

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302; NRC-2014-0266]

Duke Energy Florida, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 17, 2013, request from Duke Energy Florida, Inc. (DEF or the licensee), from certain regulatory requirements. The exemption would remove the requirement that a licensed senior operator approve the emergency suspension of security measures for Crystal River Unit 3 Nuclear Generating Plant (CR3) during certain emergency conditions or during severe weather.

DATES: [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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I. Background.

Duke Energy Florida, Inc., is the holder of Facility License No. DPR-72. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The facility consists of a permanently shutdown and defueled pressurized water reactor located in Citrus County, Florida.

By letter dated February 20, 2013 (ADAMS Accession No. ML13056A005), DEF submitted to the NRC the certification in accordance with §§ 50.82(a)(1)(i) and 50.82(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR) indicating it permanently ceased power operations and that the CR3 reactor vessel was permanently defueled.

II. Request/Action.

On July 17, 2013 (ADAMS Accession No. ML13204A397), the licensee requested an exemption from §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii), pursuant to § 73.5, "Specific exemptions," which requires, in part, that a licensed senior operator approves the suspension of security measures during certain emergency conditions or during severe weather. Portions of the letter dated July 17, 2013, contain sensitive unclassified nonsafeguards information (security-related) and, accordingly, have been withheld from public disclosure. The regulations in §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii), respectively, specify that the suspension of security measures must be approved by, as a minimum, a licensed senior operator, or a licensed senior operator with input from the security supervisor or manager.

The exemption request relates solely to the licensing requirements specified in the regulations for the staff directing suspension of security measures in accordance with §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii). Section 73.55(p)(1)(i) requires that "suspension of security measures must be approved as a minimum by a licensed senior operator before taking this action;" § 73.55(p)(1)(ii) requires that "suspension of security measures must be approved, as a minimum, by a licensed senior operator, with input from the security supervisor or manager, before taking this action."

This exemption would remove the requirement for a licensed senior operator to provide the approval. Instead, the licensee intends that suspension of security measures to be authorized by a certified fuel handler (CFH), as defined by § 50.2, "Definitions."

III. Discussion.

Historically, the Commission's security rules have long recognized the potential need to suspend security or safeguards measures. In 1986, in its final rule, "Miscellaneous

Amendments Concerning the Physical Protection of Nuclear Power Plants” (51 FR 27817; August 4, 1986), the Commission promulgated § 73.55(a), stating in part:

In accordance with § 50.54 (x) and (y) of Part 50, the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specification that can provide adequate or equivalent protection is immediately apparent. This suspension must be approved as a minimum by a licensed senior operator prior to taking the action.

Later, in Proposed Rule, “Decommissioning of Nuclear Power Plants,” July 20, 1995; 60 FR 37379, the Commission made a number of proposed rule changes to address decommissioning. Among the changes were new regulations that affected §§ 50.54 (x) and (y) by allowing a non-licensed operator called a “Certified Fuel Handler,” in addition to a licensed senior operator, to authorize protective steps. Specifically, when proposing the rule addressing the role of the CFH during emergencies, the Commission stated:

The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of “Certified Fuel Handler” specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the Commission added the following definition to § 50.2: “*Certified fuel handler* means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.” However, the Decommissioning Rule did not propose or make parallel changes to § 73.55(a), and did not discuss the role of a non-licensed certified fuel handler.

In the final rule, “Power Reactor Security Requirements” (74 FR 13926; March 27, 2009), the NRC relocated and split the security suspension requirements from § 73.55(a) to §§ 73.55(p)(1)(i) and (p)(1)(ii). The CFHs were not discussed in the rulemaking, so the requirements of § 73.55(p) to use a licensed senior operator remains, even for a site that otherwise no longer has an operating reactor.

However, pursuant to § 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. Authorized by Law.

The exemption from §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii) would remove the requirement that a licensed senior operator approve the suspension of security measures, under certain emergency conditions or severe weather. The licensee intends to align these regulations with § 50.54(y) by using the authority of a non-licensed CFH in place of a licensed senior operator to approve the suspension of security measures during certain emergency conditions or during severe weather.

Per § 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73 as authorized by law. The NRC staff has determined that granting of the licensee’s proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security.

Removing the requirement to have a licensed senior operator approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and security for the reasons described below.

First, § 73.55(p)(2) continues to require that “[s]uspended security measures must be reinstated as soon as conditions permit.”

Second, the suspension for non-weather emergency conditions under § 73.55(p)(1)(i) will continue to be invoked only “when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.” Thus, the underlying purpose of § 73.55(p)(1)(i) will still be to protect public health and safety even after the exemption is granted.

Third, the suspension for severe weather under § 73.55(p)(1)(ii) will continue to be used only when “the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.” The requirement to receive input from the security supervisor or manager will remain. The underlying purpose of § 73.55(p)(1)(ii) will continue to be to protect the health and safety of the security force.

Additionally, by letter dated June 26, 2014 (ADAMS Accession No. ML14155A181), the NRC approved DEF’s CFH training and retraining program for the CR3 facility. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH is sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns such that there will be no adverse effects or undue risk to the public health and safety as a result of the suspension of security measures during the emergencies or severe weather.

In addition, the exemption does not reduce the overall effectiveness of the physical security plan and has no adverse impacts to DEF’s ability to physically secure the site or protect special nuclear material at CR3, and thus would not have an effect on the common defense and

security. The NRC staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore, removing the requirement for a licensed senior operator to approve the suspension of security measures in an emergency or during severe weather so that suspension of security measures can be authorized by CFH does not adversely affect public health and safety issues or the assurance of the common defense and security.

C. Is Otherwise in the Public Interest.

The DEF's proposed exemption would remove the requirement that a licensed senior operator approve suspension of security measures in an emergency when "immediately needed to protect the public health and safety" or during severe weather when "immediately needed to protect the personal health and safety of security force personnel." Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve temporary suspension of security regulations during an emergency or severe weather comparable to the authority given to the CFH by the Commission when it promulgated § 50.54(y). Instead, the regulations would continue to require that a licensed senior operator be available to make decisions for a permanently shutdown plant, even though CR3 no longer requires a licensed senior operator. It is unclear how the licensee would implement emergency or severe weather suspensions of security measures without a licensed senior operator. This exemption is in the public interest for two reasons. First, without the exemption, there is uncertainty on how the licensee will invoke temporary suspension of security matters that may be needed to protect public health and safety or the safety of the security forces during emergencies and severe weather. Additionally, the consistent and efficient regulation of nuclear power plants serves the public interest by assuring consistency between the security regulations in 10 CFR part 73 and the operating reactor regulations in 10 CFR part 50, and the requirements concerning licensed operators in 10 CFR part 55. Accordingly, the NRC staff

concludes that the exemption requirements to obtain approval from a licensed senior operator, who is not otherwise required for a permanently shutdown and defueled reactor, before taking steps to protect the public health and safety, or to protect the safety of the security force, is in the public interest.

D. Environmental Considerations.

The NRC approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under § 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because removing the requirement to have a licensed senior operator approve the security suspension at a defueled shutdown power plant does 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. The exempted security regulation is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions may be viewed as involving either safeguards, materials control, or managerial matters.

Therefore, pursuant to §§ 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions.

Accordingly, the Commission has determined that, pursuant to § 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants DEF exemption from the requirements of §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii), which otherwise would require suspension of security measures during emergencies and severe weather, respectively, to be approved by a licensed senior operator. The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of December 2014.

For the Nuclear Regulatory Commission.

/RA/

Michele G. Evans, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.