



**October 28, 2013**

**NRC Docket Nos. 52-014 and 52-015**

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the NRC agreed to defer the review of the COLA (Reference 2). On December 19, 2011, TVA reaffirmed that the BLN 3&4 COLA continued to be deferred indefinitely (Reference 3). The COLA proceeding before the Atomic Safety and Licensing Board is in an indefinite period of inactivity and the disclosure schedule applicable to the parties has been modified accordingly.<sup>1</sup>

TVA is requesting an exemption from the requirement to submit annual updates to the BLN 3&4 FSAR, with a commitment to update the FSAR at the same time that TVA makes any request that the NRC resume review of the COLA. TVA is further requesting an exemption from the requirement that TVA revise the BLN 3&4 COLA, no later than December 31, 2013, to comply with changes to the emergency preparedness regulations under the final rule issued November 23, 2011, with a commitment to submit any such revisions at the same time as any request by TVA that the NRC resume review of the BLN 3&4 COLA. In addition, TVA is requesting an exemption from the requirement to submit an updated Departure Report, included as Part 7 of the BLN 3&4 COLA, until such time as any request by TVA that the NRC resume review of the BLN 3&4 COLA.

Enclosure 1 provides the basis for the exemption requests.

If you have any questions, please contact Pete Gaillard in Chattanooga, Tennessee, at (423) 751-2088 or by email at ([pcgaillard@tva.gov](mailto:pcgaillard@tva.gov)).

Sincerely,



Joe Hoagland

Enclosures: (1) Basis for Exemption from 10 CFR 50.71(e)(3)(iii), 10 CFR 50, Appendix E, I.5, and 10 CFR 52, Appendix D, (2) Regulatory Commitment List

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<sup>1</sup> See *In the Matter of Tennessee Valley Authority (Bellefonte Nuclear Power Plant Units 3 and 4)*, Memorandum and Order (Revising Schedule for Mandatory Disclosure/Hearing File Updates), Docket Nos. 52-014-COL and 52-015-COL (April 20, 2012).

## **ENCLOSURE 1**

### **Tennessee Valley Authority**

#### **Bellefonte Nuclear Station, Units 3 and 3 Combined License Application**

#### **Basis for Exemption from 10 CFR 50.71(e)(3)(iii), 10 CFR 50, Appendix E, I.5, and 10 CFR 52, Appendix D**

##### **I. Proposed Exemptions**

Pursuant to 10 CFR 50.71(e)(3)(iii), applicants for a combined license under 10 CFR Part 52 shall, during the period from docketing of a combined construction permit and operating license application ("COLA") until the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's final safety analysis report ("FSAR").

Pursuant to 10 CFR 50, Appendix E, I.5, "[a]n applicant that does not receive a combined license . . . before December 31, 2013, shall revise its combined license . . . application to comply with [any change to emergency preparedness regulations under the final rule issued November 23, 2011] no later than December 31, 2013."

Pursuant to 10 CFR 52, Appendix D, X.B.2, an applicant is required to submit updates to its Design Control Document ("DCD"), which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of 10 CFR 52, Appendix D ("Departure Report"). These updates must be filed under the filing requirements applicable to FSAR updates in 10 CFR 52.3 and 50.71(e). Further, pursuant to 10 CFR Appendix D, X.B.3.b, during the interval from the date of application for a license to the date the Commission makes its findings required by 10 CFR 52.103(g), updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

On November 24, 2010, the NRC agreed to defer the review of the Bellefonte Nuclear Plant, Units 3 and 4 ("BLN 3&4") COLA. On December 19, 2011, the Tennessee Valley Authority ("TVA") reaffirmed with the NRC that the BLN 3&4 COLA continues to be deferred indefinitely. Based on the continued deferral of the BLN 3&4 COLA, TVA is requesting exemptions from the requirements of: (1) 10 CFR 50.71 (e)(3)(iii) to submit any pending or future annual updates to the BLN 3&4 FSAR; (2) 10 CFR 50, Appendix E, I.5 to submit a revised COLA to comply with any changes in the emergency preparedness regulations under the final rule issued November 23, 2011; and (3) 10 CFR 52, Appendix D to submit plant-specific departures from the generic AP1000 DCD. TVA commits to submit the next FSAR update and a revised BLN 3&4 COLA, including any updates to the plant-specific departures, at the same time as any request to the NRC to resume review of the BLN 3&4 COLA.

In summary, the requested exemptions are schedule changes from the requirements of 10 CFR 50.71(e)(3)(iii), 10 CFR 50 Appendix E, I.5, and 10 CFR 52 Appendix D, X.B.3.b. The annual updates to the FSAR and Departure Report, and the revision to a COLA to comply with any changes in the emergency preparedness regulations under the final rule issued November 23,

2011, are established by regulation; and deferral of the annual updates and revision to the COLA each require an exemption. The exemptions would allow TVA to submit the FSAR and Departure Report updates and the revisions to the COLA at a later date, but no later than any request by TVA for the NRC staff to reinstitute any review of the BLN 3&4 COLA.

## **II. Background**

On October 30, 2007, TVA submitted a COLA to the NRC for two AP 1000 advanced passive pressurized water reactors, to be identified as Bellefonte Units 3 and 4, in accordance with the requirements contained in 10 CFR 52, "Licenses, Certifications and Approvals for Nuclear Power Plants," and the associated material licenses under 10 CFR 30, 40, and 70. The NRC Staff docketed the BLN 3&4 COLA on January 18, 2008.<sup>1</sup> By letter dated September 29, 2010, TVA requested that the NRC defer review of the BLN 3&4 COLA, pending a determination by TVA of the preferred path forward for future nuclear generation development at the Bellefonte site. By letter dated November 24, 2010, the NRC agreed to defer the review of the BLN 3&4 COLA indefinitely and subsequently revised the public milestone schedule to note that the NRC review was in a suspended status. By letter dated December 19, 2011, TVA reaffirmed that the BLN 3&4 COLA continues to be deferred indefinitely, but that TVA desires to maintain the option of pursuing construction of BLN 3&4.

The BLN 3&4 COLA remains docketed. Pursuant to 10 CFR 52.3(b)(6) and 10 CFR 50.71(e), TVA is required to submit to the NRC updates to the FSAR annually. Pursuant to 10 CFR 50, Appendix E, I.5, TVA is required to revise the BLN 3&4 COLA, before December 31, 2013, to comply with any changes in the emergency preparedness regulations under the final rule issued November 23, 2011. Pursuant to 10 CFR 52, Appendix D, X.B.3.b, TVA is required to submit annual updates to the BLN 3&4 COLA Departure Report. Because the NRC's review of the COLA remains suspended, TVA is requesting exemptions from the annual updates and COLA revision requirements until such time that a decision is made by TVA to request the NRC to proceed with its review of the BLN 3&4 COLA.

## **III. Exemption Requirements**

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 Section 50.71 (e)(3)(iii) and 10 CFR 50, Appendix E, I.5 when:

- (1) The exemptions 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.

10 CFR 50.12(a)(1) and (2). In part, "special circumstances" exist if:

- (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

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<sup>1</sup> *Tennessee Valley Authority; Acceptance for Docketing of an Application for Combined License for Bellefonte Units 3 and 4*, 73 Fed. Reg. 4923-24 (January 28, 2008).

10 CFR 50.12(a)(2)(iii). Similarly, 10 CFR 52.7 applies these same considerations for specific exemption requests to 10 CFR Part 52.

#### **IV. Basis for the Exemptions**

##### **A. Authorized By Law**

Pursuant to 10 CFR 50.12, the NRC may grant exemptions from the requirements of 10 CFR 50.71(e)(3)(iii), 10 CFR 50, Appendix E, and 10 CFR 52, Appendix D without violating the Atomic Energy Act of 1954, as amended, or the Commission's regulations. This exemption request is for exemptions from the requirements of 10 CFR 50.71 (e)(3)(iii), 10 CFR 50, Appendix E, I.5, and 10 CFR 52, Appendix D, X.B.2 and X.B.3.b, until such time as the review of the BLN 3&4 COLA is recommenced. The exemptions would allow TVA to submit the next FSAR annual update and a revised BLN 3&4 COLA at the same time as a request by TVA that the NRC proceed with its detailed review of the BLN 3&4 COLA.

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

The purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COLA in order to support the NRC's effective and efficient review of the COLA and to allow the NRC staff to issue a safety evaluation report. Because the NRC's review of the BLN 3&4 COLA is suspended, any update to the BLN 3&4 COLA while review of the BLN 3&4 COLA is suspended by the NRC will not be reviewed by the NRC. Therefore, the exemption requested is merely administrative in nature, affecting the schedule for submitting revisions to the BLN 3&4 COLA to the NRC under 10 CFR Part 52.

The purpose of 10 CFR 50, Appendix E, I.5 is to ensure that all combined license and early site permit applicants ultimately comply with the same emergency preparedness regulations. Because the NRC's review of the BLN 3&4 COLA is suspended, any revision to the BLN 3&4 COLA with respect to compliance with any changes to the emergency preparedness regulations will not be reviewed by the NRC. Therefore, this exemption request is also merely administrative in nature, affecting the schedule for submitting revisions to the BLN 3&4 COLA to the NRC under 10 CFR Part 52.

Similarly, the purpose of 10 CFR 52, Appendix D, X.B.2 and X.B.3.b is to ensure that the applicant provides timely and comprehensive updates to the plant-specific DCD in order to support the NRC's effective and efficient review of the COLA. Because the NRC's review of the BLN 3&4 COLA is suspended by the NRC, any additional departures from the AP1000 generic DCD will not be reviewed by the NRC. Therefore, the exemption requested is similarly only administrative in nature, affecting the schedule for submitting revisions to the BLN 3&4 COLA to the NRC under 10 CFR Part 52.

These exemptions are purely a scheduling and administrative issue with respect to revisions to the BLN 3&4 COLA and its FSAR, for which no license has been issued and the NRC Staff's review of which is suspended; and do not have any safety implications. No new health or safety issues are created by granting the exemptions; and neither the probability of postulated accidents nor their consequences are increased in any manner. Accordingly, there is no undue risk to public health and safety.

### **C. Consistent with Common Defense and Security**

These exemptions request only schedule changes with respect to submitting updates to the BLN 3&4 COLA's FSAR, revisions to the COLA pursuant to 10 CFR 50, Appendix E, I.5, and updates to the COLA's Departure Report, and have no relation to security issues. Therefore, the exemptions have no effect on common defense and security.

### **D. Special Circumstances**

Special circumstances warrant that the Commission grant the requested exemptions. The regulations requiring an annual FSAR update – 10 CFR 50.71(e)(3)(iii) – do not address a situation in which (1) the applicant has deferred its pursuit of the COLA; and (2) the NRC staff has suspended its review of the COLA, including the FSAR. Under the circumstances, providing an annual update to the FSAR would result in an undue hardship and unnecessary costs to TVA. The NRC has granted similar exemptions. Requiring this update for a deferred COLA, whose review the NRC has suspended, would place requirements on TVA in excess of those in similar circumstances.<sup>2</sup>

The purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COLA in order to support the NRC's effective and efficient review and to allow the NRC staff to issue a safety evaluation report. Because the NRC has suspended its review of the BLN 3&4 COLA, including the FSAR, updating the BLN 3&4 COLA will not further the purpose of 10 CFR 50.71(e)(3)(iii).

TVA is requesting only temporary relief from 10 CFR 50.71(e)(3)(iii), during the period that review of the BLN 3&4 COLA is deferred. TVA has committed to provide an updated FSAR to the NRC should TVA decide to proceed with the BLN 3&4 COLA in the future. Providing an update at that point would fulfill the purpose of 10 CFR 50.71 (e)(3)(iii).

Similarly, the regulations requiring (1) that a pending COLA be revised to comply with any changes in the emergency preparedness regulations under the final rule issued November 23, 2011(10 CFR 50, Appendix E, I.5), and (2) an annual update to the Departure Report (10 CFR 52, Appendix D, X.B.3.b) also do not address a situation in which (a) the applicant has deferred its pursuit of the COLA; and (b) the NRC staff has suspended its review of the COLA. Under the circumstances, revising the COLA and submitting the annual Departure Report would result in an undue hardship and unnecessary costs to TVA.

The purpose of 10 CFR 50, Appendix E, I.5 is to ensure that all combined license and early site permit applicants ultimately comply with the same regulations. Because the NRC has suspended its review of the BLN 3&4 COLA, revising the BLN 3&4 COLA while the NRC review of the BLN 3&4 COLA is suspended will not further the purpose of 10 CFR 50, Appendix E, I.5.

TVA is requesting only temporary relief from 10 CFR 50, Appendix E, I.5 during the period that review of the BLN 3&4 COLA is deferred. TVA has committed to provide a revised COLA to the NRC should TVA decide to proceed with the BLN 3&4 COLA in the future. At that time, providing a revision of the COLA to comply with any changes in the emergency preparedness regulations under the final rule issued November 23, 2011 would fulfill the purpose of 10 CFR 50, Appendix E, I.5.

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<sup>2</sup> See, e.g., *Ameren Missouri; Combined License Application for Callaway Plant, Unit 2; Exemption*, 77 Fed. Reg. 76,539 (December 28, 2012).

The purpose of 10 CFR 52, Appendix D, X.B.2 and X.B.3.b is to ensure that the plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under Section VIII of 10 CFR 52, Appendix D throughout the period of application and for the term of the license. Because the NRC has suspended its review of the BLN 3&4 COLA, revising the BLN 3&4 COLA while the NRC review of the BLN 3&4 COLA is suspended will not further the purpose of 10 CFR 52, Appendix D.

TVA is requesting only temporary relief from 10 CFR 52, Appendix D during the period that review of the BLN 3&4 COLA is deferred. TVA has committed to provide a revised COLA to the NRC should TVA decide to proceed with the BLN 3&4 COLA in the future. At that time, providing an update to the COLA Departure Report to comply with any changes in the plant-specific departures from the generic AP1000 DCD would fulfill the purpose of 10 CFR 52, Appendix D.

## **V. Conclusion**

Based on the above, the Commission should exempt TVA from the requirements of submitting (1) annual updates to the BLN 3&4 COLA's FSAR, (2) a revised COLA to comply with any changes in the emergency preparedness regulations under the final rule issued November 23, 2011, and (3) annual updates to the BLN 3&4 Departure Report until such time that TVA requests that the NRC resume its review of the BLN 3&4 COLA.

## **ENCLOSURE 2**

### **Tennessee Valley Authority**

#### **Bellefonte Nuclear Station, Units 3 and 3 Combined License Application**

#### **Regulatory Commitment List**

1. TVA will submit an update to the BLN 3&4 COLA FSAR at the same time as submitting a request to the NRC that it resume its review of the BLN 3&4 COLA.
2. TVA will submit a revised BLN 3&4 COLA to comply with any changes in the emergency preparedness regulations under the final rule issued November 23, 2011, at the same time as submitting a request to the NRC that it resume its review of the BLN 3&4 COLA.
3. TVA will submit an update to the BLN 3&4 COLA Departure Report at the same time as submitting a request to the NRC that it resume its review of the BLN 3&4 COLA.