

Enclosure 2

Non-Proprietary Version of Blue Energy's BE-POV-LCNRG-LIC-5005,
"Exemption Request to Allow Installation of Select Fire-Protection-Related
Structures, Systems, and Components", Revision 0

28 pages follow



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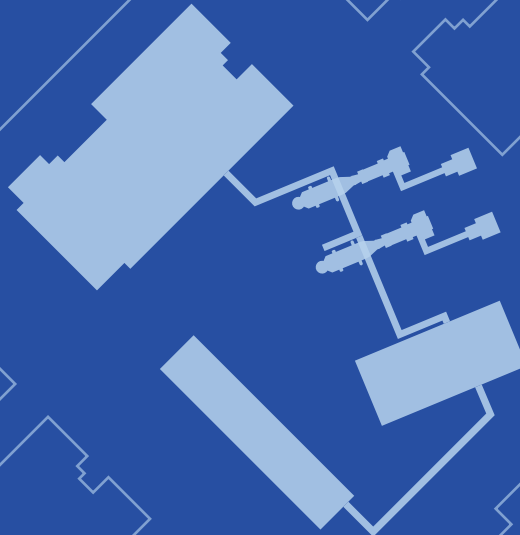


Exemption Request to Allow Installation of Select Fire-Protection-Related Structures, Systems, and Components

Non-Proprietary Version

BE-POV-LCNRG-LIC-5005-NP

Revision 0





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Information Notice

This is a Non-Proprietary version of the Blue Energy (BE) document **BE-POV-LCNRG-LIC-5005-NP, “Exemption Request to Allow Installation of Select Fire-Protection-Related Structures, Systems, and Components”**, Revision 0.

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List of Acronyms

10 CFR	Title 10 of the Code of Federal Regulations
ADVANCE Act	Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024
BECPV-N01	Blue Energy Center - Port of Victoria, Nuclear Unit 1
Blue Energy	Blue Energy Global Inc.
BOP	balance-of-plant
CCGT	combined-cycle gas turbine
CPA	Construction Permit Application
DOE	U.S. Department of Energy
EI	Energy Island
EIA	U.S. Energy Information Administration
EO	Executive Order
ER	Environmental Report
ERCOT	Electric Reliability Council of Texas
FHA	Fire Hazards Analysis
FID	Final Investment Decision
FPS	Fire Protection System
FSSA	Fire Safe Shutdown Analysis
G2N	Gas2Nuclear
GDC	General Design Criteria
GVH	GE Vernova Hitachi Nuclear Energy Americas, LLC
LTR	Licensing Topical Report
LWA	Limited Work Authorization
NEPA	National Environmental Policy Act of 1969, as amended
NFPA	National Fire Protection Association
NI	Nuclear Island
NRC	U.S. Nuclear Regulatory Commission
NSRSS	Non-Safety-Related but Safety-Significant
OLA	Operating License Application
PSAR	Preliminary Safety Analysis Report
QA	Quality Assurance
QAPD	Quality Assurance Program Description
RG	Regulatory Guide
SCN	Non-Safety Class
SE	Safety Evaluation
SMR	Small Modular Reactor
SR	safety-related
SRP	Standard Review Plan
SSCs	Structures, Systems, and Components
TAC	Texas Administrative Code



1 Introduction

In accordance with the provisions of Title 10 of the Code of Federal Regulations (10 CFR) Section 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, hereby requests a one-time exemption for Blue Energy Center – Port of Victoria Nuclear Unit 1 (BECPV-N01, “the Project”) from 10 CFR 50.10, “License required; limited work authorization,” to allow the construction of select fire-protection-related structures, systems, and components (SSCs), at risk, prior to the issuance of a construction permit. Specifically, the Applicant is requesting an exemption related to Paragraph 50.10(c), “Requirement for construction permit, early site permit authorizing limited work authorization activities, combined license, or limited work authorization,” to allow the installation of the portions of the fire protection system (FPS) needed to protect the balance-of-plant (BOP) SSCs that will support combined-cycle gas turbine (CCGT) plant operations before the Project transitions to nuclear operations. The Applicant is not requesting the U.S. Nuclear Regulatory Commission (NRC) to review any information associated with the CCGT plant. The scope of the exemption request includes: the firewater tanks, the fire pump enclosure, the underground firewater loop and hydrants in the yard, and the fire barrier, suppression, and detection systems associated with the BOP, such as fire-rated doors, penetrations seals, standpipes and hose stations, fire extinguishers, smoke detectors, and alarms in the Turbine Building and ancillary buildings (e.g., warehouses, office buildings, or other temporary buildings needed for construction support).

The Applicant provided relevant sections of the Preliminary Safety Analysis Report (PSAR) as part of Enclosure 2 to its Construction Permit Application (CPA) Part 1 submittal [\[1\]](#). Specifically, PSAR Table 3A-1, “Preliminary BWRX-300 Component Classification List,” Section 9.5.1, Fire Protection System, and Appendix 9A, Fire Hazards Analysis, in that submittal, include information necessary for context to support this exemption request, as these sections describe the FPS and its requirements. However, the Applicant is not requesting the NRC to approve the FPS design as part of this exemption request or CPA Part 1. The FPS design will be updated, if necessary, and included for NRC review as part of CPA Part 2.

Consistent with 10 CFR 50.12, the Applicant understands that issuance of an exemption shall not be deemed to constitute a commitment to issue a construction permit.



2 Background

2.1 Relevant Regulations

The regulation in 10 CFR 50.10(a)(1), states, in part:

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: . . .

- (vi) SSCs necessary to comply with 10 CFR 50.48 and criterion 3 of 10 CFR part 50, appendix A

The regulation in 10 CFR 50.10(c), states:

No person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under this part, a combined license under part 52 of this chapter, an early site permit authorizing the activities under paragraph (d) of this section, or a limited work authorization under paragraph (d) of this section.

The regulation in 10 CFR 50.12(a) states, in part:

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

- (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.
- (2) The Commission will not consider granting an exemption unless special circumstances are present.

And, 10 CFR 50.12(b) states, in part

Any person may request an exemption permitting the conduct of activities prior to the issuance of a construction permit prohibited by § 50.10. The Commission may grant such an exemption upon considering and balancing the following factors:

- (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, if any;
- (2) Whether redress of any adverse environmental impact from conduct of the proposed activities can reasonably be effected should such redress be necessary;
- (3) Whether conduct of the proposed activities would foreclose subsequent adoption of alternatives; and
- (4) The effect of delay in conducting such activities on the public interest, including the power needs to be used by the proposed facility, the availability of alternative sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers. . . .

During the period of any exemption granted pursuant to this paragraph (b), any activities conducted shall be carried out in such a manner as will minimize or reduce their environmental impact.

The applicable regulations in 10 CFR 50.48(a) state, in part:

- (1) Each holder of an operating license issued under this part . . . of this chapter must have a fire protection plan that satisfies Criterion 3 of appendix A to this part. This fire protection plan must:



- (i) Describe the overall fire protection program for the facility;
 - (ii) Identify the various positions within the licensee's organization that are responsible for the program;
 - (iii) State the authorities that are delegated to each of these positions to implement those responsibilities; and
 - (iv) Outline the plans for fire protection, fire detection and suppression capability, and limitation of fire damage.
- (2) The plan must also describe specific features necessary to implement the program described in paragraph (a)(1) of this section such as—
 - (i) Administrative controls and personnel requirements for fire prevention and manual fire suppression activities;
 - (ii) Automatic and manually operated fire detection and suppression systems; and
 - (iii) The means to limit fire damage to structures, systems, or components important to safety so that the capability to shut down the plant safely is ensured.
- (3) The licensee shall retain the fire protection plan and each change to the plan as a record until the Commission terminates the reactor license. The licensee shall retain each superseded revision of the procedures for 3 years from the date it was superseded.

2.2 Relevant General Design Criteria

The following general design criteria (GDC) from Appendix A to Part 50 are relevant for the FPS.

Criterion 3—Fire protection. Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions. Noncombustible and heat resistant materials shall be used wherever practical throughout the unit, particularly in locations such as the containment and control room. Fire detection and fighting systems of appropriate capacity and capability shall be provided and designed to minimize the adverse effects of fires on structures, systems, and components important to safety. Firefighting systems shall be designed to assure that their rupture or inadvertent operation does not significantly impair the safety capability of these structures, systems, and components.

Criterion 5—Sharing of structures, systems, and components. Structures, systems, and components important to safety shall not be shared among nuclear power units unless it can be shown that such sharing will not significantly impair their ability to perform their safety functions, including, in the event of an accident in one unit, an orderly shutdown and cooldown of the remaining units.

2.3 Regulatory Guidance

Regulatory Guide (RG) 1.189, "Fire Protection for Nuclear Power Plants" [2], provides one acceptable means to meet the underlying regulatory requirements in 10 CFR 50.48.

2.4 Other Relevant Guidance or Topical Reports

Blue Energy Topical Report BE-BOPTR-02, "Resequencing Balance-Of-Plant and NI Construction for Blue Energy Deployments," [3] describes a methodology for resequencing construction activities such that certain balance-of-plant (BOP) SSCs could be fabricated and installed prior to nuclear island construction while remaining consistent with the restrictions of 10 CFR 50.10(a)(1).



GE Vernova Hitachi Nuclear Energy Americas, LLC (GVH) Licensing Topical Report (LTR) NEDC-34403P/NEDO-34403, “BWRX-300 Expedited Construction of Certain Structures, Systems, and Components Licensing Topical Report,” Revision 0 [4], supports the determination that construction of certain BWRX-300 SSCs qualify as preconstruction activities in accordance with 10 CFR 50.10. GVH submitted this report for NRC review in June 2026.

The Commission was informed of the NRC staff’s strategy for allowing current and potential applicants to build or install SSCs that do not have a reasonable nexus to safety on optimized timeframes in SECY-25-0074, “Expedited Construction of Certain Structures, Systems, and Components” [5]. In regard to the provisions of 10 CFR 50.10(a)(1)(ii)-(vii), which pertain to non-safety-related SSCs, SECY-25-0074 explains:

NRC staff will ensure that the application of the definition of construction for a facility focuses on only those SSCs that have a reasonable nexus to radiological safety and common defense and security based on a review of the design of that facility. The non-safety-related SSCs that are not within the scope of the definition of construction would include those SSCs that do not directly affect the radiological health and safety of the public or the common defense and security, and their indirect effect on such health and safety or common defense and security is so low as to be considered negligible.

2.5 Proposed rulemaking

On July 16, 2026, the NRC published (91 FR 44560) a proposed rule, “Modernizing Reactor Licensing, Safety Oversight, and Siting Practices” [6] that would refocus the definition of “construction” in 10 CFR 50.10 and 51.4 to SSCs whose construction affect their capability to perform a safety-significant function. Specifically, the rule proposes to amend 50.10(a) to:

- (a) Definitions. As used in this section, construction means the activities in paragraph (a)(1) of this section.
 - (1) 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 may impact the required functions of:
 - (i) Safety-related structures, systems, or components (SSCs) of a facility, as defined in § 50.2;
 - (ii) SSCs that perform safety-significant functions; and
 - (iii) SSCs necessary to comply with part 73 of this chapter.
 - (2) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under section 104a. or section 104c. of the Act, construction does not include the erection of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (e.g., the construction of a college laboratory building with space for installation of a training reactor).
 - (3) Any activities that are determined to be outside the scope of those defined in § 50.10(a)(1) and that are undertaken by an applicant or on its behalf are entirely at the risk of the applicant and has no bearing on the issuance of a license with respect to the requirements of the Act, and rules, regulations, or orders issued under the Act.

The frontmatter of the proposed rule also states, in part:

[T]he SSC could be commercial grade but also subject to specified operational performance requirements. Such an SSC could be constructed without a license. The rationale for the approach rests on the fact that if no NRC QA requirement for design, fabrication, erection, and testing applies to an SSC, then there is nothing uniquely related to nuclear safety for the NRC to approve with respect to construction of the SSC. Further, design limits on the *operation* of the SSCs that do perform



safety functions would prevent or mitigate the safety effects of the failure of SSCs not subject to NRC QA requirements applicable to construction. Accordingly, construction of such SSCs would not have a reasonable nexus to nuclear safety, even if operation of the SSC did have a reasonable nexus to nuclear safety.

The failure of an SSC that has an effect on the safety of operation could warrant operational requirements with respect to SSCs that perform safety functions in response to such failures and possibly operational requirements with respect to the SSCs themselves.

An applicant's designation of an SSC as something that does not meet the definition of construction would not restrict the NRC from imposing such operational requirements to address radiological health and safety.

The proposed rule notice explains that the NRC is considering an effective date of 30 days after the publication of the final rule.

2.6 Other Regulations

The regulations in 10 CFR Part 53 establish a risk-informed, performance-based, and technology-inclusive regulatory framework as an alternative for the licensing and regulation of commercial nuclear plants. The final rule was published in the *Federal Register* on March 30, 2026 (91 FR 15794). Although this rule is not applicable to this proposed licensing action, it may provide context for the Commission's recent consideration of a new definition of construction in Part 50. The definition of construction in 10 CFR 53.020, states, in part:

Construction means the activities in paragraph (1) of this definition and does not mean the activities in paragraph (2) of this definition.

- (1) Activities constituting construction are those activities that are conducted on-site to build the commercial nuclear plant, including 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—
 - (i) Safety-related (SR) SSCs and those non-safety-related but safety-significant (NSRSS) SSCs of a facility for which special treatment includes requirements on design or installation, including associated quality assurance measures;
 - (ii) SSCs necessary to comply with 10 CFR part 73; or
 - (iii) Onsite emergency facilities necessary to comply with § 53.855.

The Applicant notes that the definition of construction in Part 53 is similar to the revised definition proposed for Part 50, which is discussed in the previous section of this exemption request.

2.7 Need for proposed exemption

Although the FPS will initially be part of a CCGT plant, the Applicant is requesting this proposed exemption to help mitigate the perceived regulatory and financial risks associated with early construction of the FPS and BOP SSCs. In accordance with 50.10(a)(1)(vi), installation of the FPS would typically be considered construction. The Applicant is requesting the proposed exemption in order to be consistent with the intent of 10 CFR 50.10, because (1) the Applicant intends to transfer the equipment within the scope of this request from the CCGT plant to BECPV-N01, after receiving an operating license; and (2) the portions of the FPS included in the scope of this exemption request would then support protection of important-to-safety SSCs within the Reactor Building during nuclear plant operations. For those reasons, the proposed one-time exemption request would allow the Applicant to install select fire-protection-related SSCs required to protect BOP SSCs prior to issuance of a construction permit for BECPV-N01.



Because the NRC-approved Blue Energy Topical Report, BE-BOPTR-02-P-A [3], explicitly excluded fire protection, the portions of the FPS within the scope of this exemption request fall outside that topical report's scope. For that reason, they were not included in the separate exemption request for installation of BOP SSCs. However, consistent with this topical report, the Applicant is providing a PSAR level of detail in this exemption request for context. Additionally, a separate exemption request may facilitate review by allowing the requests to be reviewed in parallel or by allowing a reduced number of staff to review this request.

Provisions for early construction of the FPS are not discussed or within the scope of SECY-25-0074 [5]. GVH LTR NEDC-34403P/NEDO-34403 [4] [[]]^h. The Applicant notes that the GVH LTR does discuss [[

]]^h; however, the LTR is not yet approved by the NRC. Therefore, the Applicant is not using the SECY or the LTR as part of the basis for this exemption request.

The Applicant also understands that it may have been possible to instead request an exemption to 10 CFR 50.10(a)(1)(vi), but the Applicant intentionally chose to request an exemption to the regulatory requirements in 10 CFR 50.10(c) so that it is not necessary to argue that the specified portions of the FPS do not meet the current definition of construction in Part 50. The Applicant recognizes the importance of fire protection to the safe operation of nuclear power plants and consider the FPS to meet the current definition of construction.

Finally, the Applicant acknowledges that if the proposed rulemaking for Modernizing Reactor Licensing, Safety Oversight, and Siting Practices goes into effect prior to completion of the review of this exemption request, that the request may no longer be needed. The Applicant is not requesting the NRC staff to comment on or provide any information with respect to rulemaking activities.



3 Detailed Description

The Applicant requests an exemption from the requirements of 10 CFR 50.10(c) to allow construction, entirely at the Applicant's risk, of select fire-protection-related SSCs required for the BOP to operate (as part of a CCGT plant) prior to issuance of a construction permit for BECPV-N01. The scope of the exemption request includes the following portions of the FPS: the firewater tanks, the fire pump enclosure, the underground firewater loop and hydrants in the yard, and the fire barrier, suppression, and detection systems associated with the BOP, such as fire-rated doors, penetrations seals, standpipes and hose stations, fire extinguishers, smoke detectors, and alarms in the Turbine Building and ancillary buildings (e.g., warehouses, office buildings, or other temporary buildings needed for construction support). The FPS for the BWRX-300 design is categorized as Non-Safety Class (SCN) and "non-seismic," per Table 3A-1 of the PSAR.

The Applicant is not requesting the NRC staff to review or make any findings with respect to the design of the FPS. The review of the FPS design would be expected as part of the review performed for CPA Part 2. However, the Applicant requests that NRC staff, at its discretion, identify any issue arising from its review of this exemption that would preclude future use of these SSCs for a BWRX-300 small modular reactor (SMR).

The Applicant is not requesting the NRC staff to review or make any findings associated with construction and/or operation of the CCGT plant that will be built at the BECPV site, as the CCGT plant is outside the jurisdiction of the NRC. The CCGT plant will be designed and built in accordance with applicable codes and standards. All necessary permits will be obtained, and applicable local and state requirements will be met.

The Applicant notes that no SSCs important to safety will exist until the nuclear island is built. Accordingly, while the portions of the FPS within the scope of this exemption will serve a fire protection function for the CCGT plant, they would not initially protect any SSCs important to safety, and the requirements of 10 CFR 50.48 and GDC 3 and 5 would not apply at this time. Therefore, the Applicant is not requesting the NRC make any findings with respect to 10 CFR 50.48 or the GDC. The review of the BECPV-N01 Fire Protection Program for compliance with the fire protection requirements in Part 50 would be conducted as part of an Operating License Application (OLA) review. Site-specific information and operational programs, such as discussion of coordination with the local fire department and its estimated response time, would be addressed as part of the OLA.



As discussed in the closed portion of the public meeting on August 18, 2026, Blue Energy committed to identifying any changes with respect to the design that the NRC is currently reviewing [7] for the Clinch River Nuclear site BWRX-300 application. The Applicant's CPA Part 1 is based primarily on Rev. 1 of the PSAR for the Clinch River Nuclear site [8], and in most cases has the same overall design freeze point. The design for BECPV-N01 is currently in progress, however, the Applicant has identified some potential changes to the design. This information is preliminary, and provided for information only, in the interest of full disclosure. The Applicant is not requesting these changes be reviewed at this time but are open to considering any feedback the NRC may choose to provide now or in the future. The Applicant will provide updates on the design as part of CPA Part 2 and the OLA, as needed. Currently identified potential changes that may affect the portions of the FPS within the scope of this exemption request are summarized as follows:

-]]^a as part of the detailed design to support the OLA. The need for such features will be determined based on the FHA, compliance with NFPA Codes and Standards, and with consideration for the guidance in Regulatory Guide 1.189, and other NRC-approved guidance and precedents.

-]]^a If this option is pursued, the design will be consistent with the guidance in RG 1.189 for [[

]]^a Additional details of the FPS design will be provided in CPA Part 2 and the OLA.



Figure 1: Conceptual Fire Protection System Simplified Diagram (For Information Only)



The Applicant also notes that the fire detection for BOP SSCs would initially alarm in the [[

]]^a connect to the fire detection system network for the SMR such that it would be able to communicate with the main control room, consistent with the BWRX-300 reference design. [Figure 2](#) provides a visual representation (conceptual diagram) of one potential configuration for the fire detection system network. [[

]]^a

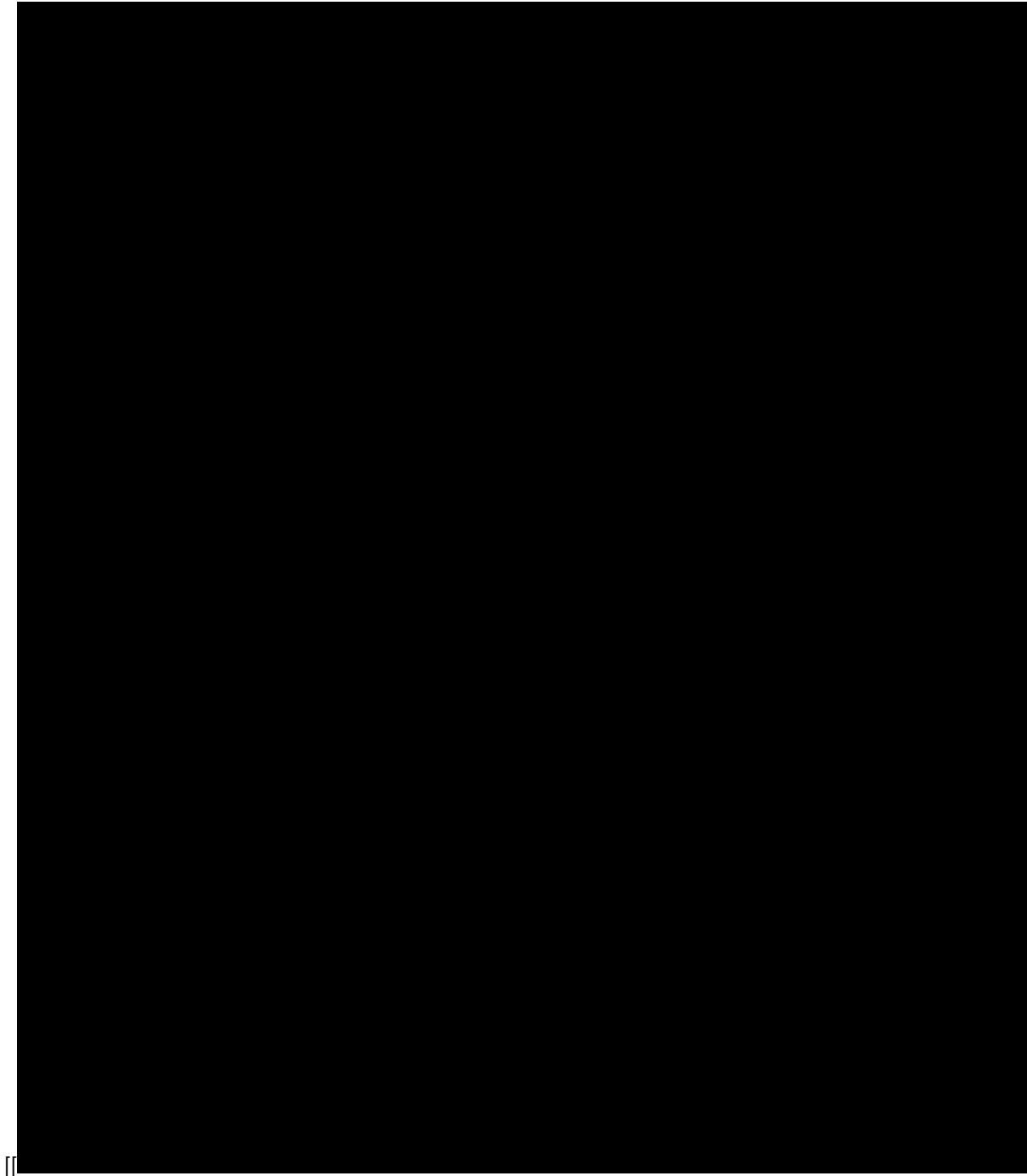


Figure 2: Conceptual Fire Detection System Network Diagram (For Information Only)



5 Justification for Exemption

In accordance with 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations in Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, provided that special circumstances are present.

5.1 Criteria of 10 CFR 50.12(a)(1)

This section addresses each of the criteria in 10 CFR 50.12(a).

5.1.1 The Exemption is Authorized by Law

The proposed exemption to 10 CFR 50.10(c) is not inconsistent with, nor does it conflict with any provisions of, the Atomic Energy Act of 1954, as amended. The NRC has given itself the authority under 10 CFR 50.12 to grant exemptions from the requirements of the regulations in 10 CFR Part 50, and specifically the requirements in 10 CFR 50.10, as recognized by the requirements in 10 CFR 50.12(b). Therefore, this exemption is authorized by law.

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

The FPS will be designed, installed, tested, operated, and maintained in accordance with the applicable portions of PSAR Section 9.5.1 and Appendix 9A. All design requirements, including the identified NFPA codes and standards, will be met and associated inspection and testing will be performed, consistent with the discussion in the PSAR. Additionally, a fire hazards analysis will be performed for the turbine building and other buildings or equipment required to support the BOP, to ensure the FPS design is acceptable, consistent with PSAR Appendix 9A. The design of the FPS will still be reviewed as part of CPA Part 2. The OLA will address the final design, including the effects of prior operation as part of a CCGT plant and any changes or modifications required to transition to nuclear plant operations, and the overall Fire Protection Program for BECPV-N01.

The Applicant will submit an updated "Quality Assurance Program Description," BE-QAPD-001-A (QAPD), by December 31, 2026, that will address Quality Assurance (QA) requirements applicable to design, fabrication, construction, operation, maintenance, and testing SSCs in accordance with 10 CFR 50.34(a)(7) and 50.34(f)(3), and Appendix B to 10 CFR Part 50. However, the current revision of the QAPD [10] already discusses some of the QA requirements associated with the FPS. Section 3.2.2 of the QAPD states that the QAPD follows the guidance of Standard Review Plan (SRP) [11] Section 17.5, Paragraph II.U.2, and commits to implement the quality requirements for the FPS in accordance with Regulatory Position 1.7, "Quality Assurance," in RG 1.189, Revision 5. Additionally, the Applicant will develop the relevant Fire Protection Program and Fire Protection QA procedures, consistent with the guidance in RG 1.189, prior to procuring the select FPS components required for protection of the BOP. This will allow the Applicant to adhere to the guidance in RG 1.189, including the augmented QA measures for design, procurement, and installation of the fire protection and detection systems, as well as the guidance for operation and maintenance of the systems. In other words, the FPS that would be installed under this exemption will be designed and constructed using the same requirements that would be applicable if it were constructed after issuance of a construction permit. Similarly, the FPS would be operated and maintained in the same manner as if it were part of an operating nuclear plant.

Finally, it is noted that until the construction permit is issued, and the BWRX-300 SMR nuclear island is built, there will be no important-to-safety SSCs that require protection, and therefore there would be no direct nexus to radiological safety or nuclear security during FPS and BOP operations (as part of the CCGT plant). Therefore, this exemption does not present an undue risk to public health and safety.



5.1.3 The Exemption is Consistent with the Common Defense and Security

The proposed exemption does not affect the design, function, or operation of structures or plant equipment that are necessary to maintain the secure status of the plant. The proposed exemption has no direct impact on plant security or safeguards procedures and does not authorize the possession of licensed material or affect NRC security requirements that will apply to the BECPV-N01 site. Therefore, this exemption is consistent with the common defense and security.

5.2 Special Circumstances

Per 10 CFR 50.12(a)(2), special circumstances, as defined in 10 CFR 50.12(a)(2)(i) through (vi), must be present for the NRC to grant an exemption to the regulations under Part 50. The special circumstances applicable to the Applicant's request are discussed below.

5.2.1 10 CFR 50.12(a)(2)(iii) – Compliance Would Result in Undue Hardship

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.”

The Applicant has determined that portions of the FPS are required prior to issuance of a construction permit for BECPV-N01 to support construction and operation of the CCGT plant (e.g., due to safety, permitting, insurance, and other requirements associated with the CCGT plant and associated facilities). The Applicant acknowledges that the CCGT plant and its needs are not within the jurisdiction of the NRC or the scope of this review. However, the fact remains that construction and operation of the CCGT plant on schedule and on budget is vital to the Applicant's phased strategy for financing and implementing gas to nuclear generation (i.e., the Gas2Nuclear or G2N strategy) at the BECPV site. Operation of the CCGT will not be allowed without a fully operational and code compliant FPS.

The Applicant is developing the Project in two phases. Phase 1, covering the CCGT portion of the Project, [[
]]^{c,d} Phase 2 FID is tied to issuance of the
construction permit for BECPV-N01, [[

]]^{c,d}

When the regulation in 10 CFR 50.10(a) was amended (72 FR 57416; October 9, 2007), in part, to change the definition of construction, a phased financing and construction strategy was not considered. Early installation of the portions of the FPS required to protect the BOP SSCs (as part of the CCGT plant), supports the Applicant's phased G2N strategy, which allows Blue Energy (or its subsidiaries) to generate power and revenue during the construction of the remainder of the nuclear island. Additionally, the FPS may be used prior to BOP operations, to provide temporary fire protection during construction (e.g., for warehouses, or other construction support facilities) [[

]]^{c,d}



Figure 3: Simple Cycle Baseline Schedule Comparison



The Applicant proposes that delaying or not granting the proposed exemption would delay the Project and increase costs [[

]]^{c,d} These added costs and the cost of delaying the commercial operation of the CCGT plant and BECPV-N01 have not been calculated in detail but are expected to be substantial and would present an undue hardship for the Applicant significantly in excess of those contemplated when the regulation was adopted.

Alternatively, CCGT construction and operations could still commence on time if a separate FPS system were installed, [[^{c,d} This would pose additional regulatory and financial risk, and if this system could not be transitioned to nuclear plant operations (e.g., it needed to be abandoned in place) and a new FPS was required [[^d for the BOP to transition, this would also present an undue hardship, as compared to the costs incurred by others similarly situated, as it would effectively require the FPS for the BOP to be procured twice for little to no safety benefit.

Based on the above discussion, the special circumstances described in 10 CFR 50.12(a)(2)(iii) are present and are unique to the Project.

5.2.2 10 CFR 50.12(a)(2)(vi) – Material Circumstances Not Considered When the Regulation Was Adopted

In accordance with 10 CFR 50.12(a)(2)(vi), special circumstances are present when “[t]here is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.” The regulation further states that if such condition is relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The material circumstances present here are the Applicant’s unique project financing structure and the staged development of the BECPV site, in which gas generation is financed and constructed before the initial nuclear phase, which is then financed and constructed in turn. Capital is committed for these phases through successive FIDs rather than in a single commitment at the outset. This structure ties each financing decision to a distinct phase of the Project, reducing risk by testing feasibility phase by phase rather than wholesale. A staged financing structure was not considered, nor was the concept of transferring an existing BOP for a CCGT to a nuclear plant considered when defining construction in Part 50. Granting the exemption is in the public interest because it allows the NRC to review the CPA (i.e., Part 1 and Part 2) on its merits, on the Applicant’s phased schedule, without relaxing any safety requirements, while any construction performed prior to issuance of a construction permit to meet the project schedule would be done so at the Applicant’s risk. If the Applicant’s unique project financing and phased gas generation and nuclear generation strategy is successful, it will prove a new means for expediting the funding and deployment of scalable nuclear power.

In terms of serving the public interest for the region located near the BECPV site, providing additional power to the Victoria, TX region sooner will help protect American households and small businesses and is consistent with the goals of the Ratepayer Protection Pledge that was announced by the White House on March 4, 2026. The need for new sources of reliable baseload electricity in the region is driven in large part by the growth of power-intensive industry and data centers and is consistent with projections from the U.S. Department of Energy (DOE) and the U.S. Energy Information Administration (EIA) indicating increasing electricity demand in the coming decades. That demand growth reflects population growth, the electrification of industry and transportation, and the continued expansion of advanced manufacturing and data center infrastructure. Meeting this demand within the Electric Reliability Council of Texas (ERCOT) South load zone, where variable renewable resources are heavily concentrated, calls for dispatchable baseload generation that also contributes to grid stability. The BWRX-300 is designed to provide such a dependable source of baseload electricity while supporting continued regional economic development and enhancing grid resilience.

The proposed action is also consistent with national goals for the deployment of advanced nuclear technology, as articulated in the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act). Relative to a traditional large light water reactor, the SMR requires a smaller regional footprint



and allows generation to be added incrementally, providing a deployment pathway that can be scaled to match regional power needs over time. Accelerating the deployment of advanced nuclear technology is also consistent with the intent of Executive Orders (EOs) associated with nuclear power, like those signed on May 23, 2025, and may also allow the regional grid to support data centers associated with artificial intelligence infrastructure, consistent with EO 14318 signed July 23, 2025. Finally, the Applicant proposes that granting the exemption would support the NRC's mission of advancing the common defense and security by enabling the safe and secure use and deployment of civilian nuclear energy technologies through efficient and reliable licensing.

Accordingly, the special circumstances described in 10 CFR 50.12(a)(2)(vi) are present and unique to the Project, and this is not the sole condition relied on to demonstrate that special circumstances are present.

5.3 Criteria of 10 CFR 50.12(b)

The Applicant has provided discussion below to support NRC's consideration of the four factors identified in 10 CFR 50.12(b)(1) through (4).

5.3.1 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, if any

The potential environmental effects of installation of the specified portions of the FPS are primarily associated with construction of the pads for the fire pump enclosure and firewater tanks and with trenching and installation of the underground piping for the firewater loop. These activities would be part of the construction of the CCGT plant and would not be within the jurisdiction of the NRC. The Limited Work Authorization (LWA) Environmental Report (ER), in Enclosure 3 of its CPA Part 1, [12] addresses the cumulative impacts of CCGT plant construction at the BECPV site, including activities such as piling and foundation installation, for the duration of the LWA ER construction activities work scope. The timeline for the LWA ER extends into 2029 and the installation of pads and underground piping for the FPS would be expected to be completed by then. Later CCGT construction activities, that fall outside the duration evaluated in the LWA ER, such as the installation of fire detection and suppression for the BOP (e.g., inside the turbine building, or ancillary buildings) would be expected to have minimal environmental impact. Therefore, the Applicant considers the conclusions of the LWA ER cumulative impacts assessment to be representative for assessing the impacts of construction of the FPS required to protect BOP SSCs. The LWA ER determined that the potential environmental impacts were SMALL for all resource categories (i.e., land use, water resources, ecological resources, socioeconomics, historical and cultural resources, air quality, noise, and public health, and non-radioactive waste management) for the LWA activities. Results of the activities allowed by the exemption will result in a negligible change in cumulative impacts, as discussed in Section 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.

Section 7 of this exemption request provides additional discussion of Environmental Considerations. See Chapter 7 of the LWA ER for further discussion of cumulative impacts.

5.3.2 Whether redress of any adverse environmental impact from conduct of the proposed activities can reasonably be effected should such redress be necessary

The redress plan provided in Enclosure 7 of its CPA Part 1 [13] was written specifically for the LWA ER construction activities (i.e., the LWA work scope and the permanent in-ground support structures for the reactor building excavation). However, much of the discussion in the redress plan would also be applicable to redress activities that could potentially be required if construction of the FPS and BOP SSCs was terminated.

If redress is required for the activities proposed in this exemption request, the necessary engineering and construction deliverables (e.g., drawings, specifications, procedures) will be developed prior to implementation. A schedule will also be developed to facilitate completion of redress within 18 months of the Applicant's



decision to abandon the project. Unused structures will be demolished below plant grade, consistent with typical construction/decommissioning practices. As necessary, below-grade structures will be abandoned in place, in accordance with the requirements in 30 Texas Administrative Code (TAC) Chapter 335, including the applicable notification and/or deed recordation requirements, and the requirements of the land lease from the Port of Victoria. Structures or features that enhance the value of the site will be retained provided that the retention is consistent with classification as an environmentally acceptable condition and does not foreclose future site adoption alternatives.

[[

]]^a

Therefore, based on minimal potential environmental impacts, and the discussion above, the Applicants propose that redress can reasonably be effected should such redress be necessary.

5.3.3 Whether conduct of the proposed activities would foreclose subsequent adoption of alternatives

The discussion of alternatives in Chapter 9 of the LWA ER would also be applicable to the construction activities that the proposed exemption would allow, in addition to the LWA and exemption activities discussed in the LWA ER. The alternative to performing the activities identified in the LWA ER is currently taking no-action. Similarly, the current alternative to construction of a CCGT plant and BWRX-300 SMR at the BECPV site would also be taking no-action. Installation of FPS and BOP SSCs and subsequent redress would not foreclose subsequent adoption of alternatives, including the no-action alternative. [[

]]^a

5.3.4 The effect of delay in conducting such activities on the public interest, including the power needs to be used by the proposed facility, the availability of alternative sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers

As discussed in [Section 5.2](#) of this exemption request, delaying or not granting this exemption could potentially delay the Project or increase costs [[

]]^{c,d} Delaying construction at the BECPV site could delay the addition of up to 1.1 gigawatts electric of gas generation and 300 megawatts electric of nuclear generation [[

]]^d The purpose and need for the

Project include the following:

- Provide firm, dependable baseload electricity to meet growing regional demand
- Serve the intended customer and support the expanding industrial and data center load in the region, minimizing industrial impact on the regional grid, further bolstering the socioeconomics of the region
- Provide grid-forming and reliability services, including inertia, to the ERCOT South load zone



Additionally, for the reasons discussed above regarding the special circumstances under 10 CFR 50.12(a)(2)(vi), including the Applicant's novel phased financing strategy and the benefit of delivering power to the Victoria, TX region sooner, consistent with the Ratepayer Protection Pledge that was announced by the White House on March 4, 2026, granting the exemption also supports the public interest under this factor.

5.3.5 Conclusions

Based on the above discussion, the Applicant proposes that the balance of factors supports granting the exemption request. Additionally, the Applicant asserts that any activities allowed by the proposed exemption conducted prior to issuance of the construction permit shall be carried out in such a manner as will minimize or reduce their environmental impact.



6 Precedent

6.1 Pioneer Units 1 & 2

In its CPA Part 1 (LWA), for the Pioneer Units 1 & 2 SMRs at the Palisades Energy Center, SMR, LLC requested an exemption [14] from 10 CFR 50.10(d)(1) to expand the scope of activities that can be performed under an LWA, including construction of “FPS SSCs.” The associated Pioneer LWA PSAR [15] identified components such as the firewater supply and firewater distribution system, including the pumps. Unlike the application for Pioneer, the Applicant is not requesting the design of the FPS be reviewed and approved for this exemption request or CPA Part 1 for BECPV-N01. Instead, the Applicant is only requesting an exemption to allow construction activities for the FPS necessary to protect BOP SSCs. The Applicant would still need to have the design approved as part of CPA Part 2. Additionally, the equipment would not be allowed to transition to nuclear plant operations until an operating license was granted.

6.2 Kemmerer Power Station Unit 1

TerraPower, LLC’s Topical Report NATD-LIC-RPRT-0001, “Regulatory Management of Sodium NI and Energy Island Design Interfaces,” which was approved by the NRC in October 2023 [16], established a methodology for evaluating the independence between safety-related NI SSCs and non-safety-related Energy Island (EI) SSCs under 10 CFR 50.10. 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, that excluded non-safety-related, no-special-treatment SSCs on the EI from the definition of “construction” [17]. Kemmerer did not take an exemption to 10 CFR 50.10(a)(1)(vi) for SSCs necessary to comply with 10 CFR 50.48 and GDC 3 because, as discussed in the NRC SE [16], “TerraPower determined that criterion (vi) is not applicable to EI SSCs because fires on the EI would not prevent the ability to achieve and maintain safe shutdown of the reactor.”

The Applicant acknowledges the Kemmerer Power Station is based on a non-light-water reactor design, and its BOP is significantly different from that of a boiling water reactor. Additionally, the Applicant is not taking the same approach for the Project, because the fire safe shutdown analysis (FSSA) has not yet been completed for the BWRX-300. However, the Applicant notes that the FPS for the BWRX-300 design is categorized as Non-Safety Class (SCN) and “non-seismic,” per Table 3A-1 of the PSAR. Based on preliminary design information in the PSAR, fires that affect only BOP SSCs would not be expected to prevent the ability to achieve and maintain safe shutdown given the application of the defense-in-depth approach to both fire protection and the BWRX-300 Safety Strategy. The FSSA will be completed as part of the OLA and will confirm the capability to achieve and maintain safe shutdown conditions after a postulated fire event.



7 Environmental Considerations

Per 10 CFR 51.1, the regulations in Part 51 implement the National Environmental Policy Act of 1969, as amended (NEPA). Per 10 CFR 51.21, “All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those covered by categorical exclusions identified in § 51.22(a) through (d), and those identified in § 51.22(e) as other actions not requiring environmental review.” Furthermore, for exemption requests permitting the conduct of activities prior to the issuance of a construction permit that are prohibited by 10 CFR 50.10, the NRC must consider factors including environmental impacts and redress, in accordance with 10 CFR 50.12(b). Therefore, an exemption request allowing construction activities prior to the issuance of a construction permit would typically require an environmental assessment.

As discussed in the background section, the Applicant is requesting the proposed exemption in order to be consistent with the intent of 10 CFR 50.10, because the Applicant intends to transfer the equipment within the scope of this request to BECPV-N01, after first receiving an operating license. For that reason, the proposed exemption request would allow the Applicant to construct the portions of the FPS required to protect BOP SSCs prior to issuance of a construction permit for BECPV-N01. However, both the select FPS and BOP SSCs would initially operate as part of the CCGT plant on the BECPV site. The construction and operation of the CCGT plant is not considered a “major federal action,” as defined in NEPA (42 U.S. Code Section 4336e) and is not within the jurisdiction of the NRC. Thus, the Applicant’s position is that the scope of this exemption request is not subject to 10 CFR Part 51 currently.

If the NRC determines that an environmental assessment is still required, the Applicant has determined that the justification provided in the LWA ER, in Enclosure 3 of its CPA Part 1, should be sufficient for such a limited-scope review. For context, the LWA ER is limited in scope and does not directly and explicitly evaluate the potential environmental impacts of the construction and operation of the fire protection and 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 LWA and in-ground support structure exemption work scope duration, are assessed in the LWA ER. The LWA ER 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. Results of the activities allowed by the exemption will result in a negligible change in cumulative impacts, as discussed in Section 7.2.1, 7.2.2, and Table 7.2-1 of the LWA ER.

Furthermore, the full ER that will be included in CPA Part 2 will address all potential environmental impacts for preconstruction and construction activities, including those associated with fire protection and BOP SSCs, as well as mitigation measures, as needed. The ER for CPA Part 2, and its supplement for the OLA, will address any additional changes or modifications required to support transition to nuclear plants 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 alarm 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 FPS and BOP SSCs, would be subject to the appropriate level of environmental review at the proper time in the licensing process.



8 Conclusion

Pursuant to 10 CFR 50.12(a) and (b), the Applicant requests an exemption from 10 CFR 50.10(c) to allow installation of select fire-protection-related SSCs required for the BOP to operate prior to issuance of a construction permit, entirely at the Applicant's risk. The scope of the exemption request includes: the firewater tanks, the fire pump enclosure, the underground firewater loop and hydrants in the yard, and the fire barrier, suppression, and detection systems associated with the BOP, such as fire-rated doors, penetrations seals, standpipes and hose stations, fire extinguishers, smoke detectors, and alarms in the Turbine Building and ancillary buildings (e.g., warehouses, office buildings, or other temporary buildings needed for construction support).

The Applicant proposes that the requested exemption is authorized by law, will not present an undue risk to public health and safety, is consistent with the common defense and security, and that special circumstances are present under 10 CFR 50.12(a)(2)(iii) and (vi).

Additionally, the Applicant proposes that the requested exemption will not result in a significant adverse impact on the environment, will allow redress to be reasonably effected for any adverse environment impacts, will not foreclose subsequent adoption of alternatives, and delaying construction is not in the best interest of the public, as set forth in 10 CFR 50.12(b).



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