

NUCLEAR REGULATORY COMMISSION

NINE MILE POINT 3 NUCLEAR PROJECT, LLC AND UNISTAR NUCLEAR

OPERATING SERVICES, LLC

COMBINED LICENSE APPLICATION FOR NINE MILE POINT 3

NUCLEAR POWER PLANT; EXEMPTION

DOCKET NO. 52-038; NRC-2008-0581

1.0 BACKGROUND:

Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC (UniStar) 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 Nine Mile Point 3 Nuclear Power Plant (NMP3NPP), and located adjacent to the current Nine Mile Point Nuclear Station, Unit 1 and Unit 2, in Oswego County, New York. The NMP3NPP COL application incorporates by reference AREVA NP's application for a Standard Design Certification for the U.S. EPR. Additionally, the NMP3NPP COL application is based upon the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the NMP3NPP COL application on December 12, 2008. On December 1, 2009, UniStar Nuclear Energy (UNE), which is acting on behalf of the COL applicants Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC, requested that the NRC temporarily suspend the NMP3NPP COL application review, including any supporting reviews by external agencies, until further notice. Based on this request, the NRC discontinued all review activities associated with the NMP3NPP

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 March 31, 2009, UNE 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 was due by December 2010. UNE has requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2010 and 2011 FSAR updates, and proposed for approval a new submittal deadline of December 31, 2012, for the next FSAR update. In addition, UNE has committed to submit an updated FSAR prior to resumption of NRC review for the NMP3NPP COL application.

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 UNE to submit the next FSAR update at a later date, but still in advance of the NRC 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. UNE requested the exemption by letter dated December 9, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103480076). UNE has affirmed that this request letter replaced UNE's previous correspondence of November 18, 2010 (ML103260479), in its entirety, on the same request for exemption from 10 CFR 50.71(e)(3)(iii). The NRC notes that the granting of the exemption applies prospectively, rather than retroactively, so this exemption applies to required

actions from the date of exemption issuance and does not retroactively authorize a previous failure to take required action.

### 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)); 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 review of the NMP3NPP COL application FSAR has been suspended since December 1, 2009. Since the COL application incorporates by reference the application for a Standard Design Certification for the U.S. EPR, many changes in the U.S. EPR FSAR require an associated change to the COL application FSAR, and because the NRC review of the COL application is suspended, the updates to the COL application FSAR will not be reviewed by the NRC staff until the NMP3NPP COL application review is resumed. Thus, the optimum time to prepare a revision to the COL application FSAR is sometime prior to UNE 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 UNE to request the NRC to resume the review, would require UNE to spend significant time and effort and would be of no value, particularly due to the fact that the U.S. EPR FSAR is still undergoing periodic revisions and updates. UNE 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, and would need to identify all changes to the U.S. EPR FSAR in order to prepare a COL application FSAR revision that accurately and completely reflects the changes to the U.S. EPR FSAR.

The requested one-time schedule exemption to defer submittal of the next update to the NMP3NPP COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). UNE has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by submitting Revision 1 to the COL application on March 31, 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 UNE to submit the next NMP3NPP COL application FSAR update on or before December 31, 2012. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting UNE 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 UNE 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 UNE 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)); 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 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 UNE time to carefully review the most recent revisions of the U.S. EPR FSAR, and fully incorporate these revisions into a comprehensive update of the FSAR associated with the NMP3NPP 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. For this reason, application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii). In addition, special circumstances are also present under 10 CFR 50.12(a)(2)(v) because granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief, and UNE has made good faith efforts to comply with the regulation by submitting Revision 1 to the COL application on March 31, 2009, prior to requesting the review suspension. Revision 1 incorporated information provided in prior supplements and standardized language with the RCOL application. For the above reasons, 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.

Eligibility for Categorical Exclusion from Environmental Review:

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25), and justified by the NRC staff as follows:

10 CFR 51.22:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
  - (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
  - (3) Involve a significant reduction in a margin of safety.
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

- (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

- (iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

- (v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents, and

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by UNE  
  
and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR  
updates to the NRC

#### 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 UNE a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the NMP3NPP 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 51.22, the NRC has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.



This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26<sup>th</sup> day of May 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

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