



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Docket No. 50-302; NRC-2015-0010

Duke Energy Florida, Inc.

Crystal River Unit 3 Nuclear Generating Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing exemptions in response to a March 28, 2014, request from Duke Energy Florida, Inc. (DEF or the licensee), representing itself and the other owners. The exemptions permit the use of the Crystal River Unit 3 Nuclear Generating Plant (CR-3) decommissioning trust fund (the Trust) for irradiated fuel management and site restoration activities in addition to decommissioning activities and allow the licensee to use withdrawals from the Trust for these purposes without prior notification to the NRC, similar to withdrawals for decommissioning activities. The NRC has reviewed the Trust and determined that, at this time, there is reasonable assurance of sufficient financial resources in the Trust for both irradiated fuel management and site restoration activities as well as to complete decommissioning activities.

ADDRESSES: Please refer to Docket ID NRC-2015-0010 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-2015-0010. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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- **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: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3229; e-mail: Michael.Orenak@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background.

DEF is the holder of Facility Operating License No. DPR-72, for CR-3. By letter dated February 20, 2013 (ADAMS Accession No. ML13056A005), DEF submitted to the NRC a certification in accordance with Sections 50.82(a)(1)(i) and 50.82(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR) indicating that it had permanently ceased power operations at CR-3 and that the CR-3 reactor vessel had been permanently defueled. CR-3 has not operated since September 2009.

By letter dated December 2, 2013, DEF submitted its Post Shutdown Decommissioning Activities Report (PSDAR) and the Site Specific Decommissioning Cost Estimate (DCE) as required by 10 CFR 50.82(a)(4)(i) and 10 CFR 50.82(a) (8)(iii)(ADAMS Accession No. ML13340A009). By a separate letter dated December 2, 2013, DEF submitted an update to the CR-3 Irradiated Fuel Management Plan (IFMP) as required by 10 CFR 50.54(bb) (ADAMS Accession No. ML13340A008).

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

II. Request/Action.

Pursuant to 10 CFR 50.12, "Specific exemptions," by letter dated March 28, 2014 (ADAMS Accession No. ML14098A037), DEF submitted a request for exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2). The exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would permit the withdrawal and use of a portion of the funds in the Trust for financing irradiated fuel management and site restoration activities. The licensee's requested exemption from 10 CFR 50.75(h)(2) would also permit the withdrawals from the Trust

for these activities to be made without prior notification of the NRC, in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities.

The requirements of 10 CFR 50.82(a)(8)(i)(A) restrict the use of decommissioning trust fund withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. The definition of "decommission" in 10 CFR 50.2 is to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license; or release of the property under restricted conditions and termination of the license.

This definition addresses radiological decontamination and does not include other activities, such as irradiated fuel management or site restoration. The requirements of 10 CFR 50.75(h)(2) also restrict the use of decommissioning trust fund disbursements (other than for ordinary administrative costs and incidental expenses) to decommissioning expenses until final radiological decommissioning has been completed. Therefore, exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are needed to allow DEF to withdraw funds from the Trust for activities other than decommissioning activities prior to completion of all radiological decommissioning activities.

The requirements of 10 CFR 50.75(h)(2) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the Trust, no disbursement may be made from the Trust until written notice of the intention to make a disbursement has been given to the NRC at least 30 working days in advance of the intended disbursement. Therefore, an exemption from 10 CFR 50.75(h)(2) is also needed to allow DEF to withdraw funds from the Trust for activities other than decommissioning activities without prior NRC notification.

III. Discussion.

Pursuant to 10 CFR 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 (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, the following: (a) 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; or (b) 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.

A. Authorized by Law.

The requested exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would allow DEF to use a portion of the funds from the Trust for irradiated fuel management and site restoration activities without prior notice to the NRC, in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained below, that granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

B. No Undue Risk to the Public Health and Safety.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors. Based on the licensee's site-specific cost estimate and the NRC staff's cash flow analysis, use of a portion of the Trust for irradiated fuel management and site restoration activities will not adversely impact DEF's ability to complete radiological decontamination within 60 years and terminate the CR-3 license. Furthermore, exemption from 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the Trust for irradiated fuel management and site restoration activities without prior written notification to the NRC should not affect the sufficiency of funds in the Trust to accomplish radiological decontamination of the site because such withdrawals are still constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B) – (C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v) – (vii).

Based on the above, no new accident precursors are created by using the Trust in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemptions will not present an undue risk to the public health and safety.

C. Consistent with the Common Defense and Security.

The requested exemptions would allow DEF to use funds from the Trust for irradiated fuel management and site restoration activities. Irradiated fuel management under 10 CFR 50.54(bb) is an integral part of the planned DEF decommissioning and final license termination process and will not adversely affect DEF's ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds from the Trust for

activities other than decommissioning activities will also not alter the scope of, or availability of, funding for the licensee's security program. Therefore, the common defense and security is not impacted by the requested exemptions.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors. Strict application of these requirements would prohibit withdrawal of funds from the Trust for activities other than decommissioning activities, such as irradiated fuel management and site restoration activities, until final radiological decommissioning at CR-3 has been completed.

The total CR-3 Decommissioning Trust Funds balance as of March 28, 2014, was \$824.8 million in 2013 dollars. The DEF analysis in the PSDAR and DCE projects the total radiological decommissioning cost of CR-3 to be approximately \$861.9 million (2013 dollars). As required by 10 CFR 50.54(bb), DEF estimated the costs associated with the long-term irradiated fuel management at CR-3 to be \$265.5 million in (2013 dollars). DEF also estimated the total expenditures for site restoration to be \$52.7 million (2013 dollars).

The NRC staff performed an independent cash flow analysis of the Trust over the 60 years of decommissioning activities (assuming an annual real rate of return of 2%, as allowed by 10 CFR 50.75(e)(1)(ii)) and determined the projected earnings of the Trust. The staff confirmed that the current funds, planned future contributions, and projected earnings of the Trust provide reasonable assurance of adequate funding to complete all NRC-required

decommissioning activities and that the DCE demonstrates that adequate funds will also be available in the Trust to conduct irradiated fuel management and site restoration activities. The staff's review and conclusions are based on DEF's specific financial situation as described in the PSDAR, DCE, IFMP, and the March 28, 2014 letter.

Therefore, the staff finds that DEF has provided reasonable assurance that adequate funds will be available for radiological decommissioning of CR-3, even with the disbursement of funds from the Trust for irradiated fuel management and site restoration activities.

Consequently, the staff concludes that application of the requirement that funds from the Trust only be used for decommissioning activities and not for irradiated fuel management and site restoration activities is not necessary to achieve the underlying purpose of the rule and, thus, that special circumstances are present supporting the approval of the exemption request.

In its submittal, DEF also requested exemption from the requirements of 10 CFR 50.75(h)(2) concerning prior written notification to the NRC of withdrawals from the Trust to fund activities other than decommissioning. The underlying purpose of notifying the NRC prior to withdrawal of funds from the Trust is to provide opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) that could result in there being insufficient funds in the Trust to accomplish radiological decontamination of the site.

By granting the exemptions to 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8)(i)(A), the staff considers that withdrawals consistent with the licensee's submittal dated March 28, 2014, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the Trust to complete legitimate radiological decommissioning activities as well as to conduct irradiated fuel management and site restoration activities consistent with the PSDAR, DCE, IFMP, and March 28, 2014 letter. Pursuant to the annual reporting requirements in 10 CFR 50.82(a)(8)(v) through (vii), licensees are required to monitor and report the status of the

decommissioning trust fund and the funding status for managing irradiated fuel. These reports provide the NRC with awareness of, and the ability to take action on, any actual or potential funding deficiencies. The requested exemption would not allow the withdrawal of funds from the CR-3 Trust for any other purpose that is not currently authorized in the regulations without prior notification to the NRC. Therefore, the granting of this exemption to 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the Trust to cover authorized expenses for irradiated fuel management and site restoration activities without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii) are present whenever 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.

The licensee states that the Trust contains funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for irradiated fuel management and site restoration activities. The NRC does not preclude the use of funds from the decommissioning trust in excess of those needed for radiological decommissioning for other purposes, such as irradiated fuel management or site restoration. The NRC has stated that funding for irradiated fuel management and other site restoration activities may be commingled in the decommissioning trust provided that the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for irradiated fuel management (see NRC Regulatory Issue Summary 2001-07, Rev 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," dated January 8, 2009 [ADAMS Accession No. ML083440158], and Regulatory Guide 1.184, Rev. 1, "Decommissioning of Nuclear Power Reactors," [ADAMS Accession No. ML13144A840]). An unnecessary financial burden without any corresponding safety benefit would be created if access to those excess funds in the Trust

was prevented because irradiated fuel management and site restoration are not associated with radiological decommissioning. The adequacy of the Trust to cover the cost of activities associated with irradiated fuel management and site restoration in addition to radiological decommissioning is supported by the NRC staff's review of the licensee's site-specific decommissioning cost analysis. If DEF cannot use the Trust for irradiated fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the Trust, or DEF would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when the regulation was adopted.

Therefore, since the underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would be achieved by allowing DEF to use a portion of the Trust for irradiated fuel management and site restoration activities without prior NRC notification, and compliance with the rules would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist and support the approval of the requested exemptions.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of the exemptions will not have a significant effect on the quality of the human environment (see Environmental Assessment and Finding of No Significant Impact published on January 23, 2015; 80 FR 3662).

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants DEF exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) to allow withdrawals from the CR-3 Trust for irradiated fuel management and site restoration activities without prior NRC notification.

The exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 26th day of January 2015.

For the Nuclear Regulatory Commission.

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