



NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-305; NRC-2017-0121]

Dominion Energy Kewaunee, Inc.

Kewaunee Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a partial exemption in response to an October 13, 2016, request from Dominion Energy Kewaunee, Inc. (the licensee or DEK). The issuance of the exemption would grant DEK a partial exemption from regulations that require the retention of records for certain systems, structures, and components associated with the Kewaunee Power Station (KPS) until the termination of the KPS operating license.

DATES: The exemption was issued on May 10, 2017.

ADDRESSES: Please refer to Docket ID **NRC-2017-0121** 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-2017-0121**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: 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. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **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: Ted H. Carter, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5543; e-mail: Ted.Carter@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By letter dated May 14, 2013, DEK submitted a certification of permanent removal of fuel from the KPS reactor vessel (ADAMS Accession No. ML13135A209). Consequently, the part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), license for KPS no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2). The DEK's decommissioning plans for KPS are described in the Post Shutdown Decommissioning Activities Report (PSDAR) submitted on April 25, 2014 (ADAMS Accession No. ML14118A382).

According to its PSDAR, DEK plans to decommission KPS using a SAFSTOR method in which most fluid systems are drained and the plant is left in a stable condition until final decontamination and dismantlement activities begin. The irradiated fuel will be stored in the Independent Spent Fuel Storage Installation (ISFSI) until it is shipped off site. With the reactor

and the spent fuel pool (SFP) emptied of fuel, the reactor, reactor coolant system, secondary system, and SFP (including its support systems) will no longer be in operation and will have no function related to the safe storage and management of irradiated fuel.

II. Request/Action

By letter dated October 13, 2016 (ADAMS Accession No. ML16291A494), DEK filed a request for NRC approval of an exemption from the record retention requirements of:

1) 10 CFR part 50, appendix B, Criterion XVII, "Quality Assurance Records," which requires certain records (e.g., results of inspections, tests, and materials analyses) be maintained consistent with applicable regulatory requirements; 2) 10 CFR 50.59(d)(3), which requires that records of changes in the facility must be maintained until termination of a license issued pursuant to 10 CFR part 50; and 3) 10 CFR 50.71(c), which requires certain records to be retained for the period specified by the appropriate regulation, license condition, or technical specification, or until termination of the license if not otherwise specified.

The licensee proposed to eliminate: 1) records associated with structures, systems, and components (SSCs) and activities that were applicable to the nuclear unit, which are no longer required by the 10 CFR part 50 licensing basis (i.e., removed from the Updated Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms; and 2) records associated with the storage of spent nuclear fuel in the SFP once all fuel has been removed from the SFP and the KPS license no longer allows storage of fuel in the SFP. The licensee cites record retention exemptions granted to Zion Nuclear Power Station, Units 1 and 2 (ADAMS Accession No. ML111260277), Millstone Power Station, Unit 1 (ADAMS Accession No. ML070110567), Vermont Yankee Nuclear Power Station (ADAMS Accession

No. ML15344A243), and San Onofre Nuclear Generating Station, Units 1, 2, and 3 (ADAMS Accession No. ML15355A055), 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 because they will be retained as decommissioning records until the termination of the KPS license. In addition, the licensee did not request an exemption associated with any other recordkeeping requirements for the storage of spent fuel at its ISFSI under 10 CFR part 50 or the general license requirements of 10 CFR part 72. No exemption was requested from the decommissioning records retention requirements of 10 CFR 50.75, or any other requirements of 10 CFR part 50 applicable to decommissioning and dismantlement.

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 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 10 CFR 50.12(a)(2).

As described in the PSDAR, many of the KPS reactor facility SSCs are planned to be abandoned in place pending dismantlement. Abandoned SSCs are no longer operable or maintained. Following permanent removal of fuel from the SFP, those SSCs required to support safe storage of spent fuel in the SFP will also be abandoned. In its October 13, 2016, exemption request, the licensee stated that the basis for eliminating records associated with

reactor facility SSCs and activities is that these SSCs have been (or will be) removed from service per regulatory change processes, dismantled or demolished, and no longer have any function regulated by the NRC.

The DEK recognizes that some records related to the nuclear unit will continue to be under NRC regulation primarily due to residual radioactivity. The radiological and other necessary programmatic controls (such as security, quality assurance, etc.) for the facility and the implementation of controls for the defueled condition and the decommissioning activities are and will continue to be appropriately addressed through the license and current plant documents such as the Updated Safety Analysis Report and Technical Specifications. Except for future changes made through the applicable change process defined in the regulations (e.g., 10 CFR 50.48(f), 10 CFR 50.59, 10 CFR 50.90, 10 CFR 50.54(a), 10 CFR 50.54(p), 10 CFR 50.54(q), etc.), these programmatic elements and their associated records are unaffected by the requested exemption.

Records necessary for SFP SSCs and activities will continue to be retained through the period that the SFP is needed for safe storage of irradiated fuel. Analogous to other plant records, once the SFP is permanently emptied of fuel, there will be no need for retaining SFP related records.

The licensee's general justification for eliminating records associated with KPS SSCs that have been or will be removed from service under the NRC license, dismantled, or demolished, is that these SSCs will not in the future serve any KPS functions regulated by the NRC. The DEK's dismantlement plans involve evaluating SSCs with respect to the current facility safety analysis; progressively removing them from the licensing basis where necessary through appropriate change mechanisms (e.g., 10 CFR 50.59 or via NRC-approved technical specification changes, as applicable); revising the Defueled Safety Analysis Report and/or

Updated Safety Analysis Report as necessary; and then proceeding with an orderly dismantlement. Dismantlement of the plant structures will also include dismantling existing records storage facilities.

The DEK intends to retain the records required by its license as the facility's decommissioning transitions as described in the PSDAR. However, equipment abandonment will obviate the regulatory and business needs for maintenance of most records. As the SSCs are removed from the licensing basis, DEK asserts that the need for their records is, on a practical basis, eliminated. Therefore, DEK is requesting exemption from the associated records retention requirements for SSCs and historical activities that are no longer relevant. Approval of the requested exemption would eliminate the associated burden of creating alternative record storage locations, and relocating records to, and retaining records in the alternative locations for those records relevant only to past power operations. The DEK is not requesting exemption from any recordkeeping requirements for storage of spent fuel at an ISFSI under 10 CFR part 50 or the general license requirements of 10 CFR part 72.

The Exemption is Authorized by Law

The NRC staff 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 the Commission's regulations. Therefore, the exemption from the recordkeeping 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 KPS has requested an exemption from recordkeeping requirements has been or will be determined by the licensee to have no adverse public health and safety impact, in accordance with 10 CFR 50.59 or an NRC-approved license amendment. These change processes involve either a determination by the licensee or an approval from the NRC that the affected SSCs no longer serve any safety purpose regulated by the NRC. Elimination of records associated with these removed SSCs can have no impact to public health and safety.

The partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the records described 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. Considering the content of these records, the elimination of these records on an advanced timetable will have no reasonable possibility of presenting any undue risk to the public health and safety.

The Exemption is Consistent with the Common Defense and Security

The elimination of the recordkeeping 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. Therefore, the partial exemption from the recordkeeping 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 of records described is consistent with the common defense and security.

Special Circumstances

Paragraph 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; [and] (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.”

Paragraph 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... .”

Paragraph 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 Statement of Considerations (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 this exemption are 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, as evidenced by their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then it is reasonable to

conclude that the records associated with these SSCs would not reasonably 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.

In addition, once removed from the licensing basis documents, SSCs are no longer governed by the NRC's regulations, and therefore are not subject to compliance with the safety and health aspects of the nuclear environment. As such, retention of 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 10 CFR 50.12(a)(2)(ii), to grant the requested exemption.

Records which 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. These retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, security, and quality assurance, as well as records associated with the ISFSI 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.

However, the cost effect of retaining operational phase records beyond the operations phase until the termination of the license was not fully considered or understood when the records retention rule was put in place. For example, existing records storage facilities are often eliminated as decommissioning progresses. Retaining records associated with SSCs and activities that no longer serve a safety or regulatory purpose would therefore necessitate creation of new facilities and retention of otherwise unneeded administrative support personnel. 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 10 CFR 50.12(a)(2)(iii), to grant the requested exemption.

Environmental Considerations

Pursuant to 10 CFR 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: 1) there is no significant hazards consideration; 2) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; 3) there is no significant increase in individual or cumulative public or occupational radiation exposure; 4) there is no significant construction impact; 5) there is no significant increase in the potential for or consequences from radiological accidents; and 6) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The NRC staff has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the recordkeeping 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 Kewaunee Power Station 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 (10 CFR 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 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 recordkeeping requirements, as well as reporting requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 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

The NRC staff has determined that the requested partial exemption from the recordkeeping 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 staff has determined that the destruction of the identified records is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the recordkeeping 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 KPS SSCs that were safety-related or important to safety have been or will be removed from the licensing basis and removed from the plant, the staff agrees that the records identified in the partial exemption will no longer be required to achieve the underlying purpose of the records retention rule.

Accordingly, the Commission has determined that, pursuant to 10 CFR 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. Also, special circumstances are present. Therefore, the Commission hereby grants the Dominion Energy Kewaunee, Inc., a partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50,

appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the Kewaunee Power Station to advance the schedule to remove records associated with SSCs that have been or will be removed from NRC licensing basis documents by appropriate change mechanisms.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of May 2017.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director,

Division of Decommissioning,

Uranium Recovery and Waste Programs,

Office of Nuclear Material Safety and Safeguards.

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