

U.S. NUCLEAR REGULATORY COMMISSIONAMEREN MISSOURICOMBINED LICENSE APPLICATION FOR CALLAWAY PLANT UNIT 2DOCKET NO. 52-037

[NRC-2008-0556]

EXEMPTION1.0 BACKGROUND:

Union Electric Company, doing business as Ameren UE, submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C of Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." This reactor is to be identified as Callaway Plant (Callaway), Unit 2, and located at the current Callaway County, Missouri site of the Callaway Power Plant. The Callaway, Unit 2, COL application is based upon and linked to the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the Callaway, Unit 2, COL application on December 12, 2008. In its letter to the NRC dated April 28, 2009, Ameren informed that it was suspending its efforts to build a nuclear power plant in Missouri. Subsequently, by letter dated June 23, 2009, Ameren requested the NRC to suspend all review activities relating to the Callaway, Unit 2, COL application. The NRC informed Ameren by letter dated June 29, 2009, that it had suspended all review activities relating to the Callaway, Unit 2, COL application. The NRC is currently performing a detailed review of the CCNPP3 RCOL application, as well as AREVA NP's application for design certification of the U.S. EPR.

2.0 REQUEST/ACTION:

The regulations specified in 10 CFR 50.71(e)(3)(iii) require that an applicant 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.

On February 25, 2009, Ameren submitted Revision 1 to the COL application, including updates to the FSAR. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update would be due in December 2010. Union Electric Company, doing business as Ameren Missouri (Ameren) as of October 1, 2010, as noted in its letter to the NRC dated October 26, 2010, has requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2010 and 2011 COL application FSAR updates, and proposed for approval of a new submittal deadline of December 31, 2012, for the next FSAR update.

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 Ameren to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2012. The current FSAR update schedule could not be changed, absent the exemption. Ameren requested the exemption by letter dated October 26, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML103090556).

3.0 DISCUSSION:

Pursuant to 10 CFR 50.12, the NRC 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) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)); (2) "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 (3) "The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The review of the Callaway, Unit 2, COL application FSAR has been suspended since June 29, 2009. Since the COL application FSAR is directly linked to the CCNPP3 RCOL application, many changes in the RCOL application require an associated change to the COL application FSAR and, because the NRC review of the COL application is suspended, the updates to the FSAR will not be reviewed by the NRC staff until the Callaway, Unit 2, COL application review is resumed. Thus, the optimum time to prepare a revision to the COL application FSAR is sometime prior to Ameren requesting the NRC to resume its review. To prepare and submit a COL application FSAR update when the review remains suspended and in the absence of any decision by Ameren to request the NRC to resume the review would require Ameren to spend significant time and effort and would be of no value, particularly due to the fact that the RCOL application and the U.S. EPR FSAR are still undergoing periodic revisions and updates. Furthermore, the adjudicatory proceedings related to the Callaway, Unit 2, COL application were terminated by the Atomic Safety and Licensing Board (ASLB) after agreements were made between Ameren, the NRC, and the petitioners for intervention, as documented in "AMERENUE (Callaway Plant Unit 2) MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) LBP-09-23 (August 28, 2009)" (ML092400189). 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, by December 31, 2012. Ameren would need to identify all committed changes to the RCOL application since the last revisions to the RCOL application and the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the committed changes to the RCOL application as well as the U.S. EPR FSAR.

The requested one-time exemption to defer submittal of the next update to the Callaway, Unit 2, COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). Ameren has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by submitting Revision 1 to the COL application dated February 25, 2009, prior to requesting the review suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application.

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 Ameren to submit the next Callaway Unit 2 COL application FSAR update on or before December 31, 2012, in lieu of the required scheduled submittals in December 2010, and December 2011. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting Ameren the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC'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 a timely and comprehensive update of the FSAR associated with a COL application in order to support an

effective and efficient review by the NRC staff and issuance of the NRC 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. In addition, since the review of the application has been suspended, any update to the application submitted by Ameren will not be reviewed by the NRC at this time.

Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent with Common Defense and Security:

The requested exemption would allow Ameren to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2012. 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) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)); (2) "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 (3) "The exemption would provide only temporary relief from the applicable regulation and the licensee 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 a timely and

comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time 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 one-time exemption will permit Ameren time to carefully review the most recent revisions of the CCNPP3 RCOL application as well as the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the Callaway, Unit 2, FSAR associated with the COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application when resumed, as well as issuance of the safety evaluation report, and therefore does not affect the underlying purpose of 10 CFR 50.71(e)(3)(iii). Under the circumstances that Ameren has suspended its pursuit of the COL, the NRC has suspended its review of the application, and the adjudicatory proceedings have been terminated by ASLB, application of 10 CFR 50.71(e)(3)(iii) would result in Ameren spending significant time and effort in incorporating changes made to the RCOL application into the Callaway, Unit 2, COL application, but not achieve the underlying purpose of that rule; granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief; and Ameren has made good faith efforts to comply with the regulation; therefore, 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 NRC 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 NRC hereby grants Ameren a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the Callaway, Unit 2, COL application to allow submittal of the next FSAR update prior

to any request to the NRC to resume the review and, in any event, no later than December 31, 2012.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 800).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of January 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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