

protected area lighting and storage of safeguards material. In response, on May 31, 1996, the licensee submitted its corrective action plan to ensure that such violations would not recur.

The fourth violation related to certain compensatory measures that the licensee implemented as part of its security upgrade. Specifically, the violation cited that the licensee's compensatory actions decreased the effectiveness of the alarm stations and did not meet the provisions specified in 10 CFR 50.54(p). The NRC staff, in a letter dated March 29, 1996, informed the licensee to cease the compensatory measures. In a subsequent meeting with the NRC on April 2, 1996, the licensee informed the NRC of the actions that it would take to maintain compliance with regulatory requirements. During the inspection of April 3-5, 1996, the NRC staff verified that the licensee was adhering to its commitments. Although this violation was serious, the NRC staff believes the timely actions implemented by the licensee to correct these deficiencies were satisfactory and that no further action by the NRC is warranted. Further, the staff concludes that neither the incidents identified by the petitioner with respect to security personnel's performance, nor the violations identified by the staff constitute "a general laxity of security."

The Petitioner states that the licensee's current practice of using only one guard to monitor several protected zones or entrances to the protected area does not provide adequate security. The licensee has committed to monitoring multiple protected zones or entrances in its NRC-approved Physical Security Plan (hereinafter referred to as the Plan) which describes compensatory measures that must be implemented when equipment or other resources are not in service. During the weeks of March 18-22 and April 3-5, 1996, the inspector reviewed the licensee's security program at CR3 with respect to guard monitoring of protected zones and found it to be in compliance with the Plan. Additionally, the inspector reviewed the established compensatory posts and determined that they were in accordance with the licensee's Plan and also with the recommended NRC guidance developed in NUREG-1045, "Guidance on the Application of Compensatory Safeguards Measures for Power Reactor Licensees," dated January 1984.

On the basis of its inspection, the staff finds that the licensee's current practice of monitoring multiple protected zones or entrances to the protected area is consistent with the Plan and provides adequate security. Therefore, the

Petitioner's concern regarding the adequacy of having one guard monitor several protected zones or entrances to the protected area was not substantiated.

The Petitioner states that the licensee intends to reduce its security force at CR3, and on that basis, the Petitioner raises a concern that the reduction in the security force would compromise security at the plant. In a discussion with licensee representatives on April 4, 1996, the inspector confirmed that the licensee intends to implement cost-saving measures that would employ new technology and result in a slight reduction in the number of security officers. The mere reduction in force does not indicate that plant security will be compromised. The licensee must ensure that, notwithstanding its cost-saving measures, its plan and security staffing will meet NRC requirements and are adequate to protect public health and safety. The number of security officers the licensee intends to utilize is required to, and will, meet the current commitments specified in the licensee's Plan. If the licensee decides to change the Plan commitments, it must identify the changes and submit them to NRC in accordance with NRC regulations. Therefore, the staff finds that the Petitioner's concern regarding personnel reduction and its consequent effect on plant security is not substantiated.

IV. Conclusion

The Petitioner's allegations have been partly substantiated. However, the NRC staff concludes that these concerns do not warrant suspension or revocation of Florida Power's license to operate CR3. With respect to violations identified, the NRC is satisfied that the licensee has taken appropriate action to correct the deficiencies. No further action based on concerns raised by the Petitioner is warranted. See Consolidated Edison Company of New York (Indian Point Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175 (1975); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 924 (1984). Therefore, any further action on the issues addressed in this Director's Decision is not warranted and the Petitioner's request for suspension or revocation pursuant to 10 CFR 2.202 is denied. As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission's review.

As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its

own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 7th day of October 1996.

For the Nuclear Regulatory Commission.
Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

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PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer That Contributes to a Multiemployer Plan; St. Louis Cardinals, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the St. Louis Cardinals, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. A notice of the request for exemption from the requirement was published on July 24, 1996 (61 FR 38480). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005-4026, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ralph L. Landy, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; telephone 202-326-4127 (202-326-4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met.

These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 4204, available at 61 FR 34002, 34084 (July 1, 1996)), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12–4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on the request for exemption.

The Decision

On July 24, 1996 (61 FR 38480), the PBGC published a notice of the pendency of a request by the St. Louis Cardinals, L.P. (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the St. Louis Cardinals Baseball Team from the St. Louis Baseball Club, Inc. (the "Seller"). According to the request, the Major League Baseball Players Benefit Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the "Clubs") and the Major League Baseball Players Association (the "Players Association").

According to the Buyer's representations, the Seller was obligated to contribute to the Plan for certain employees of the sold operations. Effective March 21, 1996, the Buyer and Seller entered into an agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business of

employing employees under the Plan. The Buyer agreed to contribute to the Plan for substantially the same number of contribution base units as the Seller. The Seller agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability. The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is approximately \$873,000. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations subject to the sale is \$7,340,095. The transaction had to be approved by Major League Baseball, which required that the debt-equity ratio of the Buyer be no more than 60 percent. The Buyer's financial statements showed that its net tangible assets exceed the unfunded vested benefits allocable to the Seller with respect to the purchased operations. The Buyer requested confidential treatment of its financial statements on the ground that they are confidential within the meaning of 5 U.S.C. 552.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Moreover, the PBGC has determined that the Buyer satisfies the net tangible assets test contained in section 4204.13(a)(2) of the regulation, and would be entitled to a variance of the bond/escrow requirement from the Plan under section 4204.11 of the regulation.

Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 7th day of October, 1996.

Martin Slate,

Executive Director.

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