

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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| In the Matters of |) | |
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| DTE ELECTRIC COMPANY |) | Docket No. 50-341 |
| (Fermi Nuclear Power Plant, Unit 2) |) | ASLBP No. 14-933-01-LR-BD01 |
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| DTE ELECTRIC CO. |) | Docket No. 52-033-COL |
| (Fermi Nuclear Power Plant, Unit 3) |) | |
| |) | |
| DUKE ENERGY CAROLINAS, LLC |) | Docket Nos. 52-018-COL, |
| (William States Lee III Nuclear Station, |) | 52-019-COL |
| Units 1 and 2) |) | |
| |) | |
| FIRSTENERGY NUCLEAR OPERATING CO. |) | Docket No. 50-346-LR |
| (Davis-Besse Nuclear Power Station, Unit 1) |) | |
| |) | |
| FLORIDA POWER & LIGHT CO. |) | Docket Nos. 52-040-COL, |
| (Turkey Point Units 6 and 7) |) | 52-041-COL |
| |) | |
| LUMINANT GENERATION CO. LLC |) | Docket Nos. 52-034-COL, |
| (Comanche Peak Nuclear Power Plant, |) | 52-035-COL |
| Units 3 and 4) |) | |
| |) | |
| NEXTERA ENERGY SEABROOK, LLC |) | Docket No. 50-443-LR |
| (Seabrook Station, Unit 1) |) | |
| |) | |
| NUCLEAR INNOVATION |) | Docket Nos. 52-012-COL, |
| NORTH AMERICA LLC |) | 52-013-COL |
| (South Texas Project Units 3 and 4) |) | |
| |) | |
| PACIFIC GAS & ELECTRIC CO. |) | Docket Nos. 50-275-LR, |
| (Diablo Canyon Nuclear Power Plant, |) | 50-323-LR |
| Units 1 and 2) |) | |
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| PROGRESS ENERGY FLORIDA, INC. |) | Docket Nos. 52-029-COL, |
| (Levy County Nuclear Power Plant, |) | 52-030-COL |
| Units 1 and 2) |) | |
| |) | |
| SOUTH TEXAS PROJECT |) | Docket Nos. 50-498-LR, |
| NUCLEAR OPERATING CO. |) | 50-499-LR |
| (South Texas Project Units 1 and 2) |) | |

risks posed by irradiated reactor fuel. Therefore, pursuant to the AEA, Petitioners respectfully request the Commission to suspend final licensing decisions in all current NRC licensing and relicensing proceedings pending completion of the required safety findings regarding spent fuel disposal.

Petitioners recognize that historically, the Commission has addressed the issue of waste confidence generically. Given that spent fuel disposal safety issues are common to all reactors, Petitioners believe that generic approach was appropriate. In the Continued Storage rulemaking, however, the Commission distinguished between generic findings under the National Environmental Policy Act (“NEPA”) and site-specific findings under the AEA, and stated that it would make AEA safety findings in individual reactor licensing proceedings.³ Therefore, while Petitioners’ concerns are generic in nature, they are raising those concerns by filing a contention in individual reactor licensing and re-licensing proceedings. The filing of contentions in individual proceedings is also consistent with the U.S. Court of Appeals’ holding in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), that waste confidence findings apply to every reactor licensing decisions and indeed “enable” those decisions. *Id.* at 477.

II. DESCRIPTION OF PETITIONERS

Petitioners are individuals and organizations dedicated to the protection of the environment. All of the Petitioners are concerned about the environmental and public health risks posed by the storage and ultimate disposal of spent fuel. Some organizations and individuals have been admitted as intervenors in the above-captioned pending NRC proceedings for the review of applications for combined licenses (“COLs”), operating licenses, and license renewals. All are neighbors of proposed reactors or existing reactors with license applications under review

³ 79 Fed. Reg. at 56,243-44; Continued Storage GEIS at D-9.

by the NRC. Additionally, many of these Petitioners have tried, without success, to raise their concerns about spent fuel in NRC licensing proceedings and rulemakings.

All Petitioners now seek to protect their health, the health of future generations, and the health of the environment, by ensuring that the NRC does not make any final licensing decisions unless and until the requisite safety findings regarding the technical feasibility of spent fuel disposal and repository capacity have been made.

Many of the Petitioners have already established their standing to bring this Petition by gaining admission as intervenors in some of the above-captioned NRC licensing proceedings. Other Petitioners are organizations whose members live within 50 miles of a nuclear reactor and who have included standing declarations with the Contention.⁴

A list of the Petitioners follows:

- Beyond Nuclear (Intervenor in Fermi Unit 3 COL proceeding and Davis-Besse license renewal proceeding; intervention petition pending in Fermi Unit 2 license renewal proceeding)
- Blue Ridge Environmental Defense League, Inc. and chapters (“BREDL”) (Intervenor in Bellefonte Units 3 and 4 COL proceeding and Sequoyah Units 1 and 2 license renewal proceeding; Petitioner in W.S. Lee COL proceeding and North Anna Unit 3 COL proceeding); Former Intervenor (now Petitioner) in North Anna Unit 3 COL proceeding)

⁴ All Petitioners have presumptive standing because they live within 50 miles of reactors that are proposed for initial and renewed licensing. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff’d*, CLI-01-17, 54 NRC 3 (2001); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), LBP-08-13, 68 NRC 43, 60 (2008); and Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911 (October 13, 2009) (slip op. at 6-7). They also have standing because the requested relief could result in the denial of the application for initial licensing or renewal. *See Sequoyah Fuels Corp.* (Gore, Oklahoma, Site Decommissioning), CLI-01-2, 53 NRC 2, 14 (2001) (party must show that the claimed injury could be cured by an action of the tribunal).

- Citizens Allied for Safe Energy, Inc. (Former Intervenor in Turkey Point Units 6 and 7 COL proceeding)
- Citizens Environment Alliance of Southwestern Ontario (Intervenor in Fermi Unit 3 COL proceeding; intervention petition pending in Fermi Unit 2 license renewal proceeding; intervenor in Davis-Besse Unit 1 license renewal proceeding)
- Citizens for Alternatives to Chemical Contamination (Intervenor in Fermi Unit 3 COL proceeding)
- Don't Waste Michigan (Intervenor in Davis-Besse Unit 1 license renewal proceeding and Fermi Unit 3 COL proceeding; intervention petition pending in Fermi Unit 2 license renewal proceeding)
- Ecology Party of Florida (Former Intervenor (now Petitioner) in Levy County Units 1 and 2 COL proceeding)
- Friends of the Coast, Inc. (Former Intervenor (now Petitioner) in Seabrook Unit 1 license renewal proceeding)
- Green Party of Ohio (Intervenor in Davis-Besse Unit 1 license renewal proceeding)
- Missouri Coalition for the Environment, Inc. (Petitioner in Callaway Unit 1 license renewal proceeding)
- National Parks Conservation Association (Intervenor in Turkey Point Units 6 and 7 COL proceeding)
- New England Coalition (Former Intervenor (now Petitioner) in Seabrook Unit 1 license renewal proceeding)
- Nuclear Information and Resource Service, Inc. (Former Intervenor (now Petitioner) in Levy Units 1 and 2 COL proceeding)

- Riverkeeper (Intervenor in Indian Point Units 2 and 3 license renewal proceeding)
- San Luis Obispo Mothers for Peace (Intervenor in Diablo Canyon Units 1 and 2 license renewal proceeding)
- Sierra Club Michigan Chapter (Intervenor in Fermi 3 COL proceeding)
- Southern Alliance for Clean Energy (Former Intervenor (now Petitioner) in Watts Bar Unit 2 operating license proceeding)
- Sustainable Energy and Economic Development (“SEED”) Coalition, Inc. (Intervenor in South Texas Units 3 and 4 COL proceeding; Former Intervenor (now Petitioner) in Comanche Peak Units 3 and 4 COL proceeding; potential intervenor in South Texas license renewal proceeding)

III. FACTUAL BACKGROUND

As discussed in greater detail in the accompanying Contention, the NRC has consistently interpreted the AEA to require that at the time of reactor licensing, the NRC must make Waste Confidence safety findings regarding the safety of ultimate spent fuel disposal. As the NRC stated in 1977, it “would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely.”⁵ Since 1984, the NRC also has repeatedly issued technical safety findings regarding the feasibility and capacity of spent fuel repositories.⁶ These findings were supported by a technical analysis of the feasibility and capacity of a repository, including geologic characteristics, waste packaging, and engineered

⁵ Denial of Petition for Rulemaking, 42 Fed. Reg. 34,391, 34,393 (July 5, 1977).

⁶ Waste Confidence Decision, 49 Fed. Reg. 34,658 (Aug. 31, 1984); Waste Confidence Decision Review, 55 Fed. Reg. 38,474 (Sept. 18, 1990); Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) (“2010 WCD Update”). The 2010 WCD Update was vacated by the U.S. Court of Appeals in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

safety barriers.⁷ In compliance with a U.S. Court of Appeals ruling in *Minnesota v. NRC*, 602 F.2d 412, 418-19 (D.C. Cir. 1979), the NRC used notice and comment rulemaking procedures to promulgate the Waste Confidence Decision (“WCD”) and its revisions.

As stated most recently in the 2010 WCD Update, the NRC’s relevant safety findings were as follows:

Finding 1: The Commission finds reasonable assurance that safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible.⁸

Finding 2: The Commission finds reasonable assurance that sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary.⁹

The 2010 WCD Update, however, was vacated by the U.S. Court of Appeals in *New York* for failure to comply with the National Environmental Policy Act (“NEPA”).¹⁰ In the final Rule recently issued by the NRC on remand from the Court’s decision, the NRC chose not to replace the vacated Waste Confidence findings.¹¹

IV. ARGUMENT: THE COMMISSION MUST SUSPEND ALL LICENSING DECISIONS PENDING COMPLETION OF AEA-REQUIRED WASTE CONFIDENCE SAFETY FINDINGS.

As set forth in detail in the attached Contention and summarized below, under the plain language of the AEA, the NRC’s own precedents, and applicable case law, the AEA requires the Commission to issue predictive safety findings regarding the safety of disposing of spent nuclear

⁷ See, e.g., 2010 WCD, 75 Fed. Reg. at 81,058-59.

⁸ Waste Confidence Decision Update, 75 Fed. Reg. 81,037, 81,058 (Dec. 23, 2010) (“2010 WCD Update”) (vacated, *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)).

⁹ *Id.*, 75 Fed. Reg. at 81,037. The 2010 WCD Update also contained three other Findings related to the safety of spent fuel storage pending disposal (as opposed to the safety of spent fuel disposal itself). Without conceding the validity of these storage-related findings, they are not challenged in the attached Contention or this Petition to Suspend.

¹⁰ 42 U.S.C. §§ 4321-4370h.

¹¹ 79 Fed. Reg. at 56,254. See also NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel Rule at D-30 (Sept. 2014).

fuel prior to issuing any reactor licensing decision. By failing to re-promulgate generic Waste Confidence safety findings or to make them in individual reactor licensing and re-licensing proceedings, the NRC now lacks any legal basis for licensing or re-licensing any reactor. Therefore it must suspend making final licensing decisions until it completes such findings.

First, the plain language of the AEA requires the NRC to provide reasonable assurances that the public's health and safety will not be unreasonably endangered by spent nuclear fuel. Section 182 of the AEA compels the Commission to ensure that "the utilization or production of special nuclear material will . . . provide adequate protection to the health and safety of the public." 42 U.S.C. § 2232(a). Furthermore, the statute requires the NRC to demonstrate this reasonable assurance prior to issuing reactor licenses. The Commission is explicitly prohibited from licensing a reactor if "the issuance of a license . . . would be inimical to . . . the health and safety of the public." 42 U.S.C. § 2133(d). The Act thus mandates that NRC condition the issuance of reactor licenses or license renewals on a predictive finding of confidence that spent fuel will not endanger public health and safety. Having omitted these required safety findings from the Rule and having failed to make them in any individual licensing proceeding, the NRC has no lawful basis under the AEA to issue licensing decisions.

The NRC's failure to make Waste Confidence safety findings is also inconsistent with the Commission's own precedents. As discussed above, historically, the NRC interpreted the AEA to mandate such safety findings, and assured the public that it would not issue reactor licenses unless it were confident that spent fuel could be safely disposed of. After the U.S. Court of Appeals for the D.C. Circuit vacated the Waste Confidence findings for failure to comply with NEPA, however, the NRC dropped the generic Waste Confidence findings. Petitioners

respectfully submit that the agency's prior interpretation requiring safety findings more accurately complies with the statutory mandate of the AEA.

Judicial opinions have also interpreted the AEA as mandating predictive safety findings prior to reactor licensing. In vacating the 2010 WCD, the D.C. Circuit cited approvingly to the NRC's historical reliance on generalized findings of reasonable confidence prior to reactor licensing. *New York*, 681 F.3d at 474. The *New York* decision quoted language from the court's 1979 opinion in *Minnesota v. NRC*, which directed the Commission to consider the reasonable assurance of safety of spent fuel storage. *Id.* ("In *Minnesota*, we directed the Commission to consider whether 'there is reasonable assurance . . . that fuel can be stored safely.'") (citing *Minnesota v. NRC*, 602 F.2d 412, 418 (D.C. Cir. 1979)).

Accordingly, the NRC's failure to make safety findings regarding the technical feasibility of spent fuel disposal and the adequacy of future repository capacity violates the AEA's mandate, the agency's own historical interpretations of the AEA, and judicial precedent. The NRC must either issue new generic Waste Confidence safety findings or it must address the same issues in individual reactor licensing proceedings. New Waste Confidence findings must be subject to a hearing or promulgated with notice and comment, as required by *Minnesota*. And they must be supported by an environmental impact statement or environmental assessment, as required in *New York*. 681 F.3d at 476.

V. CONCLUSION

For the foregoing reasons, this Petition should be granted. The Commission should issue an order that suspends all final nuclear licensing decisions pending completion of AEA-required safety findings regarding spent fuel disposal.

Respectfully submitted,

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September 29, 2014