

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 99902056; NRC-2023-0186]**

**Tennessee Valley Authority;**

**Clinch River Nuclear Site**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 17, 2023, request from Tennessee Valley Authority from certain requirements of NRC regulations pertaining to the submission of a construction permit application.

**DATES:** The exemption was issued on November 21, 2023.

**ADDRESSES:** Please refer to Docket ID **NRC-2023-0186** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2023-0186**. Address questions about Docket IDs to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@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 <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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, at

301-415-4737, or by email to PDR.Resource@nrc.gov. The NRC's response letter to TVA on the request for exemption from certain requirements of paragraph 2.101(a)(5) of title 10 of the *Code of Federal Regulations* (10 CFR) and NRC's supporting safety evaluation are available in ADAMS under Accession Nos. ML23045A008 and ML23114A098, respectively.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Allen Fetter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8556; email: Allen.Fetter@nrc.gov.

**SUPPLEMENTARY INFORMATION:** The text of the exemption is attached.

Dated: November 21, 2023.

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Brian W. Smith, Director,  
Division of New and Renewed Licenses,  
Office of Nuclear Reactor Regulation.

**Attachment – Exemption.**

**NUCLEAR REGULATORY COMMISSION**

**Docket No. 99902056**

**Tennessee Valley Authority**

**Clinch River Nuclear Site, Construction Permit Application Submittal**

**Exemption**

**I. Background.**

Tennessee Valley Authority (TVA) is currently the holder of an early site permit (ESP) for the Clinch River Nuclear (CRN) Site in Oak Ridge, Tennessee. ESP-006 was issued to TVA on December 19, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML1919352D341). Prior to the issuance of ESP-006, the NRC prepared a final environmental impact statement (FEIS) to support the agency's licensing decision. Subsequently, TVA completed a programmatic environmental impact statement (PEIS) for the CRN Site Advanced Nuclear Reactor Technology Park (published in the *Federal Register* on July 29, 2022). TVA intends to submit a construction permit (CP) application for a license to construct a small modular reactor (SMR) at the CRN Site and intends to submit the CP application in two parts, in accordance with the provisions of Title 10 of the *Code of Federal Regulations* 2.101(a)(5). Because of the extent and recency of environmental information gathered for the ESP and the PEIS at the CRN site, TVA anticipates the CP application environmental report (ER) could be available for submittal in advance of the preliminary safety analysis report (PSAR).

**II. Request/Action.**

TVA submitted an exemption request to the NRC via a letter on August 17, 2023, titled "Request for Exemption from Certain Requirements of 10 CFR 2.101(a)(5)," (ML23229A569). Specifically, TVA requested an exemption from the portion of 10 CFR 2.101(a)(5) which states, "*[w]hichever part [of the application] is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1), or 52.79(a)(1), as applicable, and § 50.37 of this chapter.*" TVA specifically requests that the information required by 10 CFR 50.34(a)(1) (i.e., a portion of the PSAR) be deferred to the second part of the submittal. TVA intends to submit the ER required by 10 CFR 50.30(f) as the first part of the CP application, preceding the portion of the PSAR required by 10 CFR 50.34(a)(1), which would be submitted as the second part of the CP application.

**III. Discussion.**

The requirements of both parts of a two-part application are delineated in 10 CFR 2.101(a)(5), which states that "*[o]ne part shall be accompanied by the information required by 10 CFR 50.30(f) [ER],*" while "*[t]he other part shall include information required by 10 CFR 50.34(a) [PSAR] and, if applicable, 10 CFR 50.34a.*"

In addition to these requirements, 10 CFR 2.101(a)(5) also requires that whichever part is filed first shall contain the following as part of the submittal:

- the filing fee required by 10 CFR 50.30(e) and 10 CFR 170.21;
- the general information required by 10 CFR 50.33;
- the portion of the PSAR required by 10 CFR 50.34(a)(1); and
- the agreement limiting access to Classified Information required by 10 CFR 50.37.

TVA requested an exemption from the requirement to submit the portion of the PSAR required by 10 CFR 50.34(a)(1) with the first part of the application. TVA intends to submit the ER required by 50.30(f) as the first part of the CP application and the PSAR required by 10 CFR 50.34(a) as the second part of the CP application. TVA states there will be no more than six months between submittals.

TVA proposes to submit the following information in the first part of the CP application:

- the filing fee required by 10 CFR 50.33(e) and 10 CFR 170.21;
- the general information required by 10 CFR 50.33;
- the agreement limiting access to Classified Information required by 10 CFR 50.37; and
- the ER required by 10 CFR 50.30(f).

TVA proposes to submit the following information in the second part of the CP application:

- the PSAR required by 10 CFR 50.34(a); and information required by 10 CFR 50.34a(a) and (b).

Because the staff's review of an ER can be done independently from the review of a PSAR, the staff finds that there are no issues associated with the ER coming to NRC up to six months before the PSAR. The ER, however, would need to contain all the necessary safety-related information for the NRC staff to prepare an environmental impact statement (EIS), as required by 10 CFR 51.41 and as described in Regulatory Guide 4.2 and NUREG-1555. The information subsequently provided in the PSAR would also need to be consistent with the information provided in the ER as any discrepancies could potentially impact the staff's environmental review.

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 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 defined in 10 CFR 50.12(a)(2).

#### **A. The Exemption is Authorized by Law**

The proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

#### **B. The Exemption Presents no Undue Risk to Public Health and Safety**

The submittal of an application and the NRC review of said application and preparation of a final EIS and a final safety evaluation report (FSER) are administrative actions. Therefore, exempting TVA from certain application submission requirements under 10 CFR 2.101(a)(5) does not present an undue risk to public health and safety. A CP

allowing for the construction of a nuclear power plant cannot be issued by the Commission until the staff completes their review of the entire CP application and issues the FEIS and final safety evaluation report (FSER), irrespective of whether the CP application is submitted in two parts and regardless of which part of the application is filed first.

### **C. The Exemption is Consistent with the Common Defense and Security**

The order and timing of submittal of parts of a CP application has no relation to security issues. Therefore, the common defense and security is not affected by this exemption.

### **D. Special Circumstances**

In accordance with 10 CFR 50.12(a)(2), the NRC will not consider granting an exemption to its regulations unless special circumstances are present. As stipulated in 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 2.101(a)(5) is to facilitate the application submittal process for CP applicants and reduce the time required to bring online nuclear power plants which satisfy all safety and environmental requirements (73 FR 20963, 20970; April 17, 2008). TVA has indicated that, without the requested exemption, their CP application development and submittal process could be potentially delayed such that the application of the rule would not serve the underlying purpose of facilitating the application process.

Therefore, because the application of the relevant portions of 10 CFR 2.101(a)(5) is not necessary to achieve the underlying purpose of the rule, the special circumstances requirement in 10 CFR 50.12 for the granting of an exemption from 10 CFR 2.101(a)(5) is met.

### **E. Environmental Considerations**

The NRC has determined that the issuance of the requested exemption meets the provisions of the categorical exclusion in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter 10 qualifies as a categorical exclusion 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 involves one of several matters, including scheduling requirements (§ 51.22(c)(25)(iv)(G)). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)-(vi).

#### **Requirements in 10 CFR 51.22(c)(25)(i)**

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because the exemption involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. As such,

the exemption does 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. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

#### Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. As such, the exemption is administrative in nature, does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite, and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

#### Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

#### Requirements in 10 CFR 51.22(c)(25)(v)

The exemption involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. As such, the exemption does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

#### Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi), the exemption must be from certain requirements only. Subsection (c)(25)(vi)(G) allows scheduling requirements to be subject to a categorical exclusion. The exemption involves scheduling requirements because it involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of this exemption request.

### **IV. Conclusion**

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, this 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, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the applicant a one-time exemption from the specific requirement of 10 CFR 2.101(a)(5) to file a portion of the PSAR as part of the first submittal in the two-part application submittal process. The decision to issue TVA this exemption does not constitute approval of the CP application TVA intends to submit. The NRC staff will determine if the application is sufficient for docketing and the application would be reviewed using established NRC license review processes and standards. The complete application must meet all applicable regulatory requirements before a CP is issued by NRC.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of  
November 2023.

For the Nuclear Regulatory Commission.

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Brian W. Smith, Director,  
Division of New and Renewed Licenses,  
Office of Nuclear Reactor Regulation.