

NUCLEAR REGULATORY COMMISSION

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

**Duke Energy Progress; Combined License Application for
Shearon Harris Nuclear Power Plant Units 2 and 3**

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 13, 2016, letter from Duke Energy Progress (DEP), which requested an exemption from certain regulatory requirements that requires DEP to submit an update to the final safety analysis report (FSAR) included in their combined license (COL) application for Shearon Harris Nuclear Power Plant (Harris) Units 2 and 3 by December 31, 2016. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the update to the FSAR must be submitted prior to, or coincident with the resumption of the COL application review or by December 31, 2019, whichever comes first.

DATE: The exemption is effective on January 18, 2017.

ADDRESSES: Please refer to Docket ID **NRC-2013-0261** when contacting the NRC about the availability of information regarding this document. You may obtain 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: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For 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 (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: Brian Hughes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-6582; e-mail: Brian.Hughes@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 2008, DEP, submitted to the NRC a 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 (ADAMS Accession No. ML080580078). The NRC docketed the Shearon Harris Units 2 and 3 COL application (Docket Nos. 52-022 and 52-023) on April 23, 2008. On April 15, 2013, (ADAMS Accession No. ML13112A761) DEP submitted Revision 5 to the COL application including updates to the FSAR, per Subsection 50.71(e)(3)(iii) of title 10 of the *Code of Federal Regulations* (10 CFR). On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Shearon Harris Nuclear Plant Units 2 and 3 COL application. On August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update, which NRC granted through December 31, 2014. On August 1, 2014 (ADAMS Accession No. ML14216A431), DEP requested another exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update which the NRC granted through December 31, 2015. On August 12, 2015 (ADAMS Accession No. ML15226A353), DEP requested another exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update which NRC granted through by December 31, 2016. On October 13, 2016 (ADAMS Accession No. ML16288A815), DEP requested another exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit annual updates to the FSAR during the years 2016, 2017, and 2018. In this exemption request, DEP indicated that it would provide an update to the FSAR, or take other appropriate action, no later than December 31, 2019.

II. Request/Action

Paragraph 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR part 52, submit updates to their FSAR annually during the period from docketing the application to the Commission making its 10 CFR 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the Harris Units 2 and 3 COL application would be due by December 31, 2016. In a letter dated October 13, 2016 (ADAMS Accession No. ML16288A815), DEP requested that the Harris Units 2 and 3 COL application be exempt from the 10 CFR 50.71(e)(3)(iii) requirements during the years of 2016, 2017, and 2018 until December 31, 2019, or prior to a request to reactivate the Harris Units 2 and 3 COL application review.

The exemption would allow DEP to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2019. The current requirement to submit an FSAR update could not be changed, absent the exemption.

III. 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 50.71(e)(3)(iii) 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)) and if: [t]he 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. Because DEP requested the NRC suspend its review of the Harris Units 2 and 3 COL application, compelling DEP to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. Requiring the updates would result in undue hardship on DEP, and the purpose of 10 CFR 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review and in any event by December 31, 2019.

The requested exemption to defer submittal of the next update to the FSAR included in the Harris Units 2 and 3 COL application would provide only temporary relief from the regulations in 10 CFR 50.71(e)(3)(iii). As evidenced by the proper submittal of annual updates on June 23, 2009 (ADAMS Accession No. ML091810540), April 12, 2010 (ADAMS Accession No. ML101120592), April 14, 2011 (ADAMS Accession No. ML111170902), April 12, 2012 (ADAMS Accession No. ML12122A656), and April 15, 2013 (ADAMS Accession No. ML13112A761), DEP has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) prior to requesting suspension of the review. In its subsequent requests dated August 1, 2014, August 12, 2015, and October 13, 2016, DEP asked the NRC to grant exemption from 10 CFR 50.71(e)(3)(iii) until December 31, 2019, or prior to any request to reactivate Harris Units 2 and 3 COL application review. For the reasons stated above, the application of 10 CFR 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary and the granting of the exemption would allow only temporary relief from a rule that the applicant had made good faith efforts to comply with, therefore special circumstances are present.

Authorized by Law

The exemption is a schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow DEP to submit the next Harris Units 2 and 3 COL application FSAR update on or before December 31, 2019, in lieu of the required scheduled submittals on December 31, 2016, December 31, 2017, and December 31, 2018. 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 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. In addition, since the review of the application has been suspended, any update to the application submitted by DEP will not be reviewed by the NRC at this time. Plant construction cannot proceed until the NRC's review of the application is completed, a mandatory hearing is completed, and a license is issued. 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 next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2019. 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:

(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)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and 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 was then required to update its FSAR by December 31, 2019, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Special circumstances in accordance with 10 CFR 50.12(a)(2)(v) are present whenever the exemption would provide only temporary relief from the regulation and the applicant has made good faith efforts to comply with this regulation. Because of the assumed and imposed new deadline of December 31, 2016, DEP's exemption request seeks only temporary relief from the requirement that it file an update to the FSAR included in the Harris Units 2 and 3 COL application. Additionally DEP submitted the required annual updates to its FSAR throughout the application process until asking for suspension of its review.

Therefore, since the relief from the requirements of 10 CFR 50.71(e)(3)(iii) would be temporary and the applicant has made good faith efforts to comply with the rule, and the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(v) 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) 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 is no significant hazards consideration 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;

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 FSAR by DEP;

and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

IV. 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 50.71(e)(3)(iii) pertaining to the Harris

Units 2 and 3 COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event no later than December 31, 2019.

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 January 2017.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Francis M. Akstulewicz, Director,
Division of New Reactor Licensing,
Office of New Reactors.