

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman  
Jeff Baran  
David A. Wright

In the Matter of

FLORIDA POWER & LIGHT CO.

(Turkey Point Nuclear Generating Units 3 and 4)

Docket Nos. 50-250-SLR  
50-251-SLR

**CLI-22-02**

**MEMORANDUM AND ORDER**

In considering the appeals of Natural Resources Defense Council, Friends of the Earth, and Miami Waterkeeper (collectively, the Intervenors), we have the opportunity to reconsider the Commission's decision in CLI-20-3. Today we reverse CLI-20-3, which addressed the referred ruling from the Atomic Safety and Licensing Board (Board) and held that 10 C.F.R. § 51.53(c)(3) applied to a subsequent license renewal applicant's preparation of an environmental report.<sup>1</sup> In CLI-20-3, the Commission held that, when considering the environmental impacts of a subsequent license renewal, the NRC staff (Staff) may rely on the Generic Environmental Impact Statement for License Renewal of Nuclear Plants<sup>2</sup> and 10 C.F.R. Part 51, Subpart A,

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<sup>1</sup> CLI-20-3, 91 NRC 133 (2020).

<sup>2</sup> "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (Final Report), NUREG-1437, rev. 1, vols. 1-3 (June 2013), (ADAMS accession nos. ML13106A241, ML13106A242, ML13106A244) (2013 GEIS).

Appendix B, Table B-1 (Table B-1) to evaluate environmental impacts of Category 1 issues. For the reasons described below, we reverse that decision and hold that section 51.53(c)(3) only applies to an initial license renewal applicant's preparation of an environmental report and that the 2013 GEIS did not address subsequent license renewal. As a result, the environmental review of the subsequent license renewal application at issue in this case is incomplete.

## I. BACKGROUND

Our regulations provide that we will prepare an EIS to comply with the National Environmental Policy Act (NEPA) when renewing a nuclear power plant operating license.<sup>3</sup> The environmental impact statement (EIS) includes the Staff's analysis that considers and weighs the environmental impacts of the proposed action. To support the preparation of EISs for license renewal, the Staff issued the Generic Environmental Impact Statement for License Renewal of Nuclear Plants in 1996.<sup>4</sup> The NRC also codified in Table B-1 the findings of the 1996 GEIS.<sup>5</sup> The NRC issued a revision to the 1996 GEIS and updated the corresponding regulations in 2013.<sup>6</sup> The 2013 GEIS classified environmental impacts into two categories—Category 1 issues, where impacts apply to all plants (or plants that share a specific characteristic), a single significance level has been assigned to the impacts, and additional plant-specific mitigation measures are not warranted; and Category 2 issues, where all of the Category 1 criteria could

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<sup>3</sup> See, e.g., 10 C.F.R. § 51.20(b)(2).

<sup>4</sup> "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (Final Report), NUREG-1437, vols. 1-2 (May 1996) (ML040690705, ML040690738) (1996 GEIS).

<sup>5</sup> See Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rule, 61 Fed. Reg. 28,467 (June 5, 1996) (1996 Final Rule).

<sup>6</sup> See Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rule, 78 Fed. Reg. 37,282 (June 20, 2013) (2013 Final Rule).

not be met.<sup>7</sup> The Staff prepares plant-specific supplements to the license renewal GEIS to address Category 2 issues.<sup>8</sup>

In this case, FPL applied for licenses to operate Turkey Point Units 3 and 4 for an additional twenty years beyond their initial renewal terms, which were otherwise scheduled to expire in 2032 and 2033, respectively.<sup>9</sup> Initially, the Intervenors challenged the environmental report (ER) that FPL submitted with its application. The Board ruled on multiple petitions to intervene and requests for hearing in LBP-19-3 and granted the Intervenors' petition to intervene.<sup>10</sup> The Intervenors submitted five contentions challenging the ER, and the Board admitted two in part as contentions of omission.<sup>11</sup> The Board also referred its ruling on the scope of 10 C.F.R. § 51.53(c)(3) to the Commission under 10 C.F.R. § 2.323(f)(1).<sup>12</sup> In CLI-20-3, the Commission accepted the referral and held that the Staff may rely on the 2013 GEIS and Table B-1 when evaluating the environmental impacts of Category 1 issues, absent new and significant information that would change conclusions in the 2013 GEIS.<sup>13</sup> Therefore, the

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<sup>7</sup> See 2013 GEIS at S-1, S-6 to S-7. The single significance criterion does not apply to collective offsite radiological impacts from the fuel cycle. See 10 C.F.R. pt. 51, subpt. A, app. B, tbl.B-1.

<sup>8</sup> 2013 GEIS at S-1, S-7.

<sup>9</sup> See Letter from William D. Maher, FPL, to NRC Document Control Desk (Apr. 10, 2018) (ML18113A132 (package) and ML18102A521 (supplemental ER information) (transmitting a revised subsequent license renewal application)).

<sup>10</sup> LBP-19-3, 89 NRC 245 (2019).

<sup>11</sup> *Id.* at 285-95. The Board also admitted similar contentions filed by Southern Alliance for Clean Energy (SACE), but SACE withdrew from the proceeding. *Id.* at 301 & n.81; *Southern Alliance for Clean Energy's Notice of Withdrawal* (Apr. 9, 2019). We therefore only address the contentions submitted by the Intervenors in this decision.

<sup>12</sup> LBP-19-3, 89 NRC at 273 n.46. Judge Abreu filed a separate opinion, in which she outlined her bases for disagreeing with the majority's conclusion that section 51.53(c)(3) applies to subsequent license renewal.

<sup>13</sup> CLI-20-3, 91 NRC at 155.

Commission held, any challenge to Category 1 issues in a subsequent license renewal proceeding would need to be accompanied by a rule waiver petition.<sup>14</sup>

In CLI-20-3, the Commission affirmed the Board's determination that the regulatory language is ambiguous because it does not direct or prohibit the application of section 51.53(c)(3) to subsequent license renewal applicants.<sup>15</sup> The decision in CLI-20-3 also rested, in part, on a concern that the application of section 51.53(c)(3) to only initial license renewal applicants would render that provision incompatible with the other license renewal provisions.<sup>16</sup> Further, the Commission decided that the regulatory history supported the conclusion that subsequent license renewal applicants can rely on the GEIS and Table B-1 when analyzing Category 1 issues. The Commission relied on the fact that the glossary in the 2013 GEIS defines "license renewal term" as "[t]hat period of time past *the original or current license term* for which the renewed license is in force" to find that the 2013 GEIS covers environmental impacts during any license renewal term—either initial or subsequent.<sup>17</sup> The Commission also cited to the regulatory analysis that accompanied the 2013 GEIS and the associated Part 51 revisions and opined that the cost-justification recommendation in the regulatory analysis was based on an understanding that the 2013 GEIS covered both initial and subsequent license renewal applications.<sup>18</sup> In addition, the Commission reasoned that "[b]ecause the regulations at

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 141.

<sup>16</sup> *Id.*; *see also id.* at 142-44 (discussing section 51.95, which applies to postconstruction EISs, and section 51.71, which applies to draft EISs).

<sup>17</sup> *Id.* at 146 (citing 2013 GEIS at 7-27) (emphasis added).

<sup>18</sup> *Id.* at 146-47. The Commission also noted that Regulatory Guide 4.2 does not distinguish between initial and subsequent license renewal applicants, and the Staff sought public comments on this guidance as part of the revisions to Part 51 in 2013. *Id.* at 150-51 (citing "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications," Regulatory Guide 4.2, supp. 1, rev. 1 (June 2013), at 25 (ML13067A354) (Regulatory Guide 4.2)).

issue codify the 2013 GEIS, the prior regulatory history [related to the 1991 proposed rule and 1996 final rule] is a less reliable guide than that accompanying the 2013 rulemaking, which is the 'latest expression of the rulemakers' intent.'"<sup>19</sup>

After the Board admitted the two environmental contentions, the Staff issued the Draft Supplemental Environmental Impact Statement (Draft SEIS) for Turkey Point Units 3 and 4. Pursuant to the migration tenet, the Intervenor's admitted contentions became challenges to the Draft SEIS.<sup>20</sup> In LBP-19-6, the Board granted FPL's motion to dismiss the admitted contentions as moot based on new information in the Draft SEIS.<sup>21</sup> The Intervenor's next sought a rule waiver and admission of six newly proffered environmental contentions, two amended and four new contentions, based on the Draft SEIS.<sup>22</sup> In LBP-19-8, the Board rejected the Intervenor's requests and terminated the proceeding at the Board level. The Intervenor's appealed all three of the Board decisions dismissing or finding inadmissible their contentions.<sup>23</sup>

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<sup>19</sup> *Id.* at 148-49 (citation omitted).

<sup>20</sup> LBP-19-6, 90 NRC 17, 20 (2019).

<sup>21</sup> *Id.* at 20-21, 26.

<sup>22</sup> *Natural Resources Defense Council's, Friends of the Earth's, and Miami Waterkeeper's Amended Motion to Migrate Contentions & Admit New Contentions in Response to NRC Staff's Supplemental Draft Environmental Impact Statement* (revised June 28, 2019), at 1-2 & n.3 (Motion to Migrate and Admit Amended and New Contentions). The Board found that its decision in LBP-19-6 rendered moot that portion of the motion that sought to migrate Contentions 1-E and 5-E as originally admitted. LBP-19-8, 90 NRC 139, 148 n.9 (2019).

<sup>23</sup> *Friends of the Earth's, Natural Resources Defense Council's, and Miami Waterkeeper's Petition for Review of the Atomic Safety and Licensing Board's Rulings in LBP-19-3 and LBP-19-06* (Aug. 9, 2019); *Friends of the Earth's, Natural Resources Defense Council's, and Miami Waterkeeper's Petition for Review of the Atomic Safety and Licensing Board's Ruling in LBP-19-08* (Nov. 18, 2019).

## II. DISCUSSION

### A. Reconsideration of CLI-20-3

As we considered the Intervenor's appeals, we also had occasion to reconsider the Commission's decision in CLI-20-3. The authority to reconsider our actions is inherent in our authority to make them in the first instance.<sup>24</sup> Because the proceeding is still open, we can modify, suspend, or revoke FPL's license, as appropriate.<sup>25</sup> Agencies may change positions and interpretations, so long as they explain their reasoning for doing so.<sup>26</sup>

Commissioner Baran dissented in CLI-20-3, and Commissioner Baran and Commissioner Hanson also dissented in part in the *Peach Bottom* proceeding, where the majority adhered to the decision in CLI-20-3 on the interpretation of section 51.53(c)(3).<sup>27</sup> Based on the legal analysis described in these dissents and summarized below, we reverse the Commission's holding in CLI-20-3. We hold that the 2013 GEIS does not cover the subsequent license renewal period and that section 51.53(c)(3) does not apply to subsequent license renewal applicants. Therefore, the Staff may not exclusively rely on the 2013 GEIS and Table B-1 for the evaluation of environmental impacts of Category 1 issues. As we noted when

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<sup>24</sup> See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 558 (2016) (reconsideration of direction to the Staff provided in a staff requirements memorandum).

<sup>25</sup> *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-8-13, 67 NRC 396, 400 (2008) ("A license renewal may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review.").

<sup>26</sup> See e.g., *South Shore Hosp., Inc. v. Thompson*, 308 F.3d 91, 102 (1st Cir. 2002); cf. *Pepper v. United States*, 562 U.S. 476, 506-507 (2011) (citing *Arizona v. California*, 460 U.S. 605, 618 (1983); *Agostini v. Felton*, 521 U.S. 203, 236 (1997)) (holding that a court need not apply the "law of the case" doctrine if it is "convinced that [its prior decision] is clearly erroneous and would work a manifest injustice.").

<sup>27</sup> CLI-20-3, 91 NRC at 159-166 (Baran, C., dissenting); *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-20-11, 92 NRC 335, 348-50 (2020) (Baran, C. and Hanson, C., dissenting in part). Judge Abreu dissented from the majority position in LBP-19-3 that section 51.53(c)(3) applies to subsequent license renewal. LBP-19-3, 89 NRC at 303-315 (Abreu, J., concurring in part and dissenting in part).

we accepted the referred ruling from the Board, this issue is significant and affects other proceedings.

Upon further consideration of the issue, we find that reversal of CLI-20-3 aligns our interpretation with the plain language of the regulation and with the requirements of the Administrative Procedure Act (APA) and NEPA. Because the rule language is clear on its face, it is unnecessary to resort to other sources to discern its meaning.<sup>28</sup> Further, we find that CLI-20-3 relied too heavily on individual statements in the 2013 updates to Part 51 and the GEIS and other agency documents from that timeframe and read them out of context with the remainder of the rule's history.<sup>29</sup> The 2013 updates built on the 1996 rule and 1996 GEIS and must be interpreted in that context.<sup>30</sup> Section 51.53 was promulgated through notice-and-

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<sup>28</sup> See *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 104-05 (2015) (quoting *Christensen v. Harris Cty.*, 529 U.S. 576, 588 (2000)).

<sup>29</sup> For example, CLI-20-3 references Commission Paper SECY-14-0016, in which the Staff advised us that it “believes the license renewal process and regulations are sound and can support subsequent license renewal; however, the staff has identified several areas that should be modified in the existing rule to allow for a more predictable review process.” “Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal,” Commission Paper SECY-14-0016 (Jan. 31, 2014), at 1 (ML14050A306). But none of the Staff’s proposed rule modifications related to the environmental review. The Staff did not recommend updates to Part 51 “because environmental issues can be adequately addressed by the existing GEIS and through future GEIS revisions.” *Id.* at 5. The Commission did not approve the Staff’s recommendation to initiate rulemaking for power reactor subsequent license renewal on non-environmental issues and did not offer any comment on the adequacy of environmental regulations. Staff Requirements—SECY-14-0016—Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal (Aug. 29, 2014) (ML14241A578).

<sup>30</sup> CLI-20-3 examined how different Part 51 provisions interacted with one another. CLI-20-3, 91 NRC at 142-44. Section 51.71(d) directs the Staff, when preparing any draft SEIS under section 51.95(c), to “rely on conclusions as amplified by the supporting information in the GEIS or issues designated as Category 1 in appendix B to subpart A of this part.” 10 C.F.R. § 51.71(d). And section 51.95(c)(4) directs the Staff, adjudicatory officers, and the Commission to “integrate the conclusions in the generic environmental impact statement for issues designated as Category 1 with information developed for those Category 2 issues applicable to the plant under § 51.53(c)(3)(ii) and any new and significant information.” 10 C.F.R. § 51.95(c)(4). These references to the GEIS in sections 51.71 and 51.95, along with section 51.53(c), were added when Part 51 was revised in 1996. As such, and contrary to the analysis in CLI-20-3, they must be read in that context and are applicable to an initial license renewal period. See 1991

comment rulemaking and any amendments to that rule must also occur through notice-and-comment rulemaking.<sup>31</sup>

## **B. Basis for Our Interpretation of Section 51.53 and the GEIS**

Section 51.53(c)(1) applies to “[e]ach applicant for renewal of a license to operate a nuclear power plant under part 54,” and section 51.53(c)(2) includes requirements for the ER that must be submitted by any such applicant.<sup>32</sup> Under section 51.53(a), this ER may incorporate by reference information contained in an NRC staff-prepared final GEIS. By contrast, section 51.53(c)(3) narrows the scope of license renewal applicants to which it applies and speaks only to “those applicants seeking an *initial* renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995.”<sup>33</sup> Contrary to the Board’s assertion (and the Commission’s previous determination in CLI-20-3), the regulation is not silent as to whether subsequent license renewal applicants can take advantage of the provisions of section 51.53(c)(3).<sup>34</sup> The structure and language of the rule indicate that the provisions of 51.53(c)(1) and (c)(2) apply to all license renewal applicants, including those for subsequent license renewal, but section 51.53(c)(3) only applies to initial license renewal applicants. The fact that the Commission deliberately confined the applicability of section 51.53(c)(3) to initial license renewal applicants (and subsequently declined to change this language, even when editing other parts of the provision through notice-and-comment rulemaking) reflects an intent—on which the public certainly would have been justified in

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Proposed Rule, 56 Fed. Reg. at 47,017 (“[T]he part 51 amendments apply to one renewal of the initial license.”).

<sup>31</sup> *Christensen*, 529 U.S. at 588.

<sup>32</sup> 10 C.F.R. § 51.53(c)(1)-(2).

<sup>33</sup> *Id.* § 51.53(c)(3) (emphasis added).

<sup>34</sup> See LBP-19-3, 89 NRC at 265.

relying—not to relieve subsequent license renewal applicants, and ultimately the NRC Staff, of the obligation to consider Category 1 issues on a plant-specific basis.

We acknowledge that there is language in the regulatory analysis accompanying the 2013 revisions to Part 51 based on the 2013 GEIS suggesting a contrary view of the meaning of section 51.53.<sup>35</sup> In the regulatory analysis, the Staff included prospective subsequent license renewal applicants as “affected licensees.”<sup>36</sup> But the regulatory analysis is not the regulation and cannot be used to change the plain meaning of the regulation.<sup>37</sup>

Moreover, we cannot interpret our regulations in a manner that conflicts with our NEPA responsibility. NEPA requires the NRC to discuss the environmental impacts of the proposed action, which is the operation of Turkey Point for an additional twenty years beyond the expiration of its renewed licenses. NRC rules codified the findings of the GEIS and designated certain topics as Category 1 issues that the Staff had considered and evaluated when drafting the GEIS. We cannot retroactively decide that the GEIS covered impacts of subsequent license renewal. As discussed below, the 1996 GEIS indicated that its scope was limited to one period of license renewal. Although there are some ambiguous statements in the text of the 2013 GEIS, these isolated cases of ambiguous text are clearly outweighed by the numerous definitive

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<sup>35</sup> See “Final Rule: Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,” Commission Paper SECY-12-0063 (Apr. 20, 2012) (ML110760045 (package)), Encl. 2 at 25 (ML110760321) (Regulatory Analysis); *Applicant’s Surreply to New Arguments Raised in Reply Pleadings* (Sept. 20, 2018), at 11-12 (FPL Surreply); *NRC Staff’s Response to the Applicant’s Surreply and the Petitioners’ Response, Regarding the Applicability of 10 C.F.R. § 51.53(c)(3) to Subsequent License Renewal Applications* (Nov. 2, 2018), at 8-9, 11-12. The Board also notes that some NRC guidance documents discuss license renewal broadly and do not distinguish between initial and subsequent license renewal. See LBP-19-3, 89 NRC at 271 & n.42 (discussing Regulatory Guide 4.2 and “Standard Review Plans for Environmental Reviews for Nuclear Power Plants” (Final Report), NUREG-1555, Supplement 1: Operating License Renewal, rev. 1 (June 2013) (ML13106A246)).

<sup>36</sup> Regulatory Analysis at 25.

<sup>37</sup> The regulatory analysis is also not the agency’s NEPA analysis, and the reference to subsequent license renewal applicants as affected licensees in the regulatory analysis does not fulfill NEPA’s mandate to disclose the environmental impacts of subsequent license renewal.

other statements in the GEIS that the document only examined the environmental impacts of a single, twenty-year license renewal and the lack of statements indicating that the scope of the 2013 GEIS was expanded from the original version. Even if the Staff had intended to address subsequent license renewal in the 2013 GEIS, the occasional ambiguous phrasing did not put the public on notice of such an intention, particularly given the language in section 51.53(c)(3) confining its applicability to initial license renewal applicants.<sup>38</sup> To provide a meaningful opportunity for public comment, the agency must adequately describe its intentions to the public.<sup>39</sup>

### **1. Part 51**

In the statements of consideration (SOC) to the 1991 proposed rule for the Part 51 revisions, the Commission explicitly described the rule as applying only to initial renewals and not subsequent license renewals, in contrast with Part 54.<sup>40</sup> The 1996 final rule made no change to this representation.<sup>41</sup> The SOC for the 1996 final rule stated that the final rule “is

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<sup>38</sup> NEPA obligates an agency “to consider every significant aspect of the environmental impact of a proposed action,” and to “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

<sup>39</sup> See 40 C.F.R. § 1502.1 (“[The EIS] shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.”).

<sup>40</sup> Environmental Review for Renewal of Operating Licenses; Proposed Rule, 56 Fed. Reg. 47,016, 47,017 (Sept. 17, 1991) (“The part 54 rule could be applied to multiple renewals of an operating license for various increments. However, the part 51 amendments apply to one renewal of the initial license for up to 20 years beyond the expiration of the initial license.”) (1991 Proposed Rule); see also *id.* at 47,020 (The GEIS will “characterize the nature and magnitude of impacts and other issues that will result from the refurbishments necessary for license renewal and the potential environmental impacts of operating plants for 20 years beyond their current 40-year licensing limit.”).

<sup>41</sup> See 1996 Final Rule, 61 Fed. Reg. at 28,468-69 (summarizing changes to the rule).

consistent with the generic approach and scope of the proposed” rule.<sup>42</sup> Most importantly, the 1996 final rule retained the restriction that only “applicants seeking an *initial* renewal license” need not consider alternatives for reducing adverse environmental impacts for Category 1 issues in Table B-1.<sup>43</sup> This restriction remains in the current regulation.

In 2009, the NRC published its proposed rule amending Part 51, including updating Table B-1 and “other related provisions in Part 51 (e.g., § 51.53(c)(3)).”<sup>44</sup> The NRC proposed revisions to section 51.53(c)(3), but it did not seek to change the phrase “for those applicants seeking an initial renewed license.”<sup>45</sup> Neither the proposed rule nor the 2013 final rule indicated an expansion in the temporal scope of the 2013 GEIS to account for subsequent license renewal. In fact, subsequent license renewal is not mentioned at all.

FPL argued to the Board that the NRC’s intent to review and update the GEIS and Table B-1 on a ten-year cycle does not make sense if their applicability was limited to initial license renewals.<sup>46</sup> We disagree. Many reactors could have submitted applications for initial license renewal ten years or more after the Part 51 revisions were finalized in 1996. In fact, plants at

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<sup>42</sup> *Id.* at 28,468.

<sup>43</sup> *Id.* at 28,487 (emphasis added). When section 51.53 was modified in 2007 to clarify its applicability to combined license applications, there was also a slight phrasal change from “those applicants seeking an initial *renewal* license” to “those applicants seeking an initial *renewed* license.” *Compare id. with* Licenses, Certifications, and Approvals for Nuclear Power Plants; Final Rule, 72 Fed. Reg. 49,352, 49,513 (Aug. 28, 2007) (emphasis added). The 2007 amendments further support the plain language interpretation of the rule—if “initial” was not intended to be a restriction, the NRC had an opportunity to remove it while it was already revising the same phrase in 51.53(c)(3).

<sup>44</sup> Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Proposed Rule, 74 Fed. Reg. 38,117, 38,117 (July 31, 2009).

<sup>45</sup> *See id.* at 38,128, 38,132. In addition, the section-by-section analysis in the 2013 final rule used the phrase “applicants seeking an initial license renewal,” similar to the phrase used in the rule itself—“applicants seeking an initial renewed license.” 2013 Final Rule, 78 Fed. Reg. at 37,312.

<sup>46</sup> FPL Surreply at 6.

thirty-three sites applied for initial license renewals in 2006 or later, with the most recent submission of a license renewal application in 2017 for River Bend Station, Unit 1.<sup>47</sup> Therefore, updating the GEIS and Table B-1 on a ten-year cycle is consistent with the regulatory language and has ensured that the agency relies on current information when preparing supplemental EISs (SEISs) for initial license renewal applications submitted in 2006 and beyond.

## **2. The License Renewal GEISs**

Neither the original 1996 GEIS nor the revised 2013 GEIS analyzed the environmental impacts of subsequent license renewal periods. The 1996 GEIS stated it “examines how [the currently operating commercial nuclear power] plants and their interactions with the environment would change if such plants were allowed to operate (under the proposed license renewal regulation 10 CFR Part 54) for a maximum of 20 years past the term of the original plant license of 40 years.”<sup>48</sup> The 1996 GEIS also contained a prototypic license renewal schedule, which contemplated an initial license and a single, renewed license: “The new license would go into effect at that point, covering the balance of the original 40-year term, as well as the additional 20-year term.”<sup>49</sup> There was no mention of a potential subsequent license renewal term.

The 2013 GEIS contained language indicating its scope was limited to an initial period of license renewal. For example, Appendix E on postulated accidents stated the following:

Since the NRC’s understanding of severe accident risk has evolved since issuance of the 1996 GEIS, this appendix assesses more recent information on severe accidents that might alter the conclusions in Chapter 5 of the 1996 GEIS. This revision considers how these developments would affect the conclusions in the 1996 GEIS and provides comparative data where appropriate. This revision does not attempt to provide new

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<sup>47</sup> NRC, Status of Initial License Renewal Applications and Industry Initiatives, <https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html> (last visited Feb. 2, 2022).

<sup>48</sup> 1996 GEIS at 2-1.

<sup>49</sup> *Id.* at 2-36. This sixty-year schedule is supported by additional information in Appendix B to the 1996 GEIS, where the Staff also assumed a total plant life of sixty years. *Id.* at B-52.

quantitative estimates of severe accident impacts. In addition, *the revision only covers one initial license renewal period for each plant (as did the 1996 GEIS)*. Thus, the population projections, meteorology, and exposure indices used in the 1996 GEIS are assumed to remain unchanged for purposes of this analysis.<sup>50</sup>

This statement limits the scope of the analysis for this topic in both the 1996 GEIS and the 2013 GEIS. Moreover, there is no technical basis in the 1996 GEIS or the 2013 GEIS upon which to conclude that operational years sixty through eighty would have the same environmental impacts as operational years forty through sixty.

If the Staff intended to change the scope of the 2013 GEIS to include subsequent license renewal, when previous versions of the GEIS did not include this timeframe (and the limiting language set forth in section 51.53(c)(3) remained unchanged), then in order to comply with NEPA and the APA this should have been clearly communicated to the public at the beginning of the updating process. The NRC cannot require members of the public to parse language in a regulatory analysis or glossary to discern that the agency is making a major shift in the scope of an EIS and rulemaking; this change must be clearly communicated to allow for proper public participation.

### **C. Effect of Our Decision**

Administrative litigation before our agency has been pending in the *Turkey Point* proceeding since the application for subsequent license renewal was filed.<sup>51</sup> Consequently, FPL was aware its licenses were subject to modification, suspension, or revocation as a result of the adjudicatory process.

The interpretation we apply today is consistent with the intent and text of NEPA and the APA, as well as judicial interpretations of those laws. This decision aligns the agency interpretation of section 51.53 with the plain language of the regulation.

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<sup>50</sup> *Id.* at E-2 (emphasis added).

<sup>51</sup> We are also issuing a decision today in *Peach Bottom* to provide direction to those parties.

We conclude that the Staff did not conduct an adequate NEPA analysis before issuing FPL licenses for the subsequent license renewal period.<sup>52</sup> While FPL's subsequently renewed licenses became immediately effective upon issuance,<sup>53</sup> the environmental analysis associated with the previous licenses analyzed the impacts of operation until 2032 and 2033 for Units 3 and 4, respectively. We conclude that it is appropriate for FPL to maintain its current subsequently renewed licenses, but with shortened terms to match the end dates of the previous licenses (i.e., July 19, 2032, and April 10, 2033, for Units 3 and 4, respectively) until completion of the NEPA analysis. Accordingly, we direct the Staff to amend the licenses to this effect. Given the timeframe involved, we fully expect that the Staff will be able to evaluate the environmental impacts prior to FPL entering the subsequent license renewal period. While we recognize that FPL and other subsequent license renewal applicants have relied on CLI-20-3 and prior agency statements, our holding today will ultimately promote the agency's goals of clear communication with the public and transparency in our actions.

Consistent with this order, we will separately direct the Staff to update the GEIS to cure the NEPA deficiency by addressing the subsequent license renewal period.<sup>54</sup> We will also issue an order on the dockets of all pending subsequent license renewal proceedings to address the pending adjudicatory matters.

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<sup>52</sup> The Staff issued the licenses, consistent with NRC regulations, after completing its review of FPL's application, which included the issuance of a draft plant-specific SEIS for public comment, a final plant-specific SEIS, and a record of decision.

<sup>53</sup> See 10 C.F.R. § 54.31(c).

<sup>54</sup> We provide our direction for addressing the NEPA deficiency discussed in this order in Staff Requirements---SECY-21-0066—"Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses – Environmental Review (RIN 3150-AK32; NRC-2018-0296)" (Feb. 24, 2022) (ML22053A308). Because we have determined that the GEIS did not cover the subsequent license renewal period, the Staff cannot exclusively rely on the GEIS for Category 1 issues until environmental impacts from the subsequent license renewal term are evaluated. However, the Staff may still use the current GEIS as necessary, through tiering and incorporation by reference, in its development of subsequent license renewal NEPA documents.

In the instant matter, we direct FPL, the Staff, and the Intervenors to provide their views on any practical effects of the current licenses remaining in place with the modified end dates as well as any practical effects if the previous licenses were reinstated. After considering briefing on the issue, we will issue a subsequent order to provide additional direction, if any, to the parties regarding the status of the licenses.

### III. CONCLUSION

For the reasons described above, we reverse CLI-20-3. We leave the licenses in place and *direct* the Staff to modify the expiration dates for Units 3 and 4 to 2032 and 2033, respectively. We further *direct* the parties to submit their views on the practical effects of (1) the subsequent renewed licenses continuing in place and (2) the previous licenses being reinstated by **March 21, 2022**. The parties' responses are due by **March 31, 2022**.

IT IS SO ORDERED.

For the Commission



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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 24<sup>th</sup> day of February 2022.

### **Commissioner Wright, dissenting in part**

I disagree with my colleagues' rationale and holding reversing our previous decision in CLI-20-3. I have serious concerns about the message this action sends to the public, applicants, licensees, and other stakeholders. Therefore, I dissent from the decision, with the narrow exception of the status of the licenses and the path forward to resolve the purported NEPA deficiency.

I continue to agree with our previous interpretation in CLI-20-3. In my view, based on regulatory ambiguity, it is appropriate to read the language of Part 51, the regulatory history, regulatory analysis, and agency guidance holistically.<sup>1</sup> This holistic analysis supports the view that 10 C.F.R. § 51.53(c)(3) applies to both initial and subsequent license renewal applications.

I view the majority's decision to reverse direction now as arbitrary and inconsistent with the NRC's Principles of Good Regulation. The majority's decision is arbitrary because my colleagues do not base the reversal on any new information or arguments beyond what we previously considered and rejected in issuing CLI-20-3. The reversal is also contrary to the NRC's Principles of Good Regulation, particularly the principles of Openness, Clarity, and Reliability. For the NRC to function as an effective and credible regulator, our stakeholders must be able to rely on our statements and positions. Such reliance is impossible when we may change our position at any time, based on nothing other than the information and arguments previously considered and rejected.

Moreover, changing course in this proceeding under these circumstances short-circuits our agency's well-established and predictable adjudicatory process, set forth in the Atomic Energy Act of 1954, as amended and detailed in our regulations.<sup>2</sup> The Atomic Safety and Licensing Board considered the specific issues of this case and held that the Generic

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<sup>1</sup> CLI-20-3, 91 NRC 133, 141, 142-44, 146, 146-47, 150-51 (2020).

<sup>2</sup> See 42 U.S.C. § 2239; 10 C.F.R. Part 2.

Environmental Impact Statement for License Renewal of Nuclear Power Plants (GEIS) and regulation applied to subsequent license renewal.<sup>3</sup> We upheld that decision after considering all arguments and positions.<sup>4</sup> In fact, there was a previous challenge to CLI-20-3 in federal court,<sup>5</sup> and the agency would comply with any direction, remand, or adverse decision resulting from such a challenge.<sup>6</sup> Here, however, the majority is simply changing position arbitrarily.

The majority also asserts that their reversal of CLI-20-3 promotes clear communication and transparent decision-making.<sup>7</sup> I disagree and find that the reversal directly contravenes those goals. We previously clearly communicated our position on this matter in CLI-20-3. My colleagues note that “[a]gencies may change positions and interpretations, so long as they explain their reasoning for doing so.”<sup>8</sup> While I agree in principle, the majority has not explained its reasoning here; rather, the majority is reversing CLI-20-3 based on information previously considered and rejected. In my view, that does not provide a sufficient basis for reversal.

While I strongly disagree with the substantive decision and the majority’s rationale for reaching that decision, I join with the majority on the limited issue of the path forward. Given the majority’s reversal, I agree that an equitable and efficient solution is to leave in place the subsequently renewed licenses while the Staff works to update its environmental analysis to comply with the majority’s new holding. This approach imposes the least impact possible on

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<sup>3</sup> LBP-19-3, 89 NRC 245, 272-73 (2019).

<sup>4</sup> CLI-20-3, 91 NRC at 155.

<sup>5</sup> See Petition for Review, *Friends of the Earth, Natural Resources Defense Council, Inc., and Miami Waterkeeper v. U.S. Nuclear Regulatory Commission and United States of America*, No. 20-1026 (D.C. Cir. Jan. 31, 2020).

<sup>6</sup> Similarly, if we were to consider new information indicating that a change in direction was necessary, we could certainly take appropriate action after considering and accounting for that new information.

<sup>7</sup> CLI-22-2, 95 NRC \_\_, \_\_ (Feb. 24, 2022) (slip op. at 14).

<sup>8</sup> *Id.* at \_\_ (slip op. at 6).

stakeholders that understandably relied on our previous statements and CLI-20-3 and appropriately places the burden of curing the purported NEPA deficiency on the agency. Leaving the licenses in place also avoids jeopardizing any safety or environmental improvements that FPL may have put in place to comply with subsequently renewed licenses. Consistent with our separate direction, I expect that the Staff will work to update the GEIS as expeditiously as possible.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
FLORIDA POWER & LIGHT COMPANY ) Docket Nos. 50-250-SLR  
 ) 50-251-SLR  
(Turkey Point Nuclear Generating )  
Units 3 & 4) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Commission Memorandum and Order (CLI-22-02)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 24<sup>th</sup> day of February 2022.