

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-022 and 52-023; NRC-2013-0261]

Duke Energy Progress; Shearon Harris Units 2 and 3

Exemption from Requirements to Revise

Combined License Applications to Address

Enhancements to Emergency Preparedness Rules

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 29, 2013, request from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On July 29, 2013, DEP requested an exemption from certain regulatory requirements which, if granted, would allow them to revise their COL application in order to address enhancements to the Emergency Preparedness (EP) rules within six months of requesting the NRC to resume the review of their COL application, rather than by December 31, 2013, as the regulations currently require. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the revised application must be submitted prior to requesting the NRC resume its review of the COL application or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID **NRC-2013-0261** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0261**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-6185; e-mail: Anthony.Minarik@nrc.gov.

SUPPLEMENTARY INFORMATION:

The following sections include the text of the exemption in its entirety as issued to DEP.

1.0 Background

On February 18, 2008, Agencywide Documents Access and Management System (ADAMS) Accession No. ML080580078) Duke Energy Progress, Incorporated (DEP), submitted to the U.S. Nuclear Regulatory Commission (NRC/the Commission) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site (Docket Numbers 052000-22 and 052000-23). The NRC docketed the Harris Units 2 and 3 COL application on April 23, 2008. On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed. On July 29, 2013 (ADAMS Accession No. ML13212A361), DEP requested an exemption from the requirements part 50 Appendix E Section I.5 of Title 10 of the *Code of Federal Regulations* (10 CFR), as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2013.

2.0 Request/Action

10 CFR Part 50 Appendix E, Section 1.5 requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the *Federal Register* (76 FR 72560) on November 23, 2011. An applicant that does not receive a COL before

December 31, 2013 shall revise its COL application to comply with these changes no later than December 31, 2013.

Because DEP will not hold a COL prior to December 31, 2013, it is therefore required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension of all review activities while the application remained docketed. In a letter dated July 29, 2013 (ADAMS Accession No. ML13212A361), DEP requested an exemption from the requirements of 10 CFR part 50 appendix E, section I.5 until the time that DEP requests the NRC to resume the review of the Harris Units 2 and 3 COL application. DEP's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR part 50 appendix E, section I.5. In its request, DEP asked the NRC to grant the exemption from 10 CFR Part 50 Appendix E Section I.5 until 6 months after reactivating the Harris Units 2 and 3 COL application review. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow DEP to comply with the new EP rule at a later date, but still in advance of the NRC resuming its review of the application and in any event, by December 31, 2014. The current requirement to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

3.0 Discussion

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 10 CFR Part 50 Appendix E, Section I.5, when: (1) the exemption(s) 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: “[a]pplication 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)).

The purpose of 10 CFR part 50 appendix E, section I.5 was to ensure that applicants and new COL holders updated their COL applications or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to receiving a license, or, for licensees, prior to operating the plant. The targets of section I.5 of the rule were those applications that were being actively reviewed by the NRC staff when the rule went into effect on November 23, 2011. Because DEP requested the NRC suspend its review of the Harris Units 2 and 3 COL application, compelling DEP to revise its COL application in order to meet the December 31, 2013 compliance deadline would result in unnecessary burden and hardship for the applicant to meet the compliance date. As long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules prior to the NRC approving their COL application, it makes no difference if they revise the COL application now, when they request the review be restarted, or December 31, 2014. For this reason the application of 10 CFR Part 50 Appendix E, Section I.5, for the suspended Harris 2 and 3 COL application is deemed unnecessary, and therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR Part 50 Appendix E Section I.5. The exemption would allow DEP to revise its COL application, and comply with the new EP rules on or before December 31, 2014, in lieu of December 31, 2013, the date required by 10 CFR Part 50 Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting DEP the requested one-time exemption from the

requirements of 10 CFR 50 Appendix E, Section I.5 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 the enhancements to Emergency Preparedness found in 10 CFR Part 50, Appendix E, is to amend certain EP requirements to enhance protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, 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 DEP to submit the revised COL application prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever “[a]pplication 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)). The underlying purpose of 10 CFR Part 50 Appendix E, Section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their revised COL application prior to issuance of the license. Because the Harris Units 2 and 3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and DEP were then required to comply by December 31, 2014 or prior to any request to restart of their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix E, Section I.5 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:

(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 are 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.

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

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by DEP

and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), 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 Commission hereby grants DEP a one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 pertaining to the Harris Units 2 and 3 COL application to allow submittal of the revised COL application that complies with the enhancements to the EP rules prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission 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 November 2013.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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