UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	Docket Nos. 50-250-SLR & 50-251-SLR
FLORIDA POWER & LIGHT COMPANY	)	
(Turkey Point Nuclear Generating Units 3 and 4)	)	March 21, 2022

FLORIDA POWER & LIGHT COMPANY'S VIEWS ON LICENSE STATUS AS REQUESTED IN COMMISSION ORDER CLI-22-02

On February 24, 2022, the Commission issued two orders on the adjudicatory docket of the above-captioned proceeding: CLI-22-02 and CLI-22-03.[1] Collectively, those orders hold that the environmental reviews in subsequent license renewal ("SLR") proceedings, including this one, may be incomplete and therefore require further analysis, which the Commission directed the U.S. Nuclear Regulatory Commission ("NRC") Staff to perform.[2] In light of those decisions, the Commission left in place the previously-issued subsequent renewed operating licenses ("SROLs") for Turkey Point Nuclear Generating Units 3 and 4 ("Turkey Point"),[3] but directed the Staff to amend those licenses to modify the expiration dates to July 19, 2032, and April 10, 2033, respectively (*i.e.*, to match the expiration dates of the former initial renewed operating

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1 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating, Units 3 & 4), CLI-22-02, 95 NRC __ (Feb. 24, 2022) (slip op.); *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, & 3) *et al*., CLI-22-03, 95 NRC __ (Feb. 24, 2022) (slip op.).

2 *See generally* CLI-22-02; CLI-22-03; SRM-SECY-21-0066, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses – Environmental Review (RIN 3150-AK32; NRC-2018-0296)" (Feb. 24, 2022) (ML22053A308).

3 Turkey Point Nuclear Generating Unit No. 3, Subsequent Renewed Facility Operating License No. DPR-31 (Issued Dec. 4, 2019) (ML052790649); Turkey Point Nuclear Generating Unit No. 4, Subsequent Renewed Facility Operating License No. DPR-41 (Issued Dec. 4, 2019) (ML052790652).

licenses ("ROLs")).[4] The Commission further directed the parties, by March 21, 2022, to submit their views on the practical effects of (1) the SROLs continuing in place with the amended expiration dates, and (2) the previous ROLs being reinstated, *i.e.*, vacating the SROLs. FPL hereby provides its views on these issues.

In sum, and as detailed below, vacating the SROLs and reinstating the ROLs would create substantial practical and potential financial difficulties with no corresponding safety, environmental, or regulatory benefit. Moreover, given that the subsequent periods of extended operation ("SPEO") under the SROLs do not commence for more than a decade, and the Staff is expected to complete the actions directed by the Commission well before that time, vacating the SROLs is not necessary to maintain the environmental status quo during the curative period.[5] Accordingly, the prudent option is for the Commission to allow the SROLs to continue in place.

I. RELEVANT BACKGROUND

To evaluate a potential license vacatur, it is first necessary to understand the background and context in which the vacatur question arises. This discussion does not attempt to catalog the procedural history of this proceeding. Rather, it highlights the extensive, fulsome, and transparent environmental review process associated with this proceeding; the limited nature of the Commission's conclusions in CLI-22-02; and the absence of any finding that there exists a

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[4] *See also Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-22-04, 95 NRC __ (Feb. 24, 2022) (slip op.) (applying the reasoning in CLI-22-02 to the Peach Bottom SLR proceeding and directing the NRC Staff to amend the associated licenses to reduce the expiration dates by 20 years); Constellation Energy Generation, LLC f/k/a Exelon Generation Company, LLC, Petition for Partial Reconsideration of CLI-22-04 (Mar. 7, 2022) (seeking reconsideration of the decision to modify the expiration dates).

[5] FPL respectfully disagrees with the Commission's decision in CLI-22-02 to partially vacate the SROLs by amending their expiration dates without the benefit any briefing on that issue. Nothing in this response should be interpreted as indicating agreement with that decision and FPL reserves all rights to seek further review thereof.

material deficiency in the Turkey Point environmental review. This background is highly relevant to the vacatur analysis below.

On June 6, 2002, the NRC granted initial ROLs to FPL for Turkey Point, permitting operation of the units through July 19, 2032, for Unit 3, and April 10, 2033, for Unit 4. On January 30, 2018, FPL filed an SLR application ("SLRA") seeking authorization to operate each unit for an additional 20-year period.[6] The SLRA included an Environmental Report ("ER") as required by 10 C.F.R. Part 51 to assist the NRC Staff in complying with the agency's obligations under the National Environmental Policy Act of 1969, as amended ("NEPA").

In developing its ER, FPL reasonably relied on multiple statements and guidance from the NRC across several years indicating that the generic analyses of certain issues (known as "Category 1" issues) in the agency's 2013 Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("2013 GEIS")[7] were relevant and applicable to SLR.[8] Accordingly, FPL's ER incorporated those analyses by reference.[9] However, consistent with 10 C.F.R. Part 51, FPL's ER also presented extensive site-specific analyses of other issues (known as "Category 2" issues) *and* undertook an extensive analysis of potential "new and significant information" ("NSI") as to the generic "Category 1" analyses. In other words, FPL evaluated information *above and beyond* what is presented in the 2013 GEIS to determine whether any

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6 *See* Letter from M. Nazar, FPL, to NRC Document Control Desk (Jan. 30, 2018) (ML18037A812), as supplemented by letters dated February 9, 2018 (ML18044A653); February 16, 2018 (ML18053A123); March 1, 2018 (ML18072A224); and April 10, 2018 (ML18102A521 and ML18113A132). The ER is Appendix E to the SLRA.

7 Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Final Report (NUREG-1437, Revision 1) (June 2013) (Vol. 1, Main Report, ML13106A241; Vol. 2, Public Comments, ML13106A242; Vol. 3, Appendices, ML13106A244).

8 *Turkey Point*, CLI-22-02, 95 NRC at __ (slip op. at 14) (Commission recognizing that FPL and other SLR applicants relied on prior agency statements).

9 ER at 4-2 ("FPL adopts by reference the NRC findings for these Category 1 issues."). *See also* 10 C.F.R. § 51.53(a) (allowing incorporation by reference).

such information would alter the "Category 1" conclusions in the 2013 GEIS as applied to Turkey Point's proposed SPEO.[10]

The NRC Staff then conducted its own independent environmental review, reasonably relying on the Commission's prevailing view[11] that the 2013 GEIS applied to SLR. Accordingly, the Staff expended significant resources developing a site-specific Supplemental Environmental Impact Statement ("SEIS") based on that framework.[12] Like FPL's ER, the SEIS did not rely solely on the 2013 GEIS analyses of "Category 1" issues. The Staff performed its own independent "hard look" at those analyses to identify any NSI that potentially could alter the 2013 GEIS conclusions as applied to Turkey Point's SPEO. On December 4, 2019, the NRC Staff granted FPL's application and issued SROLs for Turkey Point with expiration dates of 2052 and 2053, respectively, pending final resolution of certain adjudicatory appeals.

On February 24, 2022, the Commission issued CLI-22-03 dismissing those appeals based on its holding in CLI-22-02, which was issued on the same date. In CLI-22-02, the Commission discussed certain conflicting information and historical ambiguity regarding the intended scope of the 2013 GEIS. Therefore, the Commission concluded—as a legal matter,[13] not a substantive one—that the 2013 GEIS cannot be viewed as providing a stand-alone NEPA-compliant analysis of all "Category 1" issues during an SPEO. The Commission did not, however, identify any material "gaps" related to the difference between initial renewal and SLR in the issue-specific 2013 GEIS analyses. Nor did it consider whether the environmental analyses in the 2013 GEIS

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10 That evaluation process is described in Section 5.0 of the ER.

11 *See, e.g., Fla. Power & Light Co.* (Turkey Point Nuclear Generating, Units 3 & 4), CLI-20-3, 91 NRC 133 (2020).

12 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) (ML19290H346).

13 *See also* VR-SECY-21-0066, Voting Record of Chairman Hanson, Attached Comments at 1 (ML22054A054) (noting that the decision turns on a "legal conclusion").

as supplemented by FPL's and Staff's site-specific "Category 2" analyses and "hard look" at potential NSI on "Category 1" issues *collectively* satisfy—in the Turkey Point SEIS—the environmental review required by NEPA. Notwithstanding the absence of any finding that the Turkey Point SEIS contains a material defect, the Commission ordered the NRC Staff to amend the Turkey Point SROLs to claw back the SPEOs, leaving the SROLs in place "for now," and directed the parties to submit briefs regarding the possibility of vacating the SROLs altogether.

II. PRACTICAL EFFECTS OF THE SROLs CONTINUING IN PLACE VERSUS THE PREVIOUS ROLs BEING REINSTATED

The practical effects of vacating the SROLs and reinstating the previous ROLs are summarized in this Section II. These effects are further analyzed against the applicable legal standards for license vacatur in Section III below.

A. If the SROLs Are Vacated, FPL Would No Longer Be Required to Implement or Complete, and the NRC Would No Longer Be Able to Inspect and Enforce, Multiple Enhanced Safety-Based Aging Management Programs and Activities

License Condition 3.J. in the SROLs requires FPL to implement certain aging management programs and complete certain activities prior to (and in some cases, well in advance of) the SPEOs. Those programs and activities—57 items in total—and their corresponding implementation schedules are specified in Appendix A, Table A-1, of the NRC's Turkey Point SLR Safety Evaluation Report ("SER").[14]

Although the Commission expects that the Staff will be able to issue a new SEIS before Turkey Point enters the respective SPEOs,[15] certain of these safety programs and activities have

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[14] NRC, "Safety Evaluation Report Related to the Subsequent License Renewal of Turkey Point Generating Units 3 and 4," App. A, Tbl. A-1 (July 22, 2019) (ML19191A057). Additionally, License Condition 3.J.3. requires FPL to replace a portion of the existing containment spray system carbon steel piping with stainless steel piping by December 1, 2024. That project is now complete at Unit 3 and will be completed at Unit 4 after the current refueling outage; thus, completion likely would not be impacted by SROL vacatur.

[15] *Turkey Point*, CLI-22-02, 95 NRC at __ (slip op. at 14).

imminent implementation deadlines or *already have been* implemented. Such is the case with the following aging management programs ("AMPs") that, additionally, involve *imminent* inspection activities that may begin as soon as "7/19/2022," as noted in the SER:

- Item 20: Fire Water System (XI.M27);
- Item 21: Outdoor and Large Atmospheric Metallic Storage Tanks (XI.M29);
- Item 22: Fuel Oil Chemistry (XI.M30);
- Item 24: One Time Inspection (XI.M32);
- Item 25: Selective Leaching (XI.M33);
- Item 32: Buried and Underground Piping and Tanks (XI.M41); and
- Item 33: Internal Coatings/Linings for In-Scope Piping, Piping Components, Heat Exchangers, and Tanks (XI.M42).

Certain of these safety commitments also involve installation of new systems to support SLR. For example, with respect to buried and underground piping and tanks (Item 32), the SROLs require FPL to "[i]nstall cathodic protection systems and perform soil testing no later than nine years prior to the [S]PEO."

One practical effect of vacating the SROLs is that FPL would no longer be required to implement or complete any of these 57 programs or activities, and the NRC Staff would no longer be able to inspect or enforce them because they are unique to the SROLs and are not included in or required by the ROLs. If deferred until new SROLs are eventually issued, it is unclear whether or how FPL could schedule and complete such activities prior to the SPEO.

Furthermore, FPL's business operations are subject to complex and comprehensive federal, state, and local legal and regulatory requirements. This extensive framework regulates, among other things and to varying degrees, FPL's industry, businesses, rates and cost structures, operation and licensing of nuclear power facilities, planning, construction and operation of

electric generation, transmission and distribution facilities, transportation, processing and storage facilities, acquisition, disposal, depreciation and amortization of facilities and other assets, decommissioning costs and funding, service reliability, and commodities trading and derivatives transactions.[16] The full panoply of possible business and financial implications related to a hypothetical vacatur of the SROLs is complex and somewhat uncertain. But, in broad terms, SROL vacatur has the potential—without any identified safety or environmental benefit—to disrupt long-range energy and business planning decisions and the timely completion of the above-listed aging management activities and inspections, which are necessary to prepare for an SLR term.

In the end, if the SROLs are vacated, FPL would be left in regulatory limbo. Its choice would be between (1) implementing costly subsequent license renewal aging management activities and inspections now, without the benefit of the SROLs (assuming that is an option, given the complex business and regulatory matters noted above), and (2) deferring those activities, which creates a risk that safety-based enhancements may not be completed before the SPEO.

B. If the SROLs Are Vacated, FPL Would No Longer Be Required By an Explicit Provision in the License to Implement the Terms and Conditions of the U.S. Fish & Wildlife Service's Incidental Take Statement Pertaining to the American Crocodile and Eastern Indigo Snake and the NRC Would No Longer Be Able to Inspect and Enforce That Provision

With respect to federally listed species and critical habitats under the jurisdiction of the U.S. Fish and Wildlife Service ("FWS"), the NRC staff consulted with the FWS on the proposed

[16] Form 10-K, NextEra Energy, Inc.; Florida Power & Light Company at 21 (Fiscal Year Ended Dec. 31, 2021) ("10-K"), *available at* https://otp.tools.investis.com/clients/us/nextera_energy_inc/SEC/sec-show.aspx?FilingId=15583691&Cik=0000753308&Type=PDF&hasPdf=1.

action in 2018 and 2019.[17] On July 25, 2019, the FWS issued a biological opinion for Turkey Point concluding that the continued operation of Turkey Point through the SPEO is not likely to jeopardize the continued existence of the American crocodile (*Crocodylus acutus*) or eastern indigo snake (*Drymarchon corais couperi*) and will not adversely modify the critical habitat of the American crocodile. The biological opinion included incidental take statements ("ITSs") applicable to the American crocodile and eastern indigo snake. The ITSs' terms and conditions are binding conditions of the SROLs. More specifically, these requirements are imposed in Section 2.1, "Endangered Species Act," of the "Environmental Protection Plan," which is Appendix B to the SROLs.

The practical effect of vacating the SROLs is that FPL would no longer be required by an explicit provision in the license to comply with the terms and conditions of the 2019 ITSs, and the NRC Staff would no longer be able to inspect or enforce that provision because it is unique to the SROLs and is not included in the ROLs. Moreover, even assuming, *arguendo*, that the previous biological opinion somehow could be reinstated, it does not include an ITS for the eastern indigo snake.

C. Reinstating the Previous ROLs Would Create Uncertainty Regarding the Current Licensing Basis ("CLB"), the Resolution of Which May Require Substantial Agency and FPL Resources

FPL is unaware of any past proceeding in which the NRC has invoked the provision of 10 C.F.R. § 54.31(c) allowing a previously-superseded license (either an initial operating license or an ROL) to be "reinstated." Thus, doing so here likely would present a matter of first impression. Likewise, there exists no agency guidance regarding the process for reconciling a

[17] NRC, Record of Decision; Subsequent License Renewal Application for Turkey Point Nuclear Generating Unit Nos. 3 and 4 at 15 (Dec. 4, 2019) (ML19309F859).

former license with a CLB[18] that has evolved over multiple years to reflect and directly address the SPEO and other supervening licensing basis matters.

The practical complexities of disentanglement (and eventual re-entanglement) here are further compounded by the significant passage of time since the Turkey Point SROLs were issued and the many CLB-related actions that have occurred since then. The Commission did not issue CLI-22-02 until 27 months after the Turkey Point SROLs were issued. During that period, FPL took required actions to update its licensing basis to reflect an additional 20-years of licensed life. FPL also continued to take other appropriate CLB-related actions in the normal course of plant operations (*i.e.*, not specific to SLR). For example, the SROLs themselves have been amended several times since they were issued in 2019. The Unit 3 SROL has been amended 8 times (Amendment Nos. 288 to 295) and the Unit 4 SROL has been amended six times (Amendment Nos. 268 and 283 to 287).[19] Furthermore, other license amendment requests remain pending before the agency and various other CLB-related changes have occurred since the SROLs were issued.

Similarly, the Turkey Point Final Safety Analysis Report ("FSAR") has continued to evolve since 2019, as required by 10 C.F.R. § 50.71(e). Indeed, the SROLs directed that the

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[18] Per 10 C.F.R. § 54.3(a), CLB is defined as:

> the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design-basis information defined in 10 CFR 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 CFR 50.71 and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.

[19] *See* ML21119A355, ML19266A585, ML19357A195, ML20049A010, ML20104B527, ML20029E948, ML20237F385, ML20198M498, and ML21032A020.

FSAR be updated to reflect the information provided during the SLRA review process, including incorporation of certain provisions related to AMPs.[20] The status of these and other post-SROL CLB changes would be rendered unclear if the SROLs are vacated.

Additionally, the NRC's Reactor Vessel Material Surveillance Program Requirements in Appendix H to 10 C.F.R. Part 50 require, among other things, that material "surveillance capsules" be withdrawn periodically from the reactor vessel. In simplified terms, there are a fixed number of capsules in the reactor vessel; and a withdrawal schedule apportions their withdrawal and testing over the licensed life of the facility. Turkey Point has an integrated surveillance capsule program that applies to both Units 3 and 4. Currently, there is one remaining surveillance capsule that can provide meaningful data for the SPEO. Following issuance of the SROLs, an updated Turkey Point withdrawal schedule was approved by the NRC to account for the SPEOs. If the SROLs are vacated, FPL may be required to revert to the former withdrawal schedule and immediately withdraw the one remaining capsule. But then, if the SROLs are subsequently reinstated, there would be no remaining surveillance capsules capable of providing meaningful data for the SPEOs.

In order to achieve its goals of "clarity" and "reliability,"[21] the agency would need to develop and issue prompt guidance regarding the actions needed for disposition of these various issues and the path forward on reconciliation of the CLB. Given the technical and regulatory complexities of these first-of-a-kind issues, the practical implication is that developing guidance and implementing the unwinding process could absorb significant agency and FPL resources—resources that will, at the same time, presumably be focused on updating the GEIS, completing

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20 *See* SROLs (License Condition 3.J.1).

21 *See Values*, NRC.gov, https://www.nrc.gov/about-nrc/values.html.

the rulemaking, and preparing multiple SEISs. Substantial resources also would be required to re-create the SLR licensing basis once the SROLs are reinstated after issuance of the new Turkey Point SEIS, and that process again would need to account for CLB evolution that occurred throughout the curative period.

D. Vacating the SROLs Could Exacerbate Political, Economic, and Energy Planning Uncertainty

This briefing comes at a crucial moment in time when governments and private actors alike must take action to address the global climate crisis and tackle pressing issues of energy availability and independence. The U.S. government and certain states have taken and continue to take actions, such as proposing and finalizing regulations or setting targets or goals, regarding the regulation and reduction of greenhouse gas emissions.[22] Furthermore, state and regional entities must evaluate forward-looking information (often in the form of ten-year plans) to inform energy planning decisions related to electric generation.[23] The Commission's decision to amend the SROLs to revise their expiration dates already has created uncertainty and confusion among the public and other stakeholders. SROL vacatur would only foment further misunderstanding regarding the realistic outlook of SLR for Turkey Point and for the existing fleet, more broadly, to continue producing vitally important non-fossil fuel electricity.

III. VACATUR IS NOT LEGALLY WARRANTED

As explained below, the relevant considerations from the applicable legal standards weigh strongly against vacating the Turkey Point SROLs and clearly support leaving the SROLs in place.

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22 10-K at 19.

23 *See generally, e.g.*, Fla. Stat. § 186 (Florida's state and regional planning requirements).

A. Legal Standards

In the D.C. Circuit's 2018 *Oglala* decision, the court acknowledged that the NRC possesses the authority in certain circumstances to vacate a license if it determines, in subsequent proceedings, that Staff's environmental review did not comply with NEPA.[24] The court repeated the oft-cited reminder that NEPA does not permit an agency to "act first and comply later."[25] Vacatur is the "ordinary practice" in extreme cases, such as those in which an agency failed to undertake any environmental review whatsoever.[26] However, the *Oglala* court squarely affirmed that vacatur is an extraordinary remedy *not required by law* in lesser circumstances, such as those in which the agency did, in fact, conduct an environmental review, but the review is subsequently found to be defective (or even "significantly" defective).[27]

More specifically, the *Oglala* court declined to vacate an *in situ* uranium recovery license despite the existence of a "significant" NEPA defect in the environmental review conducted by the NRC. The court relied on the two-part standard set forth in *Allied-Signal*,[28] which permits remand-without-vacatur based on equitable considerations, including (1) "the seriousness of the order's deficiencies," and (2) "the disruptive consequences of an interim change." The court then remanded the matter to the NRC, without vacatur, to cure the NEPA defect and invited the agency to perform its own vacatur analysis. Notably, the court struck down the Commission's

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24 *Oglala Sioux Tribe v. NRC*, 896 F.3d 520 (D.C. Cir. 2018).

25 *Id*. at 523.

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

27 *Accord Hydro Resources, Inc.*, (2929 Coors Rd., Ste. 101, Albuquerque, NM 87120), CLI-00-15, 52 NRC 65, 66 (2000) ("Some licensing defects [] such as a failure to provide sufficient information, by their nature do not call for revoking a license outright, for a prompt *cure* may be possible without compromising the public health and safety and without defeating Intervenors' hearing rights." (emphasis in original)).

28 *Allied-Signal, Inc. v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

previous "settled practice" of using an irreparable injury standard in vacatur analyses, but it did not prescribe a new standard.

On remand, notwithstanding the "significant" NEPA deficiency (which Staff was then working to resolve), the Commission likewise determined that vacating the *Powertech* license was imprudent and unnecessary.[29] The Commission did not attempt to establish a comprehensive new vacatur standard and neither endorsed nor prohibited *Allied-Signal*-style equitable analyses going forward.[30] Instead, the Commission focused on the D.C. Circuit's primary concern: the potential that, if not vacated, the license could be "used to the detriment of resources" before the NRC cures the deficiency.[31] But for an outstanding state approval, the new license (not a renewal, as is the case here) would have authorized immediate commencement of *in situ* recovery operations that tribal intervenors feared might be detrimental to potentially-unidentified cultural, historical, and religious sites. Because the licensee was not yet in a position to *use* its NRC license for its intended operational purpose, the Commission noted that the environmental status quo would be preserved while the Staff resolved the NEPA deficiency. Thus, the Commission concluded that it need not vacate the license. Notably, the Commission announced its expectation that future vacatur analyses would be framed and informed by these *Oglala/Powertech* principles.[32]

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[29] *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-19-1, 89 NRC 1, 11 (2019) (emphasis added).

[30] *Id*. at 10-11.

[31] *Id*. at 8.

[32] *Id*. at 11. Notwithstanding this expectation, the Commission did not apply or engage with these principles in its order directing the staff to amend the SROL expiration dates to vacate the 20-year SPEOs. *See Turkey Point*, CLI-22-02, 95 NRC __ (slip op.).

B. The "Seriousness of the Order's Deficiencies" Do Not Support SROL Vacatur

The Commission's concern with the 2013 GEIS pertains to the possibility of an incomplete NEPA review associated with an SLR period. Here, the Turkey Point SPEOs are more than a decade away. Because the potential 2013 GEIS deficiency identified by the Commission poses no imminent concerns, it cannot rightly be viewed as a "serious" deficiency warranting the extreme remedy of SROL vacatur.

Furthermore, as noted in Section I above, after more than four years of extensive regulatory and adjudicatory review, neither the NRC Staff, the ASLB, nor the Commission has identified a material deficiency in the Turkey Point SEIS. In light of the Commission's recent orders, FPL and the Staff will likely have to re-examine the material sufficiency of at least some portion of the Turkey Point environmental review. But at the present time, the administrative record—including the recent Commission decisions—*does not reflect any finding that the Turkey Point SEIS in fact contains any material defect* (much less a "serious" one). Thus, the deficiency identified by the Commission in CLI-22-02 is not so imminent or "serious" as to warrant vacating the SROLs during the curative period.

C. The "Disruptive Consequences of an Interim Change" Support Keeping the SROLs in Place

As detailed in the discussion of practical implications in Section II, above, vacating the SROLs would be highly disruptive, particularly given the tightly-scheduled conditions imposed as part of SLR and necessary to prepare for the SPEO. Over the past two years, FPL has proceeded with integrating various SLR-related programs, activities, and analyses into the Turkey Point licensing basis, and has taken other appropriate CLB-related actions in the normal course of plant operations (*i.e.*, not specific to SLR), as required by the SROLs and NRC regulations. If vacated, the legal status of those changes is uncertain, including whether FPL

should or could maintain them in place pending further action as directed by the Commission. If necessary, unwinding those integrations would be a resource-intensive effort and, ultimately, would not yield any safety, environmental, or regulatory benefits. Indeed, requiring such an unnecessary effort would be contrary to the NRC's "Principles of Good Regulation." In particular, the "Efficiency" principle explains that:

> The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. . . . Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted.[33]

Here, "the disruptive consequences of an interim change" clearly weigh in favor of maintaining the SROLs in place during the curative period.

D. Potential to "Use the License to the Detriment of Resources"

Pursuant to 10 C.F.R. § 54.31(c), the SROLs became "effective immediately" upon their issuance in 2019. Although the SPEOs for Turkey Point do not begin until 2032, the SROLs obligate FPL to take certain safety- and environmentally-beneficial preparatory actions (some of which are described in further detail in Sections II.B. and II.C. above) before the SPEOs begin. However, leaving the SROLs in place during the curative period would not permit them to be used "to the detriment of resources." Importantly, from an environmental standpoint, the agency itself made the following statement regarding the Turkey Point SROLs to the U.S. Court of Appeals for the District of Columbia Circuit:

> This is not a situation where the NRC has issued a license that materially disrupts the status quo (e.g., an order authorizing the construction or operation of a new facility), or where there is practical risk that the "die may be cast" in such a way that meaningful analysis is precluded. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Turkey Point is an

[33] *Values*, NRC.gov, https://www.nrc.gov/about-nrc/values.html.

> already-existing facility that, even without the subsequent renewed licenses at issue in this case, FPL would be authorized to operate for another twelve [now ten] years.[34]

Thus, as the agency itself has already publicly acknowledged, leaving the SROLs in place during the curative period would not disrupt the environmental status quo.

In practical terms, the potential environmental impacts of *operating* the units until 2032 and 2033, respectively, were fully considered in the previous environmental review for Turkey Point's initial license renewal, which was completed in 2002 and is not subject to challenge in this proceeding, nor is it the subject of any pending Commission action.[35] Thus, a NEPA-compliant environmental analysis of operating Turkey Point for another decade already exists. Because the Commission expects the curative efforts to be completed well before 2032, the environmental status quo will be preserved without the need for any protective measures, much less the draconian measure of vacating the SROLs.

IV. CONCLUSION

As established above, the law does not require the Commission to vacate the Turkey Point SROLs and reinstate the previous ROLs; and the relevant considerations under *Allied-Signal*, *Oglala*, and *Powertech* weigh heavily against doing so here. Accordingly, the Commission should allow the SROLs to continue in place while the NRC Staff completes the actions directed by the Commission.

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[34] Final Brief of Federal Respondents at 33, Friends of the Earth, *et al*., v. NRC, No. 20-1026 (D.C. Cir. Nov. 13, 2020), ECF No. 1871031 (emphasis added).

[35] Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Turkey Point Plant, Units 3 and 4 - Final Report (NUREG-1437, Supplement 5) (Jan. 2002) (ML020280119, ML020280202, ML020280226).

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Steven Hamrick, Esq.
FLORIDA POWER & LIGHT COMPANY
801 Pennsylvania Ave., NW Suite 220
Washington, D.C. 20004
Phone: (202) 349-3496
E-mail: steven.hamrick@fpl.com

Signed (electronically) by Ryan K. Lighty

Ryan K. Lighty, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
E-mail: ryan.lighty@morganlewis.com

Executed in Accord with 10 C.F.R. § 2.304(d)

Paul M. Bessette, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5796
E-mail: paul.bessette@morganlewis.com

Counsel for Florida Power & Light Company

Dated in Washington, DC
this 21st day of March 2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	Docket Nos. 50-250-SLR & 50-251-SLR
FLORIDA POWER & LIGHT COMPANY	)	
(Turkey Point Nuclear Generating Units 3 and 4)	)	March 21, 2022

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "FLORIDA POWER & LIGHT COMPANY'S VIEWS ON LICENSE STATUS AS REQUESTED IN COMMISSION ORDER CLI-22-02" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty
Ryan K. Lighty, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
E-mail: ryan.lighty@morganlewis.com

Counsel for Florida Power & Light Company

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