

# NRC Flubbed Fla. Nuke Plant Relicensing, DC Circ. Told

July 28, 2020

Copyright © 2020 Portfolio Media, Inc. All rights reserved.

**Author:** Keith Goldberg

## Summary

Environmental groups on Monday urged the D.C. Circuit to nix the U.S. Nuclear Regulatory Commission's renewal of licenses for the **Turkey Point** nuclear power plant near Miami, arguing that the agency botched its review of the environmental impacts of extending the plant's life.

## Body

Environmental groups on Monday urged the D.C. Circuit to nix the U.S. Nuclear Regulatory Commission's renewal of licenses for the **Turkey Point** nuclear power plant near Miami, arguing that the agency botched its review of the environmental impacts of extending the plant's life.

NRC staff in December approved 20-year license renewals for the two nuclear reactors at the NextEra Energy Inc. plant that will authorize them operating until 2052 and 2053, respectively. But the Natural Resources Defense Council, Friends of the Earth and Miami Waterkeeper claim that the authorization is based on inadequate reviews of both the long-term environmental impacts of the plant's continued operation and the groundwater impacts from its cooling canal system.

Both are violations of the National Environmental Policy Act, the groups told the D.C. Circuit in a brief Monday.

Instead of looking at the specific environmental impacts of operating the **Turkey Point** plant beyond the early 2030s, the groups said the NRC and NextEra utility unit Florida Power & Light Co. used a generic environmental analysis the agency adopted in 2013 for license renewals. But those regulations only cover initial license renewals and the NRC has already renewed **Turkey Point's** licenses, which is what allowed the plants to operate into the next decade, the groups said in their brief.

Not only does that violate the Administrative Procedures Act, it violates NEPA's requirement that agencies take a "hard look" at the environmental impacts of a proposed action, the environmental groups told the D.C. Circuit.

"During the rulemaking adopting the generic approach and throughout the generic review itself, the NRC repeatedly stated that the generic analysis was conducted for the initial 20-year license renewal term and did not purport to look further into the future," the groups said in their brief. "By relying on these generic conclusions without any additional site-specific analysis in the Final [Supplemental Environmental Impact Statement], the NRC has extended **Turkey Point's** life to 80 years without a complete NEPA review."

The groups said the NRC also flouted NEPA by relying on state and county oversight to mitigate any groundwater impacts from the plant's cooling canals. That's already proven to be misguided, the groups said, noting that even the Environmental Protection Agency questioned the effectiveness of an FPL plan to manage a hypersaline water plume emanating from the plant that stemmed from a 2016 consent decree with state environmental regulators.

"The NRC's expectation that state and county oversight will ensure environmental protection of South Florida is a mere pipedream not grounded in science," the groups said in their brief.

An initial renewal of a nuclear plant's 40-year NRC operating license can extend its life to 60 years. The NRC staff's subsequent license renewal of **Turkey Point** in December was the first time the agency has allowed a nuclear plant's operation to extend from 60 to 80 years.

The NRC in March urged the D.C. Circuit to dismiss the environmental groups' challenge, arguing that license renewals issued by agency staff aren't final orders and that

the environmental groups are still lodging administrative appeals.

The D.C. Circuit said in a June 8 order that the merits panel that's assigned to the case will also consider the NRC's dismissal bid and directed both sides to address whether the license renewals are final agency orders in their briefs.

The environmental groups said in their brief Monday that the license renewals are final orders and that the NRC is trying to block judicial review even though the renewed licenses are in effect. They noted that the D.C. Circuit recently upended the Federal Energy Regulatory Commission's ability to delay requests to reconsider pipeline project approvals, saying it allows the agency to stall judicial review while still letting developers build their projects and seize land for them.

"This court rejected FERC's use of the tolling order, which 'split the atom of finality' by making the license final for eminent domain but not final for judicial review," the groups said in their brief. "The court should reject the NRC's similar actions here."

An NRC spokesperson said Tuesday that the agency doesn't comment on pending litigation. Representatives for the environmental groups couldn't be immediately reached for comment Tuesday.

The NRDC is represented by staff attorneys Caroline Reiser and Geoffrey Fettus.

Friends of the Earth is represented by Richard Ayres of Richard Ayres Esq. and Kenneth J. Rumelt of Vermont Law School's Environmental Advocacy Clinic.

Miami Waterkeeper is represented by staff attorney Kelly Cox.

The NRC is represented by Justin D. Heminger and Erika Kranz of the U.S. Department of Justice's Environment and Natural Resources Division, as well as in-house by solicitor Andrew P. Averbach and senior attorney Eric V. Michel.

The case is Friends of the Earth et al. v. NRC et al., case number 20-1026, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Editing by Kelly Duncan.