

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Allison M. Macfarlane, Chairman  
Kristine L. Svinicki  
William D. Magwood, IV  
William C. Ostendorff

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In the Matter of

DTE ELECTRIC CO.

(Fermi Nuclear Power Plant, Unit 3)

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

FIRSTENERGY NUCLEAR OPERATING CO.

(Davis-Besse Nuclear Power Station, Unit 1)

FLORIDA POWER & LIGHT CO.

(Turkey Point Units 6 and 7)

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

NUCLEAR INNOVATION NORTH AMERICA LLC

(South Texas Project Units 3 and 4)

PACIFIC GAS & ELECTRIC CO.

(Diablo Canyon Nuclear Power Plant, Units 1 and 2)

PROGRESS ENERGY FLORIDA, INC.

(Levy County Nuclear Power Plant, Units 1 and 2)

TENNESSEE VALLEY AUTHORITY

(Bellefonte Nuclear Power Plant Units 3 and 4)

TENNESSEE VALLEY AUTHORITY

(Sequoyah Nuclear Plant, Units 1 and 2)

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) Docket No. 52-033-COL  
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) Docket Nos. 50-247-LR,  
) 50-286-LR  
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) Docket No. 50-346-LR  
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) Docket Nos. 52-040-COL,  
) 52-041-COL  
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) Docket No. 50-443-LR  
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) Docket Nos. 52-012-COL,  
) 52-013-COL  
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) Docket Nos. 50-275-LR,  
) 50-323-LR  
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) Docket Nos. 52-029-COL,  
) 52-030-COL  
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) Docket Nos. 52-014-COL,  
) 52-015-COL  
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) Docket Nos. 50-327-LR,  
) 50-328-LR

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TENNESSEE VALLEY AUTHORITY  
(Watts Bar Nuclear Plant, Unit 2)

VIRGINIA ELECTRIC AND POWER CO.  
d/b/a DOMINION VIRGINIA POWER and  
OLD DOMINION ELECTRIC COOPERATIVE  
(North Anna Power Station, Unit 3)

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) Docket No. 50-391-OL  
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) Docket No. 52-017-COL  
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**CLI-14-07**

**MEMORANDUM AND ORDER**

Thirteen environmental organizations (collectively, Petitioners) separately filed in the captioned proceedings a joint petition to suspend reactor licensing decisions pending the resolution of their February 18, 2014 petition for rulemaking.<sup>1</sup> For the reasons set forth below, we deny the suspension petitions and provide direction on other related requests.

**I. BACKGROUND**

As part of the NRC's ongoing, multifaceted approach to drawing lessons from the 2011 accident at Japan's Fukushima Dai-ichi Nuclear Power Plant, the NRC Staff explored whether expediting the transfer of older spent fuel from pools to casks would result in a significant

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<sup>1</sup> See, e.g., *Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Feb. 27, 2014; Fermi combined license docket) (Suspension Petition). See generally *Environmental Organizations' Petition to Consider New and Significant Information Regarding Environmental Impacts of High-Density Spent Fuel Storage and Mitigation Alternatives in Licensing Proceedings for New Reactors and License Renewal Proceedings for Existing Reactors and Duly Modify All NRC Regulations Regarding Environmental Impacts of Spent Fuel Storage During Reactor Operation* (Feb. 18, 2014) (attached to Suspension Petition) (Rulemaking Petition). A complete list of the suspension petitions and responsive pleadings is provided in an Appendix to this decision.

reduction in risk to public health and safety from a spent fuel pool accident.<sup>2</sup> The Staff had categorized the expedited-transfer issue as a “Tier 3” lessons-learned activity requiring further study.<sup>3</sup> The Staff thus analyzed the likelihood and consequences of a spent fuel pool accident initiated by a severe earthquake with “seismic forces greater than the maximum earthquake reasonably expected to occur at the reference plant location,” a Mark I boiling water reactor modeled after the Peach Bottom Atomic Power Station (although with a less robust spent fuel pool than exists at Peach Bottom or other U.S. plants), as well as ground motion “more challenging for the spent fuel pool structure than that experienced at . . . Fukushima.”<sup>4</sup> The Staff then compared potential accident consequences from a nearly full pool to one where sufficiently cooled fuel had been removed, under conditions in which accident mitigation measures were both successfully and unsuccessfully deployed.<sup>5</sup> Based on its analysis, the Staff concluded that

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<sup>2</sup> See Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor (Oct. 2013), at iii. (ADAMS accession no. ML13256A342) (Consequence Study); “Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling-Water Reactor,” Commission Paper SECY-13-0112 (Oct. 9, 2013) (ML13256A339) (transmitted to the Commission for information).

<sup>3</sup> See “Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel,” Commission Paper COMSECY-13-0030 (Nov. 12, 2013), at 3 (ML13273A601) (COMSECY-13-0030). The Staff categorizes its Fukushima lessons-learned efforts into three tiers. Tier 1 activities are those “for which sufficient resource flexibility, including availability of critical skill sets, exists” and “should be started without unnecessary delay.” Tier 2 activities are those that do not require long-term study but cannot begin until additional resources or sufficient technical information become available. Tier 3 activities are those that require longer-term study or additional resources. See “Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned,” Commission Paper SECY-11-0137 (Oct. 3, 2011), at 2-3 (ML11272A111 (package)); see *generally* Staff Requirements—SECY-11-0137—Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned (Dec. 15, 2011) (ML113490055).

<sup>4</sup> Consequence Study at iii, 5.

<sup>5</sup> *Id.* at iii, vi-vii, 6. The Staff published a draft of its findings last July, and after considering public comments, issued the final report last October. See Consequence Study of a Beyond- (continued . . .)

“expediting movement of spent fuel from the pool does not provide a substantial safety enhancement.”<sup>6</sup>

Comparing the results of this study with prior spent fuel storage research, the Staff performed a cost-benefit analysis to determine whether further regulatory action is warranted on the expedited-transfer issue.<sup>7</sup> Ultimately, the Staff concluded that any limited safety benefit achieved by expedited transfer of older spent fuel assemblies to dry casks does not outweigh the expected costs, and it recommended that we close this Tier-3 issue.<sup>8</sup> We approved the Staff’s recommendation to close the issue and not pursue generic assessments related to expedited transfer, but we also identified additional items related to spent fuel pool management for the Staff’s consideration.<sup>9</sup>

On February 18, 2014, Petitioners, joining twenty-one other organizations, filed a petition for rulemaking pursuant to 10 C.F.R. § 2.802(a). The thirty-four (combined) rulemaking petitioners assert that the Staff’s review of the expedited-transfer issue generated “new and

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Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor, 78 Fed. Reg. 39,781 (July 2, 2013); Consequence Study at i.

<sup>6</sup> Consequence Study at iv.

<sup>7</sup> See COMSECY-13-0030, at 6-8; Regulatory Analysis for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel (Nov. 2013), at iii (ML13273A628) (Regulatory Analysis) (Enclosure 1 to COMSECY-13-0030). The Staff issued corrections to the Regulatory Analysis on November 25, 2013, which are available at ML13329A923. The ADAMS accession number for COMSECY-13-0030 and its enclosures is ML13329A918 (package).

<sup>8</sup> COMSECY-13-0030, at 10.

<sup>9</sup> Staff Requirements—COMSECY-13-0030—Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel (May 23, 2014), at 1-2 (ML14143A360) (directing that the Staff modify its regulatory analysis, and, if necessary, develop an information notice for licensees; consider the implications of the expedited-transfer study on certain ongoing lessons-learned activities; consider and report on a forthcoming, related study by the National Academy of Sciences; and remain cognizant of the Department of Energy’s efforts to develop accident-tolerant fuels).

significant information” regarding the environmental impacts of spent fuel storage that requires: (1) suspending the application of 10 C.F.R. Part 51, Subpart A, Appendix B in license renewal proceedings, in particular the generic finding that the environmental impacts of high-density spent fuel pool storage are “small” and need not be considered on a site-specific basis; (2) suspending the application of all regulations approving certified designs for new reactors with high-density spent fuel pool storage and all environmental assessments approving severe accident mitigation design alternatives; (3) republishing for public comment the environmental impact statements for all new reactors, the environmental assessments for all certified designs, and the Generic Environmental Impact Statement for License Renewal; and (4) amending NRC regulations accordingly.<sup>10</sup> The rulemaking petitioners also seek suspension of final licensing decisions in *all* pending reactor licensing proceedings, but only the thirteen Petitioners filed separate suspension petitions on the captioned dockets.<sup>11</sup> The Staff docketed the rulemaking

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<sup>10</sup> Rulemaking Petition at 4-5.

<sup>11</sup> *Compare id.* at 1 & n.1, 5, *with* Suspension Petition at 2-3 & n.1. The thirteen Petitioners are: Beyond Nuclear (*Davis-Besse* license renewal proceeding and *Fermi* combined license proceeding); Blue Ridge Environmental Defense League (*North Anna* combined license proceeding and *Sequoyah* license renewal proceeding); Don’t Waste Michigan (*Fermi* combined license proceeding); Ecology Party of Florida (*Levy County* combined license proceeding); Friends of the Coast (*Seabrook* license renewal proceeding); Hudson River Sloop Clearwater (*Indian Point* license renewal proceeding); National Parks Conservation Association (*Turkey Point* combined license proceeding); New England Coalition (*Seabrook* license renewal proceeding); Nuclear Information and Resource Service (*Levy County* combined license proceeding); Public Citizen (*South Texas* combined license proceeding); San Luis Obispo Mothers for Peace (*Diablo Canyon* license renewal proceeding); SEED Coalition (*South Texas* combined license proceeding) and Southern Alliance for Clean Energy (*Turkey Point* combined license proceeding and *Watts Bar* operating license proceeding). Suspension Petition at 2-3 n.1. The petition does not identify a petitioner for the *Bellefonte* combined license proceeding, *see* Suspension Petition at 2-3 n.1, but we note that Louis Zeller of the Blue Ridge Environmental Defense League served the petition on the *Bellefonte* docket. *See* Suspension Petition at 17 (ML14058A002) (*Bellefonte* combined license proceeding).

petition, but stated that it would address the requests for suspension in a separate action.<sup>12</sup>

We now have before us these substantively identical petitions to suspend licensing decisions in the captioned proceedings. Petitioners claim that although review of the pending license applications may continue, we must suspend issuance of final decisions on those applications to satisfy our obligation to consider whether “new and significant information” requires the NRC to supplement environmental impact statements prepared under the National Environmental Policy Act (NEPA).<sup>13</sup> In accordance with the Secretary’s briefing order, we received answers from the Staff and the applicants, all of whom oppose the suspension petitions.<sup>14</sup>

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<sup>12</sup> We provide direction to the Staff on these collateral requests below. See *Environmental Impacts of Spent Fuel Storage During Reactor Operation*, 79 Fed. Reg. 24,595, 24,596 (May 1, 2014) (Docket No. PRM-51-31; NRC-2014-0055) (Notice of PRM-51-31). The February 18, 2014 petition is one of four docketed and pending petitions for rulemaking to amend 10 C.F.R. Part 51 based on the Fukushima events. See *Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal*, 79 Fed. Reg. 22,055 (Apr. 21, 2014) (Docket No. PRM-51-30; NRC-2014-0014); *Rescinding Spent Fuel Pool Exclusion Regulations*, 77 Fed. Reg. 75,065 (Dec. 19, 2012) (Docket No. PRM-51-29; NRC-2012-0215); *Taxpayers and Ratepayers United, et al.; Environmental Impacts of Severe Reactor and Spent Fuel Pool Accidents*, 76 Fed. Reg. 70,067 (Nov. 10, 2011) (Docket Nos. PRM-51-14 through PRM-51-28; NRC-2011-0189). The NRC posts the status of rulemaking petitions on its Web site, at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year/open-petitions-all-years.html> (last visited July 15, 2014).

<sup>13</sup> Suspension Petition at 4; see also 10 C.F.R. § 51.20 (requiring the NRC to prepare environmental impact statements for reactor-licensing proceedings); 10 C.F.R. pt. 51 subpt. A, app. B (noting that the NRC has already resolved many environmental impacts for license renewal through a generic environmental impact statement and that these issues need not be revisited in site-specific environmental impact statements).

<sup>14</sup> See Appendix; Order (Mar. 4, 2014) (unpublished).

## II. DISCUSSION

Our rules of practice permit a rulemaking petitioner who is also a participant in a licensing proceeding to request suspension of that proceeding pending the outcome of the rulemaking petition.<sup>15</sup> This provision, 10 C.F.R. § 2.802(d), is similar to the waiver process in 10 C.F.R. § 2.335(b), which allows a participant to request the waiver of a current rule or regulation in a specific proceeding under “special circumstances” as an exception to the prohibition against challenging NRC rules or regulations in adjudicatory proceedings in 10 C.F.R. § 2.335(a).<sup>16</sup> A successful waiver petition would permit consideration of an issue in an adjudicatory proceeding that would otherwise impermissibly challenge an NRC rule or regulation.<sup>17</sup> Similarly, the suspension provision in section 2.802(d) provides an opportunity for a participant to ensure that a successful rulemaking petition is applied in an ongoing adjudication.<sup>18</sup> Here, Petitioners have requested rulemaking and now seek to suspend decisions in these adjudications to ensure that the information that they present regarding the environmental impacts of spent fuel storage is considered before final licensing decisions are made.<sup>19</sup>

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<sup>15</sup> See 10 C.F.R. § 2.802(d). Section 2.802 is itself currently the subject of rulemaking. See Proposed Rule, Revisions to the Petition for Rulemaking Process, 78 Fed. Reg. 25,886 (May 3, 2013).

<sup>16</sup> See Proposed Rule, Restructuring of Facility License Application Review and Hearing Processes and Consideration of Environmental Statements, 37 Fed. Reg. 9331, 9333, 9340 (May 9, 1972); Final Rule, Restructuring of Facility License Application Review and Hearing Processes, 37 Fed. Reg. 15,127, 15,127 (July 28, 1972); see also *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 6 (2003); cf. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 372-75 (2012), *petitions for review denied*, *Massachusetts v. NRC*, 708 F.3d 63 (1st Cir. 2013).

<sup>17</sup> See 10 C.F.R. § 2.335(a)-(b).

<sup>18</sup> See *id.* § 2.802(d).

<sup>19</sup> See Suspension Petition at 4.

Suspending a proceeding is a “drastic action” that we will not take “absent immediate threats to public health and safety, or other compelling reason.”<sup>20</sup> To determine whether suspension of an adjudication or licensing decision is warranted, we consider “whether moving forward . . . will jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes.”<sup>21</sup> Petitioners have not provided—nor do we find—any compelling reason to justify suspension here.<sup>22</sup>

First, Petitioners do not address whether moving forward with the captioned proceedings will jeopardize public health and safety, and we find no reason to suggest that it will. The Staff’s recent spent fuel pool study concluded that “spent fuel pools are robust structures that are likely to withstand severe earthquakes without leaking.”<sup>23</sup> Indeed, the Staff determined that, consistent with prior studies, “high density storage of spent fuel in pools protects public health

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<sup>20</sup> *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158 (2011) (internal quotation marks omitted).

<sup>21</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 380 (2001); *see also Pilgrim*, CLI-12-6, 75 NRC at 373; *Callaway*, CLI-11-5, 74 NRC at 158-59.

<sup>22</sup> Because Petitioners do not articulate a compelling reason for suspension, we need not and do not address any procedural arguments, including timeliness, whether Petitioners should have submitted proposed contentions, or whether particular Petitioners qualify as “participants” to seek suspension under 10 C.F.R. § 2.802(d). *See, e.g., Nuclear Innovation North America LLC Response to Petition to Suspend Licensing Decisions Pending Completion of Rulemaking* (Mar. 21, 2014), at 28-29 (NINA Answer); *Applicant’s Response to Petition to Suspend Licensing Decision* (Mar. 21, 2014), at 7-8 (Pacific Gas and Electric’s Answer); *Dominion’s Answer Opposing Petition to Suspend Licensing Proceedings* (Mar. 21, 2014), at 10 (Dominion Answer).

<sup>23</sup> Consequence Study at xii; *see also id.* at x (concluding that the likelihood of a spent fuel pool accident resulting from the postulated seismic event is rare—with a frequency of once in ten million years or lower).



and safety.”<sup>24</sup> Therefore, even had Petitioners addressed this factor, it is not apparent that they would have satisfied it.

In addition, we do not find that moving forward with the proceedings “will prove an obstacle to fair and efficient decisionmaking.” As Petitioners would have it, purported new and significant information from the Staff’s review of expedited spent-fuel transfer “easily” satisfies the standard under NEPA for supplementation of an environmental impact statement.<sup>25</sup> Petitioners therefore argue that “refus[al] to stay licensing decisions that are affected by that information would frustrate fair and effective decisionmaking under NEPA.”<sup>26</sup>

Petitioners’ rulemaking petition is still pending, and as part of its review, the Staff will consider whether Petitioners truly have identified new and significant information.<sup>27</sup> Contrary to Petitioners’ assertions, NEPA does not require that we suspend our licensing decisions upon receipt of a “new and significant information” claim.<sup>28</sup> Such a requirement would render our decisionmaking “intractable.”<sup>29</sup> Rather, our rules provide a process to prepare supplemental draft or final environmental impact statements when the agency identifies new and significant information.<sup>30</sup> If, as part of its consideration of Petitioners’ rulemaking petition, the NRC

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<sup>24</sup> *Id.* at xii.

<sup>25</sup> Suspension Petition at 10.

<sup>26</sup> *Id.*

<sup>27</sup> See Notice, PRM-51-31, at 24,596. Therefore, we need not and do not decide here whether Petitioners have provided new and significant information.

<sup>28</sup> See *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373-74 (1989).

<sup>29</sup> *Id.* at 373; see also *Massachusetts*, 708 F.3d at 81-82; *Pilgrim*, CLI-12-6, 75 NRC at 376.

<sup>30</sup> See 10 C.F.R. §§ 51.72, 51.92. Moreover, our adjudicatory rules are designed to promote fair and efficient resolution of disputes. See *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998). Suspending a final decision indefinitely in an (continued . . .)

determines that there is new and significant information associated with the expedited-transfer issue that requires supplementation under NEPA, we can address any affected environmental analyses as needed, and appropriately move forward with these proceedings in the meantime.<sup>31</sup>

Similarly, we find that moving forward with the proceedings will not “prevent appropriate implementation of any pertinent rule or policy changes.” Each of the captioned proceedings is affected by the suspension that we put in place after the United States Court of Appeals for the D.C. Circuit vacated and remanded our 2010 update to the Waste Confidence Decision and Temporary Storage Rule.<sup>32</sup> Therefore, final licensing decisions are not likely for at least a few

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adjudicatory proceeding upon receipt of a claim of new and significant information runs counter to that goal. See *Pilgrim*, CLI-12-6, 75 NRC at 374-75 & n.140 (citing 5 U.S.C. § 558(c)); see also NINA Answer at 11; *Tennessee Valley Authority’s Answer Opposing Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceedings Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Mar. 21, 2014), at 11-12 (TVA Answer).

<sup>31</sup> See *Marsh*, 490 U.S. at 373; see also *Callaway*, CLI-11-5, 74 NRC at 175 (“Given that the NRC will have the opportunity to further consider the concerns that the rulemaking petitioners have expressed, and as we further consider actions related to the Japan events, we decline to suspend any proceeding pending resolution of the rulemaking petition.”).

<sup>32</sup> See *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012); *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 66-67 (2012); see generally Draft Waste Confidence Generic Environmental Impact Statement, 78 Fed. Reg. 56,621 (Sept. 13, 2013).

Petitioners suggest that the situation here is analogous to our waste confidence suspension in CLI-12-16. See Suspension Petition at 4. We disagree. In issuing the suspension of final licensing decisions in those proceedings, we recognized that we could not move forward without first addressing the D.C. Circuit’s remand because the vacatur left a regulatory gap in the Part 51 regulations that undergird licensing reviews in those matters. See *Calvert Cliffs*, CLI-12-16, 76 NRC at 66-67. Here, in contrast, Petitioners seek revision of our existing rules, and no regulatory gap currently exists with regard to those provisions. See 10 C.F.R. § 51.71 (environmental impact statements in general); *id.* pt. 51, subpt. A, app. B (license renewal); see also *id.* § 51.95 (post-construction environmental impact statements).

months.<sup>33</sup> Moreover, final decisions in some of the proceedings might be years down the road.<sup>34</sup> As we stated in response to other post-Fukushima suspension petitions, “[i]f the NRC determines that changes to its current environmental assessment rules are warranted, we can revisit whether an individual licensing review or adjudication should be held in abeyance pending the outcome of a relevant rulemaking.”<sup>35</sup> At this time, however, Petitioners have not shown compelling circumstances requiring us to suspend final licensing decisions in the captioned proceedings.<sup>36</sup>

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Finally, as noted above, the Staff has stated that it will address separately the rulemaking petitioners’ collateral request to suspend licensing decisions in all pending reactor licensing proceedings beyond those captioned here, as well as the requests to suspend the application of the generic environmental impact finding for spent fuel storage in 10 C.F.R. Part 51, Subpart A, Appendix B; all regulations approving the certified designs for new reactors with high-density spent fuel pool storage; and all environmental assessments considering severe accident mitigation design alternatives.<sup>37</sup> For the reasons set forth above, we exercise our

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<sup>33</sup> We expect to complete a final rule addressing long-term storage of spent fuel later this fall. See NRC Waste Confidence Update Schedule, <http://www.nrc.gov/waste/spent-fuel-storage/wcd/schedule.html> (last visited July 15, 2014).

<sup>34</sup> As some of the combined license applicants note in their answers, the Staff’s review schedule and projected issuance of final licensing decisions in those matters are to be determined. See, e.g., Dominion Answer at 5 (noting that the Staff “has not yet issued a schedule for further review or estimated the date for issuance of the [North Anna combined license]”); TVA Answer at 4-5 (noting that “review of the [Bellefonte] application is suspended, [so] there has not yet been a draft environmental impact statement issued and there is no target date for doing so”).

<sup>35</sup> *Callaway*, CLI-11-5, 74 NRC at 174.

<sup>36</sup> See *id.* at 174-75.

<sup>37</sup> See Notice, PRM-51-31, 79 Fed. Reg. at 24,596.

inherent supervisory authority and direct the Staff to deny the request to suspend final decisions in all other pending reactor licensing proceedings. With respect to the remaining suspension requests (which are similar in nature to waiver requests), we direct the Staff to seek our approval if it determines that such suspension is necessary.<sup>38</sup>

### III. CONCLUSION

Petitioners have not shown a compelling reason to suspend the captioned proceedings pending the resolution of their February 18, 2014 rulemaking petition. Accordingly, we *deny* the suspension petitions. We also *direct* the Staff to deny the rulemaking petitioners' collateral request to suspend licensing decisions in all other pending reactor licensing proceedings and *direct* the Staff to seek our approval if it determines that suspension of our rules or the environmental assessments considering severe accident mitigation design alternatives is necessary.

IT IS SO ORDERED.

For the Commission

**NRC SEAL**

/RA/

Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 17<sup>th</sup> day of July, 2014.

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<sup>38</sup> See, e.g., "Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Main Report" (Final Report), NUREG-1437, Vol. 1, Rev. 1 (June 2013), at 1-19 (explaining that, for license renewal reviews, the Staff will seek Commission approval to suspend application of the rule if new, generically applicable information "demonstrates that the analysis of an impact codified in the rule is incorrect").

## APPENDIX

### I. PETITIONS

1. *DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), Beyond Nuclear, Don't Waste Michigan: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Feb. 27, 2014).*
2. *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3), Hudson River Sloop Clearwater: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Feb. 27, 2014).*
3. *FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), Beyond Nuclear: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Feb. 27, 2014).*
4. *Florida Power & Light Co. (Turkey Point Units 6 and 7), National Parks Conservation Association, Southern Alliance for Clean Energy: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Feb. 27, 2014).*
5. *NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), Friends of the Coast, New England Coalition: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Mar. 1, 2014).*
6. *Nuclear Innovation North America LLC (South Texas Project Units 3 and 4), Public Citizen, SEED Coalition: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Feb. 27, 2014).*
7. *Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), San Luis Obispo Mothers for Peace: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Feb. 27, 2014).*
8. *Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), Ecology Party of Florida, Nuclear Information and Resource Service: Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of*

*Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Feb. 27, 2014).

9. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4) (Louis Zeller of the Blue Ridge Environmental Defense League served the petition on the *Bellefonte* docket): *Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Feb. 27, 2014).
10. *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), Blue Ridge Environmental Defense League: *Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Feb. 27, 2014).
11. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), Southern Alliance for Clean Energy: *Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Feb. 27, 2014).
12. *Virginia Electric and Power Co. d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative* (North Anna Power Station, Unit 3), Blue Ridge Environmental Defense League: *Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Feb. 27, 2014).

## II. RESPONSIVE PLEADINGS

1. Served in all captioned proceedings: *NRC Staff Answer Opposing Suspension Petition* (Mar. 21, 2014).
2. *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3): *DTE Response to Petition to Suspend Licensing Decision* (Mar. 21, 2014).
3. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3): *Entergy's Opposition to Clearwater's Petition to Suspend License Renewal Decision Pending Completion of Rulemaking* (Mar. 21, 2014).
4. *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1): *FirstEnergy Nuclear Operating Company Response to Petition to Suspend Licensing Decisions Pending Completion of Rulemaking* (Mar. 21, 2014).
5. *Florida Power & Light Co.* (Turkey Point Units 6 and 7): *Answer of Florida Power & Light Company Opposing Petition to Suspend Licensing Proceedings* (Mar. 21, 2014).

6. *NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1): Answer of NextEra Energy Seabrook, LLC Opposing Petition to Suspend Licensing Proceedings (Mar. 21, 2014).*
7. *Nuclear Innovation North America LLC (South Texas Project Units 3 and 4): Nuclear Innovation North America LLC Response to Petition to Suspend Licensing Decisions Pending Completion of Rulemaking (Mar. 21, 2014).*
8. *Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2): Applicant's Response to Petition to Suspend Licensing Decision (Mar. 21, 2014).*
9. *Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2): Answer of Progress Energy Florida, Inc. Opposing Petition to Suspend Licensing Proceedings (Mar. 21, 2014).*
10. *Tennessee Valley Authority (Bellefonte Nuclear Power Plant Units 3 and 4): Tennessee Valley Authority's Answer Opposing Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Mar. 21, 2014).*<sup>39</sup>
11. *Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2): Tennessee Valley Authority's Answer Opposing Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Mar. 21, 2014).*
12. *Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2): Tennessee Valley Authority's Answer Opposing Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Mar. 21, 2014).*
13. *Virginia Electric and Power Co. d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (North Anna Power Station, Unit 3): Dominion's Answer Opposing Petition to Suspend Licensing Proceedings (Mar. 21, 2014).*

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<sup>39</sup> TVA served the same answer on the *Bellefonte*, *Sequoyah*, and *Watts Bar* dockets.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FIRST ENERGY NUCLEAR OPERATING	)	
COMPANY	)	Docket No. 50-346-LR
	)	
(Davis-Besse Nuclear Power Station, Unit 1)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-14-07)** have been served upon the following persons by Electronic Information Exchange.

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**COMMISSION MEMORANDUM AND ORDER (CLI-14-07)**

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Dated at Rockville, Maryland  
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