

NUCLEAR REGULATORY COMMISSION
[Docket Nos. 52-014 AND 52-015; NRC-2008-0043]
Tennessee Valley Authority
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 October 28, 2013, request from Tennessee Valley Authority (TVA). On September 29, 2010, TVA requested that the NRC suspend review of its combined license (COL) application until further notice. On October 28, 2013, TVA 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 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-2008-0043** 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-2008-0043**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: 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 e-mail to 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; e-mail: Anthony.Minarik@nrc.gov.

SUPPLEMENTARY INFORMATION:

The following sections include the text of the exemption in its entirety as issued to TVA.

1.0 Background

On October 30, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073110527) Tennessee Valley Authority (TVA), 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 Bellefonte site, located near the cities of Hollywood and Scottsboro in Jackson County in northeast Alabama. (Docket numbers 052000-14 and 052000-15). The NRC docketed the Bellefonte Nuclear Plant, Units 3 and 4 (BLN 3&4) COL application on January 28, 2008. On September 29, 2010 (ADAMS Accession No. ML10274076) TVA requested that the NRC defer the review of the BLN 3&4 COL application. In a letter dated November 24, 2010 (ADAMS Accession No. ML102930207), the NRC granted TVA's request to defer the review and stated it was in a suspended status, meaning all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. On October 28, 2013 (ADAMS Accession No. ML13325B058) TVA requested an exemption from the Title 10 of the *Code of Federal Regulations* (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 BLN 3&4 COL application would be due in January of 2014 as TVA's application was docketed on January 28, 2008 and TVA had submitted Revision 3 to its FSAR on December 22, 2010 (ADAMS Accession No. ML110040748). In a letter dated, September 29, 2010 (ADAMS Accession No. ML10274076) TVA requested that the NRC suspend review of the BLN 3&4 COL application. The NRC granted

TVA's request for suspension (ADAMS Accession No. ML102930207) and all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. In a letter dated December 19, 2011 (ADAMS Accession No. ML11356A068) TVA stated that they were still deferred and had no updates to their FSAR. In a letter dated, October 28, 2013 (ADAMS Accession No. ML13325B058), TVA requested that the BLN 3&4 COL application be exempt from the 50.71(e)(3)(iii) requirements until requesting the NRC to resume the review of the BLN 3&4 COL application.

TVA'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, TVA asked the NRC to grant the exemption from 10 CFR 50.71(e)(3)(iii), until they had asked the NRC to resume the review of the BLN 3&4 COL application. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014 deadline as part of its review of the exemption request. The exemption would allow TVA to submit the next FSAR update 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 requirement to submit an FSAR update 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 50.71(e)(3)(iii) 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:

"[a]pplication 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 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because TVA requested the NRC suspend its review of the BLN 3&4 COL application, compelling TVA to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. The purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review and in any event by December 31, 2014.

For the reasons stated above, the application of 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary in order to achieve the underlying purpose of the rule, therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow TVA to submit the next BLN 3&4 COL application FSAR update on or before December 31, 2014 in lieu of the required scheduled submittal in January 2014. 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 TVA the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) 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 purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support

an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by TVA will not be reviewed by the NRC at this time. 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. Plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued. 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 TVA to submit the next FSAR update prior to requesting 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)(ii) are present "[a]pplication 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 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of

a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and BLN 3&4 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 TVA were then required to update its FSAR by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Therefore, since the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) 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:

(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 consideration 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 FSAR by TVA

and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), 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 TVA a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the BLN 3&4 COL application to allow submittal of the next FSAR update prior to 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 19th day of December 2013.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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