

June 25, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of Calvert Cliffs 3 Nuclear Project, L.L.C. (Calvert Cliffs Nuclear Power Plant, Unit 3)	) ) )	Docket No. 52-016-COL
In the Matter of Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3)	) ) )	Docket No. 52-033-COL
In the Matter of Duke Energy Carolinas, L.L.C. (William States Lee III Nuclear Station, Units 1 and 2)	) ) ) )	Docket Nos. 52-018-COL 52-019-COL
In the Matter of Entergy Operations, Inc. (Grand Gulf Nuclear Station, Unit 1)	) ) )	Docket No. 50-416-LR
In the Matter of Entergy Operations, Inc. (Grand Gulf Nuclear Station, Unit 3)	) ) )	Docket No. 52-024-COL
In the Matter of FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1)	) ) ) )	Docket No. 50-346-LR
In the Matter of Florida Power & Light Co. (Turkey Point, Units 6 and 7)	) ) )	Docket Nos. 52-040-COL 52-041-COL
In the Matter of Luminant Generation Co., L.L.C. (Comanche Peak Nuclear Power Plant, Units 3 and 4)	) ) ) )	Docket Nos. 52-034-COL 52-035-COL
In the Matter of Nextera Energy Seabrook, L.L.C. (Seabrook Station, Unit 1)	) ) )	Docket No. 50-443-LR
In the Matter of Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	) ) ) )	Docket Nos. 50-275-LR 50-323-LR

In the Matter of PPL Bell Bend, L.L.C. (Bell Bend Nuclear Power Plant)	) ) )	Docket No. 52-039-COL
In the Matter of Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3)	) ) ) )	Docket Nos. 52-022-COL 52-023-COL
In the Matter of Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2)	) ) ) )	Docket Nos. 52.029-COL 52-030-COL
In the Matter of South Texas Nuclear Operating Co. (South Texas Project, Units 1 and 2)	) ) ) )	Docket Nos. 50-498-LR 50-499-LR
In the Matter of Nuclear Innovation North America LLC (South Texas Project, Units 3 and 4)	) ) ) )	Docket Nos. 52-012-COL 52-013-COL
In the Matter of Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4)	) ) ) )	Docket Nos. 52-014-COL 52-015-COL
In the Matter of Tennessee Valley Authority (Watts Bar Unit 2)	) ) ) )	Docket No. 50-0391-OL
In the Matter of Union Electric Co. (Callaway Plant Unit 1)	) ) ) )	Docket No. 50-483-LR
In the Matter of Virginia Electric and Power Co. d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (North Anna Unit 3)	) ) ) ) ) ) )	Docket No. 52-017-COL

NRC STAFF'S ANSWER TO PETITION TO SUSPEND FINAL DECISIONS
IN ALL PENDING REACTOR LICENSING PROCEEDINGS PENDING
COMPLETION OF REMANDED WASTE CONFIDENCE PROCEEDINGS

Pursuant to 10 C.F.R. § 2.323(c) and the June 19, 2012 Commission Order, the Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby provides its answer to the "Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings" ("Petition"), served June 18 and 19, 2012. Multiple organizations and individuals filed essentially identical petitions in several reactor licensing proceedings.¹ The Petition sought the suspension of final decisions in all reactor licensing proceedings as a result of the D.C. Circuit Court of Appeals' recent decision in *State of New York v. NRC*, No. 11-1045. sl. op. at 3 (D.C. Cir. June 8, 2012). The D.C. Circuit's decision vacated the NRC's updated Waste Confidence Decision and its Temporary Storage Rule and remanded those rulemakings to the NRC. *Id.* at 21 (citing Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) ("Waste Confidence Decision"); Consideration of Environmental Impacts of Temporary Storage of Spent Fuel after Cessation of Reactor Operation, Final Rule, 75 Fed. Reg. 81,032 (Dec. 23, 2010) ("Temporary Storage Rule")).

In addition to seeking the suspension of all reactor licensing decisions, the Petition seeks a declaration from the Commission that "any [Environmental Assessments ("EA")] or [Environmental Impact Statements ("EIS")] issued by the NRC will be published in [draft] form with a reasonable opportunity for public comment." Petition at 12. Finally, petitioners requested

¹ In the petitions filed in the Fermi combined license ("COL") proceeding and Davis-Besse license renewal ("LR") proceeding, the petitioners indicated in their 10 C.F.R. § 2.323(b) certification that "[c]ounsel for the staff stated that the NRC Staff would oppose the motion." Petition at 16. However, this was not the Staff's position. In responding to petitioners' inquiry, the Staff stated that "Based on the representation in your email, we do not have enough information to take a position on this petition. We will respond to the petition after it is filed." The Staff's response was accurately represented in petitions filed in the other proceedings.

a generic modification to each proceeding's timely filing standards as applied by the NRC regulations or the applicable scheduling orders. The Petition asks that "a period of at least 60 days [be allowed] for raising site-specific concerns relating to the remanded proceedings in individual licensing proceedings."² *Id.*

The Commission has not yet indicated how it intends to respond to the D.C. Circuit's ruling. While the Staff agrees that no final decision to grant a combined license ("COL"), operating license, or renewed operating license should be made in the captioned proceedings until the NRC has appropriately dispositioned the issues remanded by the court, there are no imminent final initial or renewed reactor licensing decisions.³

Second, to the extent the Commission chooses to disposition the remanded Waste Confidence Decision through the preparation of either an environmental analysis or, if necessary, an environmental impact statement, the Staff will provide a reasonable opportunity for public comment consistent with the NRC's regulations, the National Environmental Policy Act, and the current staff practice.⁴ *See generally* 10 C.F.R. Part 51.

Finally, with respect to the petitioners' request for a 60-day period to raise site-specific concerns in individual proceedings, the Commission's normal adjudicatory procedures in

² In linking the 60-day filing period to "remanded proceedings", the Petition is unclear as to what remanded proceedings are the triggering events for invoking the 60- day filing period.

³ With respect to license renewal proceedings, Indian Point is perhaps the closest to a final decision by the Board. The Indian Point license renewal still has three contentions that are not currently scheduled for a hearing and are waiting on the Staff to issue a draft supplement environmental impact statement ("EIS"), final supplemental EIS, and a supplemental safety evaluation report, which is currently anticipated to issue no earlier than December 2012. With respect to COL proceedings, the Levy County COL will most likely be the next application for which a decision to grant or deny a combined license will be reached; a contested hearing before the Board is scheduled for October 2012. The date for the uncontested hearing has not been established by the Commission.

⁴ While not legally required, the Staff typically provides for public participation on environmental assessments of significant public interest.

10 C.F.R. Part 2 already provide well-understood and appropriate means for raising contentions based on new information and site-specific considerations. See *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC ___, ___ (slip op. at 32-36, 42) (Sept. 9, 2011); cf. *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC ___, ___ (slip op. at 7) (Jun. 7, 2012) (“[T]he ‘trigger point’ for the timely submission of new or amended contentions is when new information becomes available, and our process places on the intervenor the obligation to raise new contentions based on such information.”). Given the varying procedural postures of the captioned proceedings, as well as the uncertainty as to what site-specific concerns petitioners may decide to raise, it is unnecessary to establish a generic 60-day timetable as petitioners propose.⁵ Rather, the appropriate timeframe for raising concerns associated with the Waste Confidence Decision (and/or the NRC’s response to the court ruling) will necessarily depend on the nature of those concerns and can be appropriately resolved under each proceeding’s scheduling order or the applicable NRC regulations as appropriate.

⁵ As the petition acknowledges, in the event petitioners seek participation in individual licensing proceedings, they may need to submit hearing requests or petitions to intervene, standing declarations, or motions to reopen the record, depending on the posture of the particular proceeding. See Petition at 11-12. Some of the captioned proceedings have admitted contentions including Bellefonte COL, Calvert Cliffs COL, Fermi COL, Levy County COL, South Texas Project COL, Turkey Point COL, Davis-Besse license renewal (“LR”), Seabrook LR, and Diablo Canyon LR, and Watts Bar. For others, although intervention was granted, all admitted contentions were subsequently dismissed or otherwise resolved including Comanche Peak COL and North Anna COL; for still others, a hearing was either not granted or was never requested including Bell Bend COL, Shearon Harris COL, W.S. Lee COL, Grand Gulf COL, South Texas LR, and Grand Gulf LR. In Callaway LR, contentions were filed, but the Board has not yet ruled on the admissibility of the contentions. Accordingly, the Staff’s view is that any contentions filed in an individual proceeding would still need to satisfy all the applicable requirements of 10 C.F.R. Part 2, including the reopening standard for those proceedings with a closed record, for example.

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⁶ Because the Staff is filling identical documents in each of the applicable proceedings, the signature block utilizes the term "Signed (electronically) by" to indicate that each counsel signed for the proceedings listed below their signature.

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Dated at Rockville, Maryland
This 25th day of June 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
FIRSTENERGY NUCLEAR OPERATING CO.) Docket No. 50-346-LRA
)
(Davis-Besse Nuclear Power Station, Unit 1))
)

CERTIFICATE OF SERVICE

I hereby certify that "NRC STAFF'S ANSWER TO PETITION TO SUSPEND FINAL DECISIONS IN ALL PENDING REACTOR LICENSING PROCEEDINGS PENDING COMPLETION OF REMANDED WASTE CONFIDENCE PROCEEDINGS" in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 25th day of June, 2012.

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