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Serial: NPD-NRC-2017-015
November 6, 2017

10 CFR 50.12
10 CFR 50.71
10 CFR 52.7
10 CFR 52 App. D

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555-0001

**LEVY NUCLEAR PLANT, UNITS 1 AND 2
COMBINED LICENSE NOS. NPF-99 AND NPF-100
DOCKET NOS. 52-029 AND 52-030
REQUEST FOR EXEMPTION FROM 10 CFR 50.71(e)(3)(iii) AND 10 CFR 52 Appendix D,
X.B.3.b**

- References:
1. Letter from Francis M. Akstulewicz (U.S. Nuclear Regulatory Commission) to Christopher M. Fallon (Duke Energy Florida), dated October 26, 2016, "Issuance of Combined Licenses for Levy Nuclear Plant Units 1 and 2" (ML16176A200)
 2. Letter from Joseph W. Donahue (Duke Energy) to U.S. Nuclear Regulatory Commission (NRC), dated November 1, 2017, "LNP Units 1 & 2 Notification of Termination of Project," Serial: NPD-NRC-2017-014

Ladies and Gentlemen:

By letter dated October 26, 2016 (Reference 1), the Nuclear Regulatory Commission issued Combined Licenses (COLs) NPF-99 and NPF-100 to Duke Energy Florida LLC (DEF) for the Levy Nuclear Plant (LNP) Units 1 and 2. As stated in Reference 2, DEF no longer plans to move forward with building LNP and further, DEF plans to submit an application for termination of license.

The purpose of this letter is to request an exemption from the requirements set forth in 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b that require an annual update to the Final Safety Analysis Report (FSAR) and plant-specific DCD for LNP Units 1 and 2. Specifically, given that plans to build LNP have been abandoned and DEF plans to submit an application for termination of license, DEF requests an exemption from the requirement to submit an annual update to the FSAR and plant-specific DCD in 2017. This exemption will avoid unnecessary work pending termination of the COLs, as well as unnecessary expenditure of NRC resources to review such an update.

The basis for this exemption request is provided in the enclosure.

This letter contains no regulatory commitments.

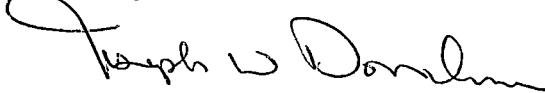
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If you have any further questions, or need additional information, please contact Erik Wagner at (704) 382-3949 or me at (980) 373-1758.

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

Executed on November 6, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph W. Donahue". The signature is fluid and cursive, with the first name "Joseph" being more prominent.

Joseph W. Donahue
Vice President - Nuclear Engineering

Enclosure: Basis for Exemption 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b
for Levy Nuclear Plant Units 1 & 2

cc: U.S. NRC Region II, Regional Administrator
Mr. Brian Hughes, U.S. NRC Project Manager

Enclosure

Basis for Exemption
from 10 CFR 50.71(e)(3)(iii)
and 10 CFR 52 Appendix D, X.B.3.b
for
Levy Nuclear Plant
Units 1 & 2

I. Proposed Exemption

During the period from docketing of an application for a combined license under Title 10 of the Code of Federal Regulations (10 CFR) Part 52 until the Commission makes the finding under 10 CFR 52.103(g) pertaining to facility operation, 10 CFR 50.71(e)(3)(iii) requires that an update to the facility Final Safety Analysis Report (FSAR) must be submitted annually. In addition, 10 CFR 52 Appendix D, X.B.3.b states that updates to the plant-specific DCD must be submitted annually during the interval from the date of application for a license to the date the Commission makes its finding required by 10 CFR 52.103(g).

Duke Energy Florida (DEF) is requesting an exemption from 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b for the Levy Nuclear Plant Units 1 and 2 (LNP), given that DEF no longer plans to move forward with building LNP, construction has not been initiated, and no safety-related work is being performed on the project. Specifically, DEF requests an exemption from the requirements to submit an annual update to the LNP FSAR, including the plant-specific DCD, in 2017. This exemption will avoid unnecessary work pending termination of the Combined Licenses (COLs).

In summary, the requested exemption is a change to the requirements of 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b, which is requested in an effort to achieve efficiency and limit the unnecessary expenditure of resources, given that DEF's plans to build LNP have been abandoned. The FSAR and plant-specific DCD annual update is required by regulation; therefore, deferral of the annual update requires an exemption.

It should be noted that if this exemption is granted, DEF will not file an update to the LNP FSAR and plant-specific DCD in 2017. As a result, License Condition 2.D.(12)(I) to include specific changes in the first annual update of the LNP FSAR would not be implemented in 2017 since there would not be an annual update in 2017. License Condition 2.D.(12)(I) would remain in effect until an update to the LNP FSAR and plant-specific DCD is required or the LNP COLs are terminated.

II. Background

By letter dated July 28, 2008, Duke Energy submitted the LNP COL application (Reference 1). Annual updates have been submitted since that time with the most recent update (Revision 9) being submitted on April 6, 2016 (Reference 2). The next LNP FSAR and plant-specific DCD update is therefore required no later than December 31, 2017.

The Nuclear Regulatory Commission issued COLs NPF-99 and NPF-100 to Duke Energy Florida LLC (DEF) for the Levy Nuclear Plant (LNP) Units 1 and 2 on October 26, 2016 (Reference 3). However, as stated in our letter dated November 1, 2017 (Reference 4), DEF no longer plans to move forward with building LNP and plans to submit an application for termination of license. Construction has not been initiated for LNP, no safety-related work is being performed on the project, and there is no nuclear fuel or special nuclear material located on the site.

III. Exemption Requirements

Pursuant to 10 CFR 52.7, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 52. The Commission's consideration will be governed by 10 CFR 50.12, unless other criteria are provided for in 10 CFR Part 52.

Pursuant to 10 CFR 50.12(a)(1) and (2), 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 and safety, and are consistent with the common defense and security; and,
- (2) Special circumstances are present.

Pursuant to 10 CFR 50.12(a)(2), "special circumstances" exist if:

- (ii) 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; or
- (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.

IV. Basis for the Exemption

A. Authorized by Law

The requested exemption is authorized by law. As set forth above, 10 CFR 50.12 and 10 CFR 52.7 allow the NRC to grant exemptions from the requirements of Part 50 and Part 52, respectively, without violating the Atomic Energy Act of 1954, as amended, or the Commission's regulations. This exemption request is for relief from the requirements of 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b, given that DEF's plans to build LNP have been abandoned and DEF plans to submit an application for termination of license.

B. No Undue Risk to Public Health and Safety

Granting the requested exemption will not create undue risk to public health and safety. The underlying purpose of 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b is to provide for timely, comprehensive updates of the FSAR and plant-specific DCD in order to support any reviews required by NRC staff. Because DEF's plans to build LNP have been abandoned and no work is being performed to build LNP Units 1 and 2, no NRC reviews based on the LNP FSAR, including the plant-specific DCD, are expected to be necessary. The requested exemption is solely administrative in nature in that it pertains to the submittal of revisions to the FSAR, including the plant-specific DCD, for a plant which will not be constructed and the COLs are expected to be terminated.

Because this exemption request relates only to an administrative issue regarding an abandoned project, for which construction has not been initiated, there are no safety implications associated with granting this exemption request. No new health or safety issues will be created if the FSAR update is not filed pending termination of the COLs. Neither the probability of postulated accidents nor their consequences would be increased in any manner if the request were granted. There would be no undue risk to public health and safety.

C. Consistent with Common Defense and Security

Granting the requested exemption is consistent with the common defense and security. This exemption requesting a change in the requirement for submitting an FSAR and plant-specific DCD update supporting an abandoned project for which construction has not been initiated is unrelated to common defense and security issues. The common defense and security would not be impacted by granting this exemption.

D. Special Circumstances

Special circumstances supporting this exemption request are present under 10 CFR 50.12(a)(2)(ii) and (iii).

The purpose of 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b is to provide for timely, comprehensive updates of the FSAR and plant-specific DCD in order to support effective and efficient reviews required by NRC staff. The regulations at 10 CFR 50.71(e)(3)(iii) and 10 CFR 52 Appendix D, X.B.3.b requiring annual FSAR and plant-specific DCD updates do not address, and do not appear to have contemplated, a situation in which the licensee has not initiated construction and has abandoned plans for construction. Here, no work is being performed that would require NRC review. Further, DEF plans to submit an application for termination of the COLs. Therefore, special circumstances are present under 10 CFR 50.12(a)(2)(ii), because application of the rule would not serve the underlying purpose.

The FSAR, including the plant-specific DCD, is an extensive document, and updating it requires significant effort. DEF believes that submitting an annual update in support of a license for which construction has not been initiated and for which the license is expected to be terminated requires effort and resources in excess of those contemplated by the rule. As such, special circumstances are present under 10 CFR 50.12(a)(2)(iii), because complying with the requirement in the rule would result in undue hardship and unnecessary costs to DEF, as well as the unnecessary expenditure of NRC resources to review the update.

V. Categorical Exclusion from Environmental Review

This specific exemption request is categorically excluded from further environmental review pursuant to 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any NRC regulation is categorically excluded if:

- (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 . . . reporting requirements

The proposed exemption would allow DEF to not submit an annual update to the LNP FSAR, including plant-specific DCD, in 2017. The proposed exemption is administrative in nature and does not involve any change in the plant's design, configuration, or operation. This exemption request meets each of the above criteria and is therefore categorically excluded from further environmental review pursuant to 10 CFR 51.22(c)(25).

VI. Conclusion

Based on the considerations discussed above, the requested exemption:

- (1) is authorized by law,
- (2) will not present an undue risk to public health and safety,
- (3) is consistent with the common defense and security, and
- (4) special circumstances are present.

Therefore, DEF requests that the Commission exempt DEF from the requirements of submitting the 2017 update to the LNP FSAR, including the plant-specific DCD.

VII. References

1. Letter from James Scarola (PEF) to U.S. Nuclear Regulatory Commission (NRC), dated July 28, 2008, "Application for Combined License for Levy Nuclear Power Plant Units 1 and 2," Serial: NPD-NRC-2008-022
2. Letter from Christopher M. Fallon (DEF) to U.S. Nuclear Regulatory Commission (NRC), dated April 6, 2016, "Levy Nuclear Plant Units 1 and 2 Submittal of COL Application, Revision 9," Serial: NPD-NRC-2016-013
3. Letter from Francis M. Akstulewicz (U.S. Nuclear Regulatory Commission) to Christopher M. Fallon (Duke Energy Florida), Issuance of Combined Licenses for Levy Nuclear Plant Units 1 and 2, dated October 26, 2016 (ML16176A200)
4. Letter from Joseph W. Donahue (Duke Energy) to U.S. Nuclear Regulatory Commission, dated November 1, 2017, "LNP Units 1 & 2 Notification of Termination of Project," Serial: NPD-NRC-2017-014