

ENCLOSURE 3

SAFETY EVALUATION

DUKE ENERGY FLORIDA, INC.

CRYSTAL RIVER UNIT 3 NUCLEAR GENERATING PLANT

DOCKET NO. 50-302

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
RELATED TO THE DIRECT TRANSFER OF 1.6994 PERCENT OWNERSHIP INTEREST  
IN CRYSTAL RIVER UNIT 3 NUCLEAR GENERATING PLANT  
FROM SEMINOLE ELECTRIC COOPERATIVE, INC.  
TO DUKE ENERGY FLORIDA, INC.  
DOCKET NO. 50-302  
FACILITY OPERATING LICENSE NO. DPR-72

1.0 INTRODUCTION

By application dated July 28, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15216A123), as supplemented by letter dated September 22, 2015 (ADAMS Accession No. ML15265A590), under Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80 and 10 CFR 50.90, Duke Energy Florida, Inc. (DEF), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfer of ownership interest to DEF of a 1.6994 percent ownership share in Crystal River Unit 3 (CR-3) held by Seminole Electric Cooperative, Inc. (Seminole Electric Cooperative). DEF and Seminole Electric Cooperative also requested a conforming amendment to the CR-3 operating license reflecting NRC approval of the transfers. The supplement requested the administrative name change of Duke Energy Florida, Inc. to Duke Energy Florida, LLC. The supplement is not addressed in this safety evaluation and will be the subject of a separate licensing action.

2.0 BACKGROUND

According to the application, DEF is a Florida public utility that provides electric service to approximately 1.7 million residential, commercial, and industrial consumers throughout the State of Florida. DEF currently holds a 98.3006 percent ownership interest in the permanently shutdown CR-3. The one other co-owner, Seminole Electric Cooperative, holds the remaining 1.6994 percent ownership interest.

Reflecting the joint ownership, DEF and Seminole Electric Cooperative are currently the license holders of DPR-72. The facility license authorizes them to possess, use, and operate CR-3, and in this context, to maintain and decommission the facility. CR-3 has been shutdown since September 26, 2009, and the final removal of fuel from its reactor vessel was completed on May 28, 2011. On February 5, 2013, DEF announced that CR-3 would be retired, and notified the NRC on February 20, 2013, of the permanent cessation of power operations and that CR-3 had removed all fuel from the reactor. Pursuant to 10 CFR 50.82(a)(2), the 10 CFR Part 50

license for CR-3 no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. CR-3 is authorized to possess and store irradiated nuclear fuel.

In the application, DEF stated they have reached an agreement with Seminole Electric Cooperative that provides for transfer of the 1.6994 percent interest in CR-3 to DEF in exchange for DEF assuming responsibility for future liabilities, including decommissioning. Pursuant to the transfer agreement, the decommissioning fund for this co-owner will be transferred to DEF, and upon completion of this transaction, DEF will hold a 100 percent interest in CR-3. Notice of the application was published in the *Federal Register* on September 29, 2015 (80 Fed. Reg. 58513), and January 4, 2016 (81 Fed. Reg. 98).

### 3.0 REGULATORY EVALUATION

The applicant's request for approval of the direct transfer of ownership interest of the license for CR-3 as discussed in this safety evaluation is made under 10 CFR 50.80. The Commission's regulation at 10 CFR 50.80(a) states the following:

No license for a production or utilization facility ... or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations at 10 CFR 50.80(b) and (c) apply. 10 CFR 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33, "Contents of Applications; General Information," and 10 CFR 50.34, "Contents of Applications; Technical Information," "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license." The regulation at 10 CFR 50.80(c) states the following:

[t]he Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Also, 10 CFR 50.33(k)(1) requires that DEF, provide information described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," indicating that there is reasonable assurance that funds will be available to decommission the facility.

The NRC staff apply guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor License Financial Qualifications and Decommissioning Funding Assurance," issued March 1999 to evaluate whether the financial qualifications of the licensees would be affected by the proposed transfers.

In addressing Foreign Ownership, Control, or Domination issues, sections 103d and 104d of the AEA provide, in relevant part, that no license may be issued to the following:

Any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issue of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC's regulation at 10 CFR 50.38, "Ineligibility of Certain Applicants," is the regulatory provision that implements this statute. The NRC staff evaluate license transfer applications in a manner that is consistent with the guidance provided in the Standard Review Plan (SRP), "Foreign Ownership, Control, or Domination of applicants for Reactor Licenses," dated June 1999 (hereafter referred to as the "SRP on FOCD") to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (64 FR 52357-52359).

The NRC staff also review information that pertains to Price-Anderson indemnity agreement requirements, the nuclear property damage insurance requirements under 10 CFR § 50.54(w), and nuclear energy liability insurance required under Section 170 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

The proposed transaction described in the application constitutes a direct transfer of the ownership interest of Seminole Electric Cooperative in CR-3 to DEF and requires prior NRC approval. For direct transfers of control of a license, the NRC must find that the transaction will not affect the qualifications of the holder of the license. DEF is licensed as the sole operator and has a 98.3006 percent ownership interest in CR-3. The proposed direct transfer will identify DEF as the sole proprietor of CR-3.

#### 4.0 FINANCIAL QUALIFICATIONS

The regulation at 10 CFR 50.33(f) provides that each application shall state the following:

Except for an electric utility applicant for a license to operate a utilization facility of the type describe in § 50.21(b) or § 50.22, [an application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, that an electric utility is the following:

Any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

Following the transaction, DEF will continue to be an "electric utility" within the meaning of 10 CFR 50.2, subject to regulation by the Florida Public Service Commission and the Federal Energy Regulatory Commission. As stated by the applicant, there will be no change in DEF's source of funds or ability to obtain additional rate-recovery to support 100 percent of the

decommissioning of CR-3 or irradiated fuel management in the permanently shut down facility, if needed. As such, pursuant to 10 CFR 50.33(f), a review of financial qualifications is not warranted in this evaluation.

## 5.0 DECOMMISSIONING FUNDING

The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility shall state information indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

The regulation at 10 CFR 50.75(b) requires the following:

Each power reactor applicant for or holder of an operating license ... for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

On March 31, 2015, and in accordance with 10 CFR 50.75(f)(1), DEF reported information to the NRC on the status of decommissioning funding for CR-3 as of December 31, 2014, in its decommissioning funding status report.<sup>1</sup> The total remaining amount of decommissioning funds estimated to be required for NRC License Termination (assuming the SAFSTOR alternative method as estimated in that report) was \$873.398 million. According to the above referenced DFS report for CR-3, Seminole Electric Cooperative's remaining financial assurance obligation, as of December 31, 2014, was \$14.843 million, which represents its 1.6994 percent pro rata share of the estimated license termination costs. The remaining obligation of \$858.555 million remains DEF's obligation. As of December 31, 2014, the total value of Seminole Electric Cooperative's funds held in an external decommissioning trust was \$13.995 million, while the value of DEF's funds held in an external trust was \$862.982 million.<sup>2</sup> Therefore, the total amount of funds accumulated for the radiological decommissioning of CR-3 as of December 31, 2014, was approximately \$876.976 million.

The NRC staff verified the calculations that the applicant provided in the aforementioned DFS report for CR-3 as of December 31, 2014. Based on its review of the DFS report, the NRC staff determined that adequate decommissioning funding assurance was provided for CR-3 in accordance with NRC regulations.

According to the application, at closing of the acquisition, DEF will assume responsibility for Seminole Electric Cooperative's current financial obligation per its proportionate share of the decommissioning funding assurance obligations for CR-3. Accordingly, the decommissioning funds for Seminole Electric Cooperative will be transferred to DEF. DEF will then deposit these funds in its existing decommissioning trust for CR-3. The full fund balance that will be transferred to DEF upon closing will differ from the amount reported in the March 31, 2014, financial status report. The differences will reflect earnings since December 31, 2014, and

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<sup>1</sup> ADAMS Accession No. ML15092A113.

<sup>2</sup> Decommissioning trust funds held by DEF include funds from minority co-owners whose ownership interests were approved for transfer to DEF by the NRC in 2015 per letter dated May 29, 2015, ADAMS Accession No. ML15121A570.

withdrawals since that date for decommissioning activities completed and payments of ordinary administrative expenses (including taxes and other incidental expenses), as permitted by 10 CFR 50.75(h)(2).

In summary, the transfer of Seminole Electric Cooperative's interests in CR-3 includes the transfer of their existing decommissioning funds, and should not affect the assurance of funding for decommissioning. DEF will continue to provide financial assurance for the decommissioning of CR-3 in accordance with 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning" and 10 CFR 50.82, "Termination of license."

Based on the discussion above, the NRC staff concludes that both owners of CR-3 have complied with the requirements of 10 CFR 50.75 to provide decommissioning funding assurance for CR-3 and that following the proposed direct transfer, DEF's ability to provide decommissioning funding assurance for CR-3 in the future will not be affected.

## 6.0 ANTITRUST REVIEW

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). The application here postdates the issuance of the operating license for the unit under consideration in this Safety Evaluation and, therefore, no antitrust review is required or authorized. The subject license does not contain any antitrust conditions. Therefore, there are no antitrust issues to be considered in connection with the conforming license amendments.

## 7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the AEA provide, in relevant part, that no license may be issued to the following:

Any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issue of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC's regulation at 10 CFR 50.38, "Ineligibility of Certain Applicants," is the regulatory provision that implements the statute. The NRC evaluated the application in a manner that is consistent with the guidance provided in the SRP on FOCD to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (64 FR 52357-52359).

The NRC's Position outlined in the SRP on FOCD states that "the foreign control prohibition should be given an orientation toward safeguarding the national defense and security." Further, the SRP on FOCD outlines how the effects of foreign ownership may be mitigated through implementation of a "negation action plan" to ensure that any foreign interest is effectively denied control or domination over the licensee.

As previously stated, DEF currently holds a 98.3006 percent ownership interest in the permanently shutdown CR-3. DEF is a Florida corporation and a wholly owned subsidiary of Duke Energy Corporation, (a Delaware corporation). The applicant provides the names, titles and addresses of the Principal Senior Officers of DEF and Duke Energy and those of the Directors of Duke Energy, all of whom are citizens of the United States. No changes to the Directors of Duke Energy Corporation, DEF, or CR-3 are proposed as a result of the transfer transaction. Based on its review, the NRC staff does not know or have reason to believe that the transfer will result in CR-3 being owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

#### 8.0 TECHNICAL QUALIFICATIONS

DEF will continue to maintain and decommission CR-3 as the licensed operator after the proposed removal of the minority co-owner from the license, just as it now does prior to the removal. According to the application, the transfer of the minority co-owner interest in CR-3 to DEF involves no change to either the management organization or technical personnel currently responsible for the maintenance and decommissioning of CR-3. Additionally, the transfer will have no impact on the ability of DEF personnel to continue to safely maintain and decommission CR-3. Since the application for the transfer of the license does not propose a new operator, transfer of operating authority, or change of personnel, a technical qualifications review is not applicable in connection with this application.

#### 9.0 NUCLEAR INSURANCE AND INDEMNITY

As required by 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," the current indemnity agreement must be modified to reflect DEF's amended ownership status to 100 percent of CR-3, as a result of the direct transfer of Seminole Electric Cooperative's 1.6994 percent ownership interest in CR-3 to DEF.

Consistent with NRC practice, the NRC staff will require DEF to provide evidence that it has obtained the appropriate amount of insurance pursuant to 140.11(a)(4) and 50.54(w), and which is effective concurrent with the date of the NRC's license amendment and amended indemnity agreement. Because the issuance of the amended license is directly tied to completion of the proposed direct license transfer, the Order approving the transfer will be conditioned as follows:

Concurrent with the date of the NRC's license amendment, DEF shall provide satisfactory documentary evidence, that demonstrates that the named licensee reflected in the current amendment has obtained the appropriate amount of insurance required by the exemptions to 10 CFR Part 140.11(a)(4) and 10 CFR 50.54(w), to the Director of the Office of Nuclear Reactor Regulation.

## 10.0 CONFORMING AMENDMENT

### 10.1 Introduction

The applicants have requested approval of a proposed conforming amendment to the operating license for CR-3. The requested change removes references to the minority co-owner to reflect the proposed license transfer. No physical or operating changes to the facility are requested.

### 10.2 Discussion

Most of the changes to be made to the CR-3 operating license do no more than accurately reflect the approved transfer action, which is subject to the condition set forth in the Order approving the transfer, and that was identified and discussed earlier in this safety evaluation. Other minor administrative changes were proposed which simplify formatting and page numbering, and remove pages for which all content had been deleted by prior amendments.

The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

### 10.3 State Consultation

On June 7, 2016, the State of Florida was notified of the pending license transfer of the minority co-owner interests in CR-3 to DEF. The State had no comments.

Regarding the conforming amendment, the State of Florida does not desire notification of issuance of license amendments, based upon a letter dated May 2, 2003, from Michael N. Stephens of the Florida Department of Health, Bureau of Radiation Control, to Ms. Brenda L. Mozafari, Senior Project Manager, NRC. In an e-mail dated July 25, 2012 (ADAMS Accession No. ML12208A014), from Cynthia Becker, Florida State Bureau of Radiation Control, to Farideh Saba, Senior Project Manager, NRC, the State of Florida confirmed that the May 2003 letter continues to reflect the State's position on notification of issuance of license amendments.

### 10.4 Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

## 11.0 ENVIRONMENTAL CONSIDERATIONS

The subject application is for approval of a transfer of license issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.



## 12.0 CONCLUSION

In consideration of information provided in the license transfer application, staff concludes that ownership, operation, and decommissioning of CR-3 by DEF following the direct transfer of minority ownership interest from Seminole Electric Cooperative, will continue to meet the definition of electric utility. Accordingly, pursuant to 10 CFR 50.33(f), a review of financial qualifications is not warranted in this evaluation. The staff also finds that DEF has satisfied the NRC's decommissioning funding assurance requirements for CR-3, that the transfer will have no effect on DEF's technical qualifications to maintain and decommission CR-3, and that DEF is not owned, controlled, or dominated by a foreign individual or entity, and has met the applicable onsite and offsite insurance requirements as described above. Further, staff concludes that the proposed direct transfer of 1.6994 percent ownership interest in CR-3 from Seminole Electric Cooperative to DEF is consistent with applicable provisions of law, regulations, and orders issued by the Commission, pursuant hereto.

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Date: August 10, 2016