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10 CFR 50.4  
10 CFR 50.12  
10 CFR 50.71

December 9, 2010

UN#10-301

ATTN: Document Control Desk  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: UniStar Nuclear Energy, NRC Docket No. 52-038  
Nine Mile Point 3 Nuclear Power Plant,  
Request for Exemption from 10 CFR 50.71(e)(3)(iii)

- References:
- 1) Greg Gibson (UniStar Nuclear Energy) to Document Control Desk (NRC),  
Nine Mile Point 3 Nuclear Power Plant – COLA Review, dated  
December 1, 2009.
  - 2) Greg Gibson (UniStar Nuclear Energy) to Document Control Desk (NRC),  
Request for Exemption from 10 CFR 50.71(e)(3)(iii), dated November 18,  
2010.

UniStar Nuclear Energy (UNE), acting on behalf of Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, its subsidiary co-applicants for a combined license (COL) for the Nine Mile Point 3 Nuclear Power Plant (NMP3NPP), reaffirms our previous request (Reference 1) for temporary suspension of the NRC review of the NMP3NPP COL application, and hereby requests an exemption from the requirements of 10 CFR 50.71(e)(3)(iii), as applicable to NMP3NPP. Specifically, UNE requests a delay in the submission of its updated final safety analysis report (FSAR).

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UNE requests an exemption from the requirement to submit the scheduled 2010 and 2011 updates to the NMP3NPP FSAR, and commits to a new deadline for submission of the next updated NMP3NPP FSAR by December 31, 2012. In addition, UNE commits to submit an updated FSAR prior to resumption of NRC review for the NMP3NPP COL application.

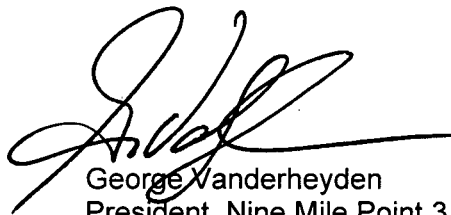
This letter replaces our previous correspondence identified in Reference 2 in its entirety.

Enclosure 1 provides the basis for this exemption request. Enclosure 2 provides a list of the Regulatory commitments made in this letter. This letter does not contain any sensitive or proprietary information.

If there are any questions regarding this transmittal, please contact me at (410) 470-4205, or Mr. Wayne A. Massie at (410) 470-5503.

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

Executed on December 9, 2010



George Vanderheyden  
President, Nine Mile Point 3 Nuclear Project, LLC  
President and Chief Executive Officer, UniStar Nuclear  
Operating Services, LLC

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

cc: Prosanta Chowdhury, NRC Project Manager, US EPR Projects Branch  
Bruce Olson, NRC Environmental Project Manager, U.S. EPR COL Application  
Getachew Tesfaye, NRC Project Manager, U.S. EPR DC Application  
Joseph Colaccino, Chief, EPR Projects Branch, Division of New Reactor Licensing-  
Loren Plisco, Deputy Regional Administrator, NRC Region II  
Kenneth Kolaczyk, U.S. NRC Senior Resident Inspector, Region 1, NMPNS  
U.S. NRC Region I Office

UN#10-301

**Enclosure 1**

**Nine Mile Point 3 Nuclear Power Plant**

**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 (COL) under 10 CFR Part 52 shall, during the period from docketing of the COL application until the U.S. Nuclear Regulatory Commission (NRC or 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).

UniStar Nuclear Energy (UNE), acting on behalf of Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, is requesting an exemption from the requirements of 10 CFR § 50.71(e)(3)(iii) to submit the 2010 and 2011 updates to the Nine Mile Point 3 Nuclear Power Plant (NMP3NPP) FSAR. UNE commits to submit an updated FSAR prior to resumption of NRC review for the NMP3NPP 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), which is requested 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 reinstituting 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 September 30, 2008,<sup>1</sup> UNE 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. EPR, to be designated NMP3NPP, at a site in Oswego County, New York. The NRC Staff docketed the application on December 12, 2008.<sup>2</sup> In addition, the NRC is currently performing a detailed review of the AREVA NP 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 December 1, 2009,<sup>3</sup> UNE requested that the NRC suspend the review of the NMP3NPP COL application and related activities. Based on that request, the NRC suspended their review activities relating to the NMP3NPP COL application. The NMP3NPP COL application remains docketed.

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:

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<sup>1</sup> Greg Gibson (UniStar Nuclear Energy) to Document Control Desk (NRC), "Submittal of a Combined License Application for the Nine Mile Point 3 Nuclear Power Plant: and Application for Withholding of Documents," dated September 30, 2008.

<sup>2</sup> Prosanta Chowdhury (NRC) to Greg Gibson (UniStar Nuclear Energy), "Combined License Application Acceptance review for Nine Mile Point 3 Nuclear Power Plant," dated December 12, 2008.

<sup>3</sup> Greg Gibson (UniStar Nuclear Energy) to Document Control Desk (NRC), Nine Mile Point 3 Nuclear Power Plant - COLA Review, dated December 1, 2009.

(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 the Commission's regulations. This exemption request is for a schedule exemption from the requirements of 10 CFR 50.71 (e)(3)(iii). The exemption would allow the applicant to submit the next NMP3NPP FSAR annual update not later than December 31, 2012, and in any event, still in advance of the NRC staff reinstituting its 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 NRC review of the NMP3NPP COL application 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; and (2) the NRC staff has suspended any and all review of the COL application, including the FSAR. As such, providing an annual update to the FSAR would result in an undue hardship and unnecessary costs to UNE.

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 reference U.S. EPR design certification application for applicability to the NMP3NPP COL application, along with updating of general background information in the NMP3NPP 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.

UNE is requesting only temporary relief from 10 CFR § 50.71 (e)(3)(iii) and has made good faith efforts to comply with the regulation. UNE 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, UNE will provide an update to the FSAR no later than December 31, 2012. Furthermore, UNE has complied with the regulation by submitting Revision 1 to the NMP3NPP COL application on March 31, 2009.<sup>4</sup> Revision 1 incorporated information provided in prior supplements and standardized language with the U.S. EPR reference design certification application.

*V. Conclusion*

Based on the above, the Commission is requested to exempt UNE from the requirement of submitting an annual update to the NMP3NPP COL application FSAR.

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<sup>4</sup> Greg Gibson (UniStar Nuclear Energy) to Document Control Desk (NRC), "Submittal of Revision 1 to the Combined License Application for Nine Mile Point Unit 3 Nuclear Power Plant; and Application for Withholding of Documents," dated March 31, 2009.

**Enclosure 2**

**Nine Mile Point 3 Nuclear Power Plant**

**List of Commitments**

### List of Commitments

The following table identifies those actions committed to by UNE 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: Wayne Massie at (410) 470-5503.

	Commitment	Due Date
NMP-10-0006	The filing date for the NMP3NPP FSAR update will be prior to resumption of NRC review for the NMP3NPP COL application, and no later than December 31, 2012.	12/31/2012