

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-022 and 52-023; NRC-2013-0261]

**Duke Energy Progress; Combined License Applications for
Shearon Harris Nuclear Plant Units 2 and 3**

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 13, 2016, letter from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On October 13, 2016, DEP requested an exemption from certain regulatory requirements which, if granted, would allow them to revise their COL application for Shearon Harris Nuclear Plant (Harris) Units 2 and 3 in order to address enhancements to the Emergency Preparedness (EP) rules by December 31, 2019, rather than by December 31, 2016, as the regulations currently require. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption to the EP update requirements until December 31, 2019, but stipulated that the updates to the Final Safety Analysis Report must be submitted prior to requesting the NRC resume its review of the COL application, or by December 31, 2019, whichever comes first.

DATE: The exemption is effective on January 13, 2017.

ADDRESSES: Please refer to Docket ID **NRC-2013-0261** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0261**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; 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 obtain publicly-available documents online in the ADAMS Public Documents collection 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 (if it available in ADAMS) is provided the first time that a 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: Brian Hughes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-6582; e-mail: Brian.Hughes@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 2008, DEP submitted to the NRC a COL application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site (ADAMS Accession No. ML080580078). The NRC docketed the Harris Units 2 and 3 COL application (Docket Nos. 52-022 and 52-023) on April 23, 2008. On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed.

On July 29, 2013 (ADAMS Accession No. ML13212A361), DEP requested an exemption from the requirements in part 50, appendix E, Section I.5 of title 10 of the *Code of Federal Regulations* (10 CFR), as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2013, which the NRC granted through December 31, 2014. On August 1, 2014 (ADAMS Accession No. ML14216A432), DEP requested another exemption from the requirements of 10 CFR part 50, appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2014, which the NRC granted through December 31, 2015. On August 12, 2015 (ADAMS Accession No. ML15226A352), DEP requested another exemption from the requirements of 10 CFR part 50, appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2016. On October 13, 2016 (ADAMS Accession No. ML16288A816) DEP

requested another exemption from the requirements of 10 CFR part 50, appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit annual updates to the COL application during the years 2016, 2017, and 2018, addressing the enhancements to the EP rules by December 31, 2019.

II. Request/Action

Part 50, appendix E, Section 1.5, requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the *Federal Register* (76 FR 72560) on November 23, 2011. An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Since DEP will not hold a COL prior to December 31, 2013, it is therefore required to revise its application to be compliant with the new EP rules. Similar to an earlier exemption request it submitted, as described above, by letter dated October 13, 2016 (ADAMS Accession No. ML16288A815), DEP requested another exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5, to submit the required COL application revision to comply with the new EP rules. The requested exemption would allow DEP to revise its COL application, and comply with the new EP rules on or before December 31, 2019, rather than the initial December 31, 2013, date required by 10 CFR part 50, appendix E, Section I.5. The current requirement to comply with the new EP rule could not be changed, absent the exemption.

III. Discussion

Pursuant to 10 CFR 50.12(a), 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 part 50, appendix E, Section I.5, 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: 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)).

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR part 50, appendix E, Section I.5. The exemption would allow DEP to revise its COL application, and comply with the new EP rules on or before December 31, 2019, in lieu of the initial December 31, 2013, the date required by 10 CFR part 50, appendix E, Section I.5. 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 DEP the requested one-time exemption from the requirements of 10 CFR part 50, appendix E, Section I.5 will not result in a violation of the Atomic Energy Act of 1954, as amended, or NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of the enhancements to EP found in 10 CFR part 50, appendix E, is to amend certain EP requirements to enhance protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license is issued, the exemption does not increase the probability of postulated accidents. 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 DEP to submit the revised COL application prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2019. 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 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)(ii); or (2) The exemption would only provide temporary relief from the applicable regulation or the applicant has made good faith efforts to comply with the regulation (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR part 50, appendix E, Section I.5 is to ensure that applicants and new COL holders updated their COL applications or COLs to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to receiving a license, or, for licensees, prior to operating the plant. If the NRC were to grant this exemption, and DEP were then required to update its application to comply with the EP rule enhancements by December 31, 2019, or prior to any request to restart their review, the purpose of the rule would still be achieved because the applicant will be required to make required updates to the emergency plan to facilitate NRC review of the application at the

appropriate time. For this reason, the application of 10 CFR part 50, appendix E, Section I.5, for the suspended Harris 2 and 3 COL application is deemed unnecessary and, therefore, special circumstances are present.

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:

The following categories of actions are categorical exclusions 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 are no significant hazards considerations 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;

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 COL application by DEP and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

IV. 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 DEP a one-time exemption from the requirements of 10 CFR Part 50 Appendix E, Section I.5 pertaining to the Harris Units 2 and 3 COL application to allow submittal of the revised COL application that complies with the enhancements to the EP rules prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2019.

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 4th day of January 2017.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

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