

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-22-06

MEMORANDUM AND ORDER

In CLI-22-2, we asked the parties to submit their views on the practical effects of two options—leaving in place the subsequently renewed licenses for Turkey Point Nuclear Generating Units 3 and 4 (Turkey Point Units 3 and 4) and reinstating the previous licenses.¹ The parties provided timely responses and answers.²

¹ CLI-22-2, 95 NRC __, __ (Feb. 24, 2022) (slip op. at 15).

² *Florida Power & Light Company's Views on License Status as Requested in Commission Order CLI-22-02* (Mar. 21, 2022) (FPL Views); *NRC Staff Views on the Practical Effects of (1) the Subsequent Renewed Licenses Continuing in Place and (2) the Previous Licenses Being Reinstated* (Mar. 21, 2022) (Staff Views); *Views in Response to CLI-22-02 of Friends of the Earth, Natural Resources [Defense] Council, and Miami Waterkeeper* (Mar. 21, 2022) (Environmental Organizations Views); *Florida Power & Light Company's Response to Other Parties' Views on License Status as Requested in Commission Order CLI-22-02* (Mar. 31, 2022) (FPL Response to Other Views); *NRC Staff's Response to Views on Practical Effects* (Mar. 31, 2022) (Staff Response to Other Views); *Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper Response to Nuclear Regulatory Commission Staff's & Florida Power & Light Co.'s Views as Requested in Commission Order CLI-22-02* (Mar. 31, 2022) (Environmental Organizations Response to Other Views).

I. BACKGROUND

The Staff issued the subsequently renewed licenses for Turkey Point Units 3 and 4 after completion of its safety and environmental reviews, and pursuant to 10 C.F.R. § 54.31(c), the licenses became immediately effective. We found in CLI-22-2 that the environmental review of the subsequent license renewal application in this case was incomplete.³ Since 2019, FPL has been operating under the subsequently renewed licenses, which include safety enhancements compared to the previous licenses. To best reconcile FPL's current licensing bases⁴ with the recognition that the agency's National Environmental Policy Act (NEPA) review was incomplete, we directed that the subsequently renewed licenses remain in place but with shortened terms to match the end dates of the previous licenses until completion of the NEPA analysis. After considering the pleadings of the parties, we will maintain this approach.

II. DISCUSSION

A. Confirmation of Direction in CLI-22-2

All parties acknowledge that there are safety benefits associated with the Turkey Point units operating under the subsequently renewed licenses compared to the prior licenses.⁵ In addition, reconciling the licensing bases under reinstated licenses would be a time-consuming,

³ We reject FPL's suggestions that our concern in CLI-22-2 was with the "possibility" of an incomplete NEPA review associated with the subsequent license renewal period. FPL Views at 1, 5, 14. In CLI-22-2, we held that "the 2013 [Generic Environmental Impact Statement for License Renewal (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." CLI-22-2, 95 NRC at ___ (slip op. at 2); *id.* at ___ (slip op. at 6) ("We hold that the 2013 GEIS does not cover the subsequent license renewal period. . . . 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."); *id.* at ___ (slip op. at 12) ("Neither the original 1996 GEIS nor the revised 2013 GEIS analyzed the environmental impacts of subsequent license renewal periods."); *id.* at ___ (slip op. at 14) ("We conclude that the Staff did not conduct an adequate NEPA analysis before issuing FPL licenses for the subsequent license renewal period.").

⁴ The current licensing bases include changes from license amendments, exemptions, and changes made under 10 C.F.R. § 50.59.

⁵ See FPL Views at 5-7; Staff Views at 6-11; Environmental Organizations Views at 5-6.

complex process.⁶ As the Staff stated, maintaining the subsequently renewed licenses “is the simplest, most efficient way to continue requiring those enhanced aging management programs found desirable by Environmental Organizations and FPL.”⁷

With respect to the Environmental Organizations’ suggestion that we vacate the subsequently renewed licenses and reinstate the previous licenses but with the enhanced aging management program provisions included, we find that they have not provided sufficient legal authority or a safety justification for the Commission to further pursue that option.⁸

Environmental Organizations correctly identify that it is “ordinary practice” for courts to vacate agency actions taken in violation of NEPA.⁹ However, as the Staff points out, a decision by the Commission to reinstate the previous licenses would make the enhanced aging management program provisions no longer required.¹⁰ Environmental Organizations do not provide a basis for us to find otherwise.

FPL advocates that we balance the equities in determining the remedy here, as federal courts have done.¹¹ In FPL’s view, the result would be that the subsequently renewed licenses with end dates coextensive with the subsequent license renewal period should be in effect while

⁶ FPL Views at 8-11; Staff Response to Other Views at 4.

⁷ Staff Response to Other Views at 5.

⁸ See Environmental Organizations Response to Other Views at 1-3; FPL Response to Other Views at 7; NRC Staff Response to Other Views at 2-3. A license renewal may be conditioned or vacated after administrative or judicial review, in which case the operating license previously in effect would be reinstated. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008); 10 C.F.R. § 54.31(c).

⁹ *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 985 F.3d 1032, 1050-51 (D.C. Cir. 2021) (quoting *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019)).

¹⁰ See Staff Views at 10-11. The Staff identifies other problematic outcomes that would result from the reinstatement of the previous licenses, including obsolescence of the updated final safety analysis reports and impacts to the current licensing bases. See *id.* at 11-13.

¹¹ FPL Views at 11-16.

the NRC completes its NEPA review. Even if the NRC has the authority to craft a remedy using an equitable analysis,¹² we decline to pursue such a remedy before we have fulfilled our NEPA duty to fully evaluate the environmental impacts of the proposed action. Through NEPA, Congress tasked the NRC with evaluating the environmental impacts of a proposed major federal action before taking that action.¹³ Here, that means we must evaluate the environmental impacts of subsequent license renewal before approving issuance of a license that covers the period of subsequent license renewal.¹⁴ As FPL's licenses were still subject to modification due to pending agency litigation, it is within the NRC's authority to maintain the shortened end dates of the subsequently renewed licenses.¹⁵ We find that this remedy is the best way to fulfill our statutory duty while maintaining the enhanced aging management programs and safety enhancements of the subsequently renewed licenses favored by all parties to the proceeding.

¹² While federal courts have discretion to leave an agency action in place while the decision is on remand, the court in *Oglala Sioux Tribe* noted that the NRC did not "identify any statute that authorizes it not to comply with NEPA on equitable grounds." *Oglala Sioux Tribe v. NRC*, 896 F.3d 520, 536 (D.C. Cir. 2018). The court did not resolve "whether the absence of statutory authority is sufficient to reject the analogy to judicial remand-without-vacatur." *Id.* And in our decision on remand, we did not address "the question, left expressly open by the court, of whether, or under what circumstances, an NRC presiding officer should perform an *Allied-Signal*-style equitable analysis in the first instance upon finding a significant NEPA deficiency." *Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility)*, CLI-19-1, 89 NRC 1, 10 (2019); *see Allied-Signal, Inc. v. NRC*, 988 F.2d 146 (D.C. Cir. 1993). Similarly, we find it unnecessary to do so in this case.

¹³ With respect to FPL's argument that the "new and significant" information review undertaken for the Supplemental Environmental Impact Statement for Turkey Point Units 3 and 4 cured the deficiency in the 2013 GEIS, we find that such an analysis did not adequately address environmental impacts during the subsequent license renewal period. *See* FPL Views at 3-5. The "new and significant" analysis used the 2013 GEIS as its baseline and assumed that analysis covered the subsequent license renewal period. *See* "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4" (Final Report), NUREG-1437, Supplement 5, Second Renewal (Oct. 2019), at 1-3 (ML19290H346).

¹⁴ *See Oglala Sioux Tribe*, 896 F.3d at 532 ("[NEPA's] requirement that a detailed environmental impact statement be made for a 'proposed' action makes clear that agencies must take the required hard look *before* taking that action.>").

¹⁵ *See* CLI-22-2, 95 NRC at ___ (slip op. at 6) (citing *Oyster Creek*, CLI-08-13, 67 NRC at 400).

As stated in CLI-22-2, we separately directed the Staff to update the GEIS, and we recently directed the Staff to complete that effort in twenty-four months while seeking opportunities to accelerate the schedule.¹⁶

B. Applicability of 10 C.F.R. § 54.21(b)

One additional matter merits attention. The Staff raised an issue related to the applicability of 10 C.F.R. § 54.21(b). That regulation requires license renewal “applicants” to periodically update their applications. The Staff questioned whether FPL is an “applicant” under this regulation because the Staff’s review of the environmental impacts related to subsequent license renewal is still active.¹⁷ We hold that FPL does not need to update its application pursuant to 10 C.F.R. § 54.21(b) while the Staff completes the environmental review. Because Turkey Point is already operating under the subsequently renewed licenses, it would not serve any useful purpose to require FPL to update its application to identify changes to the current licensing bases. Our ruling in CLI-22-2 did not disturb the safety review.

¹⁶ See *id.* at ___ (slip op. at 14 & n.54); Staff Requirements—SECY-22-0024—Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296) (Apr. 5, 2022) (ML22096A035).

¹⁷ NRC Staff Views at 9; see also FPL Response to Other Views at 9-10.

III. CONCLUSION

For the reasons discussed above, we *affirm* our direction in CLI-22-2 regarding the status of the Turkey Point subsequently renewed licenses without further modification and *terminate* this proceeding.

IT IS SO ORDERED.

For the Commission



Russell E. Chazell
Assistant for Rulemaking and Adjudications
Office of the Secretary

Dated at Rockville, Maryland,
this 3rd day of June 2022.

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Units 3 & 4))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Commission Memorandum and Order (CLI-22-06)** have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland,
this 3rd day of June 2022.