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**Dominion®**

November 17, 2009

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

Serial No. NA3-09-039  
Docket No. 52-017  
COL/BCB

**DOMINION VIRGINIA POWER**  
**NORTH ANNA UNIT 3 COMBINED LICENSE APPLICATION**  
**REQUEST FOR EXEMPTION FROM 10 CFR 50.71(e)(3)(iii)**

In accordance with the provisions of 10 CFR 50.12, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion), acting on its own behalf and as agent for the Old Dominion Electric Cooperative (ODEC), hereby requests an exemption from the requirements of 10 CFR 50.71(e)(3)(iii) as applicable to North Anna Power Station, Unit No. 3 (NAPS Unit 3). Specifically, Dominion requests a one-time exemption from 10 CFR 50.71(e)(3)(iii), which requires an applicant for a combined license to submit an update to its Final Safety Analysis Report (FSAR) annually. Dominion requests this exemption to permit the scheduled 2009 update of the NAPS Unit 3 FSAR to be extended. The new filing date for the NAPS Unit 3 FSAR update would be on or before June 30, 2010. Because this submission would include FSAR changes made through the first half of 2010, an additional FSAR update later in the same year would not be necessary. Rather, the next Unit 3 FSAR update would be submitted in 2011.

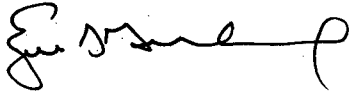
GE Hitachi Nuclear Energy (GEH) submitted Revision 6 of the ESBWR Design Control Document (DCD) on August 31, 2009, which was docketed and released on ADAMS on November 5, 2009. The requested exemption would allow additional time for Dominion to carefully review Revision 6 of the DCD and fully incorporate its effects into the NAPS Unit 3 FSAR. While the proposed FSAR update would be submitted by June 30, 2010, Dominion will continue to work with NRC to resolve open items by responding to requests for additional information and submitting information letters, as appropriate, to minimize the impact on the NRC's COLA review schedule.

Enclosure 1 provides the basis for this exemption request.

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Please contact Regina Borsh at (804) 273-2247 (regina.borsh@dom.com) if you have questions.

Very truly yours,



Eugene S. Grecheck

Enclosures:

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

Commitments made by this letter:

1. The new filing date for the NAPS Unit 3 FSAR update would be on or before June 30, 2010.
2. The next Unit 3 FSAR update would be submitted in 2011.

cc: U. S. Nuclear Regulatory Commission, Region II  
T. A. Kevern, NRC  
J. Jessie, NRC  
J. T. Reece, NRC

**ENCLOSURE 1**

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

### Proposed Exemption

Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion), on its own behalf and as agent for Old Dominion Electric Cooperative (ODEC), requests a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii), which requires an applicant for a combined license to submit to the Nuclear Regulatory Commission (NRC) an update to its Final Safety Analysis Report (FSAR) annually. For the reasons provided below, Dominion requests an exemption to allow the 2009 annual update to the FSAR for the North Anna Power Station Unit 3 (NAPS Unit 3) to be submitted on or before June 30, 2010.

### Background

GE Hitachi Nuclear Energy (GEH) submitted Revision 6 of the ESBWR Design Control Document (DCD) on August 31, 2009, which was docketed and released on ADAMS on November 5, 2009. The requested exemption would allow additional time for Dominion to carefully review Revision 6 of the DCD and fully incorporate its effects into the NAPS Unit 3 FSAR.

### Basis for Exemption

Pursuant to 10 CFR 50.12, the NRC may grant an exemption from requirements contained in 10 CFR 50 provided that the following three 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; and
3. The requested exemption is consistent with the common defense and security.

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 50.12 is being followed. Further, since the exemption requested by Dominion is merely a temporary exemption applicable to an application that has not yet been granted, it presents no risk to the public health and safety, nor any inconsistency with the common defense and security. Therefore, the three criteria are satisfied.

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

**“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)(iii)).**

The NRC’s rule at 10 CFR 50.71(e)(3)(iii), requiring an applicant for a combined license to update its FSAR annually, did not contemplate the possibility that a design control document referenced in the FSAR would be revised shortly before the annual FSAR update was due. Because 10 CFR 50.71(e) n.1 indicates that the effects of changes that must be included in an FSAR update include appropriate revisions of descriptions in the FSAR such that the FSAR as updated is complete and accurate, it is Dominion’s understanding that the FSAR update for NAPS Unit 3 must now include the effects of DCD Revision 6. To include these effects will require identifying and reviewing all changes in DCD Revision 6, which is an extensive document, and evaluating new descriptions of Tier 2 information to determine whether they should be adopted, supplemented, or a departure taken. It also requires identifying, reviewing and addressing any changes in COL action items. Accomplishing this review and the corresponding revisions to the NAPS Unit 3 FSAR by the end of the year would present a considerable and undue burden.<sup>1</sup>

Some of the changes in DCD Revision 6 will require extensive engineering work to be performed before the FSAR can be revised. For example, DCD Revision 6 changed the shear wave velocity (SWV) soil site parameter from equivalent uniform SWV to minimum SWV. Because of this change, Dominion must perform additional seismic analyses, including a site-specific soil-structure interaction analysis. The results of these analyses will be incorporated into the FSAR. These activities involve several vendors and are expected to take up to six months to complete.

Due to the number and nature of the changes in DCD Revision 6, and the magnitude of resources required to effect those changes, Dominion considered it prudent not to begin these activities until the NRC accepted the DCD Revision 6 submittal, as evidenced by its release on ADAMS on November 5, 2009. To proceed prior to the NRC’s acceptance could have caused Dominion to conduct multiple reviews or address DCD changes that were not acceptable to the Staff.

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<sup>1</sup> Dominion has discussed with the NRC Staff the possibility of submitting an FSAR update by the end of the year that reflects prior responses to RAIs and other previously identified COLA changes and commitments, but does not include the effects of DCD Rev. 6. Dominion understands that the Staff would prefer an FSAR update that includes all changes.

**“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 one time only for the updated FSAR revision that is currently being developed and provides only temporary relief. Dominion has made a good faith effort to comply with 10 CFR 50.71(e) by maintaining a “living” COLA in which Dominion 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 changes resulting from GEH’s submittal of the revised DCD, which will require additional resources and time for Dominion to review.

#### Environmental Assessment

The proposed action would exempt Dominion 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 Dominion to submit its 2009 update to the FSAR for the North Anna Power Station, Unit 3, by June 30, 2010. Because this submission would include FSAR changes made through the first half of 2010, an additional FSAR update later in the same year would not be necessary. Rather, the next Unit 3 FSAR update would be submitted in 2011.

This proposed action is needed to allow Dominion to review and fully incorporate into the FSAR the effects of Revision 6 to the ESBWR Design Control Document (DCD). GEH submitted Revision 6 to the DCD on August 31, 2009, which was docketed and released on ADAMS on November 5, 2009. The proposed action will reduce the burden on the applicant associated with having to incorporate the effects of a DCD revision submitted toward the end of the normal updating period.

The proposed action will not result in any impact on the environment. The exemption would only grant a temporary exemption 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 for it to address the effects of the recent DCD revision). In addition, the no action alternative would not have any different environmental impact. Both the proposed action and the no action alternative would have no impact on the environment.