

August 7, 2014

ALNRC00063

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

10 CFR 50 Appendix E
10 CFR 50.71(3)(3)(iii)
10 CFR 50.12

Ladies and Gentlemen:

DOCKET NUMBER 52-037
CALLAWAY PLANT UNIT 2
UNION ELECTRIC CO.
COMBINED LICENSE APPLICATION
REQUEST FOR EXEMPTIONS

- References: 1.) Ameren Missouri letter to the NRC; ALNRC 00004, Application for Combined License for Callaway Plant Unit 2, dated July 24, 2008
- 2.) Ameren Missouri letter to the NRC, ALNRC 00057, Request for Exemption from 10 CFR § 50.71(e)(3)(iii), dated October 15, 2012
- 3.) Ameren Missouri letter to the NRC, ALNRC 00060, Request for Exemption from 10 CFR Part 50 Appendix E, dated October 3, 2013

In Reference 1 Union Electric Company, d/b/a Ameren Missouri, (formerly AmerenUE) submitted to the Nuclear Regulatory Commission (NRC) a combined construction permit and operating license ("COL") application under Title 10 of the Code of Federal Regulations ("10 CFR"), Subpart C of Part 52, to construct and operate a U.S. Evolutionary Power Reactor ("U.S. EPR"), to be designated Callaway Plant Unit 2, at the Callaway Plant site in Callaway County, Missouri. The NRC Staff docketed the application on December 12, 2008.

By letter dated April 28, 2009, Ameren Missouri reported that it was suspending its efforts to build a nuclear power plant in Missouri. Shortly thereafter in a letter dated June 23, 2009, Ameren Missouri requested that the NRC suspend the review of the Callaway Plant Unit 2 COL application and all related activities. Based on that request, the NRC suspended all of their review activities relating to the Callaway Plant Unit 2 COL application. The Callaway Plant Unit 2 COL application remains docketed.

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10 CFR 50.71(e)(3)(iii) requires that applicants for a combined license under 10 CFR Part 52 shall, during the period from docketing of a combined construction permit and operating license ("COL") application 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").

Ameren Missouri is requesting an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) to submit the 2014 and 2015 updates to the Callaway Plant Unit 2 FSAR. Ameren commits to submit the next FSAR update prior to any request to the NRC to resume review of the COL application and, in any event, no later than December 31, 2016. A previous exemption request was submitted in Reference 2 and approved as documented in Adams ML12339A208.

Additionally, on November 23, 2011 the NRC issued the final rulemaking amending emergency plan requirements for nuclear power plants including those undergoing COL application reviews. 10 CFR Part 50 Appendix E Section I.5 states the following:

Each applicant for a combined license or early site permit under part 52 of this chapter whose application is docketed before December 23, 2011 may defer compliance with any change to emergency preparedness regulations under the final rule issued November 23, 2011. If that applicant chooses to defer compliance, it shall subsequently request to amend the combined license or early site permit to comply with those changes no later than December 31, 2013. An applicant that does not receive a combined license or early site permit before December 31, 2013, shall revise its combined license or early site permit application to comply with those changes no later than December 31, 2013. Notwithstanding any Commission finding under 10 CFR 52.103(g) regarding the combined license holder's facility, the combined license holder may not operate the facility until the NRC has approved the license amendment demonstrating compliance with the final rule.

In Reference 3 Ameren Missouri requested an exemption from the requirement to amend the Callaway Plant Unit 2 combined license application emergency plan due to the application being in suspended status. The NRC approved this exemption request as documented in Adams ML13301A710 until December 3, 2014.

The purpose of this letter is to request an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) to update the Callaway Plant Unit 2 FSAR as well as 10 CFR 50 Appendix E Section I.5 to update the emergency plan from the current due date of December 31, 2014. In light of the suspension of the Callaway Plant Unit 2 COL application, Ameren Missouri is requesting an exemption from the requirement to submit a revised emergency plan and updated FSAR by December 31, 2014 with a commitment to update these documents prior to any request by Ameren Missouri that the NRC resumes review of the COL application or by December 31, 2016 whichever is earlier.

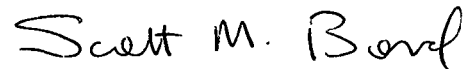
Enclosure 1 provides the basis for the exemption request for the FSAR update. Enclosure 2 provides the basis for the exemption request for the emergency plant update.

This letter does contain a new commitment as shown in Enclosure 3.

If there are any questions, please contact Scott Bond at (573) 676-8519 (SBond2@ameren.com) or Roger Wink at (314) 225-1561 (RWink@ameren.com).

Sincerely,

Executed on: 8/7/2014



Scott M. Bond
Director, Nuclear Development
Ameren Missouri

SMB/WPC/brd

Enclosures

1. Basis for Exemption from 10 CFR 50.71 (e)(3)(iii)
2. Basis for Exemption from 10 CFR Part 50 Appendix E
3. List of Commitments

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ENCLOSURE 1

Basis for Exemption from 10 CFR 50.71(e)(3)(iii)

I. Proposed Exemption

10 CFR 50.71(e)(3)(iii) requires that applicants for a combined license under 10 CFR Part 52 shall, during the period from docketing of a combined construction permit and operating license (“COL”) application 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”).

Union Electric Company, doing business as Ameren Missouri (“Ameren”) is requesting an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) to submit the 2014 through 2015 updates to the Callaway Plant Unit 2 FSAR. Ameren commits to submit the next FSAR update prior to any request to the NRC to resume review of the COL application and, in any event, no later than December 31, 2016.

In summary, the requested exemption is a schedule change from the requirements of 10 CFR § 50.71(e)(3)(iii) in an effort to achieve efficiency and limit the unnecessary expenditure of resources. The exemption would allow Ameren to submit the FSAR update at a later date, but still in advance of the NRC staff reinstituting its review of the COL application, and in any event, no later than December 31, 2016. The FSAR annual update is established by regulation; deferral of the annual update requires an exemption.

II. Background

On July 24, 2008, Ameren submitted to the NRC a COL application, under Title 10 of the Code of Federal Regulations (“10 CFR”), Subpart C of Part 52, to construct and operate a U.S. Evolutionary Power Reactor (“U.S. EPR”), to be designated Callaway Plant Unit 2, at the Callaway Plant site in Callaway County, Missouri. The NRC Staff docketed the application on December 12, 2008.¹ In addition, the NRC is currently performing a detailed review of the Areva Nuclear Power application for design certification of the U.S. EPR.

By letter dated April 28, 2009, Ameren reported that it was suspending its efforts to build a nuclear power plant in Missouri.² Shortly thereafter in a letter dated June 23, 2009, Ameren requested that the NRC suspend the review of the Callaway Plant Unit 2 COL application and all related activities.³ Based on that request, the NRC suspended all of their review activities relating to the Callaway Plant Unit 2 COL application.⁴ The Callaway Plant Unit 2 COL application remains docketed. As noted in its letter, the NRC said that “pursuant to 10 CFR 52.3(b)(6) and 10 CFR 50.71(e), AmerenUE will be required to submit to the NRC updates to the FSAR annually.” By letter dated October 26, 2010, Ameren requested that the NRC grant an exemption from the requirement in 10 CFR 50.71(e)(3)(iii) to submit the annual updates to the Callaway Plant Unit 2 FSAR that would have been due in 2010 and

¹ See 73 Fed. Reg. 77,078 (Dec. 18, 2008).

² See Callaway Plant Unit 2, Suspension of Efforts to Build Proposed Nuclear Power Plant (Apr. 28, 2009) (ML091210159).

³ See Callaway 2 COL - Request to Suspend Review of COL Application (Jun. 23 2009) (ML091910581).

⁴ See Response to AmerenUE Letter of June 23, 2009, Requesting to Suspend Callaway Unit 2 COLA Review (Jun. 29, 2009) (ML091750665).

2011.⁵ The NRC approved the exemption⁶. By letter dated October 15, 2012⁷ Ameren requested that the NRC grant a continuance of that exemption from the requirements until December 31, 2014. The NRC approved that exemption request.⁸

In light of Ameren's suspension of Callaway Plant Unit 2, Ameren entered into a settlement agreement with the NRC and the petitioners to terminate the adjudicatory proceedings and pursuant to the settlement agreement filed a joint motion to terminate the proceedings.⁹ The Atomic Safety and Licensing Board found the settlement in the public interest and terminated the contested hearing.¹⁰

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) 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.

Reference: 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; or

(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

Reference: 10 CFR § 50.12(a)(2)(iii) and (v).

⁵ Ameren Missouri letter to the NRC ALNRC 00048, Request for Exemption from 10 CFR § 50.71(E)(3)(iii) (Oct. 26, 2010) (ML103010055)

⁶ NRC letter to Ameren Missouri, Callaway Plant, Unit 2. Combined License Application - Exemption From the Requirements of Title 10 of the Code of Federal Regulations 50.71(e)(3)(iii) (Jan. 11, 2011). (ML103330194) (ML123330208)

⁷ Ameren Missouri letter to the NRC ALNRC 00057, Request for Exemption from 10 CFR § 50.71(e)(3)(iii) (October 15, 2012) (ML12311A370)

⁸ NRC letter to Ameren Missouri, Callaway Plant, Unit 2, Combined License Application – Exemption From the Requirements of Title 10 of the *Code of Federal Regulations* Part 50 Section 71(e)(3)(iii) (ML12339A208) (ML12339A2130)

⁹ See Joint Motion Of AmerenUE, NRC Staff, MCE/MSE, MAHUR, and MPC Requesting Approval Of Settlement Agreement and Termination Of Contested Portion Of Hearing (Aug. 14, 2009) (ML092260683).

¹⁰ See LB Memorandum and Order (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) (LBP-09-23) (Aug. 28, 2009). (ML092400161)

IV. Basis for the Exemption

A. *Authorized by Law*

10 CFR § 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.71(e)(3)(iii) without violating the Atomic Energy Act of 1954, as amended, or the Commission's regulations. This exemption request is for a schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow the applicant to submit the next Callaway Plant Unit 2 FSAR annual update not later than December 31, 2016, and, in any event, in advance of a request that the NRC proceed with its detailed review of the COL application.

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

The underlying purpose of 10 CFR § 50.71(e)(3)(iii) is to provide for timely, comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. Because the NRC's review of the Ameren COLA is suspended, any update to the COL application will not be reviewed by the NRC. 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.

Because this exemption is purely a scheduling and administrative issue; there are no safety implications. No new health or safety issues are created. Neither the probability of postulated accidents nor their consequences are increased in any manner. There is no undue risk to public health and safety.

C. *Consistent with Common Defense and Security*

This exemption requesting a schedule change has no relation to security issues. The common defense and security is not impacted by this exemption.

D. *Special Circumstances*

Special circumstances are present. The regulations at 10 CFR 50.71(e)(3)(iii), requiring annual FSAR update, do not address and do not appear to have contemplated a situation in which (1) the applicant suspended its pursuit of the COL; (2) the NRC staff has suspended any and all review of the COL application, including the FSAR; and (3) petitioners have agreed to terminate adjudicatory proceedings. As such, providing an annual update to the FSAR would result in an undue hardship and unnecessary costs to Ameren.

The purpose of 10 CFR 50.71(e)(3)(iii) is to provide for timely, comprehensive updates of the FSAR associated with a COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. The FSAR is an extensive document and updating the document will require review and evaluation of changes made to

the U.S. EPR Reference COL application for applicability to the Callaway Plant Unit 2 Subsequent COL application, along with updating of general background information in the Callaway Plant Unit 2 COL application. Despite the effort to provide the updated FSAR, the purpose of 10 CFR 50.71(e)(3)(iii) will go unfulfilled because the NRC has suspended its review of the COL application, including the FSAR.

Ameren is requesting only temporary relief from 10 CFR 50.71(e)(3)(iii) and has made good faith efforts to comply with the regulation. Ameren has committed to provide an updated FSAR to the NRC should Ameren decide to proceed with the COL application in the future. Doing so fulfills the purpose of 10 CFR 50.71(e)(3)(iii) to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. In any event, Ameren will provide an update to the FSAR no later than December 31, 2016, and, in any event, prior to a request that the NRC proceed with its detailed review of the COL application. should Ameren decide to proceed with the COL application sooner. Furthermore, Ameren has complied with the regulation by submitting Revision 1 to the Callaway Plant Unit 2 COL application on February 25, 2009. Revision 1 incorporated information provided in prior supplements and standardized language with the U.S. EPR Reference COL.

V. Conclusion

Based on the above, the Commission should exempt Ameren from the requirement of submitting an annual update to the Callaway Plant Unit 2 COL application's FSAR until such time as the COL review is resumed or December 31, 2016.

ENCLOSURE 2

Basis for Exemption from 10 CFR Part 50 Appendix E

I. Proposed Exemption

10 CFR Part 50 Appendix E Section I.5 requires that each applicant for a combined license under part 52 whose application is docketed before December 23, 2011 revise its combined license application to comply with the emergency plan rulemaking changes effective November 23, 2011 no later than December 31, 2013. Listed below is the cited text from Section I.5 of 10 CFR Part 50 Appendix E:

Each applicant for a combined license or early site permit under part 52 of this chapter whose application is docketed before December 23, 2011 may defer compliance with any change to emergency preparedness regulations under the final rule issued November 23, 2011. If that applicant chooses to defer compliance, it shall subsequently request to amend the combined license or early site permit to comply with those changes no later than December 31, 2013. An applicant that does not receive a combined license or early site permit before December 31, 2013, shall revise its combined license or early site permit application to comply with those changes no later than December 31, 2013. Notwithstanding any Commission finding under 10 CFR 52.103(g) regarding the combined license holder's facility, the combined license holder may not operate the facility until the NRC has approved the license amendment demonstrating compliance with the final rule.

By letter dated October 3, 2013¹¹ Ameren requested that the NRC grant an exemption from the requirements to update the combined license application emergency plan until December 31, 2014. The NRC approved that exemption request.¹²

Ameren is requesting a continued exemption from the requirements of 10 CFR Part 50 Appendix E to submit an emergency plan update for the Callaway Plant Unit 2 COL application. Ameren commits to submit an updated emergency plan prior to any request to the NRC to resume review of the COL application or by December 31, 2016.

In summary, the requested exemption is a schedule change from the requirements of 10 CFR Part 50 Appendix E in an effort to achieve efficiency and limit the unnecessary expenditure of resources. The exemption would allow Ameren to submit the Emergency Plan update at a later date, but still in advance of the NRC staff reinstituting its review of the COL application. The Emergency Plan update is established by regulation; deferral of the update requires an exemption.

II. Background

On July 24, 2008, Ameren submitted to the NRC a COL application, under Title 10 of the Code of Federal Regulations ("10 CFR"), Subpart C of Part 52, to construct and operate a U.S. Evolutionary Power Reactor ("U.S. EPR"), to be designated Callaway Plant Unit 2, at the Callaway Plant site in

¹¹ Ameren Missouri letter to the NRC ALNRC 00060, Request for Exemption from 10 CFR Part 50 Appendix E (October 13, 2013) (ML13282A311)

¹² NRC letter to Ameren Missouri, Callaway Plant, Unit 2, Combined License Application – Exemption From the Requirements of Title 10 of the *Code of Federal Regulations* Part 50 Section I.5 (November 20, 2013) (ML13301A666) (ML13301A701)

Callaway County, Missouri. The NRC Staff docketed the application on December 12, 2008¹³. In addition, the NRC is performing a review of the AREVA NP, Inc. design certification application of the U.S. EPR.

By letter dated April 28, 2009, Ameren reported that it was suspending its efforts to build a nuclear power plant in Missouri¹⁴. Shortly thereafter in a letter dated June 23, 2009, Ameren requested that the NRC suspend the review of the Callaway Plant Unit 2 COL application and all related activities¹⁵. Based on that request, the NRC suspended all of their review activities relating to the Callaway Plant Unit 2 COL application¹⁶. The Callaway Plant Unit 2 COL application remains docketed.

In light of Ameren's suspension of Callaway Plant Unit 2, Ameren entered into a settlement agreement with the NRC and the petitioners to terminate the adjudicatory proceedings and pursuant to the settlement agreement filed a joint motion to terminate the proceedings¹⁷. The Atomic Safety and Licensing Board found the settlement in the public interest and terminated the contested hearing¹⁸.

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 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.

Reference: 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; or
- (v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

¹³ See 73 Fed. Reg. 77,078 (Dec. 18, 2008).

¹⁴ See Callaway Plant Unit 2, Suspension of Efforts to Build Proposed Nuclear Power Plant (Apr. 28, 2009) (ML091210159).

¹⁵ See Callaway 2 COL - Request to Suspend Review of COL Application (Jun. 23 2009) (ML091910581).

¹⁶ See Response to AmerenUE Letter of June 23, 2009, Requesting to Suspend Callaway Unit 2 COLA Review (Jun. 29, 2009) (ML091750665).

¹⁷ See Joint Motion Of AmerenUE, NRC Staff, MCEIMSE, MAHUR, and MPC Requesting Approval Of Settlement Agreement and Termination Of Contested Portion Of Hearing (Aug. 14, 2009) (ML092260683).

¹⁸ See LB Memorandum and Order (Approving Settlement Agreement and Terminating Contested Adjudicatory Proceeding) (LBP-09-23) (Aug. 28, 2009). (ML092400161)

Reference: 10 CFR § 50.12(a)(2)(iii) and (v).

IV. Basis for the Exemption

A. Authorized by Law

10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 without violating the Atomic Energy Act of 1954, as amended, or the Commission's regulations. This exemption request is for a schedule exemption from the requirements of 10 CFR Part 50 Appendix E. The exemption would allow the applicant to submit the next Callaway Plant Unit 2 Emergency Plan update not later than December 31, 2016, and, in any event, prior to a request that the NRC proceed with its detailed review of the COL application.

B. No Undue Risk to Public Health and Safety

The underlying purpose of the 10 CFR Part 50 Appendix E emergency plan update requirement is to provide for a timely update of the emergency plan associated with an active COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. Because the NRC's review is suspended, the update to the COL application emergency plan will not be reviewed by the NRC. 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.

Because this exemption is purely a scheduling and administrative issue; there are no safety implications. No new health or safety issues are created. Neither the probability of postulated accidents nor their consequences are increased in any manner. There is no undue risk to public health and safety.

C. Consistent with Common Defense and Security

This exemption requesting a schedule change has no relation to security issues. The common defense and security is not impacted by this exemption.

D. Special Circumstances

Special circumstances are present. The regulations at 10 CFR Part 50 Appendix E requiring an Emergency Plan update, do not address and do not appear to have contemplated a situation in which (1) the applicant suspended its pursuit of the COL; (2) the NRC staff has suspended any and all review of the COL application, including the Emergency Plan; and (3) petitioners have agreed to terminate adjudicatory proceedings. As such, providing an update to the Emergency Plan would result in an undue hardship and unnecessary costs to Ameren.

The purpose of 10 CFR Part 50 Appendix E Section I.5 is to provide an update of the Emergency Plan associated with an active COL application in order to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report. The Emergency Plan is an extensive document and updating the Emergency Plan will require review and evaluation of the rulemaking changes that became effective November 23, 2011¹⁹. Despite the effort to provide the updated Emergency Plan, the purpose of 10 CFR Part 50 Appendix E Section I.5 will go unfulfilled. The NRC has suspended its review of the COL application, including the Emergency Plan.

Ameren is requesting only temporary relief from 10 CFR Part 50 Appendix E Section I.5 and has made good faith efforts to comply with the regulation. Ameren has committed to provide an updated Emergency Plan to the NRC not later than December 31, 2016, and, in any event, prior to a request that the NRC proceed with its detailed review of the COL application. should Ameren decide to proceed with the COL application sooner. Doing so fulfills the purpose of 10 CFR Part 50 Appendix E Section I.5 to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

V. Conclusion

Based on the above, the Commission should exempt Ameren from the requirement of submitting an update to the Callaway Plant Unit 2 COL application's Emergency Plan until such time as the COL review is resumed or December 31, 2016.

¹⁹ See Federal Register Vol. 76, No. 226 Dated Wednesday, November 23, 2011

Enclosure 3**LIST OF COMMITMENTS**

The following table identifies those actions committed to by Ameren Missouri in this document. Any other statements in this document are provided for information purposes and are not considered commitments. Please direct questions regarding these commitments to:.

COMMITMENT	Due Date/Event
Ameren Missouri will update the Callaway Plant Unit 2 Emergency Plan and FSAR as specified in 10 CFR Part 50 Appendix E and 10 CFR 50.71(3)(3)(iii).	Before any request by Ameren Missouri that the NRC resume review of the COL application or by December 31, 2016