

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-302; NRC-2016-0253]**

**Duke Energy Florida, Inc., LLC**

**Crystal River Unit 3 Nuclear Generating Plant**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a partial exemption from three record keeping requirements in its regulations in response to a September 14, 2016, request from Duke Energy Florida, (DEF, or the licensee). Specifically, the licensee requested that the Crystal River Unit 3 Nuclear Generating Plant (CR-3), be granted a partial exemption from regulations that require retention of records for certain systems, structures, and components.

**DATES:** The exemption was issued on November 30, 2016.

**ADDRESSES:** Please refer to Docket ID **NRC-2016-0253** 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-2016-0253**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual 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](mailto: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:** John Hickman, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3017; e-mail: [John.Hickman@nrc.gov](mailto:John.Hickman@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The CR-3 facility is a decommissioning power reactor located in Citrus County, Florida. The licensee, DEF, is the holder of CR-3 Facility Operating License No. DPR-72. The CR-3 has been shutdown since September 26, 2009. Subsequently, the licensee determined that issues with containment integrity could not be satisfactorily resolved and decided not to attempt to restart the facility. On May 28, 2011, DEF completed the removal of fuel from the reactor

vessel at CR-3. By letter dated February 20, 2013 (ADAMS Accession No. ML13056A005), DEF submitted to the NRC a certification in accordance with section 50.82(a)(1)(i) of title 10 of the *Code of Federal Regulations* (10 CFR), indicating it would permanently cease power operations, and with § 50.82(a)(1)(ii) that it had permanently defueled the reactor vessel at CR-3. Because CR-3 is a permanently shutdown and defueled facility, and in accordance with § 50.82(a)(2), DEF is no longer authorized to operate the reactor or emplace nuclear fuel into the reactor vessel. The licensee is still authorized to possess and store irradiated (i.e., spent) nuclear fuel. The spent fuel is currently being stored onsite in a spent fuel pool (SFP).

## **II. Request/Action**

By letter dated September 14, 2016 (ADAMS Accession No. ML16258A058), DEF filed a request for NRC approval of an exemption from the record retention requirements of:

1) 10 CFR part 50, appendix B, Criterion XVII, which requires certain records be retained consistent with other regulatory requirements; 2) § 50.59(d)(3), which requires certain records be maintained until termination of a license issued pursuant to 10 CFR part 50; and 3) § 50.71(c), which requires certain records be maintained consistent with various elements of the NRC regulations, facility technical specifications, and other licensing basis documents.

The licensee is requesting an exemption from the requirement to retain these records when the following conditions are satisfied: 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective. The licensee cites record retention

exemptions granted to Zion Nuclear Power Station, Units 1 and 2 (76 FR 39134), Millstone Power Station, Unit 1, (72 FR 5755), and Haddam Neck Plant (70 FR 54587), as examples of the NRC granting similar requests.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security and quality assurance, are not affected by the exemption request, and would be retained as decommissioning records until the termination of the CR-3 license. In addition, the licensee did not request an exemption from 10 CFR part 50, appendix A, Criterion 1, which requires certain records to be maintained “throughout the life of the unit,” because CR-3 is not a general design criteria facility. Nor did DEF request an exemption associated with any record keeping requirements for storage of spent fuel at the CR-3 ISFSI under 10 CFR part 50, the general license requirements of 10 CFR part 72, or for the other requirements of 10 CFR part 50 or Facility Operating License No. DPR-72 applicable to the decommissioning and dismantlement of the CR-3 plant.

### **III. Discussion**

Pursuant to § 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in § 50.12(a)(2).

According to the Final Safety Analysis Report, revision 38, submitted May 25, 2016 (ADAMS Accession No. ML16172A182), the majority of plant components at CR-3 no longer meet the definition of safety related in § 50.2.

The September 14, 2016 (ADAMS Accession No. ML16258A058) exemption application states that the CR-3 nuclear steam supply system and balance of plant SSCs will be abandoned in place pending dismantlement. These SSCs are no longer operable or maintained except as required to support safe storage of spent fuel in the SFP or those that are needed to meet other regulatory requirements or are needed to support other site facilities (e.g., radioactive waste handling, Heating, Ventilation, and Air Conditioning (HVAC), etc.). The licensee's justification for eliminating records is that these SSCs have been (or will be) removed from service under the NRC license, dismantled or demolished, and that therefore maintenance of these records will not serve any function regulated by the NRC.

While DEF stated that it would retain the records required as the project transitions from current plant conditions to a plant with spent fuel only in dry storage, the transition will remove the safety and business need for the maintenance of most records. As the SSCs are removed from the licensing basis and the need for the associated records is eliminated, the licensee proposes that they be exempted from the records retention requirements for SSCs and historical activities associated with 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective, thereby eliminating the associated regulatory and economic burdens of creating alternative storage locations, relocating records, and retaining irrelevant records.

The exemption request states that all records necessary for spent fuel and spent fuel storage SSCs and activities have been, and will continue to be, retained for the SFP throughout

its functional life. Similar to other plant records, once the SFP is emptied of fuel, drained and ready for demolition, there will be no safety-significant function or other regulatory need for retaining certain SFP-related records.

The DEF stated that some records related to the nuclear steam supply system, balance of plant, and SFP will continue to be maintained under NRC regulations due to residual radioactivity. The radiological and other necessary programmatic controls (such as security and quality assurance) for the facility and decommissioning activities are and will continue to be appropriately addressed through the license and current plant documents such as the updated Final Safety Analysis Report and Technical Specifications. These programmatic elements and their associated records would be unaffected by the requested exemption.

#### The Exemption is Authorized by Law

The NRC has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or other Commission regulations. Therefore, the exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) is authorized by law.

#### The Exemption Presents no Undue Risk to Public Health and Safety

Removal of the underlying SSCs associated with the records for which DEF has requested an exemption from record keeping requirements will not have adverse public health and safety impact because the subject SSCs would no longer have a safety function at the permanently shutdown facility, would be removed from the licensing basis by the license, and will be disposed of by the licensee when active decommissioning begins. Elimination of records

associated with the removed SSCs therefore would not have an impact on public health and safety.

The requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for records associated with 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective, is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The exemption will only advance the schedule for disposition of the specified records, which would otherwise be retained until license termination requiring the expenditure of resources by the licensee.

#### The Exemption is Consistent with Common Defense and Security

The elimination of the record keeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the exemption requested is administrative in nature and would only advance the current schedule for disposition of the specified records, which would otherwise be retained until license termination. This allows the licensee to not expend resources maintaining records that have no benefit or safety purpose. Therefore, the partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR

50.59(d)(3) for the types records associated with 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective, is consistent with the common defense and security.

### Special Circumstances

Section 50.12(a)(2) states, in part: “The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever: ... (ii) 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; (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted ... .”

Criterion XVII of 10 CFR part 50, appendix B, states in part: “Sufficient records shall be maintained to furnish evidence of activities affecting quality.”

Section 50.59(d)(3) states in part: “The records of changes in the facility must be maintained until the termination of an operating license issued under this part... .”

Section 50.71(c), states in part: “Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license... .”



In the Statements of Consideration (SOC) for the final rulemaking, “Retention Periods for Records” (53 FR 19240; May 27, 1988), in response to public comments received during the rulemaking process, the NRC stated that records must be retained “for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety.” In the SOC the Commission also explained that requiring licensees to maintain adequate records assists the NRC “in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident.”

These regulations apply to licensees in decommissioning despite the fact that, during the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms. Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem which would adversely impact public health and safety.

The records subject to removal under the requested exemption are those associated with SSCs that had been important to safety during power operation or operation of the SFP, but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, given their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then certain records associated with these SSCs would not be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

Retention of certain records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Accordingly, special circumstances are present which the NRC may consider, pursuant to § 50.12(a)(2)(ii), to grant the requested exemption permitting the disposal of records associated with 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective.

Records that continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to the regulations in 10 CFR part 50 and 10 CFR part 72. The retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, which continue to be required for eventual decommissioning; security, emergency planning and quality assurance, programs which remain in effect; as well as records associated with the Independent Spent Fuel Storage Installation and spent fuel assemblies.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee. Retention of the volume of records

associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident, as discussed previously in this notice.

However, the cost of retaining operational phase records beyond the operations phase until the termination of the license may not have been fully considered when the records retention rule was put in place. As such, compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted. Accordingly, special circumstances are present which the NRC may consider, pursuant to § 50.12(a)(2)(iii), to grant the requested exemption.

#### Environmental Considerations

Pursuant to § 51.22(b) and (c)(25), the granting of an exemption from the requirements of any regulation in Chapter I of 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 are among those identified in 10 CFR 51.22(c)(25)(vi).

The NRC has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) at the decommissioning CR-3 does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (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 (§ 50.92(c)). Likewise, 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 regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (i.e., potential amount of radiation involved in an accident) or accident mitigation; therefore, there is no significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee partial exemption from the record retention requirements for which the exemption is sought involves record keeping requirements (§ 51.22(c)(35)(vi)(A), as well as reporting requirements (§ 51.22(c)(35)(vi)(B).

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

#### **IV. Conclusions**

The NRC has determined that the requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) will not present an undue risk to the public health and safety. The destruction of the identified records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security. The NRC has determined that the destruction of the identified records does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the record keeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility is understood, documented, preserved and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the CR-3 SSCs that were safety-related or important to safety during operations have been or will be removed from the licensing basis and removed from the plant, the staff finds that the records associated with 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective will no longer be required to achieve the underlying purpose of the records retention rule.

Accordingly, the Commission has determined that, pursuant to § 50.12, 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, and that special circumstances are present. Therefore, the Commission hereby grants Duke Energy Florida a one-time partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the Crystal River Unit 3 Nuclear Generating Plant to allow removal of records associated with 1) the CR-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (i.e., removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or 2) for SSCs associated with

safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security, emergency planning, spent fuel management and quality assurance are not affected by the exemption request and are required to be retained consistent with regulatory existing requirement as decommissioning records until the termination of the CR-3 license.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of November 2016.

For the Nuclear Regulatory Commission.

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