health and safety as stated by the licensee:

The LTA reload evaluation will ensure that these acceptance criteria [in the Commission's regulations] are met following the insertion of LTAs containing Optimized ZIRLO™ material. Fuel assemblies using Optimized ZIRLO™ cladding will be evaluated using NRC-approved analytical methods and plant specific models to address the changes in the cladding material properties. The safety analysis for Waterford 3 is supported by the applicable Technical Specifications. The Waterford 3 reload cores containing Optimized ZIRLO™ cladding are required to be operated in accordance with the operating limits specified in the Technical Specifications. The LTAs utilizing Optimized ZIRLO™ cladding will be placed in non-limiting core locations. Thus, the granting of this exemption request will not pose an undue risk to public health and safety.

The NRC staff has evaluated these considerations as set forth in Section 3.1 of this exemption. For the reasons set forth in that section, the NRC staff concludes that Optimized ZIRLO™ may be used as a cladding material for no more than four LTAs to be placed in non-limiting core locations during Waterford 3's next refueling outage, and that an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, Appendix K does not pose an undue risk to the public health and safety.

(3) The requested exemption will not endanger the common defense and security:

The common defense and security are not affected and, therefore, not endangered by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, Appendix K, to allow the use of Optimized ZIRLO™ as a cladding material in four LTAs in the capacity described in their April 30, 2004, submittal, as supplemented by letter dated June 8, 2004, up to a lead rod average burnup of 60,000 MWD/MTU.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 31848 dated June 7, 2004).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 28th day of July, 2004.

For the Nuclear Regulatory Commission.

James E. Lyons,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17853 Filed 8–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–251]

Florida Power and Light Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–41, issued to Florida Power and Light (the licensee), for operation of the Turkey Point Unit 4 located in Miami-Dade County.

The proposed amendment would revise Technical Specifications (TSs) 3/4.1.3.1, 3/4.1.3.2 and 3/4.1.3.5 to allow the use of an alternate method of determining rod position for the control rod F–8 with the rod position indicator, until repairs can be conducted at the next outage which is scheduled for spring 2005.

The reason for the exigency is due to the unanticipated failure of the Turkey Point Unit 4 Analog Rod Position Indication for control rod F–8 in Shutdown Bank B, which was last declared inoperable on July 26, 2004, at 8:47 a.m. Additionally, there is a concern regarding excessive wear due to exercising the movable incore detectors every 8 hours (90 times per month) to comply with the compensatory actions required by the current Action Statement a. of TS 3.1.3.2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change provides an alternative method for verifying rod position of one shutdown rod. The proposed change meets the intent of the current specification in that it ensures verification of position of the control rod once every eight (8) hours. The proposed change provides only an alternative method of monitoring shutdown rod position and does not change the assumption or results of any previously evaluated accident.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As described above, the proposed change provides only an alternative method of determining the position of one shutdown rod. No new accident initiators are introduced by the proposed alternative manner of performing rod position verification. The proposed change does not affect the reactor protection system or the reactor control system. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The bases of Specification 3.1.3.2 state that the operability of the rod position indicators is required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position but provides an alternative method for determining the position of the affected rod. As a result, the initial conditions of the accident analysis are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendments

would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the

Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to M. S. Ross, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 28, 2004, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of July 2004.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17854 Filed 8–4–04; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering amending an exemption from (1) Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix K, section I.D.1, which requires that accident evaluations use the combination of emergency core cooling system (ECCS) subsystems assumed to be operative ''after the most damaging single failure of ECCS equipment has taken place;'' and (2) requirements of 50.46(a)(1)(ii), for Facility Operating License No. NPF–3, issued to FirstEnergy Nuclear Operating Company (FENOC or the licensee), for operation of the Davis-Besse Nuclear Power Station (DBNPS), located in Ottawa County, Ohio. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The original exemption issued on May 5, 2000, exempted the licensee from the single-failure requirement for the two systems for preventing boric acid precipitation during the long-term cooling phase following a loss-of-coolant accident (LOCA). Additionally, the action exempted the licensee from the calculation requirements of 50.46(b)(5) and Appendix K, section I.A.4 for the second or backup system for preventing boric acid precipitation. The proposed action would amend the existing exemption by approving a new system to prevent boric acid precipitation. This new system would become the primary system and the current primary system would become the backup system. The current backup system would no longer be credited as part of the licensing basis, although it would remain as a third option procedurally. As such, the part of the existing exemption related to the calculation requirements of 50.46(b)(5) and Appendix K, section I.A.4 would be removed from the exemption as it only applied to the current backup system and is no longer needed.

The proposed action is in accordance with the licensee's application dated February 13, 2004.

The Need for the Proposed Action

The proposed action provides a new active means of preventing boric acid precipitation within the reactor vessel core region following a LOCA. The new system has fewer vulnerabilities and meets calculation requirements without an exemption, unlike the system to be removed from the licensing basis.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed amended exemption would continue to satisfy the underlying purpose of 10 CFR 50.46 and 10 CFR part 50, Appendix K. Additionally, the proposed action does not involve radioactive wastes, release of radioactive material into the atmosphere, solid radioactive waste, or liquid effluents released to the environment.

The DBNPS systems were evaluated in the Final Environmental Statement (FES) dated October 1975 (NUREG 75/097). The proposed amended exemption will not involve any change in the waste treatment systems described in the FES.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for DBNPS, NUREG 75/097, dated October 1975.

Agencies and Persons Consulted

On May 25, 2004, the staff consulted with the Ohio State official, C. O'Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.