

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-334, 50-412, 50-346, and 50-440]**

**Vistra Operations Company, LLC;**

**Beaver Valley Power Station, Units 1 and 2,**

**Davis-Besse Nuclear Power Station, Unit 1,**

**Perry Nuclear Power Plant, Unit 1;**

**Exemptions**

**I. Background.**

Vistra Operations Company, LLC (VistraOps, the licensee) is the holder of Facility Operating License Nos. DPR-66, NPF-73, NPF-3, and NPF-58, for Beaver Valley Power Station (BVPS), Units 1 and 2; Davis-Besse Nuclear Power Station (DBNPS) Unit 1; and Perry Nuclear Power Plant (PNPP) Unit 1, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The BVPS, Units 1 and 2; and DBNPS, Unit 1, facilities consist of pressurized-water reactors (PWRs) located along the Ohio River in Beaver Valley, PA and in Ottawa County, OH, respectfully. The PNPP, Unit 1, is a boiling-water reactor (BWR) located near Lake Erie in Lake County, Ohio.

**II. Request/Action.**

Section 50.71 of title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR) submitted as part of the original license application] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months."

By letter dated February 23, 2024 (ADAMS Accession No. ML24054A101), Energy Harbor Corporation requested that the due date for submittal of the BVPS, Unit 1, UFSAR be by May 31 of every even-numbered year, provided the interval between successive updates does not exceed 24 months. Similarly, for BVPS, Unit 2, the UFSAR update would be due by May 31 of every odd-numbered year; for PNPP, Unit 1, the UFSAR update would be due by September 30 of every odd-numbered year; and for DBNPS, Unit 1, the UFSAR update would be due by September 30 of every even-numbered year, provided the interval between successive updates does not exceed 24 months for each unit. This proposal differs from the requirements these units are currently subject to. As explained in the request for exemptions:

Currently, BVPS, Units 1 and 2 are on 18-month staggered refueling cycles while PNPP and DBNPS are on 24-month refueling cycles. Based on the applicable refueling cycle, PNPP and DBNPS perform UFSAR updates approximately every 24 months while BVPS Units 1 and 2 perform updates approximately every 18 months. The exemption will provide for a set calendar schedule for each of the Energy Harbor Nuclear Corp. plants, which would allow more efficient scheduling and allocation of resources to prepare and submit UFSAR updates while remaining within the maximum allowed 24 months between successive updates.

Effective March 1, 2024 (ML24057A092), the facility operating licenses for BVPS, Units 1 and 2, DBNPS, Unit 1, and PNPP, Unit 1, were transferred from Energy Harbor Nuclear Corp. (operator) to Vistra Operations Company LLC (operator). The ownership of these units by Energy Harbor Nuclear Generation LLC was not affected by the transfer. Upon completion of this license transfer, VistraOps assumed the responsibility for all licensing actions under NRC review at the time of the transfer and requested that the NRC continue its review of these actions (ML24054A498). VistraOps submitted a supplement to the exemption requests on August 15, 2024 (ML24228A213).

### **III. Discussion.**

Pursuant to 10 CFR 50.12, the NRC 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)(4) when: (1) the exemptions are authorized by law, will not present an undue risk to the public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

**A. The Exemptions are Authorized by Law.**

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50 if the exemption is authorized by law. The proposed exemptions are authorized by law as no other prohibition of law exists that would preclude the activities that would be authorized by the exemptions. The NRC staff has determined that granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

**B. The Exemptions Present no Undue Risk to Public Health and Safety.**

The proposed exemptions will not alter the manner in which changes to the UFSAR are evaluated in that changes to the UFSAR will continue to be reviewed through the existing applicable administrative and programmatic control processes to ensure that UFSAR changes are properly evaluated and implemented.

Licensees are required, in accordance with 10 CFR 50.71(e)(4), to periodically submit their UFSARs and modifying the schedule for periodic submittal does not alter plant design or operation. Therefore, the exemptions do not present an undue risk to the public health and safety.

**C. The Exemptions are Consistent with the Common Defense and Security.**

The proposed exemptions have no impact on the BVPS, Units 1 and 2, DBNPS, and PNPP physical security plan or the ability to protect special nuclear material at BVPS, Units 1

and 2, DBNPS, and PNPP. Therefore, the exemptions are consistent with the common defense and security.

**D. Special Circumstances.**

In accordance with 10 CFR 50.12(a)(2)(ii), special circumstances exist when compliance is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically submit their UFSARs to assure that the UFSAR remains up to date while reflecting the plant design and operation. Specifically, when the requirement to provide an UFSAR update was first promulgated (May 9, 1980; 45 FR 30614), the Commission explained that it was establishing the requirement “to provide an updated reference document to be used in recurring safety analyses performed by the licensee, the Commission, and other interested parties.” That rule required updating on an annual basis. In a 1992 final rule that had the purpose of reducing regulatory burden on licensees (August 31, 1992; 57 FR 39353), the Commission provided an alternative to annual updating, in which licensees could provide updates “6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months.” In a response to a comment suggesting that the FSAR update be decoupled from the refueling cycle, the Commission explained in the final rule (57 FR 39354), “The majority of facility design changes reflected in an updated FSAR are effected during the refueling outage. The use of the refueling cycle interval provides for a current plant status document that is coordinated with plant changes.”

As required by 10 CFR 50.71(e)(4) a maximum time of 24 months between successive updates and the requirement to reflect changes to the UFSAR up to a maximum of 6 months prior to the date of filing is allowed. The processing and submittal of more frequent revisions to the UFSAR, including all documents incorporated by reference, is not necessary to achieve the underlying purpose of the rule. The BVPS, Units 1 and 2, DBNPS, and PNPP routine UFSAR submittals will not exceed the maximum 24 months between submission. Further, as noted in

the licensee's submittal dated August 15, 2024, the majority of facility design changes reflected in the UFSAR for the affected reactors are no longer effected during the refueling outage. Therefore, the submittals will continue to contain timely updates to the NRC as required by 10 CFR 50.71(e)(4). Furthermore, tying the processing and submittal of the UFSAR to the refueling cycle is not necessary to achieve the underlying purpose of the rule as the majority of the facility design changes are not implemented during refueling outages and therefore tying the UFSAR submittal to the refueling cycle is not necessary to provide a current plant status document coordinated with plant changes. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the requirements in these particular circumstances are not necessary to achieve the underlying purpose of the rule.

#### **E. Environmental Considerations.**

With respect to the impact of the exemptions on the quality of the human environment, the NRC has determined that the issuance of the exemptions discussed herein meets the eligibility criteria for categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement, set forth 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 10 CFR chapter I (which includes 10 CFR 50.71(e)(4)) is an action that is a categorical exclusion, provided that certain specified criteria are met. 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 no significant hazards consideration. The criteria for determining whether an action involves a 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 UFSAR. As set forth in that regulation, there are no significant hazard considerations because granting the

exemptions 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.

Requirements in 10 CFR 51.22(c)(25)(ii):

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(ii) that 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 in the types or increase in the amounts of any effluents that may be released offsite.

Requirements in 10 CFR 51.22(c)(25)(iii):

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(iii) that 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 individual or cumulative public or occupational radiation exposures.

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

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(iv) that there is no significant construction impact. Since the proposed action involves only a schedule change related to the timing for submittal of UFSAR updates, which is administrative in nature, it does not involve any construction impact.

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

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(v) that there is no significant increase in the potential for or consequences from radiological accidents. The proposed action involves only a schedule change related to the timing for submittal of UFSAR

updates, which is administrative in nature and does not impact the potential for or consequences from radiological accidents.

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

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(vi)(B) and 51.22(c)(25)(vi)(G) because the requirements from which the exemption is sought involve reporting and scheduling requirements, specifically the required schedule for submittal of UFSAR updates to the NRC pursuant to 10 CFR 50.71(e)(4).

Based on the above, the NRC staff concludes that the proposed exemptions meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of these exemptions.

#### **IV. Conclusions.**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are 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, pursuant to 10 CFR 50.12(a)(2)(ii) are present. Therefore, the Commission hereby grants VistraOps the following exemptions from the requirements of 10 CFR 50.71(e)(4) to allow VistraOps to file its periodic updates: to the BVPS, Unit 1, UFSAR by May 31 of every even-numbered year, to the BVPS, Unit 2, UFSAR by May 31 of every odd-numbered year, to the PNPP, Unit 1, UFSAR by September 30 of every odd-numbered year, and to the DBNPS, Unit 1, UFSAR by September 30 of every even-numbered year, provided the interval between successive updates does not exceed 24 months for each unit.

The exemptions are effective upon issuance.

Dated: September 17, 2024.

For the Nuclear Regulatory Commission.

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