

Enclosure 2

Non-Proprietary Version of Blue Energy's BE-POV-LCNRG-LIC-5004,
"Exemption Request from Activities Defined as Construction in
10 CFR 50.10(a)(1)", Revision 0

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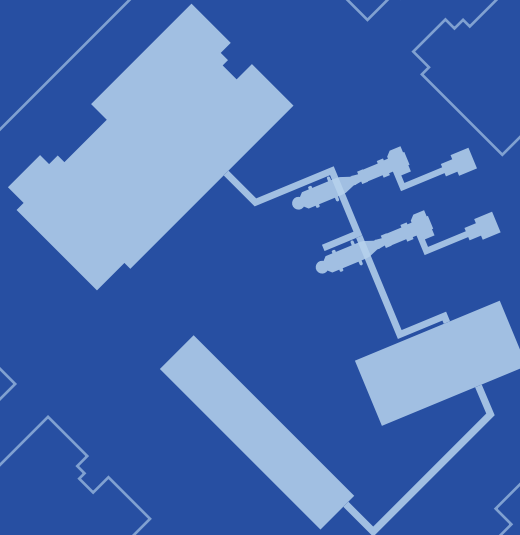


Exemption Request from Activities Defined as Construction in 10 CFR 50.10(a)(1)

Non-Proprietary Version

BE-POV-LCNRG-LIC-5004-NP

Revision 0





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List of Acronyms

10 CFR	Title 10 of the Code of Federal Regulations
AOO	Anticipated Operational Occurrence
BOP	balance of plant
CCGT	combined-cycle gas turbine
CP	Construction Permit
DBA	Design Basis Accident
DL	Defense Line
ER	Environmental Report
ERCOT	Electric Reliability Council of Texas
FSAR	Final Safety Analysis Report
G2N	Gas2Nuclear
GDC	General Design Criteria
LWA	Limited Work Authorization
NEPA	National Environmental Policy Act
NI	Nuclear Island
NRC	Nuclear Regulatory Commission
NSSS	Nuclear Steam Supply System
OLA	Operating License Application
PSAR	Preliminary Safety Analysis Report
RTNSS	Regulatory Treatment of Non-Safety Systems
SC1	Safety Class 1
SC2	Safety Class 2
SC3	Safety Class 3
SCN	Non-Safety Class
SMR	Small Modular Reactor
SOC	Statements of Consideration
SSC	Structures, Systems, and Components



1 Summary Description

In accordance with the provisions of Title 10 of the Code of Federal Regulations (10 CFR) 50.12, Specific Exemptions, Blue Energy Global Inc. (Blue Energy, the “Applicant”) on behalf of itself, as the controlling applicant, and Sister 1 LLC (Sister 1), as owner of the project, request an exemption from the requirements of 10 CFR 50.10, License required; limited work authorization, specifically activities defined as construction in 10 CFR 50.10(a)(1) requiring Applicant to request Nuclear Regulatory Commission (NRC) approval prior to driving piles, subsurface preparation, placing backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing, of those Structures, Systems, and Components (SSCs) relied upon to mitigate accidents or transients or used in plant emergency operating procedures and whose failure could cause a reactor scram or actuation of a safety-related system. Application of the regulation in this circumstance is not necessary to achieve the underlying purpose of the rule and 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.

The Applicant is requesting this proposed exemption to help mitigate the perceived regulatory and financial risks associated with early construction of the balance of plant (BOP) SSCs. Although the BOP will initially be built as part of a combined-cycle gas turbine (CCGT) plant, over which the NRC has no jurisdiction, the activities described in this exemption would meet the current definition of construction, in 10 CFR 50.10(a)(1), were they built initially for nuclear plant operations. The Applicant may elect to transition the BOP from CCGT operations to nuclear operations at a later date, pending final investment decision for the nuclear plant. Therefore, the requested exemption to portions of Section 50.10 would allow BOP SSCs to be constructed by the Applicant prior to receiving a construction permit.

If any exemptions are required to transition BOP SSCs to nuclear plant operations, the associated requests will be included in the Operating License Application (OLA); however, no exemptions are anticipated at this time.



2 Background

2.1 10 CFR 50.10(a)(1) Requirements

10 CFR 50.10(a)(1), Activities constituting construction, requires:

“Activities constituting construction are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing, which are for:

1. Safety-related SSCs of a facility, as defined in 10 CFR 50.2;
2. SSCs relied upon to mitigate accidents or transients or used in plant emergency operating procedures;
3. SSCs whose failure could prevent safety-related SSCs from fulfilling their safety-related function;
4. SSCs whose failure could cause a reactor scram or actuation of a safety-related system;
5. SSCs necessary to comply with 10 CFR part 73;
6. SSCs necessary to comply with 10 CFR 50.48 and criterion 3 of 10 CFR part 50, appendix A; and
7. Onsite emergency facilities necessary to comply with either § 50.160 or § 50.47 and appendix E to this part, as applicable.”

Within this rule are the implicit assumptions that:

1. Avoid a situation where construction begins but the NRC subsequently concludes either the site or design does not satisfy regulatory requirements.
2. Protection of the environment by assessing the potential environmental effects of building and subsequently operating and decommissioning a nuclear reactor facility.
3. Allow the NRC to monitor early activities that are significant to reactor safety, such as adequacy of Nuclear Island (NI) foundations and installation of safety-related SSCs.
4. Ensure that appropriate NRC review and approval occurs prior to beginning construction of key SSCs with a reasonable nexus to reactor safety, security, or emergency preparedness.

2.2 Blue Energy BOP Resequencing Topical Report

Blue Energy submitted Topical Report BE-BOPTR-02-A, “Resequencing Balance-Of-Plant and Nuclear Island Construction for Blue Energy Deployments,”^[1] to describe a methodology for resequencing activities such that certain BOP SSCs could be fabricated, installed, and operated as part of a CCGT plant, prior to the NI construction while remaining consistent with the limitations of 10 CFR 50.10(a)(1). The methodology provides a structured evaluation to distinguish between SSCs that are clearly outside the scope of “construction” and those that may meet one or more of the criteria in 10 CFR 50.10(a)(1) based on their function, location, or potential interface with safety-related SSCs. Using this framework, the Applicant evaluated the planned BOP SSCs and identified a subset that meet the definition of construction in 10 CFR 50.10(a)(1), and therefore require NRC approval prior to installation.

In parallel, the NRC staff’s position in SECY-25-0074, “Expedited Construction of Certain Structures, Systems, and Components,”^[2] provides further clarification regarding the application of the 10 CFR 50.10 construction definition, particularly for non-safety-related SSCs. That paper focuses on the scope of the construction restriction on activities having a reasonable nexus to radiological safety and common defense and security and recognizes that certain non-safety-related SSCs may be outside the scope where their indirect effect on safety-related SSCs is so low as to be considered negligible. Consistent with the BOP resequencing methodology and SECY-25-0074, the Applicant performed a systematic evaluation of early BOP SSCs to identify those that may meet one or more of the 10 CFR 50.10(a)(1) criteria. This exemption supports proceeding with a limited subset of non-safety-related SSCs by demonstrating that any indirect effects on safety-related SSCs are negligible and do not undermine the underlying intent of the definition of construction in the regulations.



The BWRX-300 design uses different safety classification terminology than the definitions described in 10 CFR 50.2. Topical Report NEDC-33934P, Revision 2, Table 5-1 “Safety Class and Safety Category Mapping to USNRC Regulatory Requirements and Guidance,”[3] maps the BWRX-300 to NRC regulatory requirements, lists the safety category functions and the supporting defense line functions, and provides the following definitions:

- Safety Class 1 (SC1) - Safety-Related and Important to Safety
- Safety Class 2 (SC2) - Non-Safety-Related, Important to Safety, and Regulatory Treatment of Non-Safety Systems (RTNSS)
- Safety Class 3 (SC3) - Non-Safety-Related, Important to Safety, and RTNSS
- Non-Safety Class (SCN) - Non-Safety-Related

The BWRX-300 safety strategy applies a defense-in-depth approach that relies on multiple layers of prevention and mitigation to maintain the fundamental safety functions of the plant and protect against the release of radioactive material. For this exemption request, the evaluation focuses on BOP systems, structures, and components that support Defense Line (DL)2 functions associated with the mitigation of Anticipated Operational Occurrences (AOOs) and DL3 functions associated with the mitigation of design basis events. The evaluation assesses whether the proposed activity affects the ability of these SSCs to perform their intended defense-in-depth functions.

For consistency in this request for exemption, references to safety-related SSCs or functions are replaced with SC1.



3 Detailed Description

3.1 Reason for Proposed Exemption

The requested exemption is justified based on the fundamental differences in design, safety philosophy, and risk profile between the proposed BWRX-300 advanced reactor and the current fleet of large light water reactors. The BWRX-300 incorporates passive safety features and simplified system architectures that are designed to maintain core cooling, containment integrity, and key fundamental safety functions without the need for operator actions within 72 hours. As a result, the reliance on active equipment, operator response, and complex system interactions to mitigate AOOs or design basis accidents is significantly reduced.

Consistent with this design approach, the subset of balance-of-plant SSCs identified in this exemption request has been evaluated for potential interactions with SC1 SSCs. The evaluation demonstrates that while certain BOP SSCs may initiate a plant trip or support AOO mitigation functions, the resulting initiating events are of low-risk significance. Furthermore, these SSCs do not affect the performance or response capability of the passive safety systems credited in the BWRX-300 design to mitigate the associated events. Consequently, activities conducted prior to receipt of a Construction Permit (CP) related to BOP SSCs does not adversely affect the ability of the plant to perform its fundamental safety functions and does not undermine the intent of 10 CFR 50.10(a)(1).

In addition, these SSCs will be operated as part of a CCGT plant prior to construction of the NI and start of nuclear power generation. Attachment A provides the justification to demonstrate BOP SSCs reliability, and integrity are maintained prior to transition to nuclear operations.

This request is also consistent with the direction of the NRC's own regulatory reform efforts. The NRC has published proposed rulemaking^[4] to modify the definition of "construction" in 10 CFR 50.10, which would narrow the scope of activities that constitute construction requiring prior authorization and would expressly allow a broader set of preliminary and balance-of-plant activities to proceed before issuance of a construction permit. This proposed change reflects the NRC's recognition that the current definition is broader than necessary to protect public health and safety, particularly for BOP SSCs that do not affect the performance of safety-related SSCs. Granting the requested exemption is therefore fully aligned with the regulatory outcome the Commission is itself pursuing through rulemaking, and provides an appropriate interim mechanism pending finalization of the revised rule.

Because the BOP SSCs at issue do not affect the fundamental safety functions of the plant, requiring the Applicant to defer these activities until after issuance of the construction permit would impose delay and cost without a corresponding safety benefit. Deferring BOP resequencing would shift the resequenced construction schedule and the associated Phase 1 activities central to the Applicant's Gas2Nuclear (G2N) strategy, which supports the finding of undue hardship discussed further below. This scheduling consideration reinforces, but is not necessary to, the safety-based justification for the exemption.

The exemption therefore supports efficient construction sequencing while maintaining an appropriate level of protection of public health and safety and preserving the NRC's regulatory oversight.

Attachment A to this enclosure implements the methodology described in Blue Energy's topical report and provides additional details to identify the SSCs that would trigger the definition of construction under 10 CFR 50.10(a)(1) and their impacts to SC1 SSCs and safety category 1 functions.



4 Technical Evaluation

4.1 Supporting Qualitative Analysis

This analysis will leverage risk-informed principles to demonstrate that the BOP Resequencing meets the underlying intent of the regulation as it pertains to 10 CFR 50.10(a)(1). The analysis will leverage key principles from Regulatory Guide 1.174 “An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis”[5] to demonstrate that defense-in-depth is maintained, the safety significance of this change is low, and the consequences resulting from these changes will not result in a more than minimal increase in risk to the public. In summary, the planned construction of these SSCs will not have a reasonable nexus to radiological safety and any indirect effects on SC1 SSCs are so low as to be considered negligible.

In addition, the Applicant is requesting a Type-2-like review as described in LIC-206, “Integrated Risk-Informed Decision-Making for Licensing Reviews” Revision 1[6] that would leverage risk insights to support a review commensurate with the safety significance of this exemption.

Underpinning this analysis are two key conditions:

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]]^{a,b}. [7].

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]]^{a,b}.

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1. [[

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2. [[

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3. [[

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These are the principal bases for the conclusions in this analysis. Attachment A fully implements the methodology in BE-BOPTR-02-A and provides the technical basis to demonstrate this exemption request should be granted[1].

[[

]]^{a,b}[7] the risk to public health and safety is no more

than minimal.



4.1.1 Defense-in-Depth Maintained

The Applicant is requesting authorization to build or install BOP SSCs that would fall under the definition of construction prior to receiving a construction permit from the NRC. [[

]]^{a,b}.

This section evaluates whether the requested exemption is consistent with the defense-in-depth philosophy. The evaluation is performed against Principle 2 of Regulatory Guide 1.174, which states that a proposed change should be consistent with the defense-in-depth philosophy, and against the seven considerations the guide identifies for reaching that conclusion:

(1) preservation of a reasonable balance among the layers of defense; (2) avoidance of over-reliance on programmatic activities as compensatory measures; (3) preservation of system redundancy, independence, and diversity commensurate with the expected frequency and consequences of challenges to the system and with uncertainties; (4) preservation of defenses against potential common-cause failures, and assessment of the potential for introduction of new common-cause failure mechanisms; (5) preservation of the independence of barriers; (6) preservation of defenses against human error; and (7) maintenance of the intent of the General Design Criteria (GDC) of 10 CFR part 50, appendix A.

The BWRX-300 accomplishes its credited DL3 safety functions through SC1 SSCs outside the scope of this request that are constructed after receiving a construction permit. There will be no SC1 components constructed or included in this evaluation. As stated in the Preliminary Safety Analysis Report (PSAR)[7], BOP SSCs perform no DL3 functions.

4.1.1.1 Reasonable Balance Among the Layers of Defense

The balance among prevention of core damage, prevention of containment failure, and mitigation of consequences is established by the BWRX-300 design and its supporting safety analyses. [[

]]^{a,b}.

4.1.1.2 Over-Reliance on Programmatic Activities as Compensatory Measures

[[

]]^{a,f}. DL3 credited mitigating functions require no alternating current power, no motive cooling, no instrument air, and no operator action for 72 hours.

4.1.1.3 Redundancy, Independence, and Diversity Commensurate with the Expected Frequency and Consequences of Challenges

No redundancy, independence, or diversity provision is removed or reduced, and each remains commensurate with the expected frequency and consequences of challenges and their uncertainties. The consequences of the challenges that BOP SSC failures can produce are unchanged, [[



]]^{a,b}.

4.1.1.4 Defenses Against Common-Cause Failure, and Assessment of New Common-Cause Failure Mechanisms

The credited mitigating functions of the BWRX-300 are passive and independent of the support systems that could couple them to the BOP. A common-cause failure within the BOP therefore does not cause a failure of an SC1 function. The Applicant has identified no new common-cause failure mechanism, because as demonstrated in Attachment A, [[

]]^{a,b}[7].

4.1.1.5 Independence of Barriers

The scope boundary lies outboard of the main steam and feedwater isolation valves. No containment penetration, isolation valve, or reactor coolant pressure boundary component is within scope, and no BOP SSC performs a containment isolation function or forms part of a credited pressure-retaining boundary. The fuel cladding, the reactor coolant pressure boundary, and the containment are constructed in their entirety under the construction permit, and their independence from one another and from the BOP is unchanged.

4.1.1.6 Defenses Against Human Error

The credited safety functions require no operator action for at least 72 hours following an event, so the defenses against human error applicable to the mitigating layers are provided by the design and are unchanged. For BOP SSCs, [[

]]^{a,b}.

4.1.1.7 Intent of the General Design Criteria

The exemption seeks no relief from any GDC and Attachment A describes compliance with applicable GDC. [[

]]^{a,b}. [7]

The requested exemption changes only the sequence in which the Attachment A SSCs are erected and commissioned. [[

]]^{a,b}[7].

Evaluated against the seven considerations of Principle 2 of Regulatory Guide 1.174, Revision 3, the exemption results in no adverse effect on any layer of defense. The Applicant concludes that defense-in-depth is maintained.



4.1.2 Safety Margins

For this application, the Applicant is requesting an exemption from the definition of activities that constitute construction in 10 CFR 50.10(a)(1) related to the BOP SSCs in Attachment A, for which prior NRC approval is required. The exemption does not significantly affect the safety margins described in the PSAR[7].

The requested exemption changes the sequence in which the Attachment A SSCs are erected and commissioned. [[

]]^{a,b}. The BOP SSCs are not credited in the safety analyses that evaluate the response to postulated Design Basis Accident (DBA)s; they appear in transient analyses as initiators of events and used to mitigate AOOs. Failures of the BOP SSCs initiate events already analyzed in the licensing basis, and the effects, if any, of this exemption request are evaluated in Attachment A. PSAR[7] Sections 15.5.1.1.1, 15.5.1.1.2, and 15.5.1.1.3 include a margin analysis and its conclusions. This exemption request does not introduce any new analysis uncertainty and no margin is reduced that would challenge those conclusions. The Applicant concludes that sufficient safety margins are maintained, consistent with Principle 3 of Regulatory Guide 1.174, Revision 3.

4.1.3 Risk Insights

The risk insights in this section are informed by the probabilistic safety assessment for the BWRX-300 design. [[

]]^{a,h}. All initiating events that a failure of a BOP SSC can cause, fall within that category, so these values bound the contribution of the BOP SSCs to plant risk. The assessment reflects a balanced design in which no feature or postulated initiating event makes a disproportionate contribution to overall risk.

The low overall safety significance reflected in these results is a direct consequence of the BWRX-300 design. The reactor relies on passive safety systems that require neither external alternating current power nor operator action to reach and maintain a safe, stable state. Core cooling is accomplished by natural circulation and the isolation condenser system, which condense steam and return coolant to the reactor pressure vessel by gravity, allowing decay heat to be removed for an extended period without power or operator intervention. The reactor's lower thermal power and correspondingly smaller radionuclide inventory further limit the potential source term relative to the large light water reactors for which the current regulatory framework was developed, and fission product retention is accomplished within the containment without reliance on a secondary containment, containment spray, or engineered atmosphere cleanup systems.

The BOP SSCs impact the risk assessment as initiating events. However, they are not credited in the deterministic safety analyses, nor does their reliability affect the availability of the isolation condenser system or the passive containment cooling system, which accomplishes the credited safety functions. The requested exemption will [[

]]^{a,b}[7]. The safety significance of the BOP SSCs is low, the change in risk attributable to the requested sequencing is no more than minimal, and the activities for which the exemption is requested have no reasonable nexus to radiological health and safety for which issuance of the construction permit is required.

4.1.4 Uncertainty

At this stage in the design process, plant-specific reliability data is limited, so generic industry data and the associated uncertainty are used, with the development of failure rates reflecting appropriate characterizations of those uncertainties. The generic sources include the NUREG/CR-6928 industry-average parameter estimates and the NRC common cause failure database. Because the BWRX-300 is a light water reactor, and because the initiating events associated with the Attachment A SSCs are the transients for which industry operating experience is most extensive, uncertainty in this analysis is among the better characterized in the assessment. [[



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4.1.5 Other Considerations

The purpose of NRC oversight of construction activities is confidence that the as-built SSC will perform its intended function. [[

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- [[

]]^a.

4.1.6 Performance Monitoring

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]]^{a,b}.

This monitoring and feedback and operational programs, continuing assurance provides that the BOP SSCs remain capable of performing their intended functions prior to and upon connection to the Nuclear Steam Supply System (NSSS).



5 Regulatory Evaluation

5.1 Applicable Regulatory Requirements and Guidance

The authoritative guidance on the meaning of the definition of construction is the Statements of Consideration (SOC) for the final rule “Limited Work Authorizations,” 72 FR 57416 (October 9, 2007), which promulgated the current definition (see the source credit to § 50.10 at 72 FR 57441) and states the Commission’s basis for it[8, 9].

The SOC explain that the Commission deliberately narrowed the definition of construction so that prior NRC authorization is required only for those activities over which the agency’s regulatory oversight is warranted:

“NRC authorization would only be required before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security for which regulatory oversight is necessary.” (72 FR at 57426)

The Commission grounded that narrowing in the limits of its own statutory authority:

“[T]he NRC does not possess statutory authority to regulate activities that do not have an impact upon radiological health and safety or common defense and security.” (72 FR at 57427)

Applying that principle, the Commission concluded that the site-preparation and related activities removed from the definition lack the requisite nexus, and that NRC oversight of them is unnecessary:

“[T]he site-preparation activities that would no longer be considered construction under this ... rule do not have a reasonable nexus to radiological health and safety, or the common defense and security.” (72 FR at 57427)

“[E]xcavation may be excluded from the definition of construction ... NRC inspection and regulatory oversight [of excavation] are not necessary.” (72 FR at 57419)

The SOC state the resulting permission directly, in terms of SSCs:

“SSCs that are not within the scope of construction may be installed before receipt of an LWA, construction permit, or combined license.” (72 FR at 57427)

The SOC also confirm that the limited work authorization procedure is an option, not a precondition, for pre-permit work:

“The final LWA rule also provides an optional, phased application and approval procedure” (72 FR at 57426)

10 CFR 50.10(c) prohibits only the commencement of “construction” as that term is defined in 10 CFR 50.10(a). The Statements of Consideration for the final rule that established the current definition confirm that the Commission drew the definition to reach only those activities having a reasonable nexus to radiological health and safety or the common defense and security, expressly stating that “SSCs that are not within the scope of construction may be installed before receipt of an LWA, construction permit, or combined license.”

Finally, the SOC confirm that activities outside the definition of construction are not Federal actions and therefore do not require completion of the NRC’s environmental review before they are performed, the Commission having severed the definition of construction from the National Environmental Policy Act (NEPA)-driven formulation adopted in 1972 and observing that “NEPA is a procedural statute and does not expand the jurisdiction delegated to an agency by its organic statute” (72 FR at 57427).



5.1.1 Conclusion

The Applicant has evaluated the proposed exemption request against the applicable regulatory requirements described above. Based on this evaluation, there is reasonable assurance that the health and safety of the public will remain unaffected following the approval of this exemption.

5.2 Precedent

NRC precedent supports this type of exemption. TerraPower, LLC's Topical Report NATD-LIC-RPRT-0001, "Regulatory Management of Sodium NI and Energy Island Design Interfaces," approved by NRC Final Safety Evaluation in September 2023[10], established a methodology for evaluating the independence between safety-related NI SSCs and non-safety-related Energy Island SSCs under 10 CFR 50.10; the same approach the Applicant applies to its Topical report (BE-BOPTR-02-A)[1]. Applying that methodology, TerraPower obtained an exemption, granted May 7, 2025, from 10 CFR 50.10(a)(1)(iv) for the proposed Kemmerer Power Station, Unit 1 (Docket No. 50-613), excluding non-safety-related, no-special-treatment SSCs on the Sodium Energy Island from the definition of "construction"[11]. NRC staff found the exemption satisfied the same four findings under 10 CFR 50.12(a)(1) and 50.12(a)(2) addressed in Section 5.3 of this request and noted the grant did not commit the NRC to issuing a construction permit. This confirms that the NRC has both approved and applied the same basic approach the Applicant proposes here. A similar approach is now being pursued for GE Vernova Hitachi's Licensing Topical Report NEDC-34403P/NEDO-34403, "BWRX-300 Expedited Construction of Certain Structures, Systems, and Components," submitted June 2026 and currently under NRC review[12].

This exemption also aligns with the Commission's own rulemaking direction. On July 14, 2026, the NRC published a proposed rule, "Modernizing Reactor Licensing, Safety Oversight, and Siting Practices"[4], which would narrow the definition of "construction" in 10 CFR 50.10, 51.4 and 53.020 to SSCs whose construction affect their capability to perform a safety significant function. Approval of this exemption is therefore consistent with the outcome the Commission is pursuing. The risk-informed method behind this request reflects the NRC's own longstanding practice. Since its 1995 Probabilistic Risk Assessment Policy Statement[13], the Commission has directed NRC staff to weigh risk insights alongside deterministic requirements so regulatory attention lines up with safety significance. The Office of Nuclear Reactor Regulation (NRR) Instruction LIC-206, Revision 1, "Integrated Risk-Informed Decision-Making for Licensing Reviews"[6], implements this policy, confirming that the reasoning applied in Section 4 is the same reasoning the NRC has established for its own staff.

The Commission's adoption of 10 CFR Part 53[14] provides further evidence of a longstanding NRC policy trend toward risk-informed regulation and the alignment of regulatory requirements with safety significance. Part 53 establishes a framework that focuses regulatory attention on SSCs necessary to achieve applicable safety functions and safety objectives, rather than applying equivalent regulatory treatment to all plant features regardless of risk significance. Consistent with this policy direction, the SSCs addressed by this exemption do not perform DL3 safety functions and are not relied upon to satisfy applicable accident prevention. Accordingly, allowing these activities to proceed prior to issuing a construction permit is consistent with the Commission's broader regulatory approach of tailoring oversight and controls to the safety significance of the activity being performed.

5.3 Justification for Exemption and Special Circumstances

In accordance with 10 CFR 50.12[15], the Commission may grant exemptions from the requirements of the regulations of Part 50 for reasons which are (1) the exemption is authorized by law, (2) the exemption will not present an undue risk to the public health and safety, (3) the exemption is consistent with the common defense and security, and (4) special circumstances, as defined in 10 CFR 50.12(a)(2), are present. As discussed below, this exemption request satisfies the provisions of Section 50.12.



5.3.1 The Exemption is Authorized by Law

The Applicant requests an exemption from the definition of construction in 10 CFR 50.10(a)(1) as applied to driving piles, subsurface preparation, placing backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing related to the BOP SSCs identified in Attachment A. 10 CFR 50.12(a) authorizes the Commission to grant exemptions from the requirements of the regulations of 10 CFR Part 50, and 10 CFR 50.12(b) provides that any person may request an exemption permitting the conduct of activities prior to the issuance of a construction permit that are prohibited by 10 CFR 50.10. No provision of the Atomic Energy Act of 1954, as amended, of any other statute, or of the Commission's regulations prohibits the requested exemption or the activities it would permit, and granting the exemption would not result in a violation of the Atomic Energy Act or of the Commission's regulations. The Applicant requests no relief from any design requirement, GDC, quality assurance requirement, code or standard, or acceptance criterion, and requests no relief with respect to the NI, any safety-related SSC, any SSC necessary to comply with 10 CFR Part 73 or 10 CFR 50.48, or the connection of the Attachment A SSCs to the NI.

Therefore, the exemption is authorized by law.

5.3.2 The Exemption Will Not Present an Undue Risk to Public Health and Safety

Based on this assessment, it is determined that the proposed exemption poses no impact to safety. Furthermore, the results of the risk insights demonstrate that the potential risk is not risk-significant and consistent with the intent of the Commission's safety goal policy statement, which defines an acceptable level of risk that is a small fraction of other risks to which the public is exposed.

Therefore, approval of the exemption request will not present an undue risk to the public health and safety.

5.3.3 The Exemption is Consistent with the Common Defense and Security

The requested exemption applies only to the BOP SSCs identified in Attachment A. No SSC necessary to comply with 10 CFR Part 73 is within the scope of the request, the exemption involves no change to the physical security plan, the safeguards contingency plan, the training and qualification plan, the cyber security plan, or the material control and accounting provisions applicable to the facility, and no special nuclear material would be received or possessed at the site under the exemption.

The proposed exemption does not involve security requirements and does not create a security risk. Therefore, the common defense and security are not impacted by this exemption.

5.3.4 Special Circumstances

The underlying purpose of the definition of construction in 10 CFR 50.10(a)(1) is stated in the Statements of Consideration for the final rule that established it, "Limited Work Authorizations," 72 FR 57416 (October 9, 2007), in which the Commission narrowed the definition so that "NRC authorization would only be required before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security for which regulatory oversight is necessary." The Attachment A SSCs fall within the definition on two bases, 10 CFR 50.10(a)(1)(ii) SSCs relied upon to mitigate accidents or transients or used in plant emergency operating procedures and 10 CFR 50.10(a)(1)(iv), because their failure could cause a reactor scram or actuation of a safety-related system after they are connected to the NI. They are not safety-related SSCs and could not prevent a safety-related SSC from fulfilling its safety-related function. That result follows from key safety features of the BWRX-300 design described in PSAR[7] Section 1.2.

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]]^a establish that the safety significance of the BOP SSCs is low and the requested exemption changes neither that significance nor the design, codes, criteria and monitoring that apply to these SSCs. Requiring prior NRC authorization of their construction would therefore produce no safety benefit that the definition was adopted to secure, and the activities have no reasonable nexus to radiological health and safety for which regulatory oversight prior to issuance of the construction permit is necessary. This aligns with the special circumstance identified in 10 CFR 50.12(a)(2)(ii): “Application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.”

In accordance with 10 CFR 50.12(a)(2)(iii), special circumstances are present when “[c]ompliance 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.”

As discussed under criterion (ii), the Project relies on a G2N deployment strategy in which the CCGT plant is constructed and placed in operation first, and the BWRX-300 Small Modular Reactor (SMR) is subsequently integrated through resequencing of the BOP. This strategy depends on constructing certain BOP SSCs before issuance of the construction permit. Absent this exemption, those activities would fall within the definition of construction in 10 CFR 50.10(a) and could not be authorized until the construction permit is issued. When that definition was amended (72 FR 57416; October 9, 2007), a phased G2N construction and financing strategy of this type was not contemplated.

Requiring the Applicant to defer BOP resequencing until construction permit issuance does not serve the underlying purpose of the rule. The BOP SSCs at issue support the CCGT and have no reasonable nexus to nuclear safety or security prior to integration of the reactor. Compelling the Applicant to hold these non-safety activities until after the construction permit is issued would impose delay and cost without any corresponding safety benefit.

The hardship is the effect on the resequenced construction schedule and the G2N strategy. [[

]]^{c,d} Because BOP resequencing is the mechanism that enables the CCGT to be built and operated ahead of the SMR, a delay to resequencing directly delays CCGT operations and shifts the entire deployment



In summary, denying or delaying this exemption [[

]]^{c,d}. These costs and the cost of delaying commercial operation of the CCGT plant and the NSSS have not been calculated in detail and depend on a number of uncertain factors, but are expected to be substantial and would present an undue hardship significantly in excess of that contemplated when the regulation was adopted.

Based on the above, the special circumstances described in 10 CFR 50.12(a)(2)(iii) are present. The added costs and construction delays associated with denying the exemption are unique to the Project, are significantly in excess of those contemplated when the regulation was adopted, and would not be in the public interest.

5.4 Consideration and Balancing of the Factors in 10 CFR 50.12(b)

10 CFR 50.12(b) provides that any person may request an exemption permitting the conduct of activities prior to the issuance of a construction permit that are prohibited by 10 CFR 50.10, and that the Commission may grant such an exemption upon considering and balancing four factors. Because the activities addressed by this request would otherwise be prohibited by 10 CFR 50.10(c) prior to issuance of a construction permit or a limited work authorization, the Applicant addresses each of the four factors below. Figure 1 depicts the proposed site layout showing the previously disturbed areas and the area of turbine building activities that are relevant to this request. For purposes of this application, the term “Environmental Report” refers to Enclosure 3, Environmental Report, submitted in part 1 of the Applicant’s construction permit application[16].

5.4.1 Factor 1. Whether Conduct of the Proposed Activities Will Give Rise to a Significant Adverse Impact on the Environment and the Nature and Extent of Such Impact

The activities authorized by this exemption would not give rise to a significant adverse impact on the environment. The Attachment A SSCs would be constructed at the Port of Victoria site on the Primary Facilities Parcel. That area will have been cleared, grubbed, and rough graded, and provided with access roads, parking, and drainage, as part of the site preparation and combined-cycle gas turbine plant construction. Those activities are outside the definition of construction under 10 CFR 50.10(a)(2). No ground disturbance outside that footprint is required to conduct the activities authorized by this exemption.

The timeline for the environmental report extends into 2029. Later CCGT construction activities that fall outside the duration evaluated in the environmental report, such as the installation of Attachment A SSCs, would be expected to have minimal environmental impact. Therefore, the Applicant considers the conclusions of the Environmental Report (ER) cumulative impacts assessment to be representative for assessing the impacts of construction of the BOP SSCs. The environmental report determined that the potential environmental impacts were SMALL for all resource categories (e.g., land use, water resources, ecological resources, socioeconomics, historical and cultural resources, air quality, noise, and public health, and non-radioactive waste management) for the Limited Work Authorization (LWA) activities. The activities allowed by the exemption will result in a negligible change in cumulative impacts, as discussed in Sections 7.2.1, 7.2.2, and Table 7.2-1 of the LWA ER. Therefore, the Applicant proposes that granting the requested exemption to allow the associated construction activities will not result in an adverse environmental impact.

During the period covered by this request there is no fuel and no radiological inventory at the site. The activities involve no receipt or possession of source, byproduct, or special nuclear material, produce no radiological effluent, and create no potential for a radiological accident. The nonradiological impacts are of the same character as, and are bounded by, the conventional power block construction impacts already characterized for the site. The Applicant has concluded that the impacts of the proposed activities are not significant.

[Section 6](#) of this exemption request provides additional discussion of Environmental Considerations.

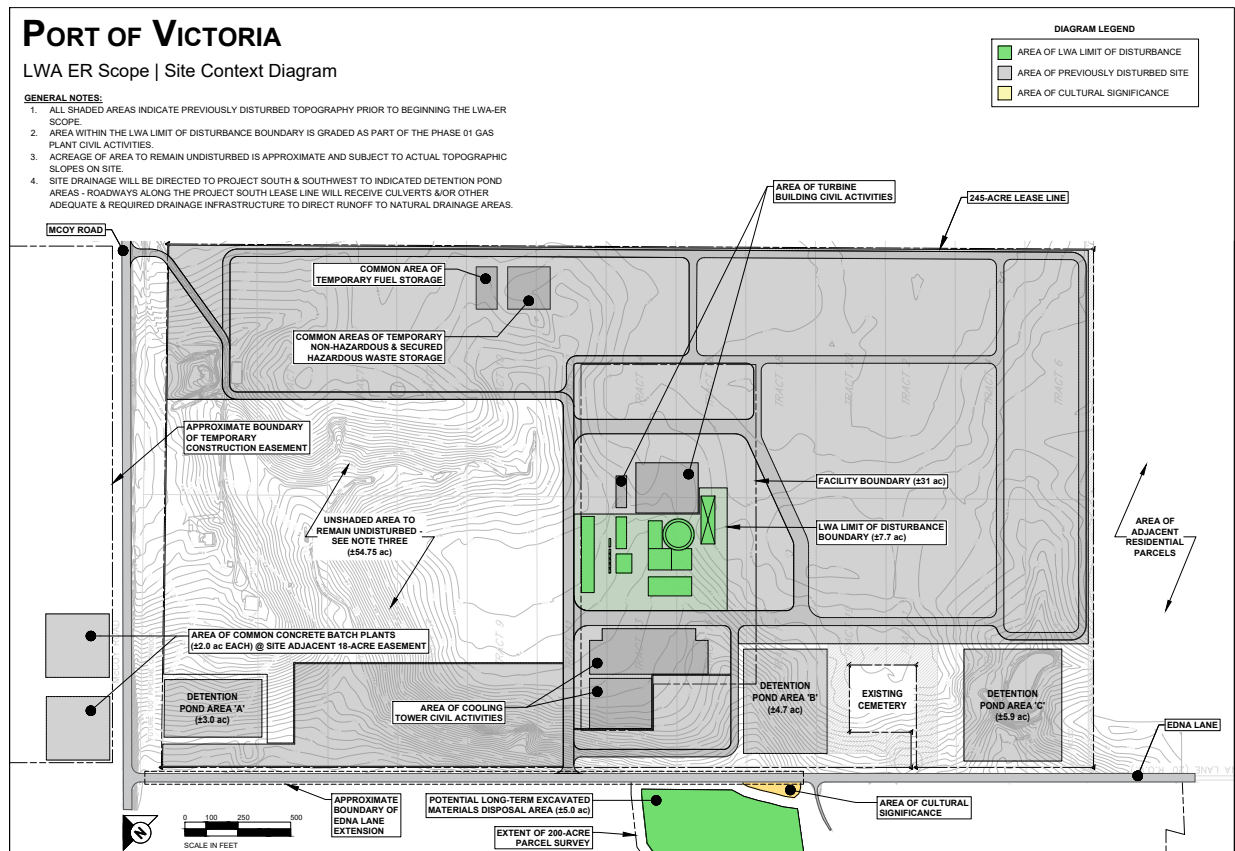


Figure 1: Proposed Site Layout for the LWA ER Scope

5.4.2 Factor 2. Whether Redress of Any Adverse Environmental Impact from Conduct of the Proposed Activities Can Reasonably Be Effected Should Such Redress Be Necessary

Redress of any adverse environmental impact from the proposed activities can reasonably be effected. The controlling consideration is that the Attachment A SSCs are not abandoned if the construction permit is never issued. The Attachment A SSCs are conventional power conversion and support equipment that will be placed in service supporting the combined-cycle gas turbine plant, which is not a production or utilization facility, is outside the NRC's licensing jurisdiction, and proceeds independently of the outcome of this proceeding. Their construction is not a step that must be undone. It is a step that produces equipment in beneficial use whether or not the reactor is licensed.

For that reason the site condition that redress is intended to address does not arise from these activities. If the construction permit application were withdrawn or denied, the turbine building activities would remain an operating industrial site supporting the combined-cycle gas turbine plant, in the condition it would have been in had this exemption never been granted, because the same equipment would have been constructed in the same location under the gas plant scope. The Redress Plan^[17] makes the corresponding point for the site as a whole, noting that upon commencement of the activities addressed here the site will already have undergone site preparation for the combined-cycle gas turbine plant and would no longer be considered a greenfield site.

To the extent the Commission considers redress of the Attachment A activities notwithstanding the above, it can reasonably be effected. The Attachment A SSCs are installed above grade on discrete foundations, together with associated piping, electrical, and control components. They are not integral to the ground and they are removable using ordinary demolition and salvage methods, with below grade elements demolished below plant



grade or abandoned in place consistent with the approach described in the Redress Plan^[17] for structures within the limited work authorization scope submitted in part 1 of the construction permit application. This is a less demanding case than the permanent support of excavation walls addressed in the Pioneer exemption^[18], which the NRC nevertheless found could reasonably be redressed by retirement in place, backfilling, and regrading. The Applicant commits that any such redress would be conducted using best management practices and would begin in a reasonable timeframe and be completed within 18 months, consistent with 10 CFR 50.10(g).

The Applicant would undertake these activities entirely at its own risk. Consistent with the final sentence of 10 CFR 50.12(b), issuance of this exemption does not constitute a commitment by the NRC to issue either a limited work authorization or a construction permit. The Applicant further commits that any sunk costs associated with activities conducted pursuant to this exemption will not be considered in the NRC's decision on the construction permit application. In making this commitment, the Applicant applies to these activities the same principle embodied in 10 CFR 50.10(f) for activities conducted under a limited work authorization.

5.4.3 Factor 3. Whether Conduct of the Proposed Activities Would Foreclose Subsequent Adoption of Alternatives

The proposed activities would not foreclose subsequent adoption of alternatives. The activities are confined to the area of turbine building activities on the Primary Facilities Parcel, within the site boundary already identified as the proposed plant site, and they involve no new land commitment, no new water withdrawal or discharge, no new transmission corridor, and no new right of way. The Environmental Report confirms that no offsite transmission lines, pipeline corridors, rail spurs, or offsite road widenings are planned in connection with this phase of the project^[16]. Nothing about the activities constrains the NRC's evaluation of, or ability to select, any alternative to be considered in the environmental review for the construction permit application, including the no action alternative, alternative sites, alternative energy sources, and alternative plant and transmission system designs. Those alternatives are addressed in part 2 of the construction permit application under 10 CFR 51.50 to be submitted at a later date.

Two features reinforce this conclusion. First, the redress capability described under Factor 2 means the site can be returned to a condition that supports adoption of an alternative. Second, the Attachment A SSCs are, by design, to be commissioned and operated on the combined-cycle gas turbine plant independent of the NI, so their construction does not presuppose the outcome of the construction permit proceeding. Consistent with the final sentence of 10 CFR 50.12(b), issuance of this exemption is not a commitment to issue a limited work authorization or a construction permit, and the Applicant has committed under Factor 2 that sunk costs associated with these activities are not to be considered in the licensing decision.

5.4.4 Factor 4. The Effect of Delay in Conducting Such Activities on the Public Interest

Factor 4 directs the Commission to consider the effect of delay on the public interest, including the power needs to be served by the proposed facility, the availability of alternative sources to meet those needs on a timely basis, and delay costs to the applicant and to consumers.

Deferring the Attachment A activities until issuance of a construction permit would extend the project schedule by [[

]]^{c,d}. Environmental Report^[16] describes the analogous schedule effect for the limited work authorization scope, where early pile installation is estimated to reduce the overall project schedule by three to six months and to eliminate the cost of demobilizing and remobilizing a construction crew already performing BOP work. The same relationship applies here but on a larger scope and would result in schedule delays.

The delay would postpone delivery of approximately 300 megawatts of firm, dispatchable baseload generation to the Electric Reliability Council of Texas (ERCOT) South load zone. As described in the Environmental Report^[16], the need for that generation is driven by growth in power intensive industry and data center load in the region,



the plant will serve signed industrial offtakers, and the ERCOT South load zone carries a high concentration of variable renewable resources such that the zone benefits from the grid forming and inertia services the facility provides. [[
]]^c.

Deferral is also the less favorable environmental outcome in one respect. Constructing the Attachment A SSCs concurrently with the CCGT plant uses a single mobilization of equipment and workforce. Deferring the work to a later, separate campaign would require demobilization and remobilization, with the associated additional vehicle trips, equipment operation, and emissions.

Delay of these activities also carries a public interest cost that is specific to the proposed resequencing. [[

]]^{c,d}

5.4.5 Balancing and Conclusion

Considering and balancing the four factors, the Applicant concludes that the exemption should be granted. The activities give rise to no significant adverse environmental impact, redress can reasonably be effected if it becomes necessary, no alternative is foreclosed, and delay would impose material costs on the Applicant, on consumers in the ERCOT South load zone, and on the reliability benefit that the proposed resequencing itself produces.

Consistent with the final sentence of 10 CFR 50.12(b), the Applicant commits that during the period of any exemption granted under that paragraph, the activities conducted will be carried out in such a manner as will minimize or reduce their environmental impact.



6 Environmental Considerations

6.1 Scope of the Proposed Action

Defining what this exemption does and does not authorize is a necessary first step, because it determines the scope of the environmental review.

The proposed Federal action is NRC approval of an exemption from the definition of construction in 10 CFR 50.10(a)(1) as applied to the BOP SSCs identified in Attachment A. Consistent with the methodology in Topical Report BE-BOPTR-02-A[1], the Applicant evaluated the planned BOP scope and identified the subset of SSCs that meet one or more of the criteria in 10 CFR 50.10(a)(1). This exemption is limited to that subset. It does not extend to, and is not required for, the BOP scope generally.

In particular, the turbine building civil work is not construction as defined in 10 CFR 50.10 and is not within the scope of this exemption. Excavation is expressly excluded from the definition of construction by 10 CFR 50.10(a)(2)(v). The turbine building excavation, the mat foundation, and the continuous flight auger piles supporting the turbine building are not activities described in 10 CFR 50.10(a)(1) performed for an SSC in categories (i) through (vii) of that paragraph. They are preconstruction activities that proceed under the CCGT plant and BOP scope, outside the NRC's licensing jurisdiction, whether or not this exemption is granted.

Because that civil work is not construction as defined in 10 CFR 50.10, it requires no NRC authorization and is not a Federal action. The Statements of Consideration for the 2007 limited work authorization final rule confirm that the site preparation and related activities removed from the definition lack a reasonable nexus to radiological health and safety, that NRC regulatory oversight of them is not necessary, and that such activities are not Federal actions requiring completion of the NRC's environmental review before they are performed (72 FR 57416 at 57419 and 57426 to 57427, October 9, 2007)[9]. No determination under 10 CFR part 51, including a categorical exclusion, is sought or required for the turbine building civil work and associated SSCs.

The activities authorized by this exemption are the in-place assembly, erection, fabrication, and testing of the Attachment A SSCs.

6.2 Level of Environmental Review

If the NRC determines that an environmental assessment is still required, the Applicant has determined that the justification provided in the Environmental Report submitted for part 1 of its construction permit application, should be sufficient for such a limited-scope review[16]. For context, the Environmental Report[16] is limited in scope and does not directly and explicitly evaluate the potential environmental impacts of the construction and operation of the BOP SSCs, as these SSCs will initially be part of the CCGT plant. However, the cumulative impacts of the construction activities associated with these SSCs, concurrent with the Limited Work Authorization (LWA) and in-ground support structure exemption work scope duration, are assessed in the Environmental Report, which concluded that the environmental impact of the LWA and permanent in-ground support structures exemption activities to be no more than SMALL for all applicable potential environmental impacts[16]. The activities allowed by the exemption will result in a negligible change in cumulative impacts, as discussed in Sections 7.2.1, 7.2.2, and Table 7.2-1 of the Environmental Report[16].

Furthermore, a full Environmental Report will be included in part 2 of the construction permit application and will address all potential environmental impacts for preconstruction and construction activities, including those associated with the BOP SSCs, as well as mitigation measures, as needed. The Environmental Report for part 2 of the construction permit application, and its supplement for the operating license application, will address any additional changes or modifications required to support transition to nuclear plant operations, or categorical exclusions will be applied, where applicable. For example, additional trenching and installation of buried piping in a location that was not a previously disturbed area, as defined in 10 CFR 51.4, would require environmental assessment. Whereas rewiring cables or installing a new control panel within the turbine building may be eligible



to apply a categorical exclusion per 51.22(d). Therefore, all SSCs in the nuclear plant, including the BOP SSCs, would be subject to the appropriate level of environmental review at the proper time in the licensing process.

The requested exemption is an authorization under 10 CFR part 50 with respect to the installation of facility components, specifically Attachment A SSCs. It changes the sequence in which those components are installed and [[]]^a. The mere installation of these components alone normally does not have a significant effect on the human environment, as the NRC recognized when promulgating the categorical exclusion in 10 CFR § 51.22(d)(8).



7 Conclusion

During the period covered by this request there is no fuel, no radiological inventory, and no possibility of radiological consequence from any failure of an Attachment A SSC. Nothing about the requested activities is irreversible with respect to safety, [[
]]^a.

The NRC's regulatory review is preserved in full. [[

]]^a.

The exemption request is permissible under 10 CFR 50.12 in that it is authorized by law, it will not present undue risk to the health and safety of the public, it is consistent with the common defense, and it presents the special circumstance that application of the regulation in this circumstance is not necessary to achieve the underlying purpose of the rule and 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.



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Proprietary Information Notice

- ^a Withheld pursuant to 10 CFR 2.390(a)(4) as information which reveals distinguishing aspects of a process, component, structure, tool, or method, including supporting data and analyses related thereto, whose use by Blue Energy competitors without a license or contract would constitute a competitive economic disadvantage and diminish Blue Energy's competitive position;
- ^b Withheld pursuant to 10 CFR 2.390(a)(4) as information which, if used by a competitor, would reduce the competitor's expenditure of resources or improve its competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product;
- ^c Withheld pursuant to 10 CFR 2.390(a)(4) as information which reveals cost or price information, production capacities, budget levels, or commercial strategies of Blue Energy or its customers, partners, or suppliers;
- ^d Withheld pursuant to 10 CFR 2.390(a)(4) as information that reveals aspects of past, present, or future privately funded or customer-funded development plans or programs of potential commercial value to Blue Energy or the owner of the information;
- ^e Withheld pursuant to 10 CFR 2.390(a)(4) as information that discloses patentable subject matter or ideas for which it may be desirable to obtain patent protection;
- ^f Withheld pursuant to 10 CFR 2.390(a)(4) as information, including supporting data and test results, obtained through Blue Energy activities that provide insights into reactor system development, testing, qualification processes, or regulatory strategies, and which are not otherwise readily obtainable by competitors;
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