

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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

In the Matter of)

CALVERT CLIFFS NUCLEAR PROJECT, LLC)
(Calvert Cliffs Nuclear Power Plant, Unit 3))

Docket No. 52-016-COL

DETROIT EDISON CO.)
(Fermi Nuclear Power Plant, Unit 3))

Docket No. 52-033-COL

DUKE ENERGY CAROLINAS, LLC)
(William States Lee III Nuclear Station, Units 1 and 2))

Docket Nos. 52-018-COL,
52-019-COL

ENTERGY NUCLEAR OPERATIONS, INC.)
(Indian Point Nuclear Generating Units 2 and 3))

Docket Nos. 50-247-LR,
50-286-LR

ENTERGY OPERATIONS, INC.)
(Grand Gulf Nuclear Station, Unit 1))

Docket No. 50-416-LR

ENTERGY OPERATIONS, INC.)
(Grand Gulf Nuclear Station, Unit 3))

Docket No. 52-024-COL

EXELON GENERATION CO., LLC)
(Limerick Generating Station, Units 1 and 2))

Docket Nos. 50-352-LR,
50-353-LR

EXELON NUCLEAR TEXAS HOLDINGS, LLC)
(Victoria County Station Site))

Docket No. 52-042

FIRSTENERGY NUCLEAR OPERATING CO.)
(Davis-Besse Nuclear Power Station, Unit 1))

Docket No. 50-346-LR

FLORIDA POWER & LIGHT CO.)
(Turkey Point, Units 6 and 7))

Docket Nos. 52-040-COL,
52-041-COL

LUMINANT GENERATION CO. LLC)
(Comanche Peak Nuclear Power Plant, Units 3 and 4))

Docket Nos. 52-034-COL,
52-035-COL

NEXTERA ENERGY SEABROOK, LLC)
(Seabrook Station, Unit 1))

Docket No. 50-443-LR

NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)	)	Docket Nos. 52-012-COL, 52-013-COL
PACIFIC GAS & ELECTRIC CO. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	Docket Nos. 50-275-LR, 50-323-LR
PPL BELL BEND, LLC (Bell Bend Nuclear Power Plant)	)	Docket No. 52-039-COL
PROGRESS ENERGY CAROLINAS, INC. (Shearon Harris Nuclear Power Plant, Units 2 and 3)	)	Docket Nos. 52-022-COL, 52-023-COL
PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2)	)	Docket Nos. 52-029-COL, 52-030-COL
SOUTH TEXAS PROJECT NUCLEAR OPERATING CO. (South Texas Project, Units 1 and 2)	)	Docket Nos. 50-498-LR, 50-499-LR
TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant, Units 3 and 4)	)	Docket Nos. 52-014-COL, 52-015-COL
TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2)	)	Docket No. 50-391-OL
UNION ELECTRIC CO. (Callaway Nuclear Power Plant, Unit 1)	)	Docket No. 50-483-LR
VIRGINIA ELECTRIC AND POWER CO. d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Nuclear Power Station, Unit 3)	)	Docket No. 52-017-COL

CLI-12-16

MEMORANDUM AND ORDER

We have received a series of substantively identical petitions to suspend final licensing decisions, and requesting additional related relief, in the captioned matters.¹ As discussed below, we grant the requests in part and deny the requests in part.

¹ See, e.g., *Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings* (June 18, 2012) (Petition). In addition, Friends of the Earth, and Eric Epstein, on behalf of Three Mile Island Alert, Inc.,

(continued . . .)

Recently, the U.S. Court of Appeals for the District of Columbia Circuit found that the NRC had violated the National Environmental Policy Act (NEPA) in issuing its 2010 update to the Waste Confidence Decision and accompanying Temporary Storage Rule.² The court vacated both the Decision and the Rule, and remanded the case for further proceedings consistent with the court's opinion.³

In response to the court's decision, the petitioners request that we: (1) suspend final licensing decisions in reactor licensing cases, pending the completion of our action on the remanded Waste Confidence proceeding; (2) provide an opportunity for public comment on any generic determinations that we may make in either an environmental assessment (EA) or environmental impact statement (EIS); and (3) provide at least sixty days to seek consideration in individual licensing cases of any site-specific concerns relating to the remanded proceedings.⁴

submitted the identical petition to the Commission, without identifying a particular docket. For convenience, page references in today's decision correspond to the Petition filed by Mindy Goldstein of the Turner Environmental Law Clinic, in the *Turkey Point* combined license (COL) matter. In response to the June 19, 2012, Order of the Secretary, we received answers from the NRC Staff, the applicants in all captioned matters, and a letter from the Nuclear Energy Institute (seeking to participate as *amicus curiae*). As we did in the *Callaway* matter, we consider the petitions, and take action, as an exercise of our inherent supervisory authority over agency proceedings. We need not, therefore, address procedural issues that would merit further consideration in adjudications. See *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC ___, ___ (Sept. 9, 2011) (slip op. at 18-19 & n.65).

² *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012). See generally Final Rule, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 75 Fed. Reg. 81,032 (Dec. 23, 2010); Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010).

³ In particular, the court struck down the Waste Confidence Decision's "Finding 2," (reasonable assurance exists that sufficient geologic repository capacity will be available for disposal of high-level waste and spent nuclear fuel "when necessary"), and "Finding 4" (reasonable assurance exists that, if necessary, spent fuel can be stored safely without significant environmental impacts beyond a reactor's licensed life for operation, in a combination of storage in its spent fuel pool and either an onsite or offsite dry cask storage system).

⁴ See Petition at 3-4, 10-12.

Waste confidence undergirds certain agency licensing decisions, in particular new reactor licensing and reactor license renewal.⁵ Because of the recent court ruling striking down our current waste confidence provisions, we are now considering all available options for resolving the waste confidence issue, which could include generic or site-specific NRC actions, or some combination of both. We have not yet determined a course of action. But, in recognition of our duties under the law, we will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand is appropriately addressed.⁶ This determination extends just to *final* license issuance; all licensing reviews and proceedings should continue to move forward.⁷

The petitioners seek assurance that they will be able to participate in future NRC proceedings on waste confidence. We hereby provide that assurance. The public will be afforded an opportunity to comment in advance on any generic waste confidence document that the NRC issues on remand—be it a fresh rule, a policy statement, an EA, or an EIS.⁸

⁵ See 10 C.F.R. § 51.23(b).

⁶ See *NRC Staff's Answer to Petition to Suspend Final Decisions in all Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings* (June 25, 2012), at 4 (Staff Answer) (pointing to a number of factors that bear upon consideration of the requested relief but also stating that no final decision to grant a combined license, or initial or renewed operating license should be made “until the NRC has appropriately dispositioned the issues remanded by the court”).

⁷ The petitioners expressly state that they do not seek suspension of ongoing adjudications. Petition at 4. Consistent with our ruling in *Callaway*, we agree that it is in the public interest for adjudications to proceed, except for contentions associated with waste confidence issues, as discussed *infra*. See *Callaway*, CLI-11-5, 74 NRC at ___ (slip op. at 25-27). Petitioners also expressly state that they do not seek “any change in the schedules for the NRC Staff’s review of reactor license applications.” Petition at 4. Likewise, we see no need for the Staff to change its review schedules other than as may be necessary to address waste confidence issues.

⁸ See *Pa’ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 93 (2010). See generally 10 C.F.R. § 51.73 (requiring a comment period for draft EISs and supplemental EISs). See also Staff Answer at 4 & n.4.

To the extent that the NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in our adjudicatory process.⁹ In this vein, we and the boards are now in receipt of a number of new contentions and associated filings concerning waste confidence.¹⁰

⁹ *But see Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974) (“[L]icensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.”).*

¹⁰ *See Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Proposed Fermi 3 Nuclear Power Plant (July 9, 2012); Motion to Reopen the Record for William States Lee III Units 1 and 2, together with Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at William States Lee III Units 1 and 2 (dated July 9, 2012, filed July 10, 2012 (additional declarations filed July 11, 2012); Beyond Nuclear Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Grand Gulf Unit 1 (July 9, 2012); Beyond Nuclear Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Grand Gulf Unit 3 (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant (July 9, 2012); Citizens Allied for Safe Energy, Inc. Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant (dated July 9, 2012, filed July 10, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Comanche Peak Nuclear Power Plant (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Seabrook Station, Unit 1 (July 9, 2012); San Luis Obispo Mothers for Peace Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Spent Reactor Fuel at Diablo Canyon Nuclear Power Plant (July 9, 2012); NC WARN’s Motion to Reopen the Record and Admit Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at the Shearon Harris Nuclear Power Plant (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Spent Reactor Fuel at Levy Nuclear Power Plant (July 9, 2012); Petition for Intervention to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at STP Units 1 & 2 (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at South Texas Units 3 & 4 (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Bellefonte (July 9, 2012); Southern Alliance for Clean Energy’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Spent Reactor Fuel at Watts Bar Unit 2 (July 9, 2012); Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Callaway Nuclear*

(continued . . .)

In view of the special circumstances of this case, as an exercise of our inherent supervisory authority over adjudications, we direct that these contentions—and any related contentions that may be filed in the near term—be held in abeyance pending our further order.¹¹

Power Plant (July 9, 2012); *Motion to Reopen the Record for North Anna Unit 3*, together with *Intervenors' Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at North Anna Unit 3* (dated July 9, 2012, filed July 10, 2012).

The Petition was not filed in the *Indian Point*, *Victoria County*, or *Limerick* dockets. We have, however, received new contentions in those ongoing adjudications. See *Hudson River Sloop Clearwater, Inc.'s Motion for Leave to Add a New Contention Based Upon New Information and Petition to Add New Contention* (July 9, 2012); *State of New York, Riverkeeper, and Clearwater's Joint Motion for Leave to File a New Contention Concerning the On-Site Storage of Nuclear Waste at Indian Point*, together with *State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater's Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning the On-Site Storage of Nuclear Waste at Indian Point* (July 8, 2012); *Texans for a Sound Energy Policy's Motion to Reinstate Contentions TSEP-ENV-17 and TSEP-ENV-18, or in the Alternative for Leave to File a New Contention* (July 9, 2012, amended July 10, 2012); *Joint Motion to Dismiss Texans for a Sound Energy Policy's Motion to Reinstate Contentions and for Leave to File a New Contention, and to Establish a Schedule for Future Submissions* (July 13, 2012); *NRDC's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Limerick*, together with *NRDC's Waste Confidence Contention* (July 9, 2012, errata filed July 9 and 10, 2012). These three cases have been added to the caption of this decision for the purpose of providing guidance on all new contentions that have been filed on this topic. Three licensing boards have issued case management orders relating to the new contentions. See *Order* (Extending Time to Answer Motion to Admit New Contention) (July 26, 2012) (unpublished) (*Callaway* license renewal); *Order* (Granting Joint Motion to Dismiss and Setting Schedule) (July 24, 2012) (unpublished) (*Victoria County* early site permit); *Order* (Extending Time to Answer Motion to Admit New Contention) (July 17, 2012) (unpublished) (*Bellefonte* COL).

¹¹ Should we determine at a future time that case-specific challenges are appropriate for consideration, our normal procedural rules will apply. See *Callaway*, CLI-11-5, 74 NRC at ____ (slip op. at 32-36).

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of August, 2012

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 12-16) have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk*.

Office of Commission Appellate
Adjudication
Mail Stop O-7H4M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Office of the Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission.
Mail Stop T-3F23
Washington, DC 20555-0001

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Edward L. Williamson, Esq.
E-mail: edward.williamson@nrc.gov

William J. Froehlich, Chair
Administrative Judge
E-mail: william.froehlich@nrc.gov

Lloyd B. Subin, Esq.
E-mail: loyd.subin@nrc.gov

Nicholas G. Trikouros
Administrative Judge
E-mail: nicholas.trikouros@nrc.gov

Brian Harris, Esq.
E-mail: brian.harris@nrc.gov
Catherine Kanatas, Esq.
E-mail: catherine.kanatas@nrc.gov

William E. Kastenberg
Administrative Judge
E-mail: wek1@nrc.gov

Brian P. Newell, Paralegal
E-mail: brian.newell@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

Hillary Cain, Law Clerk
E-mail: hillary.cain@nrc.gov
Matthew Flyntz, Law Clerk
E-mail: matthew.flyntz@nrc.gov

FirstEnergy Service Company.
Mailstop: A-GO-15
76 South Main Street
Akron, OH 44308
David W. Jenkins, Esq.
E-mail : djenkins@firstenergycorp.com

COMMISSION MEMORANDUM AND ORDER (CLI 12-16)

Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Stephen Burdick, Esq.
E-mail: sburdick@morganlewis.com
Kathryn M. Sutton, Esq.
E-mail: ksutton@morganlewis.com
Martin O'Neill, Esq.
E-mail: martin.oneill@morganlewis.com
Timothy Matthews, Esq.
E-mail: tmatthews@morganlewis.com
Jane Diecker, Esq.
E-mail: jdiecker@morganlewis.com
Mary Freeze, Legal Secretary
E-mail: mfreeze@morganlewis.com

Erich Pica, President
Friends of the Earth
1100 15th Street, NW
11th Floor
Washington, D.C. 20555
E-mail: mkeever@foe.org

Erich Pica, President*
Friends of the Earth
1100 15th Street, NW
11th Floor
Washington, D.C. 20555
Email: mkeever@foe.org

Citizens Environmental Alliance (CEA)
of Southwestern Ontario
1950 Ottawa Street
Windsor, Ontario Canada N8Y 197

Green Party of Ohio
2626 Robinwood Avenue
Toledo, Ohio 43610

Don't Waste Michigan
811 Harrison Street
Monroe, Michigan 48161
Michael Keegan
E-mail: mkeegani@comcast.net

Terry J. Lodge, Counsel for CEA, Don't
Waste Michigan, and Green Party of Ohio
316 N. Michigan Street, Suite 520
Toledo, OH 43604-5627
E-mail: tjlodge50@yahoo.com

Beyond Nuclear
6930 Carroll Avenue Suite 400
Takoma Park, Md. 20912
Kevin Kamps
E-mail : kevin@beyondnuclear.org
Paul Gunter
E-mail : paul@beyondnuclear.org

[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of August 2012