

March 31, 2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

FLORIDA POWER & LIGHT CO.

(Turkey Point Nuclear Generating
Units 3 and 4)

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

NRC STAFF'S RESPONSE TO VIEWS ON PRACTICAL EFFECTS

INTRODUCTION

Pursuant to the Commission's direction in CLI-22-2,¹ the NRC Staff hereby provides its response to the views of Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (together, Environmental Organizations)² and the views of Florida Power & Light Co. (FPL)³ concerning the practical effects of (1) the subsequent renewed licenses continuing in place and (2) the previous renewed licenses being reinstated.

DISCUSSION

Environmental Organizations argue that if the Commission allows the subsequent renewed licenses to continue in place, it would signal that the NRC has prejudged that the National Environmental Policy Act (NEPA) review will produce no meaningful insights or

¹ *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, CLI-22-2, 95 NRC ___ (Feb. 24, 2022) (ADAMS accession no. ML22055A496).

² *Views in Response to CLI-22-02 of Friends of the Earth, Natural Resources Council, and Miami Waterkeeper* (Mar. 21, 2022) (ML22080A249) (Environmental Organizations' Views).

³ *Florida Power & Light Company's Views on License Status as Requested in Commission Order CLI-22-02* (Mar. 21, 2022) (ML22080A233) (FPL's Views).

changes in the license.⁴ But the Commission has already determined that under some circumstances it may allow a license to remain in place while the agency cures a National Environmental Policy Act (NEPA) deficiency.⁵ And with respect to the Turkey Point subsequent renewed licenses, the Commission has stated its expectation that there is sufficient time to cure the NEPA deficiency.⁶

Environmental Organizations argue that the “Commission should vacate FPL’s subsequent renewed license[s] but order the Staff to impose FPL’s Aging Management Plan as a condition of continued operation.”⁷ Environmental Organizations also assert that “[h]aving completed a safety review and offered a hearing on FPL’s revised Aging Management Plan, the Commission may declare that FPL’s initial renewed licenses have effectively been amended, with the required procedures for fairness and due process, to incorporate the revised Aging Management Plan.”⁸ Environmental Organizations’ argument that the Commission may *sua sponte* convert a license renewal proceeding into a license amendment proceeding while still respecting the required procedures and due process⁹ lacks merit. As the Commission noted in *Oyster Creek*, a license renewal may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review.¹⁰ If a renewed license is

⁴ Environmental Organizations’ Views at 4.

⁵ *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-19-1, 89 NRC 1, 6 (2019) (stating in part “Until Powertech can lawfully use its NRC license, the risk of harm occurring to any Tribal cultural resources that is traceable to the identified NEPA deficiency will remain hypothetical. ... Continuing to leave Powertech’s license in place for now thus appears to us to be the approach most consistent with the court’s opinion.”). Notably the Commission did “not attempt here to set forth a comprehensive formula for addressing any future circumstances in which significant NEPA deficiencies are found through our hearing process after staff issuance of a license under 10 C.F.R. § 2.1202(a).” *Powertech*, CLI-19-1, 89 NRC at 10-11.

⁶ *Turkey Point*, CLI-22-2, 95 NRC at ___ (slip op. at 14).

⁷ Environmental Organizations’ Views at 1 (citing Beyond Nuclear’s Response to Constellation Energy Generation, LLC’s Petition for Partial Reconsideration of CLI-22-04 and Beyond Nuclear’s Views in Response to CLI-22-04 (Mar. 17, 2022) (ML22076A089)).

⁸ *Id.* at 5 - 6.

⁹ *Id.* (asserting this would be consistent with *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008)).

¹⁰ *Oyster Creek*, CLI-08-13, 67 NRC at 400.

subsequently set aside, the operating license previously in effect will be reinstated.¹¹ The Commission never intended 10 C.F.R. § 54.31(c) to suggest that if a renewed license were somehow set aside upon appeal, the licensee could not continue operating under its previous operating license.¹² *Oyster Creek* does not hold that the Commission can fairly and with respect for due process and procedures convert a proceeding for an application for a subsequent renewed license into a proceeding concerning the sufficiency of the current license.¹³ Instead, the process for raising concerns about the sufficiency of the current license is the 10 C.F.R. § 2.206 process; license renewal applications are licensing actions and are not considered under 10 C.F.R. § 2.206.¹⁴ If Environmental Organizations believe that either Turkey Point unit would not be safe to operate under the reinstated renewed licenses, then Environmental Organizations may request action under 10 C.F.R. § 2.206.¹⁵

In contrast, FPL argues that reinstating the previous Turkey Point licenses would eliminate the subsequent license renewal license conditions that, among other things, required compliance with enhanced aging management programs, with the result being that the licensee would not be required to comply with those multiple enhanced safety programs.¹⁶ FPL lists seven aging management programs that “involve imminent inspection activities that may begin as soon as ‘7/19/2022’” that would be eliminated by vacatur of the subsequent license renewal

¹¹ 10 C.F.R. § 54.31(c). The regulation states in part that the license “previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner,” but those factors are not relevant here because, as the Commission noted in *Turkey Point*, CLI-22-2, 95 NRC at ___ (slip op. at 14), the previous Unit 3 and Unit 4 licenses on expire July 19, 2032, and April 10, 2033, respectively.

¹² Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,964 (Dec. 13, 1991).

¹³ *Oyster Creek* concerned a motion for the Commission to refrain from making a final decision on the issuance of a renewed license. *Oyster Creek*, CLI-08-13, 67 NRC 396.

¹⁴ Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Unit 1), DD-7-3, 65 NRC 643, 644 (2007).

¹⁵ See *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 3 (2019).

¹⁶ FPL’s Views at 5-6.

licenses and reinstatement of the previous renewed licenses.¹⁷ FPL further asserts that if the subsequent license renewal licenses are vacated, FPL would no longer be required to implement or complete 57 aging management programs or activities, and the NRC Staff would no longer be able to inspect or enforce them because they are unique to the subsequent license renewal licenses and are not included in or required by the previous renewed licenses.¹⁸ FPL states that there is no guidance on how to address changing the licensing basis if the superseded licenses were reinstated, but that such guidance is needed.¹⁹ The Staff agrees that the previous superseded licenses did not require (and, if reinstated, would not require) the licensee to implement the new and enhanced programs developed for subsequent renewal.²⁰ The Staff also agrees that reconciling the licensing basis under a reinstated license would be complex.²¹

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ FPL's Views at 8, 10.

²⁰ NRC Staff Views on the Practical Effects of (1) The Subsequent Renewed Licenses Continuing In Place and (2) The Previous Licenses Being Reinstated, at 10-11 (Mar. 21, 2022) (ML22080A270).

²¹ *Id.* at 11-13.

CONCLUSION

The Staff notes that Environmental Organizations and FPL appear to agree that the enhanced subsequent license renewal aging management programs are preferable to the previous programs required by the superseded initial renewed license but disagree as to how to retain them. The Staff's view is that maintaining the subsequent renewed licenses in place is the simplest, most efficient way to continue requiring those enhanced aging management programs found desirable by Environmental Organizations²² and FPL.

/Signed (electronically) by/

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²² The staff understands that maintaining the subsequent renewed licenses is not what Environmental Organizations advocate. See Environmental Organizations' Views at 7.

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Certificate of Service

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO VIEWS ON PRACTICAL EFFECTS," dated March 31, 2022, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the captioned proceeding, this 31st day of March 2022.

/Signed (electronically) by/

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Dated this 31st day of March 2022