



CHRISTOPHER M. FALLON
Vice President
Nuclear Development

Duke Energy
EC12L/526 South Church Street
Charlotte, NC 28202

Mailing Address:
EC12L / P.O. Box 1006
Charlotte, NC 28201-1006

Serial: NPD-NRC-2016-019
October 13, 2016

10 CFR 50.12 o: 704.382.9248
10 CFR 50.71 c: 704.519.6173
10 CFR 52.7 f: 980.373.2551
christopher.fallon@duke-energy.com

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555-0001

**SHEARON HARRIS NUCLEAR POWER PLANT, UNITS 2 AND 3
DOCKET NOS. 52-022 AND 52-023
REQUEST FOR EXEMPTION FROM 10 CFR 50.71(e)(3)(iii)**

- References:
1. Letter from James Scarola (PEC) to U.S. Nuclear Regulatory Commission (NRC), dated February 18, 2008, "Application for Combined License for Shearon Harris Nuclear Power Plant Units 2 and 3," Serial: NPD-NRC-2008-001
 2. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission, dated May 2, 2013, "Combined License Application (COLA) Review," Serial: NPD-NRC-2013-019
 3. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission, dated August 12, 2015, "Request for Exemption from 10 CFR 50.71(e)(3)(iii)," Serial: NPD-NRC-2015-036
 4. Duke Energy Progress; Combined License Application for Shearon Harris Nuclear Power Plants Units 2 and 3 - Exemption Issuance; Federal Register Vol. 81, No. 43, 11606, March 4, 2016

Ladies and Gentlemen:

By letter dated February 18, 2008 (Reference 1), Duke Energy Progress (DEP) submitted an application for a combined construction permit and operating license for two AP1000 advanced pressurized water reactors to be located at the existing Shearon Harris Nuclear Plant site. By letter dated May 2, 2013 (Reference 2), DEP requested that the Nuclear Regulatory Commission (NRC) suspend review of the Shearon Harris Nuclear Plant Units 2 and 3 (HAR) combined license application (COLA). The NRC granted that request.

By letter dated August 12, 2015 (Reference 3), DEP requested an exemption from the annual Final Safety Analysis Report (FSAR) updates required by 10 CFR 50.71(e)(3)(iii) for the COLA submitted for HAR. The NRC granted an exemption which allows submittal of the next HAR FSAR update prior to the resumption of the COLA review, and in any event, no later than December 31, 2016 (Reference 4).

D084
NRD

The purpose of this letter is to request an additional exemption from the requirement set forth in 10 CFR 50.71(e)(3)(iii), as applicable to HAR, that an applicant for a combined license (COL) under Subpart C of 10 CFR 52 submit annual updates to the FSAR. Specifically, given that the NRC's review of the HAR COLA has been suspended and remains suspended, DEP requests an exemption from the requirement to submit annual updates to the FSAR during the years 2016, 2017, and 2018. There has been extensive effort involved in the development and review of the HAR COLA by both the NRC staff and DEP. DEP would like to preserve the work that has been performed to date in support of the HAR COLA while decisions on future generation are in progress. The three year timeframe of this request is based on the current uncertainty of several factors involved in the decision to pursue new nuclear generation at the Shearon Harris site, including potential carbon dioxide regulation, fuel prices, and the possibility of pursuing second license renewal for DEP's existing nuclear stations. A three-year exemption minimizes the collective preparation, review and approval time for both the NRC staff and DEP, and is therefore considered more efficient than several one-year exemption requests.

Enclosure 1 provides the basis for this exemption request. If the exemption is granted, DEP commits to submitting the next HAR FSAR update prior to any request to NRC to reactivate the HAR COLA review should DEP decide to proceed with the COL application in the future. Further, DEP will provide an update to the HAR FSAR, or take such other action as may be appropriate, no later than December 31, 2019.

If you have any further questions, or need additional information, please contact Bob Kitchen at (704) 382-4046, or me at (704) 382-9248.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 13, 2016.

Sincerely,



Christopher M. Fallon
Vice President
Nuclear Development

Enclosure:

1. Basis for Exemption 10 CFR 50.71(e)(3)(iii) for Shearon Harris Nuclear Power Plant Units 2 & 3

cc : U.S. NRC Region II, Regional Administrator (w/o enclosure)
U.S. NRC Resident Inspector, SHNPP Unit 1 (w/o enclosure)
Mr. Brian Hughes, U.S. NRC Project Manager (w/enclosure)

Enclosure 1

Basis for Exemption
from 10 CFR 50.71(e)(3)(iii)
for
Shearon Harris Nuclear Power Plant
Units 2 & 3

I. Proposed Exemption

10 CFR 50.71(e)(3)(iii) requires that applicants for a combined license (COL) under Title 10 of the Code of Federal Regulations (10 CFR) Part 52 shall, during the period from docketing of the 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 annual updates to the application's final safety analysis report (FSAR).

Duke Energy Progress (DEP) is requesting a three year exemption from 10 CFR 50.71(e)(3)(iii) for the Shearon Harris Nuclear Power Plant Units 2 and 3 (HAR) FSAR, Part 2 of the HAR combined license application (COLA), given that the NRC's review of the HAR COLA remains suspended. Specifically, DEP requests an exemption from the requirement to submit annual updates to the HAR FSAR during the years 2016, 2017, and 2018. DEP commits to submitting the next HAR FSAR update prior to any request to NRC to reactivate the HAR COLA review should DEP decide to proceed with the COL application in the future. Further, DEP will provide an update to the HAR FSAR, or take such other action as may be appropriate, no later than December 31, 2019. There has been extensive effort involved in the development and review of the HAR COLA by both the NRC staff and DEP. DEP would like to preserve the work that has been performed to date in support of the HAR COLA while decisions on future generation are in progress. The three year timeframe of this request is based on the current uncertainty of several factors involved in the decision to pursue new nuclear generation at the Shearon Harris site, including potential carbon dioxide regulation, fuel prices, and the possibility of pursuing second license renewal for DEP's existing nuclear stations. A three-year exemption minimizes the collective preparation, review and approval time for both the NRC staff and DEP, and is therefore considered more efficient than several one-year exemption requests.

In summary, the requested exemption is a schedule change from the requirements of 10 CFR 50.71(e)(3)(iii), which is requested in an effort to achieve efficiency and limit the unnecessary expenditure of resources, given that the NRC's review of the HAR COLA is currently suspended. The exemption would allow DEP to submit the next FSAR update for HAR at a later time, in an orderly and efficient manner without undue expenditure of resources, in concert with the NRC staff reinstituting its review of the HAR COLA. The FSAR annual update is required by regulation; therefore, deferral of the annual update requires an exemption.

II. Background

By letter dated February 18, 2008 (Reference 1), DEP submitted the HAR COLA, under 10 CFR Part 52, Subpart C, of the NRC's regulations. The NRC staff docketed the application on April 17, 2008 (Reference 2). By letter dated May 2, 2013, DEP requested that the NRC suspend the review of the HAR COLA and related activities (Reference 3). The NRC agreed to the requested suspension. The HAR COLA remains docketed.

By letter dated August 7, 2013 (Reference 5), DEP requested an exemption from the annual Final Safety Analysis Report (FSAR) updates required by 10 CFR 50.71(e)(3)(iii) for the COLA submitted for HAR. The NRC granted an exemption which allows submittal of the next HAR FSAR update prior to the resumption of the COLA review, and in any event, no later than December 31, 2014 (Reference 6). NRC granted additional exemptions on December 3, 2014 (Reference 8) and March 4, 2016 (Reference 10) such that submittal of the next HAR FSAR update is currently required no later than December 31, 2016.

III. Exemption Requirements

Pursuant to 10 CFR 50.12(a)(1) and (2), 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 and safety, and are consistent with the common defense and security; and,

(2) Special circumstances are present.

Pursuant to 10 CFR 50.12(a)(2), "special circumstances" exist if:

(ii) 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; or

(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.

IV. Basis for the Exemption

A. *Authorized by Law*

The requested exemption is authorized by law. As set forth above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of Part 50, such as 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 temporary relief from the requirement of 10 CFR 50.71(e)(3)(iii), given that the NRC's review of the HAR COLA has been suspended. The exemption would allow the applicant to submit the next HAR FSAR update prior to requesting reactivation of the NRC's HAR COLA review and no later than December 31, 2019.

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

Granting the requested exemption will not create undue risk to public health and safety. The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for timely, comprehensive updates of the FSAR associated with a COLA in order to support an effective and efficient review of the COLA by NRC staff and issuance of the staff's safety evaluation report. Because the NRC's review of the HAR COLA is currently suspended, any update to the FSAR that DEP submits during such suspension would not be reviewed by the NRC. The requested exemption is solely administrative in nature in that it pertains to the schedule for submitting revisions to the HAR FSAR for which the NRC's review has been suspended.

Because this exemption request relates only to a timing and administrative issue regarding a suspended COLA, and not to a license that has been or is about to be granted, there are no safety implications associated with granting this exemption request. No new health or safety issues will be created if the filing of the next FSAR update is postponed. Neither the probability of postulated accidents nor their consequences would be increased in any manner if the request were granted. There would be no undue risk to public health and safety.

C. Consistent with Common Defense and Security

Granting the requested exemption is consistent with the common defense and security. This exemption requesting a change in the timing for submitting the next FSAR update supporting a suspended COLA is unrelated to common defense and security issues. The common defense and security would not be impacted by granting this exemption.

D. Special Circumstances

Special circumstances supporting this exemption request are present under 10 CFR 50.12(2) (ii), (iii) and/or (v).

The purpose of 10 CFR 50.71(e)(3)(iii) is to provide for timely, comprehensive updates of the FSAR associated with a COLA in order to support an effective and efficient review of the COLA by NRC staff and issuance of the staff's safety evaluation report. The regulations at 10 CFR 50.71(e)(3)(iii) requiring annual FSAR updates do not address, and do not appear to have contemplated, a situation in which the applicant suspended its pursuit of the COL and the NRC staff has suspended review of the COLA.

Even if DEP were to submit the next updated HAR FSAR when it is currently due, the purpose of 10 CFR 50.71(e)(3)(iii) would go unfulfilled since the NRC has suspended its review of the HAR COLA, including the FSAR. The FSAR is an extensive document, and updating it requires significant effort. DEP believes that submitting an annual FSAR update in support of a COLA for which review has been suspended requires effort and resources in excess of those contemplated by the rule. As such, special circumstances are present under 10 CFR 50.12(a)(2)(iii), because complying with the schedule in the rule would result in undue hardship and unnecessary costs to DEP. Moreover, special circumstances are also present under 10 CFR 50.12(a)(2)(ii), because submitting the next FSAR update prior to reactivation of the HAR COLA review or no later than December 31, 2016 would be consistent with the underlying purpose of the rule, which is to support an effective and efficient review by NRC staff and issuance of the staff's safety evaluation report.

In addition, special circumstances are present under 10 CFR 50.12(a)(2)(v), because DEP's exemption request seeks only temporary relief from the requirement in 10 CFR 50.71(e)(3)(iii). DEP requests exemption from this requirement because the review of the HAR COLA is suspended. DEP has submitted five revisions to the HAR COLA FSAR since the initial application, the most recent by letter dated April 15, 2013 (Reference 4). As stated above, DEP commits to submitting the next HAR FSAR update prior to any request to NRC to reactivate the HAR COLA review should DEP decide to proceed with the COL application in the future. Further, DEP will provide an update to the HAR FSAR, or take such other action as may be appropriate, no later than December 31, 2019. Accordingly, DEP is acting in good faith to comply with the regulation.

V. Conclusion

Based on the considerations discussed above, the requested exemption:

- (1) is authorized by law,
- (2) will not present an undue risk to public health and safety,
- (3) is consistent with the common defense and security, and
- (4) special circumstances are present.

Therefore, DEP requests that the Commission exempt DEP from the requirement of submitting the 2016 update to the HAR COLA FSAR.

VI. References

1. Letter from James Scarola (PEC) to U.S. Nuclear Regulatory Commission (NRC), dated February 18, 2008, "Application for Combined License for Shearon Harris Nuclear Power Plant Units 2 and 3," Serial: NPD-NRC-2008-001
2. Letter from U.S. Nuclear Regulatory Commission (NRC) to James Scarola (PEC), dated April 17, 2008, "Acceptance Review for the Shearon Harris Nuclear Power Plant Units 2 and 3 Combined License Application"
3. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission (NRC), dated May 2, 2013, "Combined License Application (COLA) Review," Serial: NPD-NRC-2013-019
4. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission (NRC), dated April 15 2013, "Shearon Harris Nuclear Power Plant Units 2 and 3 Submittal of COL Application, Revision 5," Serial: NPD-NRC-2013-012
5. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission, dated August 7, 2013, "Request for Exemption from 10 CFR 50.71(e)(3)(iii)," Serial: NPD-NRC-2013-034
6. Letter from Brian Hughes (NRC) to Christopher M. Fallon (DEP), dated November 21, 2013, "Shearon Harris Nuclear Power Plant, Units 2 and 3 Combined License Application Exemption from the Requirements of 10 CFR 50.71(e)(3)(iii)"
7. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission, dated August 1, 2014, "Request for Exemption from 10 CFR 50.71(e)(3)(iii)," Serial: NPD-NRC-2014-031
8. Duke Energy Progress Combined License Application for Shearon Harris Nuclear Power Plants Units 2 and 3 - Exemption Issuance; Federal Register Vol. 79, No. 232, 71791, December 3, 2014

9. Letter from Christopher M. Fallon (DEP) to U.S. Nuclear Regulatory Commission, dated August 12, 2015, "Request for Exemption from 10 CFR 50.71(e)(3)(iii)," Serial: NPD-NRC-2015-036
10. Duke Energy Progress; Combined License Application for Shearon Harris Nuclear Power Plants Units 2 and 3 - Exemption Issuance; Federal Register Vol. 81, No. 43, 11606, March 4, 2016