

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos.: 52-034 and 52-035; NRC-2008-0594]**

**Luminant Generation Company, LLC.**

**Combined License Application for Comanche Peak Nuclear Power Plant, Units 3 and 4,  
Exemption**

**1.0 BACKGROUND:**

Luminant Generation Company, LLC. (Luminant) submitted to the U.S. Nuclear Regulatory Commission (NRC), Combined License (COL) applications for two United States - Advanced Pressurized Water Reactors (US-APWR) in accordance with the requirements of Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C, "Licenses, Certifications, and Approvals for Nuclear Power Plants." These reactors will be identified as Comanche Peak Nuclear Power Plant (CPNPP), Units 3 and 4, and are located at the existing Comanche Peak site in Somervell County, Texas. The NRC docketed the application on December 2, 2008, and is currently performing a review of the application. In addition, the NRC is currently performing a detailed review of the Mitsubishi Heavy Industries, Ltd. (MHI) application for the design certification of the US-APWR.

**2.0 REQUEST/ACTION:**

The regulations specified in 10 CFR 50.71(e)(3)(iii) require that an applicant for a COL under Subpart C of 10 CFR Part 52 shall, during the period from docketing of a COL application (COLA), until the 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), which is a part of the COLA.

On November 7, 2013, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13316A369) Luminant submitted a request to the NRC that all reviews associated with the COLA for CPNPP, Units 3 and 4, be suspended for an indeterminate period beginning March 31, 2014. Luminant then submitted COLA, FSAR, Revision 4, on November 26, 2013 (ADAMS Accession No. ML13344B515). Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update (COLA, FSAR, Revision 5) would be due in November 2014. On January 14, 2014, Luminant requested an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) for an indeterminate period until a change in COLA status is formally requested (ADAMS Accession No. ML14016A298).

In summary, the requested exemption from the requirements of 10 CFR 50.71(e)(3)(iii) is for an indeterminate period. The exemption would allow Luminant to submit the subsequent FSAR update (Revision 5) one year after the COLA review suspension period is formally ended. The FSAR update schedule could not be changed, absent the exemption.

Luminant'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, Luminant asked the NRC to grant the exemption from 10 CFR 50.71(e)(3)(iii), until one year after the end of the suspension period. Because such a request is seen as open-ended, the NRC included an imposed November 30, 2015 deadline as part of its review of the exemption request. The exemption would allow Luminant to submit the next FSAR update at a later date, but still within a reasonable timeframe of NRC's reinstating its review of the application and in any event, by November 30, 2015. 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 NRC 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) 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. As relevant to the requested exemption, special circumstances exist if: (1) "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)); (2) "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" (10 CFR 50.12(a)(2)(iii)); or (3) "The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

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 Luminant requested the NRC suspend its review of the CPNPP, Units 3 and 4 COL application, compelling Luminant 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. Requiring the updates would result in undue hardship on Luminant, and the purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted after restarting the review and in any event by November 30, 2015.

The requested exemption for filing CPNPP COLA FSAR updates would provide relief from the regulations of 10 CFR 50.71(e)(3)(iii) until 1 year after the review suspension has formally been ended. Luminant has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by maintaining a "living" COLA, in which Luminant continuously incorporates changes resulting from its responses to requests for additional information (RAIs),

commitments, or other identified changes. Luminant has also submitted proposed changes to the COLA FSAR pages along with responses to NRC RAIs. Additionally, Luminant has periodically submitted Updated Tracking Reports, which provide changes to the COLA FSAR that reflect changes to the COLA FSAR.

Authorized by Law:

The exemption is a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow the applicant to submit the CPNPP, Units 3 and 4, COLA FSAR annual update currently scheduled for November 2014, on or before November 30, 2015 and to submit the subsequent FSAR annual update in November 2016. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting Luminant a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation 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 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 an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report (SER). 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.

Based on the above, no new accident precursors are created by the exemption; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent with Common Defense and Security:

The authorized exemption would allow Luminant to submit the FSAR annual update (Revision 5) currently scheduled for November 2014, on or before November 30, 2015 and to submit the subsequent FSAR annual update in November 2016. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances:

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever:

(1) "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)); (2) "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" (10 CFR 50.12(a)(2)(iii)); or (3) "The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

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 COLA in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's SER. As discussed above, the requested exemption is solely administrative in nature, in that it pertains to submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. Because the requirement to annually update the FSAR was intended for active reviews and the CPNPP Units 3 and 4 COL application review will soon be suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. The requested exemption would permit Luminant to fully suspend work on the CCNPP COLA FSAR for more than 1 year. Due to the suspension of review work, this exemption will not affect the

NRC staff's review, and therefore does not affect the underlying purpose of 10 CFR 50.71(e)(3)(iii). Because the application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule; granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide relief during the suspension of review work. Since Luminant has made good faith efforts to comply with the regulation, the special circumstances required by 10 CFR 50.12 (a)(2) 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 Luminant  
and

(G) Scheduling requirements;

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

4.0 CONCLUSION:

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12(a), a one-time exemption is authorized by law and 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 NRC hereby grants Luminant a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the CPNPP, Units 3 and 4, COLA to allow the submittal of the FSAR update scheduled for November 2014, on or before November 30, 2015 and to submit the subsequent FSAR annual update in November 2016.

Pursuant to 10 CFR 51.22, the Commission NRC 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 13<sup>th</sup> day of March 2014.

FOR THE NUCLEAR REGULATORY COMMISSION

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