



October 3, 2013

ALNRC00060

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

10 CFR 50 Appendix E  
10 CFR 50.12

Ladies and Gentlemen:

**DOCKET NUMBER 52-037  
CALLAWAY PLANT UNIT 2  
UNION ELECTRIC CO.  
COMBINED LICENSE APPLICATION  
REQUEST FOR EXEMPTION FROM 10 CFR PART 50 APPENDIX E**

Reference: 1.) Ameren Missouri letter to the NRC; ALNRC 00004, Application for Combined License for Callaway Plant Unit 2, dated July 24, 2008

In Reference 1 Union Electric Company, d/b/a Ameren Missouri, submitted to the Nuclear Regulatory Commission (NRC) a combined construction permit and operating license ("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.

On November 23, 2011 the NRC issued the final rulemaking amending emergency plan requirements for nuclear power plants including those undergoing COL application reviews. 10 CFR Part 50 Appendix E Section I.5 states the following:

Each applicant for a combined license or early site permit under part 52 of this chapter whose application is docketed before December 23, 2011 may defer compliance with any change to emergency preparedness regulations under the final rule issued November 23, 2011. If that applicant chooses to defer compliance, it shall subsequently request to amend the combined license or early site permit to comply with those changes no later than December 31, 2013. An applicant that does not receive a combined license or early site permit before December 31, 2013, shall revise its combined license or early site permit application to comply with those

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changes no later than December 31, 2013. Notwithstanding any Commission finding under 10 CFR 52.103(g) regarding the combined license holder's facility, the combined license holder may not operate the facility until the NRC has approved the license amendment demonstrating compliance with the final rule.

By letter dated April 28, 2009, Ameren Missouri reported that it was suspending its efforts to build a nuclear power plant in Missouri. Shortly thereafter in a letter dated June 23, 2009, Ameren Missouri requested that the NRC suspend the review of the Callaway Plant Unit 2 COL application and all related activities. Based on that request, the NRC suspended all of their review activities relating to the Callaway Plant Unit 2 COL application. The Callaway Plant Unit 2 COL application remains docketed.

In light of the suspension of the Callaway Plant Unit 2 COL application, Ameren Missouri is requesting an exemption from the requirement to submit a revised emergency plan by December 31, 2013 with a commitment to update the emergency plan prior to any request by Ameren Missouri that the NRC resumes review of the COL application.

Enclosure 1 provides the basis for this exemption request.

This letter does contain a new 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)).

Sincerely,



Scott M. Bond

Director Nuclear Development

Executed on: 10/3/2013

Enclosures:

1. Basis for Exemption from 10 CFR Part 50 Appendix E
2. List of Commitments

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Enclosure 1

## ENCLOSURE 1

Basis for Exemption from 10 CFR Part 50 Appendix E

## **I. Proposed Exemption**

10 CFR Part 50 Appendix E Section I.5 requires that each applicant for a combined license under part 52 whose application is docketed before December 23, 2011 revise its combined license application to comply with the emergency plan rulemaking changes effective November 23, 2011 no later than December 31, 2013. Listed below is the cited text from Section I.5 of 10 CFR Part 50 Appendix E:

Each applicant for a combined license or early site permit under part 52 of this chapter whose application is docketed before December 23, 2011 may defer compliance with any change to emergency preparedness regulations under the final rule issued November 23, 2011. If that applicant chooses to defer compliance, it shall subsequently request to amend the combined license or early site permit to comply with those changes no later than December 31, 2013. An applicant that does not receive a combined license or early site permit before December 31, 2013, shall revise its combined license or early site permit application to comply with those changes no later than December 31, 2013. Notwithstanding any Commission finding under 10 CFR 52.103(g) regarding the combined license holder's facility, the combined license holder may not operate the facility until the NRC has approved the license amendment demonstrating compliance with the final rule.

Union Electric Company, doing business as Ameren Missouri ("Ameren") is requesting an exemption from the requirements of 10 CFR Part 50 Appendix E to submit an emergency plan update for the Callaway Plant Unit 2 COL application. Ameren commits to submit an updated emergency plan prior to any request to the NRC to resume review of the COL application.

In summary, the requested exemption is a schedule change from the requirements of 10 CFR Part 50 Appendix E in an effort to achieve efficiency and limit the unnecessary expenditure of resources. The exemption would allow Ameren to submit the Emergency Plan update at a later date, but still in advance of the NRC staff reinstating its review of the COL application. The Emergency Plan update is established by regulation; deferral of the 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 performing a review of the AREVA NP, Inc. design certification application of the U.S. EPR. The schedule for publishing the Final Safety Evaluation Report (FSER) for the U.S. EPR is presently on hold pending resolution of digital Instrumentation and Control system design questions<sup>2</sup>.

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

<sup>2</sup> See ML13168A571 dated July 2, 2013.

By letter dated April 28, 2009, Ameren reported that it was suspending its efforts to build a nuclear power plant in Missouri<sup>3</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>4</sup>. Based on that request, the NRC suspended all of their review activities relating to the Callaway Plant Unit 2 COL application<sup>5</sup>. The Callaway Plant Unit 2 COL application remains docketed.

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>6</sup>. The Atomic Safety and Licensing Board found the settlement in the public interest and terminated the contested hearing<sup>7</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 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>3</sup> See Callaway Plant Unit 2, Suspension of Efforts to Build Proposed Nuclear Power Plant (Apr. 28, 2009) (ML091210159).

<sup>4</sup> See Callaway 2 COL - Request to Suspend Review of COL Application (Jun. 23 2009) (ML091910581).

<sup>5</sup> See Response to AmerenUE Letter of June 23, 2009, Requesting to Suspend Callaway Unit 2 COLA Review (Jun. 29, 2009) (ML091750665).

<sup>6</sup> See Joint Motion Of AmerenUE, NRC Staff, MCEIMSE, MAHUR, and MPC Requesting Approval Of Settlement Agreement and Termination Of Contested Portion Of Hearing (Aug. 14, 2009) (ML092260683).

<sup>7</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 Part 50 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 Part 50 Appendix E. The exemption would allow the applicant to submit the next Callaway Plant Unit 2 Emergency Plan update prior to 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 the 10 CFR Part 50 Appendix E emergency plan update requirement is to provide for a timely update of the emergency plan associated with an active 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 emergency plan 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 Part 50 Appendix E requiring an Emergency Plan 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 Emergency Plan; and (3) petitioners have agreed to terminate adjudicatory proceedings. As such, providing an update to the Emergency Plan would result in an undue hardship and unnecessary costs to Ameren.

The purpose of 10 CFR Part 50 Appendix E Section I.5 is to provide an update of the Emergency Plan associated with an active COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. The Emergency Plan is an extensive document and updating the Emergency Plan will require review and evaluation of the

rulemaking changes that became effective November 23, 2011<sup>8</sup>. Despite the effort to provide the updated Emergency Plan, the purpose of 10 CFR Part 50 Appendix E Section I.5 will go unfulfilled. The NRC has suspended its review of the COL application, including the Emergency Plan.

Ameren is requesting only temporary relief from 10 CFR Part 50 Appendix E Section I.5 and has made good faith efforts to comply with the regulation. Ameren has committed to provide an updated Emergency Plan to the NRC should it decide to proceed with the COL application in the future. Doing so fulfills the purpose of 10 CFR Part 50 Appendix E Section I.5 to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

## **V. Conclusion**

Based on the above, the Commission should exempt Ameren from the requirement of submitting an update to the Callaway Plant Unit 2 COL application's Emergency Plan.

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<sup>8</sup> See Federal Register Vol. 76, No. 226 Dated Wednesday, November 23, 2011

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Enclosure 2

## ENCLOSURE 2

### List of Commitments

### LIST OF COMMITMENTS

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

<b>COMMITMENT</b>	<b>Due Date/Event</b>
Ameren Missouri will update the Callaway Plant Unit 2 Emergency Plan as specified in 10 CFR Part 50 Appendix E before any request by Ameren Missouri that the NRC resume review of the COL application.	Before any request by Ameren Missouri that the NRC resume review of the COL application