

NUCLEAR REGULATORY COMMISSION

[Docket No. 52-016; NRC-2008-0250]

UniStar Nuclear Energy

Combined License Application for

Calvert Cliffs Nuclear Power Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a December 31, 2014, letter from UniStar Nuclear Energy (UNE), on behalf of Calvert Cliffs Nuclear Project, LLC, and UniStar Operating Services, LLC, co-applicants for the combined license (COL) application for the Calvert Cliffs Nuclear Power Plant Unit 3 (CCNPP3), which requested an exemption to delay the submission of the annual update of the Final Safety Analysis Report (FSAR) to be included in their COL application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption to delay the FSAR update submittal up to December 31, 2015.

ADDRESSES: Please refer to Docket ID **NRC-2008-0250** when contacting the NRC about the availability of information regarding this document. You may access the publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for

Docket ID **NRC-2008-0250**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For the technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection 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 a 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: Surinder Arora, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1421, or e-mail: Surinder.Arora@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 2008, UNE, on behalf of Calvert Cliffs Nuclear Project, LLC and UniStar Operating services, LLC, submitted to the NRC a COL application, under Subpart C of Part 52

of *Title 10 of the Code of Federal Regulations* (10 CFR) to construct and operate a single unit of AREVA NP's U.S. Evolutionary Power Reactor (EPR), designated as Calvert Cliffs Nuclear Power Plant Unit 3, at a site in Calvert County, Maryland. The UNE application was docketed on June 3, 2008 (Docket Number 52-016). UNE's COL application for CCNPP3 incorporates by reference AREVA NP's application for a standard design certification for the U.S. EPR. The NRC is currently performing concurrent reviews of the CCNPP3 COL application as well as AREVA NP's application for design certification of the U.S. EPR. UNE also had previously requested an exemption on November 19, 2013 (this request was later supplemented by UNE's follow up updated request on March 21, 2014), under 10 CFR 50.71(e)(3)(iii) to submit the scheduled 2013 FSAR update, and proposed, for approval, a new submittal deadline of December 31, 2014. The NRC reviewed the bases for the exemption request and granted the exemption as described in *Federal Register* notice published on September 11, 2014 (79 FR 54303).

By a letter dated December 16, 2014 (ADAMS Accession No. ML14351A301), UNE requested that after January 2015, the NRC defer its safety review portion of the Calvert Cliffs Unit 3 COL application until such time that UNE formally requests that the NRC resume its review. The letter also stated that UNE will monitor and evaluate progress of the technical issue resolution for the U.S. EPR FSAR and the development of guidance necessary to address Foreign Ownership Control and Domination (FOCD) prior to requesting the NRC to resume review. By letter dated February 27, 2015 (ADAMS Accession No. ML15062A050), UNE requested that after March 6, 2015, the NRC suspend the Calvert Cliffs Unit 3 COL application review until such time the UNE formally requests that the NRC resume its review. The letter also stated that UNE will continue to monitor the U.S. EPR Design Certification efforts, as well as other project conditions such as foreign ownership guidance, loan guarantee availability and the electricity market, among others.

II. Request/Action

The regulations at 10 CFR 50.71(e)(3)(iii) require that an applicant for a COL under 10 CFR Part 52 shall, during the period from docketing of a COL application and until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's FSAR, which is Part 2 of the COL application. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update of the FSAR for the CCNPP3 COL application would have been due by December 31, 2014.

On September 30, 2014, UNE submitted Revision 10 of the COL application, including updates to the FSAR. The FSAR updates in Revision 10 of the CCNPP3 COL application satisfied the applicant's requested exemption of November 19, 2013, and the supplement follow up request of March 21, 2014.

By a letter dated December 31, 2014 (ADAMS Accession No. ML15002A245), UNE submitted a request to the NRC, for exemption from the requirements of 10 CFR 50.71(e)(3)(iii) for delaying the scheduled 2014 FSAR updates and proposed for approval a new submittal date of December 31, 2015. UNE's letter states that the requested exemption is a schedule change from the requirements of 10 CFR 50.71(e)(3)(iii) to accommodate the incorporation of the U.S. EPR Design Certification application revisions in an orderly and efficient manner. The current requirements to submit an FSAR update could not be changed, absent the exemption request.

III. 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 10

CFR 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)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to-date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. As requested by UNE in the above referenced letter dated February 27, 2015, the NRC suspended the CCNPP3 COL application review until further notification by UNE. Therefore, updating the CCNPP3 FSAR would only cause undue hardship on UNE, and the purpose of 10 CFR 50.71(e)(3)(iii) would still be achieved so long as the next update is submitted by December 31, 2015, as committed to in UNE's exemption request letter.

The requested exemption to defer submittal of the next update to the FSAR included in the CCNPP3 COL application 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 December 31, 2015. Per 10 CFR 50.12, 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; therefore, neither the probability, nor the consequences, of postulated accidents are increased. Therefore, the requested exemption does not result in any 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 December 31, 2015. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by the 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)).

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. This one-time exemption will support the NRC staff's effective and efficient review of the CCNPP3 COL application, when resumed, as well as issuance of the NRC staff's 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. 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 (which includes 10 CFR 50.71(e)(3)(iii)) 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:
- (A) Recordkeeping requirements;
 - (B) Reporting requirements;
 - (C) Inspection or surveillance requirements;
 - (D) Equipment servicing or maintenance scheduling requirements;
 - (E) Education, training, experience, qualification, requalification or other employment suitability requirements;
 - (F) Safeguard plans, and materials control and accounting inventory scheduling requirements;
 - (G) Scheduling requirements;
 - (H) Surety, insurance or indemnity requirements; or
 - (I) Other requirements of an administrative, managerial, or organizational nature.

The requirements from which this exemption is sought involve only “(B) Reporting requirements” or “(G) Scheduling requirements” of those required by 10 CFR 51.22(c)(25)(vi).

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

- I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

Staff Analysis: The criteria for determining if an exemption involves a 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 suspended. 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. 10 CFR 51.22(c)(25)(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 in the types or significant increase in the amounts of effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(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. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

Staff Analysis: The proposed action involves only a schedule change which is administrative in nature. While the environmental portion of the application review is complete in that the final environmental impact statement is already issued, the safety portion of the COL application review has been suspended and no license will be issued prior to the NRC resuming the review and receipt of the aforementioned application's December 31, 2015, submittal of the revised FSAR; therefore, the proposed action does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

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.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which this exemption is sought involve only “(B) Reporting requirements” or “(G) Scheduling requirements.”

Staff Analysis: The exemption request involves requirements in both of these categories because it involves submitting an updated COL FSAR by December 31, 2015, and also relates to the schedule for submitting COL FSAR updates to the NRC.

IV. Conclusion

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 exist under 10 CFR 50.12(a)(2)(ii). This one-time exemption will support the NRC staff’s effective and efficient review of the COL application, when resumed, as well as issuance of the NRC staff’s safety evaluation report. Therefore, the NRC hereby grants UNE a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the BBNPP COL application to allow submittal of the next FSAR update on or before December 31, 2015.

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 9th day of April 2015.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Frank Akstulewicz, Director, Division
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New Reactors.