

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 52-016; NRC-2008-0250]

UniStar Nuclear Energy

Combined License Application for

Calvert Cliffs Nuclear Power Plant, Unit 3

Exemption

1.0 Background:

UniStar Nuclear Energy (UNE) submitted to the U.S. Nuclear Regulatory Commission (NRC or the Commission) 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 Calvert Cliffs Nuclear Power Plant Unit 3 (CCNPP3) and located at a site in Calvert County, Maryland. The CCNPP3 COL application incorporates by reference AREVA NP's application for a Standard Design Certification for the U.S. EPR. The NRC docketed the CCNPP3 COL application on June 3, 2008. The NRC is currently performing concurrent reviews of the CCNPP3 COL application, as well as the 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 December 20, 2010, UNE submitted Revision 7 to the COL application, including updates to the FSAR. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update is due by December 2011. UNE has requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the scheduled 2011 update, and proposed, for approval, a new submittal deadline of March 30, 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 UNE to submit the next FSAR update at a later date. The current FSAR update schedule could not be changed, absent the exemption. UNE requested the exemption by letter dated November 8, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11318A013).

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)).

UNE commits to submit the next FSAR update by March 30, 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 CCNPP3 COL application FSAR would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii).

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 CCNPP3 COL application FSAR update on or before March 30, 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. 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 on or before March 30, 2012. The requested 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 CCNPP3 COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application 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 7 to the COL application on December 20, 2010. Revision 7 of the COL application incorporated information provided in prior supplements and standardized language with the U.S. EPR Design Certification 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). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of 10 CFR Chapter 1 is an action that is a categorical exclusion, provided that:

- (i) There is no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;
- (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;
- (iv) There is no significant construction impact;
- (v) There is no significant increase in the potential for or consequences from radiological accidents; and
- (vi) The requirements from which an exemption is sought involve:
 - (B) Reporting requirements; or (G) Scheduling requirements.

The NRC staff's determination that each of the applicable criteria for this categorical exclusion is met is justified as follows:

- (i) There is no significant hazards consideration;

Staff analysis: 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 is currently underway. Therefore, there are no significant hazard 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;

Staff analysis: 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;

Staff analysis: 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;

Staff analysis: The proposed action involves only a schedule change which is administrative in nature; the application review is underway and no license will be issued prior to receipt of the afore-mentioned March 30, 2012 submittal of the revised FSAR, 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

Staff analysis: 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; or (G) Scheduling requirements;

Staff analysis: The proposed exemption involves requirements in both of these categories because it involves submitting an updated FSAR by UNE and also 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 CCNPP3 COL application to allow submittal of the next FSAR update, no later than March 30, 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 21st day of December, 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

John Segala, Chief

Licensing Branch1

Division of New Reactor Licensing

Office of New Reactors