



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 17, 2021

Mr. Ken J. Peters
Senior Vice President and
Chief Nuclear Officer
Attention: Regulatory Affairs
Vistra Operations Company LLC
Comanche Peak Nuclear Power Plant
6322 N FM 56
P.O. Box 1002
Glen Rose, TX 76043

SUBJECT: COMANCHE PEAK NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2 –
TEMPORARY EXEMPTION FROM REQUIREMENTS OF 10 CFR PART 50,
APPENDIX E, SECTIONS IV.F.2.B AND IV.F.2.C
(EPID L-2021-LLE 0028 [COVID-19])

Dear Mr. Peters:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Appendix E to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Sections IV.F.2.b and IV.F.2.c, for Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2 (Comanche Peak or CPNPP). This action is in response to your application dated April 21, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21111A364), that requested a one-time scheduler exemption to postpone the Comanche Peak calendar year (CY) 2021 biennial emergency preparedness (EP) exercise until CY 2022.

Vistra Operations Company LLC (Vistra OpCo, the licensee) holds Facility Operating License Nos. NPF-87 and NPF-89, which authorize operation of Comanche Peak Units 1 and 2, respectively. These licenses are subject to the rules, regulations, and orders of the Commission.

The facility consists of two pressurized-water reactors located in Somervell County, Texas.

By letter dated April 21, 2021, Vistra OpCo submitted a request for temporary exemption from Appendix E to 10 CFR Part 50, Sections IV.F.2.b and IV.F.2.c, regarding the performance of the CY 2021 full participation biennial EP exercise at Comanche Peak.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b, state, in part:

Each licensee at each site shall conduct a subsequent exercise of its onsite emergency plan every 2 years. ... The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c, state, in part:

Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.

In Appendix E to 10 CFR Part 50, the NRC defines the term “full participation,” when used in conjunction with EP exercises for a particular site, to mean appropriate offsite local and State authorities and licensee personnel physically and actively taking part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local, and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario. While desirable, full participation exercises required by Sections IV.F.2.b (onsite) and IV.F.2.c (offsite) of Appendix E are not required to be performed simultaneously.

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation’s healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). Subsequently, the Centers for Disease Control and Prevention (CDC) issued various recommendations (e.g., social distancing, limiting assemblies) that were intended to limit the spread of COVID-19.¹

In your application, you provided the following information:

- Because of the COVID-19 PHE, Vistra OpCo has determined that an exemption is needed from the biennial emergency plan exercise requirements specified in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, as meeting these requirements would conflict with practices recommended by the CDC, state and local officials, and Comanche Peak’s pandemic response plan to limit the spread of COVID-19. In order to fulfill the exercise requirements of Section IV.F.2.b, Vistra OpCo would need to staff emergency facilities in a manner that would compromise current social distancing strategies and would be inconsistent with Comanche Peak’s isolation activities necessary to protect personnel responsible for safe plant operation and emergency response (e.g., ongoing limitations on protected area and vital area access).
- Required offsite response organizations (OROs) have determined that conducting an exercise during CY 2021 to fulfill 10 CFR Part 50, Appendix E, Section IV.F.2.c would compromise social distancing practices and would be inconsistent with pandemic response protocols for Somervell and Hood Counties and the Texas Department of State Health Services (DSHS). Somervell and Hood County emergency responders are leading COVID-19 vaccination distribution efforts for the area. Redirecting the personnel needed to perform an exercise during this ongoing vaccination effort is not feasible with limited rural county staffing and would jeopardize the prioritization of the health and welfare of their community members.
- The threat of COVID-19 spread has resulted in the inability to safely conduct the biennial EP exercise that was scheduled for June 16, 2021, due to implementation of isolation activities (e.g., social distancing, group size limitations, and self-quarantining). In addition, Somervell and Hood Counties, and the State of Texas informed the licensee that they were no longer able to support the biennial EP exercise in the interest of

¹ CDC, “How to Protect Yourself and Others,” April 18, 2020 (ADAMS Accession No. ML20125A069).

protecting State and local staff and Federal evaluators. The OROs continue to maintain readiness to respond to an actual radiological emergency at Comanche Peak.

- This one-time schedular exemption to allow for the conduct of the biennial EP exercise in CY 2022 supports continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required emergency response organization (ERO) and ORO personnel in response to the COVID-19 PHE.
- The last biennial EP exercise was conducted on November 6, 2019. Since that time, the licensee has conducted numerous drills, exercises, and other training activities that have exercised its emergency response strategies. State and local agencies have participated at various levels in these activities, exercising various EP program elements during the following months:
 - February 2020
 - June 2020
 - August 2020
 - September 2020
 - October 2020
 - November 2020
 - December 2020
 - February 2021
 - March 2021
 - April 2021
- The licensee will continue to conduct drills, tabletops, and other training activities that exercise its emergency response strategies. The State and local authorities are expected to participate in limited-scope drills and training activities, to the extent practical, while also complying with the CDC isolation activity recommendations to limit the spread of COVID-19.
- The licensee made a reasonable effort to reschedule the biennial EP exercise during CY 2021 but was unsuccessful. Vistra OpCo has been in communication with NRC Region IV, Federal Emergency Management Agency (FEMA) Region VI, the State of Texas, and the local offsite organizations concerning availability and exercise preparation. The isolation protocols remain in place at CPNPP and for the offsite agencies. Despite the current vaccination efforts, there is still no definitive date for ending the isolation activities. Additionally, CPNPP has an extended (40+ days) refueling outage scheduled in the fall of 2021, which further hinders the ability to reschedule the exercise within CY 2021. Offsite agencies provided letters, which were attached to the licensee's application, in support of rescheduling the biennial exercise to a CY 2022 date. FEMA is aware of the requests from the offsite agencies and has indicated its understanding of the need for the schedular relief due to the ongoing PHE. FEMA has communicated that it will work closely with the OROs to accommodate their request to reschedule the biennial exercise.
- The date of the rescheduled biennial EP exercise (tentatively July 27, 2022) falls within 35 months from the month of the previously evaluated biennial EP exercise conducted on November 6, 2019. This exemption would defer the CY 2021 biennial EP exercise to

CY 2022. Future biennial EP exercises would continue to be held in odd numbered years.

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC 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 the public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present.

The NRC staff determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The regulations in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c concern requirements for licensees to conduct biennial EP exercises at their facilities. No new accident precursors are created by allowing the licensee to postpone the biennial EP exercise from CY 2021 until CY 2022. Thus, the probability and consequences of postulated accidents are not increased. In addition, the requested exemption for a one-time change to the biennial EP exercise schedule has no relation to security issues. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Special circumstances, per 10 CFR 50.12, that apply to the requested exemption include:

- a. 10 CFR 50.12(a)(2)(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."

The regulation in 10 CFR Part 50, Appendix E, Section IV.F.2.b requires licensees to conduct an exercise of their site emergency plan biennially. Further, the regulation in 10 CFR Part 50, Appendix E, Section IV.F.2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. The underlying purpose of these requirements is to ensure that the emergency organization personnel are familiar with their duties and to identify and correct any weaknesses that may exist in the licensee's EP Program. The underlying purpose of Section IV.F.2.c is also to test and maintain interfaces among affected State and local authorities and the licensee.

The licensee stated that it has conducted numerous drills, exercises, and other training activities that have exercised its emergency response strategies since the last evaluated EP exercise. State and local agencies have participated at various levels in these activities, exercising various EP program elements. In addition, the licensee will continue to conduct drills, tabletops, and other training activities that exercise its emergency response strategies, and State and local authorities are expected to participate in limited-scope drills and training activities to the extent practical.

Based on the above, the NRC staff finds that the underlying purposes of these regulations are met by the licensee having conducted these preparedness activities and establishing an acceptable tentative date of July 27, 2022, for the rescheduled biennial EP exercise.

- b. 10 CFR 50.12(a)(2)(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.”

The licensee has determined that the originally scheduled exercise date does not support continued implementation of the isolation activities (e.g., social distancing, group size limitations, and self-quarantining) to protect required ERO personnel in response to the ongoing COVID-19 PHE. These activities are needed to ensure that ERO personnel are isolated from COVID-19 and remain capable of executing the functions of the ERO, as described in the Comanche Peak Emergency Plan. The licensee proposed a tentative date of July 27, 2022, for the next biennial EP exercise.

The State of Texas informed the licensee that they were no longer able to support the originally scheduled biennial EP exercise in the interest of protecting State and local staff and Federal evaluators. During discussions among the licensee, State and local officials, and the NRC and FEMA Regions, the parties concluded that scheduling the biennial exercise in CY 2021 would not be reasonable during the current COVID-19 PHE due to conflicts, such as conducting COVID-19 vaccination distribution efforts for the area. Redirecting the personnel needed to perform an exercise during this ongoing vaccination effort is not feasible with limited rural county staffing, and it would jeopardize the prioritization of the health and welfare of community members. The parties agreed to a tentative date of July 27, 2022.

Therefore, the NRC staff finds that the requested exemption to conduct the biennial EP exercise in CY 2022 instead of CY 2021 would provide only temporary relief from the applicable regulations, and that the licensee has made good faith efforts to comply with the regulations.

Based on the above, the NRC staff finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, change any of the assumptions or limits used in the licensee’s safety analyses, or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits, as provided in the licensee’s technical specifications or by the regulations in 10 CFR Part 20, “Standards for Protection Against Radiation.” There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for, or consequences from, radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee’s safety analysis. In addition, the NRC staff determined that there would be no

significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Granting the requested exemption does not impact NRC findings of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Comanche Peak. In the statement of considerations for the standards to be applied when considering whether to grant exemptions ("Specific Exemptions; Clarification of Standards, Final Rule," 50 *Federal Register* 50764, dated December 12, 1985), the Commission stated:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

The NRC staff has determined that in accordance with 10 CFR 50.12, the requested 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; and that special circumstances are present. Therefore, the NRC hereby grants the licensee's request for a one-time schedular exemption from the requirements for the biennial EP exercise in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c at Comanche Peak.

This exemption expires on October 6, 2022, or when the required exercise(s) is conducted in CY 2022, whichever occurs first.

If you have any questions, please contact the Comanche Peak project manager, Dennis J. Galvin, at 301-415-6256, or via e-mail to Dennis.Galvin@nrc.gov.

Sincerely,

Craig G. Erlanger, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-445 and 50-446

cc: Listserv

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