



October 26, 2010

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
11555 Rockville Pike
Rockville, MD, 20852

ALNRC 00048

**Callaway Plant Unit 2
Union Electric Company
Combine License Application NRC Docket No 52-037
Request for Exemption from 10 CFR § 50.71(E)(3)(iii)**

In accordance with the provisions of 10 CFR 50.12, Union Electric Company, doing business as Ameren Missouri,* acting on its own behalf, hereby requests an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) as applicable to Callaway Plant ("Callaway"), Unit 2. Specifically, Ameren Missouri requests a delay in the submission of its updated final safety analysis report ("FSAR"). Ameren Missouri has suspended its pursuit of the combined construction permit and operating license ("COL") for Callaway Unit 2, the Nuclear Regulatory Commission ("NRC") has suspended its review of the COL application, and all parties to the contested hearing have agreed to terminate the proceeding.

Ameren Missouri requests an exemption from the requirement to submit the scheduled 2010 and 2011 updates to the Callaway Unit 2 FSAR, and a new deadline for submission of the next updated Callaway Unit 2 FSAR of December 31, 2012. In addition, prior to any request by Ameren Missouri for the NRC to resume the review of the COL application, Ameren Missouri will submit an updated FSAR.

Enclosure 1 provides the basis for this exemption request.

Please contact Scott Bond at (314) 225-1034 (SBond2@ameren.com) or Dave Shafer at (314) 225-1056 (DShafer@ameren.com) if you have questions.

* As part of a corporate reorganization of Ameren Corporation on October 1, 2010 Union Electric Company began doing business as Ameren Missouri and ceased using the name Ameren UE. Union Electric Company will therefore use Union Electric Company d/b/a Ameren Missouri in all future correspondence

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NRD

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 2009:

Sincerely,



Scott M. Bond
Manager, New Generation
Development

Enclosures:

1. Basis for Exemption from 10 CFR 50.71 (e)(3)(iii)
2. List of Commitments

cc:

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ENCLOSURE 1

Basis for Exemption from 10 CFR 50.71(e)(3)(iii)

I. Proposed Exemption

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 combined construction permit and operating license (“COL”) application until the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) 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”).

Union Electric Company, doing business as Ameren Missouri (“Ameren”) is requesting an exemption from the requirements of 10 CFR § 50.71(e)(3)(iii) to submit the 2010 and 2011 updates to the Callaway Unit 2 FSAR. Ameren commits to submit the next FSAR update prior to any request to the NRC to resume review of the COL application and, in any event, no later than December 31, 2012.

In summary, the requested exemption is a schedule change from the requirements of 10 CFR § 50.71(e)(3)(iii) in an effort to achieve efficiency and limit the unnecessary expenditure of resources. The exemption would allow the applicant to submit the FSAR update at a later date, but still in advance of the NRC staff reinstating its review of the COL application, and in any event, no later than December 31, 2012. The FSAR annual update is established by regulation; deferral of the annual update requires an exemption.

II. Background

On July 24, 2008, Ameren submitted to the NRC a COL application, under Title 10 of the Code of Federal Regulations (“10 CFR”), Subpart C of Part 52, to construct and operate a U.S. Evolutionary Power Reactor (“U.S. EPR”), to be designated Callaway Unit 2, at the Callaway site in Callaway County, Missouri. The NRC Staff docketed the application on December 12, 2008.¹ In addition, the NRC is currently performing a detailed review of the Areva Nuclear Power application for design certification of the U.S. EPR. The NRC Staff’s published (tentative) schedule projects that the Final Safety Evaluation Report (“FSER”) for the U.S. EPR will be issued in December 2011.

By letter dated April 28, 2009, Ameren reported that it was suspending its efforts to build a nuclear power plant in Missouri.² Shortly thereafter in a letter dated June 23, 2009, Ameren requested that the NRC suspend the review of the Callaway Unit 2 COL application and all related activities.³ Based on that request, the NRC suspended all of their review activities relating to the Callaway Unit 2 COL application.⁴ The Callaway Unit 2 COL application remains docketed. As noted in its letter, the NRC said that

¹ See 73 Fed. Reg. 77,078 (Dec. 18, 2008).

² See Callaway, Unit 2, Suspension of Efforts to Build Proposed Nuclear Power Plant (Apr. 28, 2009) (ML091210159).

³ See Callaway 2 COL - Request to Suspend Review of COL Application (Jun. 23 2009) (ML091910581).

⁴ See Response to AmerenUE Letter of June 23, 2009, Requesting to Suspend Callaway Unit 2 COLA Review (Jun. 29, 2009) (ML091750665).

“pursuant to 10 CFR 52.3(b)(6) and 10 CFR 50.71(e), AmerenUE will be required to submit to the NRC updates to the FSAR annually.” *Id.* The next annual update would be due no later than December 31, 2010.

In light of Ameren’s suspension of Callaway Unit 2, Ameren entered into a settlement agreement with the NRC and the petitioners to terminate the adjudicatory proceedings and pursuant to the settlement agreement filed a joint motion to terminate the proceedings.⁵ The Atomic Safety and Licensing Board found the settlement in the public interest and terminated the contested hearing.⁶

III. Exemption Requirements

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.

10 CFR § 50.12(a)(1) and (2). In part, “special circumstances” exist if:

- (iii) 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; or
- (v) 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)(iii) and (v).

IV. Basis for the Exemption

A. Authorized by Law

10 CFR § 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.71(e)(3)(iii) without violating the Atomic Energy Act of 1954, as amended, or

⁵ See Joint Motion Of AmerenUE, NRC Staff, MCE/MSE, MAHUR, and MPC Requesting Approval Of Settlement Agreement and Termination Of Contested Portion Of Hearing (Aug. 14, 2009) (ML092260683).

⁶ See LB Memorandum and Order (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) (LBP-09-23) (Aug. 28, 2009).

the Commission's regulations. This exemption request is for 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 next Callaway Unit 2 FSAR annual update not later than December 31, 2012, and, in any event, in advance of a request that the NRC proceed with its detailed review of the COL application.

B. 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. Because the NRC's review is suspended, the update to the COL application will not be reviewed by the NRC. 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.

Because this exemption is purely a scheduling and administrative issue; there are no safety implications. No new health or safety issues are created. Neither the probability of postulated accidents nor their consequences are increased in any manner. There is no undue risk to public health and safety.

C. Consistent with Common Defense and Security

This exemption requesting a schedule change has no relation to security issues. The common defense and security is not impacted by this exemption.

D. Special Circumstances

Special circumstances are present. The regulations at 10 CFR 50.71(e)(3)(iii), requiring annual FSAR update, do not address and do not appear to have contemplated a situation in which (1) the applicant suspended its pursuit of the COL; (2) the NRC staff has suspended any and all review of the COL application, including the FSAR; and (3) petitioners have agreed to terminate adjudicatory proceedings. As such, providing an annual update to the FSAR would result in an undue hardship and unnecessary costs to Ameren.

The purpose of 10 CFR § 50.71(e)(3)(iii) is to provide for timely, comprehensive updates 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 FSAR is an extensive document and updating the document will require review and evaluation of changes made to the EPR Reference COL application for applicability to the Callaway Unit 2 SCOL application, along with updating of general background information in the Callaway Unit 2 COL application. Despite the effort to provide the updated FSAR, the purpose of 10 CFR § 50.71(e)(3)(iii) will go unfulfilled. The NRC has suspended its review of the COL application, including the FSAR.

Ameren is requesting only temporary relief from 10 CFR § 50.71(e)(3)(iii) and has made good faith efforts to comply with the regulation. Ameren has committed to provide an updated FSAR to the NRC should it decide to proceed with COL application in the future. Doing so fulfills the purpose of 10 CFR § 50.71(e)(3)(iii) to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. In any event, Ameren will provide an update to the FSAR no later than December 31, 2012, or withdraw the COL application. Furthermore, Ameren has complied with the regulation by submitting Revision 1 to the Callaway Unit 2 COL application on February 25, 2009. Revision 1 incorporated information provided in prior supplements and standardized language with the EPR Reference COL.

V. Conclusion

Based on the above, the Commission should exempt Ameren from the requirement of submitting an annual update to the Callaway Unit 2 COL application's FSAR.

ENCLOSURE 2

List Of Commitments

List Of Commitments

The following table identifies those actions committed to by AmerenUE in this document. Any other statements in this document are provided for information purposes and are not considered commitments. Please direct questions regarding these commitments to: Dave Shafer at (314) 225-1056 (DShafer@ameren.com).

COMMITMENT	Due Date/Event
The new filing date for the Callaway Unit 2 FSAR update would be before any request by Ameren Missouri for the NRC to resume review of the COL application.	12/31/2012