

Comanche Peak Nuclear Power Plant Units 3 and 4

**Exemption from 10 CFR 70.22(b), 74.31, 74.41
and 74.51**

Revision 1

Exemption 1:**Basis for Exemption from 10 CFR 70.22(b), 74.31, 74.41 and 74.51**

In accordance with the provisions of 10 CFR §§ 52.7, 50.12, 70.17(a) and 74.7, Luminant Generation Company LLC (Luminant), hereby requests an exemption from the requirements of 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 for Comanche Peak Nuclear Power Plant (CPNPP) Units 3 and 4. Section 70.22(b) requires an application for a license for special nuclear material (SNM) to contain a full description of the applicant's program for material control and accounting (MC&A) of special nuclear material under §§ 74.31, 74.33, 74.41, and 74.51. Section 70.32(c) requires a license authorizing the use of SNM to contain and be subject to a condition requiring the licensee to maintain and follow a SNM control and accounting program, measurement control program, and other material control procedures, including the corresponding records management requirements. However, §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 contain exceptions for nuclear reactors licensed under 10 CFR Part 50. The regulations applicable to the MC&A of SNM for nuclear reactors licensed under 10 CFR Part 50 are provided in 10 CFR Part 74, Subpart B, §§ 74.11 through 74.19, excluding § 74.17. The purpose of this exemption request is to seek a similar exception for CPNPP Units 3 and 4 under 10 CFR Part 52, such that the same regulations will be applied to the special nuclear material MC&A program for Comanche Peak Units 3 and 4 as nuclear reactors licensed under 10 CFR Part 50.

Background

Nuclear reactors licensed under Part 50 are explicitly excluded from the requirements of §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51. There is no technical or regulatory reason to treat nuclear reactors licensed under Part 52 differently than reactors licensed under Part 50 with respect to the MC&A provisions in 10 CFR Part 74. As indicated in the Statement of Considerations for 10 CFR § 52.0(b) (72 Fed. Reg. 49352, 49372, 49436 (Aug. 28, 2007)), applicants and licensees under Part 52 are subject to all of the applicable requirements in 10 CFR Chapter I, whether or not those provisions explicitly mention a Combined Operating License (COL) under 10 CFR Part 52. This regulation clearly indicates that plants licensed under Part 52 are to be treated no differently than plants licensed under Part 50 with respect to the substantive provisions in 10 CFR Chapter I (which includes Parts 70 and 74). Specifically, the exception for nuclear reactors licensed under Part 50, as contained in §§ 70.22(b), 70.32(c), 74.31, 74.41, or 74.51, should also be applied to reactors licensed under Part 52.

An exemption from the requirements of §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 would not mean that an MC&A program would be unnecessary or that the COL application would be silent regarding MC&A. To the contrary, the MC&A requirements in Subpart B to Part 74 would still apply to the COL just as they are to licenses issued under Part 50. Additionally, the application for CPNPP Units 3 and 4 will describe the MC&A program for satisfying Subpart B to Part 74.

Provisions for Granting an Exemption

Pursuant to 10 CFR § 52.7 and § 50.12, the NRC may grant an exemption from requirements contained in 10 CFR Parts 52 and 50 provided that the following conditions are satisfied:

1. The requested exemption is authorized by law;
2. The requested exemption will not present an undue risk to the public health and safety;
3. The requested exemption is consistent with the common defense and security; and
4. Special circumstances are present.

The criteria in § 50.12 encompass the criteria for an exemption in 10 CFR §§ 70.17(a) and 74.7, the specific exemption requirements for Parts 70 and 74, respectively. Therefore, by demonstrating that the exemption criteria in § 50.12 are satisfied, this request also demonstrates that the exemption criteria in §§ 52.7, 70.17(a) and 74.7 are satisfied. The four criteria are addressed below.

- 1) This exemption is consistent with the Atomic Energy Act or any other statute and is therefore authorized by law.
- 2) An exemption from the requirements of 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 would not present an undue risk to public health and safety. The exemption would treat CPNPP Units 3 and 4 similarly to Part 50 license applicants, who are excluded from the regulations in question. Furthermore, the application for CPNPP Units 3 and 4 will contain a description of the Material Control and Accountability (MC&A) program for special nuclear material under Subpart B to Part 74. Therefore, the exemption from 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 would not present an undue risk to public health and safety.
- 3) An exemption from the requirements of 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 would not be inconsistent with the common defense and security. The exemption would treat CPNPP Units 3 and 4 similarly to Part 50 license applicants, who are excluded from the regulations in question. Furthermore, the application for CPNPP Units 3 and 4 will contain a description of the MC&A program for CPNPP Units 3 and 4 under Subpart B to Part 74. Therefore, the exemption from §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 is consistent with the common defense and security.
- 4) The exemption request involves special circumstances under 10 CFR § 50.12(a)(2)(ii). This subsection defines special circumstances as when “[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].” Since the Commission determined that the requirements in 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 are unnecessary for Part 50 applicants, those requirements are also unnecessary for Part 52 applicants.

Environmental Assessment

The proposed action would exempt CPNPP Units 3 and 4 from the requirement of 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 for Comanche Peak Units 3 and 4. Section 70.22(b) requires an application for a license for SNM to contain a full description of the applicant’s program for MC&A of SNM under §§ 74.31, 74.33, 74.41, and 74.51. Section 70.32(c) requires a license authorizing the use of SNM to contain and be subject to a condition requiring the licensee to maintain and follow a SNM material control and accounting program, measurement control program, and other material control procedures, including the corresponding records management requirements. However, §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51 contain exceptions for nuclear reactors licensed under 10 CFR Part 50. The regulations applicable to the MC&A of special nuclear material for nuclear reactors licensed under 10 CFR Part 50 are provided in 10 CFR Part 74, Subpart B, §§ 74.11 through 74.19, excluding § 74.17. The purpose of this exemption request is to seek a similar exception for Comanche Peak Units 3 and 4 under 10 CFR Part 52, such that the same regulations will be applied to the special nuclear material MC&A program for Comanche Peak Units 3 and 4 as nuclear reactors licensed under 10 CFR Part 50.

The proposed action will not result in any impact on the environment. The exemption would only clarify the applicability of the identified regulations and establish consistency between CPNPP Units 3 and 4 and the fleet of operating plants licensed under 10 CFR Part 50. Consequently, the exemption would not authorize any activity that could have an impact on the environment.

The only alternative to the proposed action would be not issuing the exemption (i.e., the “no action” alternative). This alternative would not accomplish the purpose of the proposed action (to clarify the applicability of the regulations and establish consistency). The “no action” alternative would not have a different environmental impact. Both the proposed action and the no action alternative would have no impact on the environment.

Conclusions

As demonstrated above, the exemption complies with the requirements of 10 CFR §§ 50.12, 52.7, 70.17, and 74.7. For these reasons, approval of the requested exemption is requested from the regulations of 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51, as described herein.

Exemption Wording for COL

The facility is exempt from the requirements of 10 CFR §§ 70.22(b), 70.32(c), 74.31, 74.41, and 74.51.