



Luminant

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Ref. # 10 CFR 52.7
10 CFR 50.12

July 28, 2010

U. S. Nuclear Regulatory Commission
Document Control Desk
Washington, DC 20555
ATTN: David B. Matthews, Director
Division of New Reactor Licensing

SUBJECT: COMANCHE PEAK NUCLEAR POWER PLANT, UNITS 3 AND 4
DOCKET NUMBERS 52-034 AND 52-035
REQUEST FOR EXEMPTION FROM 10 CFR 50.71(e)(3)(iii)

Dear Sir:

In accordance with the provisions of 10 CFR 52.7 and 50.12, Luminant Generation Company LLC (Luminant), hereby requests a one-time exemption from the scheduler requirements of 10 CFR 50.71(e)(3)(iii) as applicable to Comanche Peak Nuclear Power Plant (CPNPP) Units 3 and 4. Specifically, Luminant requests a one-time exemption from the reporting requirement in 10 CFR 50.71(e)(3)(iii), which requires an applicant for a combined license under Subpart C of Part 10 CFR 52 to submit an update to its Final Safety Analysis Report (FSAR) annually. The most recent FSAR update was submitted as Revision 1 on November 20, 2009. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update (FSAR Revision 2) would be due in November 2010. Luminant requests this exemption to extend the filing date for FSAR Revision 2 to on or before June 30, 2011. This update would include the latest information developed through the first quarter of 2011. The next FSAR update would be submitted in June 2012.

The basis for this request is the NRC's announced delay in the Phase 2 and Phase 3 milestones for the US-APWR Design Control Document (DCD) (see NRC letter dated April 28, 2010 - ML100830739) and the corresponding Mitsubishi Heavy Industries Ltd. plan to issue Revision 3 of the DCD in March 2011. A one-time exemption would allow additional time for Luminant to carefully review Revision 3 of the DCD and fully incorporate its effects into the CPNPP Units 3 and 4 FSAR. While the proposed FSAR update would be submitted by June 30, 2011, Luminant will continue to work with NRC to resolve issues by responding to requests for additional information and submitting information letters, as appropriate. As a result, we believe that the exemption should not negatively impact the NRC review schedule.

Attachment 1 provides the basis for this exemption request.

Should you have any questions regarding this request, please contact Don Woodlan (254-897-6887, Donald.Woodlan@luminant.com) or me.

There are no commitments in this letter.

DOYO
MRO

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

Executed on July 28, 2010.

Sincerely,

Luminant Generation Company LLC

A handwritten signature in black ink, appearing to read "Rafael Flores" with a stylized flourish at the end.

Rafael Flores

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

Electronic distribution w/attachment:

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Luminant Records Management (.pdf files only)

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

Luminant Generation Company LLC (Luminant) requests a one-time exemption from the scheduler reporting requirements of 10 CFR 50.71(e)(3)(iii), which requires an applicant for a combined license (COL) under Subpart C of Part 52 to submit to the Nuclear Regulatory Commission (NRC) an update to its Final Safety Analysis Report (FSAR) annually. For the reasons provided below, Luminant requests an exemption to allow the 2010 annual update to the COL application (COLA) FSAR for Comanche Peak Nuclear Power Plant (CPNPP) Units 3 and 4 to be submitted on or before June 30, 2011. In accordance with 10 CFR 50.71(e)(3)(iii), the subsequent FSAR update would be submitted within one year after that; i.e., by June 2012.

Background

Mitsubishi Heavy Industries Ltd. (MHI) will submit Revision 3 of the US-APWR Design Control Document (DCD) on or before March 31, 2011. The timing of the DCD revision is planned to correspond with the NRC's milestone completion date for the DCD Phase 2 safety review. This revision will incorporate the majority of information provided during the Phase 2 review including information provided in response to the Phase 2 Requests for Additional Information (RAIs). The requested exemption would allow Luminant to carefully review Revision 3 of the DCD and fully incorporate its effects into the CPNPP Units 3 and 4 FSAR.

Basis for Exemption

Pursuant to 10 CFR 52.7 and 50.12, the NRC may grant an exemption from requirements contained in 10 CFR Parts 52 and 50 provided that the following conditions are satisfied:

1. The requested exemption is authorized by law;
2. The requested exemption will not present an undue risk to the public health and safety;
3. The requested exemption is consistent with the common defense and security; and
4. Special circumstances are present.

The Commission has the authority to grant exemptions from its rules, and such exemptions are authorized by law if the regulatory process of 10 CFR 52.7 and 50.12 is being followed. Because the exemption requested by Luminant is merely a one-time scheduler exemption to a reporting requirement for an application that has not yet been granted, it presents no risk to the public health and safety, and is in no way inconsistent with the common defense and security. The first three criteria of 10 CFR 50.12 are therefore satisfied.

In addition, 10 CR 50.12(a)(2) states that the NRC will not grant an exemption unless special circumstances are present. The following special circumstances as listed in 10 CFR 50.12(a)(2) apply to the requested exemption. An evaluation follows each special circumstance listed.

“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))

The requirement for applicants for a combined license to submit an updated FSAR annually provides the NRC reviewers the latest information developed with respect to the application on a periodic basis. Luminant maintains a "living" COLA in which Luminant continuously incorporates changes resulting from its responses to RAIs, commitments, or other identified changes. Marked-up pages included with RAI responses have facilitated Staff review and kept the NRC apprised of changes to the FSAR. In

addition, Luminant periodically submits Update Tracking Reports, which provide marked-up pages of the FSAR to reflect changes between the submittal of FSAR amendments. The optimum time to prepare a COLA FSAR update is shortly after a DCD update has been submitted. To prepare and submit a COLA FSAR update midway between DCD revisions would require that Luminant identify all committed changes to the DCD made since the last DCD revision and update the FSAR to reflect changes that have not yet been incorporated into the DCD. In addition, the normally scheduled COLA FSAR update may actually make the NRC review more difficult. The NRC reviewers would need to go back to the last DCD revision, identify all the committed changes made since then, and then integrate the revision with the changes to understand how the COLA FSAR update links to the latest DCD descriptions. If the COLA FSAR update is submitted shortly after a DCD revision as requested in this exemption, this process is greatly simplified. In other words, submitting a COLA FSAR update on the schedule required by the rule may not assist the NRC reviewers as intended by the rule whereas submitting the COLA FSAR update shortly after the submittal of the DCD revision will provide a more useful product for the NRC reviewers.

"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)).

The US-APWR DCD and the CPNPP COLA FSAR are undergoing NRC review in parallel. During Phases 1 and 2 of these reviews, both the applicants for Design Certification (DC) and the COL are committing to numerous changes (clarifications, modifications, etc.) to their respective applications (specifically the DCD and the COLA FSAR). Because the COLA FSAR is directly linked to the DCD, many DCD changes require an associated change in the COLA FSAR. The committed changes for the DCD and the COLA FSAR are consolidated into a revision and periodically submitted to the NRC. The optimum time to prepare a COLA FSAR update is shortly after a DCD revision has been submitted. To prepare and submit a COLA FSAR update midway between DCD revisions would require significantly more time and effort because Luminant would need to identify all committed changes to the DCD since the last DCD revision in order to create a COLA FSAR update that reflects the committed changes to the DCD made since the last DCD revision. In addition, the COLA FSAR update may actually make the NRC review more difficult. The NRC reviewers would need to go back to the last DCD revision, identify all the committed changes made since then, and then integrate the revision with the changes to understand how the COLA FSAR update links to the latest DCD descriptions. When the COLA FSAR update is submitted shortly after a DCD revision this process is greatly simplified.

Due to the announced change in DCD review schedule, MHI plans to revise the DCD no later than March 31, 2011, as noted in MHI letter UAP-HF-10214 dated July 22, 2010. This proposed revision is planned to include the majority of the results of the Phase 2 review effort. Luminant believes that the inclusion of the DCD Phase 2 review results will result in a more complete revision of the COLA FSAR and will assist the NRC in its review of the COLA FSAR.

The Luminant COLA Phase 2 Safety Review milestone completion date is June 24, 2011. As a result, a COLA FSAR update in June 2011 would incorporate the majority of information provided during the Phase 2 review including information provided in response to the Phase 2 RAIs. Luminant believes that submitting an FSAR update by the currently required date requires resources and effort not anticipated by the rule and provides a document not particularly useful to the NRC reviewers. As such, complying with the schedule in the rule would impose an undue hardship. On the other hand, rescheduling the revision to on or before June 30, 2011 would be consistent with the effort anticipated by the rule and would provide a document more useful to the NRC reviewers.

"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 exemption would be applied only to the schedule for the updated FSAR revision that is due in November 2010 and provides only temporary relief. Luminant maintains a "living" COLA in which Luminant continuously incorporates any changes resulting from its responses to RAIs, commitments, or other identified changes. Marked-up pages, included with RAI responses, have facilitated Staff review and kept the NRC apprised of changes to the FSAR. However, this process does not address all changes resulting from MHI's changes to the DCD, which will require additional resources and time for Luminant to include in the COLA FSAR update. Luminant remains committed to taking the actions needed for an efficient and effective review of the COLA. Luminant has submitted this request for exemption well before the submission due date per the regulations to allow time to prepare and submit an FSAR update per the scheduler requirements of 10 CFR 50.71(e) should this exemption request not be granted.

Environmental Assessment

The proposed action would exempt Luminant from the requirement of 10 CFR 50.71(e)(3)(iii), which specifies that an applicant for a combined license must submit an update to its final safety analysis report annually. The proposed exemption would grant a one-time exemption to allow Luminant to submit its 2010 update to the FSAR for Comanche Peak Nuclear Power Plant Units 3 and 4 by June 30, 2011. Because this submission would include FSAR changes made through the first quarter of 2011, an additional FSAR update later in the same year would not serve any useful purpose. Rather, the next FSAR update would be submitted in June 2012.

This proposed action is needed to allow Luminant to review and fully incorporate into the FSAR the effects of Revision 3 to the US-APWR DCD. MHI plans to submit DCD Revision 3 on or before March 31, 2011. The proposed action will reduce the burden on the applicant associated with having to incorporate the effects of a DCD revision submitted just after the end of the normal updating period.

The proposed action will not result in any impact on the environment. The exemption would only grant temporary relief from a requirement to update an application not yet granted. Consequently, the exemption would not authorize any activity that could have an impact on the environment.

The only alternative to the proposed action would be not issuing the exemption (i.e., the "no action" alternative). This alternative would not accomplish the purpose of the proposed action (to reduce the burden on the applicant and allow more time to address the effects of the recent DCD revision). In addition, the "no action" alternative would not have a different environmental impact. Both the proposed action and the "no action" alternative would have no impact on the environment.