



October 15, 2012

ALNRC 00057

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555-001

10 CFR 50.71(e)(3)(iii)  
10 CFR 50.12

Ladies and Gentlemen:

**DOCKET NO. 52-037  
CALLAWAY PLANT UNIT 2  
UNION ELECTRIC CO.  
COMBINED LICENSE APPLICATION  
REQUEST FOR EXEMPTION FROM 10 CFR § 50.71(e)(3)(iii)**

References: 1.) Ameren Missouri letter to the NRC; ALNRC 00048, Request for Exemption from 10 CFR § 50.71(E)(3)(iii), dated October 26, 2010.

2.) NRC letter to Ameren Missouri; Callaway Plant, Unit 2. Combined License Application - Exemption From the Requirements of Title 10 of the Code of Federal Regulations 50.71(e)(3)(iii) dated January 11, 2011.

In Reference 1 Union Electric Company, d/b/a Ameren Missouri, requested, and in Reference 2 the NRC granted an exemption from the annual FSAR updates required by 10 CFR § 50.71(e)(3)(iii) for the combined construction permit and operating license ("COL") submitted for Callaway Plant Unit 2. Specifically, Ameren Missouri requested a delay in the submission of an updated final safety analysis report ("FSAR") until December 31, 2012 or prior to requesting the NRC to resume review of the COL for Callaway Plant Unit 2. Ameren Missouri previously suspended its pursuit of the COL for Callaway Plant Unit 2, and 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 is requesting an additional exemption from the requirement to submit the scheduled 2012 and 2013 updates to the Callaway Plant Unit 2 FSAR with a commitment to update the FSAR prior to any request by Ameren Missouri that the NRC resumes review of the COL application or by December 31, 2014.

Enclosure 1 provides the basis for this exemption request.

This letter does contain a revised commitment as shown in Enclosure 2.

If there are any questions, please contact Scott Bond at (314) 225-1034 ([SBond2@ameren.com](mailto:SBond2@ameren.com)) or Roger Wink at (314) 225-1561 ([RWink@ameren.com](mailto:RWink@ameren.com)).

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

Executed on October 15, 2012:

Sincerely,

*Scott Bond 611*

Scott M. Bond  
Manager, New Generation Development

*RCW*  
SMB/RCW/slk

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”) 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 2012 and 2013 updates to the Callaway Plant 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, 2014.

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 Ameren 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, 2014. 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 Plant Unit 2, at the Callaway Plant site in Callaway County, Missouri. The NRC Staff docketed the application on December 12, 2008.<sup>1</sup> 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 mid-2014.

By letter dated April 28, 2009, Ameren reported that it was suspending its efforts to build a nuclear power plant in Missouri.<sup>2</sup> Shortly thereafter in a letter dated June 23, 2009, Ameren requested that the NRC suspend the review of the Callaway Plant Unit 2 COL application and all related activities.<sup>3</sup> Based on that request, the NRC suspended all of their review activities relating to the Callaway Plant Unit 2 COL application.<sup>4</sup> The Callaway Plant Unit 2 COL application remains docketed. As noted in its letter, the NRC said that “pursuant to 10 CFR 52.3(b)(6) and 10 CFR 50.71(e), AmerenUE will be

<sup>1</sup> See 73 Fed. Reg. 77,078 (Dec. 18, 2008).

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

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

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

required to submit to the NRC updates to the FSAR annually.” *Id.* By letter dated October 26, 2010, Ameren requested that the NRC grant an exemption from the requirement in 10 CFR § 50.71(e)(3)(iii) to submit the annual updates to the Callaway Plant Unit 2 FSAR that would have been due in 2010 and 2011.<sup>5</sup> The NRC approved the exemption<sup>6</sup>.

In light of Ameren’s suspension of Callaway Plant 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.<sup>7</sup> The Atomic Safety and Licensing Board found the settlement in the public interest and terminated the contested hearing.<sup>8</sup>

### 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.

*Reference: 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.

*Reference: 10 CFR § 50.12(a)(2)(iii) and (v).*

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<sup>5</sup> Ameren Missouri letter to the NRC ALNRC 00048, Request for Exemption from 10 CFR § 50.71(E)(3)(iii) (Oct. 26, 2010)

<sup>6</sup> NRC letter to Ameren Missouri, Callaway Plant, Unit 2. Combined License Application - Exemption From the Requirements of Title 10 of the Code of Federal Regulations 50.71(e)(3)(iii) (Jan. 11, 2011).

<sup>7</sup> 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).

<sup>8</sup> See LB Memorandum and Order (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) (LBP-09-23) (Aug. 28, 2009).

#### 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 Callaway Plant Unit 2 FSAR annual update not later than December 31, 2014, 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 U.S. EPR Reference COL application for applicability to the Callaway Plant Unit 2 SCOL application, along with updating of general

background information in the Callaway Plant 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 the 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, 2014, or take such other action as may be appropriate. Furthermore, Ameren has complied with the regulation by submitting Revision 1 to the Callaway Plant Unit 2 COL application on February 25, 2009. Revision 1 incorporated information provided in prior supplements and standardized language with the U.S. 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 Plant Unit 2 COL application's FSAR.



**ENCLOSURE 2**

**List Of Commitments**

**List of Commitments**

The following table identifies those actions committed to by Ameren 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: Roger Wink (314) 225-1561 (RWink@ameren.com).

<b>COMMITMENT</b>	<b>Due Date/Event</b>
The new filing date for the Callaway Plant Unit 2 FSAR update would be before any request by Ameren that the NRC resumes review of the COL application.	12/31/2014