

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52–036; NRC–2008–0616]

### Entergy Operations, Inc.; Combined License Application for River Bend Station Unit 3, Exemption From the Requirements To Revise a Combined License Application To Comply With Enhancements to Emergency Preparedness Rule

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 30, 2013, request from Entergy Operations, Inc. (EOI) which requested an exemption from addressing enhancements to the Emergency Preparedness (EP) rules in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption but stipulated that the revised application must be submitted prior to, or coincident with, requesting the NRC to resume its review of the COL application, or by December 31, 2014, whichever comes first.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0616 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2008–0616. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** John Klos, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5136; email: [John.Klos@nrc.gov](mailto:John.Klos@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The following sections include the text of the exemption in its entirety as issued to EOI.

#### 1.0 Background

The NRC accepted for docketing the River Bend Station Unit 3 (RBS3) COL application on December 4, 2008, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML083370275, Docket No. 52–036). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080277) while the application remained docketed. On September 30, 2013 (ADAMS Accession No. ML13275A066), EOI requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update by December 31, 2013, to the COL application, addressing the enhancements to EP rules by December 31, 2013.

#### 2.0 Request/Action

Part 50, Appendix E, Section I.5 of Title 10 of the *Code of Federal Regulations* (10 CFR), requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** on November 3, 2011 (76 FR 72560). Part 50, Appendix E, Section I.5 gives those COL applicants close to receiving their COL the option to defer addressing the changes to the EP rules, however a license amendment request must be submitted no later than December 31, 2013. An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Because EOI will not hold a COL prior to December 31, 2013, it is therefore, required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated January 9, 2009, EOI requested that the NRC suspend review of the RBS3 COL

application. The NRC granted EOI's request for suspension of all review activities while the application remained docketed (ADAMS Accession No. ML090080277). In a letter dated, September 30, 2013 (ADAMS Accession No. ML13275A066), EOI requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 until the time that EOI requests reactivation of the RBS3 COL application review. Prior to, or coincident with this reactivation request, EOI commits to submit an upgrade of the RBS3 COL application, addressing the enhancements to Emergency Preparedness Regulations.

EOI's requested exemption is seen as an open-ended, one-time schedule change from the requirements of 10 CFR part 50, Appendix E, Section I.5. Therefore the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow EOI to comply with the new EP rule at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current schedule to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

#### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 50, Appendix E, Section I.5, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: "application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR Part 50 Appendix E, Section I.5 was to ensure that applicants and new COL holders updated their COL application or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to COL approval and receipt of license, or operate the facility. The target of Section I.5 of the rule were those applications that were in the process of being actively reviewed by the NRC staff when the rule came into effect on November 23, 2011.

Because EOI requested the NRC to suspend its review of the RBS3 COL application, compelling EOI to revise its COL application in order to meet the December 31, 2013 compliance deadline would only bring on unnecessary burden and hardship for the applicant to meet the compliance date. So long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules, prior to the NRC approving EOI's COL application, it makes no difference if they revise the COL application now, when they request the review be restarted, or December 31, 2014. For this reason the application of Appendix E, Section I.5 can be deemed unnecessary, and therefore special circumstances are present.

#### *Authorized by Law*

The exemption is a one-time schedule exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5. The exemption would allow EOI to revise its COL application and comply with the new EP rules on or before December 31, 2014, in lieu of December 31, 2013, the date required by 10 CFR Part 50, Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting EOI the requested one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 will be only temporary, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

#### *No Undue Risk to Public Health and Safety*

The underlying purposes of the enhancements to Emergency Preparedness found in 10 CFR Part 50, Appendix E are to amend certain EP requirements which are aimed at enhancing protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are

created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

#### *Consistent With Common Defense and Security*

The requested exemption would allow EOI to submit the revised COL application prior to, or coincident, with a request of the NRC to resume the review, and in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

#### *Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever "application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR Part 50, Appendix E, Section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their COL application prior to issuance of the license. Because the requirement to comply with the new EP rules was intended for active reviews and the RBS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and EOI were then required to comply by December 31, 2014, or prior to any request to restart their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix E, Section I.5 exist.

#### *Eligibility for Categorical Exclusion From Environmental Review*

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions: When contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or  
(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or  
(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by EOI and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants EOI a one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 pertaining to the River Bend Station Unit 3 COL application to allow submittal of the revised COL application that complies with the new EP rules prior to, or coincident with, any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 2013.

For the Nuclear Regulatory Commission.

**Ronaldo Jenkins,**

*Branch Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.*

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#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-022 and 52-023; NRC-2013-0261]

#### Duke Energy Progress; Shearon Harris Units 2 and 3; Exemption From the Requirement To Submit an Annual Update to the Final Safety Analysis Report Included in a Combined License Application

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 7, 2013, request from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On August 7, 2013, DEP requested an exemption from certain regulatory requirements that require them to

submit updates to the Final Safety Analysis Report (FSAR) included in their COL application until six months after requesting the NRC to resume its review of their COL application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to requesting the NRC resume its review of the COL application, or by December 31, 2014, whichever comes first.

**ADDRESSES:** Please refer to Docket ID NRC-2013-0261 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-6185; email: [anthony.minarik@nrc.gov](mailto:anthony.minarik@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The following sections include the text of the exemption in its entirety as issued to DEP.

#### 1.0 Background

On February 18, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No.

ML080580078) Duke Energy Progress, Inc. (DEP), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site. (Docket Numbers 052000-22 and 052000-23). The NRC docketed the Shearon Harris Units 2 and 3 COL APPLICATION on April 23, 2008. On April 15, 2013, DEP submitted Revision 5 to the COL application (ADAMS Accession No. ML13112A761), including updates to the Final Safety Analysis Report (FSAR), per subsection 50.71(e)(3)(iii) of Title 10 of the *Code of Federal Regulations* (10 CFR). On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Shearon Harris Nuclear Plant Units 2 and 3 COL application. On August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit COL application Final Safety Analysis Report (FSAR) updates.

#### 2.0 Request/Action

10 CFR 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR part 52, submit updates to their FSAR annually during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the Harris Units 2 and 3 COL application would be due in April of 2014 as DEP had submitted Revision 5 to the COL application which included an update to the FSAR, in a letter dated April 15, 2013 (ADAMS Accession No. ML13112A761). By letter dated May 2, 2013, (ADAMS Accession No. ML13123A344) DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed. In a letter dated August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested that the Harris Units 2 and 3 COL application be exempt from the 10 CFR 50.71(e)(3)(iii) requirements until the time that DEP requests the NRC to resume the review of the Harris Units 2 and 3 COL application.

DEP's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). In its request, DEP asked