

June 30, 2020  
NRC:20:011

U.S. Nuclear Regulatory Commission  
Document Control Desk  
11555 Rockville Pike  
Rockville, MD 20852

## Request for Exemption from 10 CFR 50.46(a)(3)(iii) for the U.S. EPR Design Certification

- Ref. 1: Letter, Sandra M. Sloan (AREVA NP Inc.) to Document Control Desk (NRC), "Application for Standard Design Certification of the U.S. EPR (Project No. 733)," NRC:07:070, December 11, 2007.
- Ref. 2: Letter, Getachew Tesfaye (NRC) to Sandra M. Sloan (AREVA NP Inc.), "AREVA NP Inc. – Acceptance of the Application for Standard Design Certification of the U.S. EPR," February 25, 2008.
- Ref. 3: Letter, Pedro Salas (AREVA Inc.) to Document Control Desk (NRC), "Request to Suspend Review of U.S. EPR Design Certification Application," NRC:15:010, February 25, 2015.
- Ref. 4: Letter, Gary Peters (Framatome Inc.) to Document Control Desk (NRC), "Exemption from the Requirements of 10 CFR Part 50, Section 50.46 for the U.S. EPR Design Certification," NRC:20:006, March 17, 2020.

Framatome Inc. (Framatome, formerly AREVA NP Inc.) submitted the application for a Standard Design Certification of the U.S. EPR design in Reference 1. The NRC accepted the application for review in Reference 2. Reference 3 requested that the NRC suspend the safety review of the U.S. EPR design certification application (DCA) until further notice. Reference 4 requested an exemption from the annual reports required by 10 CFR 50.46(a)(3)(iii) for the U.S. EPR DCA.

The purpose of this letter is to provide additional information for the request for an exemption from the requirement set forth in 10 CFR 50.46(a)(3)(iii). Specifically, given that the NRC's review of the U.S. EPR DCA has been suspended and remains suspended, Framatome requests an exemption from the requirement to submit annual reports required by 10 CFR 50.46(a)(3)(iii) for the next five years (2020 - 2024). There has been extensive effort involved in the development and review of the U.S. EPR DCA by both the NRC staff and Framatome. Framatome would like to preserve the work that has been performed to date in support of the U.S. EPR DCA while decisions on future generation are in progress. The five-year timeframe of this request is based on the current uncertainty of several factors involved in the decision to pursue new nuclear generation. A five-year exemption minimizes the collective preparation,

review and approval time for both the NRC staff and Framatome, and is therefore considered more efficient than several one-year exemption requests.

Enclosure 1 provides the basis for this exemption request. If the exemption is granted, Framatome commits to submitting the next U.S. EPR DCA 50.46 report prior to any request to the NRC to reactivate the U.S. EPR DCA review should Framatome decide to proceed with the DCA in the future. Further, Framatome will provide an update to the U.S. EPR DCA 50.46 report, or take such other action as may be appropriate, no later than December 31, 2024.

A response by September 30, 2020 is greatly appreciated.

If you have any questions related to this information, please contact Gayle Elliott, Deputy Director, Licensing & Regulatory Affairs, by telephone at (434) 832-3347, or by e-mail at [Gayle.Elliott@framatome.com](mailto:Gayle.Elliott@framatome.com).

Sincerely,



Gary Peters, Director  
Licensing & Regulatory Affairs  
Framatome Inc.

cc: Docket 52-020  
M.I. Dudek, Branch Chief, New Reactor Licensing  
N. Otto

Enclosure:

1. Basis for Exemption from 10 CFR 50.46(a)(3)(iii) for U.S. EPR Design Certification Application

**Basis for Exemption from 10 CFR 50.46(a)(3)(iii) for  
U.S.EPR Design Certification Application**

***I. Proposed Exemption***

10 CFR 50.46(a)(3)(iii) requires that for each change to or error discovered in an acceptable evaluation model or in the application of such a model that affects the temperature calculation, the applicant for a standard design certification shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission and to any applicant or licensee referencing the design certification at least annually. If the change or error is significant, the applicant for the design certification shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46 requirements. The affected applicant shall propose immediate steps to demonstrate compliance or bring plant design into compliance with § 50.46 requirements.

Framatome Inc. (Framatome) is requesting a five-year exemption from 10 CFR 50.46(a)(3)(iii) for the U.S. EPR Design Certification Application (DCA), given that the NRC's review of the DCA remains suspended. Specifically, Framatome requests an exemption from the requirement to submit annual reports to the DCA during the years 2020 through 2024. Framatome commits to submitting the next report prior to any request to NRC to reactivate the DCA review should Framatome decide to proceed with the DCA application in the future. Further, Framatome will provide an update to the DCA 50.46 reporting, or take such other action as may be appropriate, no later than December 31, 2024. There has been extensive effort involved in the development and review of the U.S. EPR DCA by both the NRC staff and Framatome. Framatome would like to preserve the work that has been performed to date in support of the U.S. EPR DCA while decisions on future generation are in progress. The five-year timeframe of this request is based on the current uncertainty of several factors involved in the decision to pursue new nuclear generation. A five-year exemption minimizes the collective preparation, review and approval time for both the NRC staff and Framatome, and is therefore, considered more efficient than several one-year exemption requests.

In summary, the requested exemption is a schedule change from the requirements of 10 CFR 50.46(a)(3)(iii) which is requested in an effort to achieve efficiency and limit the unnecessary expenditure of resources, given that the NRC's review of the Framatome U.S. EPR Design Certification is currently suspended. The exemption would allow Framatome to submit the next 50.46 report for the DCA at a later time, in an orderly and efficient manner without undue expenditure of resources, in concert with the NRC staff reinstating its review of the Framatome U.S. EPR DCA. The 50.46 annual report is required by regulation; therefore, deferral of the annual update requires an exemption.

***II. Background***

By letter dated December 11, 2007, (Reference 1), Framatome submitted the application for Standard Design Certification of the U.S. EPR. The NRC accepted the application for review on February 25, 2008 (Reference 2). By letter dated February 25, 2015 (Reference 3), Framatome requested that the NRC suspend the review of the U.S. EPR DCA and related activities. The NRC agreed to the requested suspension. The U.S. EPR DCA remains docketed.

By letter dated March 17, 2020 (Reference 4), Framatome requested an exemption from the annual reports required by 10 CFR 50.46(a)(3)(iii) for the U.S. EPR DCA. In a conference call on May 6, 2020, the NRC requested additional information on the requested exemption. This enclosure provides the additional information requested during the conference call.

### ***III. Exemption Requirements***

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; 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.

### ***IV. Basis for the Exemption***

#### ***A. Authorized by Law***

The requested exemption is authorized by law. As set forth above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of Part 50, such as 10 CFR 50.46(a)(3)(iii), without violating the Atomic Energy Act of 1954, as amended, or the Commission's regulations. This exemption request is for temporary relief from the requirement of 10 CFR 50.46(a)(3)(iii), given that the NRC's review of the U.S. EPR DCA has been suspended. The exemption would allow the applicant to submit the next U.S. EPR DCA 50.46 report prior to requesting reactivation of the NRC's U.S. EPR DCA review, or no later than December 31, 2024.

#### ***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 50.46(a)(3)(iii) is to provide for timely, comprehensive reports on the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission and to any applicant or licensee referencing the design certification at least annually. Because the NRC's review of the U.S. EPR DCA is currently suspended, any report Framatome submits during such suspension would not be reviewed by the NRC. The requested exemption is solely administrative in nature in that it pertains to the schedule for submitting reports to the U.S. EPR DCA for which the NRC's review has been suspended. Because this exemption request relates only to a timing and administrative issue regarding a suspended DCA, and not to a license that has been or is about to be granted, there are no safety implications associated with granting this exemption request. No new health or safety issues will be created if the filing of the next report is postponed. 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 timing for submitting the next 50.46 report supporting a suspended DCA 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), (iii) and/or (v). The purpose of 10 CFR 50.46(a)(3)(iii) is to provide for timely, comprehensive reports on the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission and to any applicant or licensee referencing the design certification at least annually. The regulations at 10 CFR 50.46(a)(3)(iii) requiring annual reports do not address, and do not appear to have contemplated, a situation in which the applicant suspended its pursuit of the DCA and the NRC staff has suspended review of the DCA.

Even if Framatome were to submit the next U.S. EPR DCA 50.46 report when it is currently due, the purpose of 10 CFR 50.46(a)(3)(iii) would go unfulfilled since the NRC has suspended its review of the U.S. EPR DCA, including the 50.46 reports. The 50.46 report requires significant effort. Framatome believes that submitting an annual 50.46 report in support of a DCA for which review has been suspended 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 schedule in the rule would result in undue hardship and unnecessary costs to Framatome.

Moreover, special circumstances are also present under 10 CFR 50.12(a)(2)(ii), because submitting the next 50.46 report prior to reactivation of the U.S. EPR DCA review, or no later than December 31, 2024 would be consistent with the underlying purpose of the rule, which is to support an effective and efficient review by NRC staff and issuance of the staffs safety evaluation report.

In addition, special circumstances are present under 10 CFR 50.12(a)(2)(v), because Framatome's exemption request seeks only temporary relief from the requirement in 10 CFR 50.46(a)(3)(iii).

Framatome requests exemption from this requirement because the review of the U.S. EPR DCA is suspended. As stated above, Framatome commits to submitting the next U.S. EPR DCA 50.46 report prior to any request to NRC to reactivate the U.S. EPR DCA review should Framatome decide to proceed with the DCA in the future. Further, Framatome will provide an update to the U.S. EPR DCA 50.46 report, or take such other action as may be appropriate, no later than December 31, 2024. Accordingly, Framatome is acting in good faith to comply with the regulation.

### ***V. 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, Framatome requests that the Commission exempt Framatome from the requirement of submitting reports to the U.S. EPR DCA until Framatome requests reactivation of the NRC's U.S. EPR DCA review, or by no later than December 31, 2024.

#### **VI. References**

1. Letter, Sandra M. Sloan (AREVA NP Inc.) to Document Control Desk (NRC), "Application for Standard Design Certification of the U.S. EPR (Project No. 733)," NRC:07:070, December 11, 2007.
2. Letter, Getachew Tesfaye (NRC) to Sandra M. Sloan (AREVA NP Inc.), "AREVA NP Inc. – Acceptance of the Application for Standard Design Certification of the U.S. EPR," February 25, 2008.
3. Letter, Pedro Salas (AREVA Inc.) to Document Control Desk (NRC), "Request to Suspend Review of U.S. EPR Design Certification Application," NRC:15:010, February 25, 2015.
4. Letter, Gary Peters (Framatome Inc.) to Document Control Desk (NRC), "Exemption from the Requirements of 10 CFR Part 50, Section 50.46 for the U.S. EPR Design Certification," NRC:20:006, March 17, 2020.