

NUCLEAR REGULATORY COMMISSION

VIRGINIA ELECTRIC AND POWER COMPANY

D/B/A DOMINION VIRGINIA POWER

AND OLD DOMINION ELECTRIC COOPERATIVE

COMBINED LICENSE APPLICATION FOR NORTH ANNA UNIT 3

DOCKET NO. 52-017

EXEMPTION

[NRC-2008-0066]

1.0 BACKGROUND

Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion), acting on its own behalf and as agent for Old Dominion Electric Cooperative (ODEC), submitted to the U.S. Nuclear Regulatory Commission (NRC) a combined license (COL) application, under Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C of Part 52, for an Economic Simplified Boiling-Water Reactor (ESBWR), to be designated as North Anna Unit 3, at the North Anna Power Station site located in Louisa County, VA. The NRC docketed the application on January 28, 2008, and is currently performing a detailed review of the application. In addition, the NRC is currently performing a detailed review of the GE Hitachi Nuclear Energy application for design certification of the Economic Simplified Boiling Water Reactor (ESBWR).

2.0 REQUEST/ACTION

10 CFR 50.71(e)(3)(iii) requires that applicants for a combined license under 10 CFR Part 52 shall, during the period from docketing of a COL application until the Commission

makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's final safety analysis report (FSAR), which is a part of the application.

Dominion has requested a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) to allow submittal of the FSAR update, scheduled for December 2009, by June 30, 2010, and submittal of the subsequent FSAR update in 2011.

In summary, the requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow the applicant to submit the FSAR update scheduled for 2009 by June 30, 2010, and to submit the subsequent FSAR update in 2011. The FSAR update schedule could not be changed absent the exemption. Dominion requested the exemption by letter dated November 17, 2009, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093240090).

### 3.0 DISCUSSION

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if (1) "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated" (10 CFR 50.12(a)(2)(iii)) or (2) "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The regulations at 10 CFR 50.71(e)(3)(iii), requiring annual FSAR update, did not contemplate a situation in which a design control document (DCD) referenced in a COL application FSAR was revised shortly before the annual FSAR update was due. The ESBWR, referenced in the North Anna Unit 3 COL application, is currently undergoing NRC review, and Revision 6 of the FSAR, which is a comprehensive revision, was submitted to the NRC on August 31, 2009. Consistent with the regulations at 10 CFR 50.71(e), the COL FSAR update shall contain information to reflect all changes since the previous FSAR update. For North Anna, the FSAR update is to include the effects of all changes contained in DCD Revision 6. The overall quantity and nature of changes in ESBWR FSAR Revision 6 was extensive. Some changes in Revision 6 call for detailed analyses and extensive engineering work, including that of vendors, to be performed prior to the COL FSAR update. Completing all prerequisite activities and preparing the North Anna FSAR update by December 2009, would present a considerable and undue burden.

The requested one-time exemption to incorporate ESBWR FSAR Revision 6 into the North Anna FSAR update would provide only temporary relief from the regulations at 10 CFR 50.71(e)(3)(iii). The applicant has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by incorporating ESBWR FSAR Revision 5 into the prior North Anna FSAR update and by providing, on an on-going basis, marked-up COL FSAR pages to incorporate changes associated with responses to NRC requests for additional information.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow the applicant to submit the North Anna FSAR annual update scheduled for 2009 by June 30, 2010, and to submit the subsequent FSAR annual update in 2011. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.71(e)(3)(iii). The NRC staff has determined that granting of

the requested exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

#### No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for timely, comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. The requested exemption is solely administrative in nature in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52 for which a license has not been granted.

Based on the above, no new accident precursors are created by the exemption; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

#### Consistent with Common Defense and Security

The requested exemption would allow the applicant to submit the FSAR annual update scheduled for 2009 by June 30, 2010, and to submit the subsequent FSAR annual update in 2011. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever (1) "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated" (10 CFR 50.12(a)(2)(iii)) or (2) "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for timely, comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. As discussed above, the requested exemption is solely administrative in nature in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52 for which a license has not been granted. The requested exemption does not affect the underlying purpose of 10 CFR 50.71(e)(3)(iii).

Therefore, since the underlying purpose of 10 CFR 50.71(e)(3)(iii) is achieved, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

#### 4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Dominion an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the North Anna Unit 3 COL application to allow submittal of the FSAR update scheduled for 2009 by June 30, 2010, and submittal of the subsequent FSAR update in 2011.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (74 FR 65161).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11<sup>th</sup> day of January 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

Jeffrey Cruz, Chief  
ESBWR/ABWR Projects Branch 1  
Division of New Reactor Licensing  
Office of New Reactors

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