



**Luminant**

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CP-201400058  
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Ref. # 10 CFR 52.7  
10 CFR 50.12

January 14, 2014

U. S. Nuclear Regulatory Commission  
Document Control Desk  
Washington, DC 20555  
ATTN: Frank M. Akstulewicz, Director  
Division of New Reactor Licensing

**SUBJECT:** COMANCHE PEAK NUCLEAR POWER PLANT, UNITS 3 AND 4  
DOCKET NUMBERS 52-034 AND 52-035  
REQUEST FOR EXEMPTION FROM 10 CFR 50.71(e)(3)(iii)

**REFERENCE:** Letter logged TXNB-13035, from R. Flores of Luminant Power to D. Matthews, NRC,  
"Combined License Application (COLA) Review," dated November 7, 2013  
(ML13316A369)

Dear Sir:

In the referenced letter, Luminant Generation Company LLC (Luminant) notified the NRC of its intent that all reviews associated with the Combined License Application (COLA) for Comanche Peak Nuclear Power Plant (CPNPP) Units 3 and 4 be suspended by March 31, 2014. In accordance with the provisions of 10 CFR 52.7 and 50.12, Luminant hereby requests an exemption from the scheduler requirement of 10 CFR 50.71(e)(3)(iii) as applicable to CPNPP Units 3 and 4, while review of the COLA is suspended. Specifically, Luminant requests an exemption from the reporting requirement in 10 CFR 50.71(e)(3)(iii), which requires an applicant for a combined license under Subpart C of 10 CFR 52 to submit an update to its Final Safety Analysis Report (FSAR) annually. The most recent FSAR update was submitted as Revision 4 on November 26, 2013 (ML13344B515). Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update (FSAR Revision 5) would be due in November of 2014.

After March 31, 2014, Luminant will only maintain a "caretaker" staff for the COLA and will only perform actions required by the regulations or by Luminant commitments to the NRC. Luminant does not intend to modify the plant design or to update the FSAR during the suspension period. As a result, Luminant requests that this exemption extend the due date for filing FSAR Revision 5 until one year after the end of the suspension period. An end date for the suspension has not been established.

The basis for this request is that updates to the design or procedures that are described in the FSAR will not be completed during the suspension period. As a result, there will be no updated FSAR information generated for NRC staff consideration. In addition, the NRC will not be conducting reviews during the suspension.

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Attachment 1 provides the basis for this exemption request.

Should you have any questions regarding this request, please contact Don Woodlan (254-897-6887, Donald.Woodlan@luminant.com) or me.

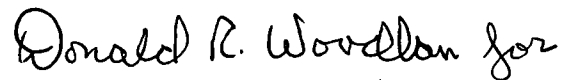
There are no commitments in this letter.

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

Executed on January 14, 2014.

Sincerely,

Luminant Generation Company LLC

A handwritten signature in black ink that reads "Donald R. Woodlan for". The signature is written in a cursive style.

Rafael Flores

Attachment: Basis for Exemption from 10 CFR 50.71(e)(3)(iii)

Electronic distribution w/attachment:

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## **Basis for Exemption from 10 CFR 50.71(e)(3)(iii)**

Luminant Generation Company LLC (Luminant) requests an exemption from the scheduler reporting requirement of 10 CFR 50.71(e)(3)(iii), which requires an applicant for a combined license (COL) under Subpart C of Part 52 to submit to the Nuclear Regulatory Commission (NRC) an update to its Final Safety Analysis Report (FSAR) annually. For the reasons provided below, Luminant requests an exemption to allow the next update to the COL application (COLA) FSAR for Comanche Peak Nuclear Power Plant (CPNPP) Units 3 and 4 to be submitted within one year following the end of the review suspension.

### Background

On November 5, 2013, Mitsubishi Heavy Industries Ltd. (MHI) notified the NRC of MHI's intent to slow down the review of the US-APWR Design Control Document (DCD) (ML13311A109). Mitsubishi's decision to slow their DCD review resulted in Luminant's reconsideration of its options with respect to the COLA for CPNPP Units 3 and 4. Given the indeterminate timeline for DCD review completion and the fact that the COLA is generally paced by DCD progress, Luminant concluded that it does not make sense to continue to expend Luminant or NRC resources on the COLA review until more progress has been made in reviewing the US-APWR application for certification. On November 7, 2013, Luminant requested (ML13316A369) that all reviews associated with the COLA will be suspended by March 31, 2014, and that no new charges be posted to the CPNPP COLA dockets after that date. Subsequently, Luminant has agreed that limited review man-hours may be charged to complete selected ongoing activities, but no reviews are expected beyond April 30, 2014.

Luminant does not intend to complete changes to the plant designs or procedures as described in the FSAR or to update the FSAR during the suspension period. There will be no updated FSAR information generated for NRC staff consideration during the period of suspension. In addition, the NRC will not be conducting reviews during the suspension. As a result, Luminant requests that this exemption extend the filing date for FSAR Revision 5 to one year after the end of the suspension period.

### Basis for Exemption

Pursuant to 10 CFR 52.7 and 50.12, the NRC may grant an exemption from requirements contained in 10 CFR Parts 52 and 50 provided that the following conditions are satisfied:

1. The requested exemption is authorized by law;
2. The requested exemption will not present an undue risk to the public health and safety;
3. The requested exemption is consistent with the common defense and security; and
4. Special circumstances are present.

The Commission has the authority to grant exemptions from its rules, and such exemptions are authorized by law if the regulatory process of 10 CFR 52.7 and 50.12 is being followed. Because the exemption requested by Luminant is merely a limited time scheduler exemption to an NRC reporting requirement for an application that has not yet been granted, it is not inconsistent with any law, it presents no risk to the public health and safety, and is in no way inconsistent with the common defense and security. The first three criteria of 10 CFR 50.12 are therefore satisfied.

In addition, 10 CR 50.12(a)(2) states that the NRC will not grant an exemption unless special circumstances are present. The following special circumstances as listed in 10 CFR 50.12(a)(2) apply to the requested exemption. An evaluation follows each special circumstance listed.

**“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))**

The requirement for applicants for a combined license to submit an updated FSAR annually provides the NRC reviewers the latest information developed with respect to the application on a periodic basis. Luminant does not intend to modify the plant design or procedures described in the FSAR during this suspension. The NRC staff will not be conducting COLA reviews during the suspension. Revision 4 to the FSAR was submitted on November 26, 2013 (ML13344B515). Revision 4 included information developed through August 30, 2013, and some information through October 2013. Based on the decision to suspend in early November 2013, minimal new information has been developed since the issuance of FSAR Revision 4. If a Revision 5 to the FSAR were submitted in November 2014 or any time during the suspension, it would include little new information compared to Revision 4 and the information would be of no value to the NRC staff because the NRC staff will not be actively reviewing the COLA at that time. Submitting Revision 5 during the suspension would not serve the underlying purpose of the rule. As a result, Luminant requests that this exemption extend the filing date for FSAR Revision 5 to one year after the end of the suspension period.

**“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” (10 CFR 50.12(a)(2)(iii)).**

If a Revision 5 to the FSAR were submitted in November 2014 or any time during the suspension, it would include little new information compared to Revision 4 and the information would be of no value to the NRC staff because the NRC staff will not be actively reviewing the COLA at that time.

A COLA FSAR update about one year after the end of the suspension would incorporate the new information anticipated by the rule for the NRC staff.

Luminant believes that submitting an FSAR update by the currently required date requires resources and effort not anticipated by the rule in that revisions would provide little new information. The revision submittal process would require an expenditure of resources with little or no benefit. As such, complying with the schedule in the rule would impose an undue hardship. On the other hand, rescheduling the revision to one year after the end of the suspension would be consistent with the effort anticipated by the rule and would provide a document useful to the NRC reviewers.

**“The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.” (10 CFR 50.12(a)(2)(v)).**

The exemption would be applied only during the COLA review suspension and provides only temporary relief. Luminant has submitted this request for exemption well before the submission due date per the regulations to allow time to prepare and submit an FSAR update per the scheduler requirement of 10 CFR 50.71(e)(3)(iii) should this exemption request not be granted.

Environmental Assessment

The proposed action would exempt Luminant from the requirement of 10 CFR 50.71(e)(3)(iii), which specifies that an applicant for a combined license must submit an update to its final safety analysis report annually. The proposed exemption would grant an exemption to allow Luminant to submit its next update to the FSAR for CPNPP Units 3 and 4 within one year after the end of the COLA review suspension.

The proposed action will not result in any impact on the environment. The exemption would only grant temporary relief from a requirement to update an application not yet granted. Consequently, the exemption would not authorize any activity that could have an impact on the environment.

The only alternative to the proposed action would be not issuing the exemption (i.e., the "no action" alternative). This alternative would not accomplish the purpose of the proposed action (to eliminate the submittal of FSAR revisions with little or no new information - and of no value to the NRC Staff - and to reduce the burden on the applicant). In addition, the "no action" alternative would not have a different environmental impact. Both the proposed action and the "no action" alternative would have no impact on the environment.