

September 1, 2009

Mr. Mano Nazar  
Senior Vice President Nuclear  
and Chief Nuclear Officer  
Florida Power and Light Company  
P.O. Box 14000  
Juno Beach, FL 33408-0420

SUBJECT: TURKEY POINT UNITS 3 AND 4 - INDIVIDUAL NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR HEARING AND ORDER (TAC NOS. ME1754 AND ME1755)

Dear Mr. Nazar:

The U.S. Nuclear Regulatory Commission has forwarded the enclosed "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing" and "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation," to the Office of the Federal Register for publication.

This notice relates to your application dated July 23, 2009, in which you request to revise the TS 6.8.4.j, Steam Generator (SG) Surveillance Program and TS 6.9.1.8, Steam Generator Tube Inspection Report. The purpose of these modifications is to revise the scope of the inservice inspections required in the tubesheet regions of the Turkey Point Units 3 and 4 SGs.

If you have any questions, please contact me at 301-415-2020.

Sincerely,

*/RA/*

Brenda Mozafari, Senior Project Manager  
Plant Licensing Branch II-2  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-250 and 50-251

Enclosure:  
As stated

cc w/encl: Distribution via Listserv

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**NUCLEAR REGULATORY COMMISSION**

**[NRC-2009-0369]**

**FLORIDA POWER & LIGHT COMPANY**

**DOCKET NOS. 50-250 AND 50-251**

**NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO  
FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS  
CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR A HEARING  
AND ORDER IMPOSING PROCEDURES FOR ACCESS TO  
SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI)  
FOR CONTENTION PREPARATION**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power & Light Company (the licensee), for operation of Turkey Point, Units 3 and 4 located in Florida City, Florida.

The proposed amendment would revise the TS 6.8.4.j, Steam Generator (SG) Surveillance Program and TS 6.9.1.8, Steam Generator Tube Inspection Report. The purpose of these modifications is to revise the scope of the inservice inspections required in the tubesheet regions of the Turkey Point Units 3 and 4 SGs. The amendment application dated July 23, 2009, contains sensitive unclassified non-safeguards information (SUNSI).

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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 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. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the SG tube rupture (SGTR) event and the steam line break (SLB) postulated accident.

During the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H\* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes" [Reference 7] and NEI [Nuclear Energy Institute] 97-06, "Steam Generator Program Guidelines" [Reference 3], are maintained for both normal and postulated accident conditions. For the portion of the tube outside of the tubesheet, the proposed change also has no impact on the structural or leakage

integrity. Therefore, the proposed change does not result in a significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet, which would constitute a failure to meet  $H^*$ , is considered to be equivalent to a tube rupture. Therefore, the proposed change does not result in a significant increase in the consequences of an SGTR event. In addition, the selected  $H^*$  value envelopes the depth within the tubesheet required to prevent a tube pullout.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event.

The leak rate factor of 1.82 for Turkey Point Units 3 and 4, for a postulated SLB, has been calculated as shown in Table 9-7 of Reference 2, Westinghouse Electric Company WCAP-17091-P,  $H^*$ : Alternative Repair Criteria for the tubesheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model 44F). Turkey Point Units 3 and 4 will apply the factor of 1.82 to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. Multiplying the leak rate factor of 1.82 by the TS operational leak rate limit of 150 gpd (at room temperature) through any one SG indicates that an assumed primary to secondary accident induced leak rate of 273 gpd or greater through any one SG is required to ensure that the limiting design basis accident assumption is not exceeded. This condition is satisfied by the current UFSAR [Updated Final Safety Analysis Report] assumed primary to secondary accident induced leak rate of 500 gpd (355 gpd adjusted to room temperature) through any one SG for SLB. Since the existing limits on operational leakage continue to ensure that the SLB assumed accident induced leakage will not be exceeded, the consequences of a SLB accident are not increased.

For the CM assessment, the component of leakage from the prior cycle from below the  $H^*$  distance will be multiplied by a factor of 1.82 and added to the total leakage from any other source and compared to the allowable accident induced leak rate. For the OA, the difference in the leakage between the allowable leakage and the calculated accident induced leakage from sources other than the tubesheet expansion region will be divided by 1.82 and compared to the observed operational leakage.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the SG inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change that alters the SG inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change defines the safety significant portion of the tube that must be inspected and repaired. WCAP-17091-P identifies the specific inspection depth below which any type of tube degradation is shown to have no impact on the performance criteria in NEI 97-06 Rev. 2, "Steam Generator Program Guidelines" [Reference 3] and TS 6.8.4.j, "Steam Generator (SG) Program."

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97-06, "Steam Generator Program Guidelines" [Reference 3], and NRC Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes" [Reference 7], are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers

(ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse WCAP-17091-P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The SLB leak rate factor for Turkey Point Units 3 and 4 is 1.82 (Table 9-7 in WCAP-17091-P). Multiplying this factor by the room temperature TS operational leak rate limit of 150 gpd through any one SG indicates that an assumed primary to secondary accident induced leak rate of 273 gpd or greater through any one SG is required to ensure that the limiting design basis accident assumption is not exceeded (at room temperature). This condition is satisfied by the current UFSAR assumed primary to secondary accident induced leak rate of 500 gpd (355 gpd adjusted to room temperature) through any one SG for SLB.

Therefore, the proposed change does not involve a significant reduction in any 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 30 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 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment

period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the Federal Register a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after 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, Rulemaking, Directives and Editing Branch (RDB), TWB-05-B01M, 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 faxed to the RDB at 301-492-3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. 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 person(s) 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 O1F21, 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 is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include 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 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/ requestor must contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/sitehelp/esubmittals/installviewer.html>.

Information about applying for a digital ID certificate is available on NRC's public website at <http://www.nrc.gov/sitehelp/esubmittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government

holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov).

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted 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; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely 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 and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at

[http://ehd.nrc.gov/ehd\\_proceeding/home.asp](http://ehd.nrc.gov/ehd_proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer.

Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated July 23, 2009, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public 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/readingrm/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.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards  
Information (SUNSI) for Contention Preparation**

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information.
2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A “potential party” is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR § 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.
3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov) and [OGCMailCenter.Resource@nrc.gov](mailto:OGCMailCenter.Resource@nrc.gov), respectively.<sup>1</sup> The request must include the following information:

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<sup>1</sup> See footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC’s “E-Filing Rule,” the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

- a. A description of the licensing action with a citation to this Federal Register notice of opportunity for hearing;
  - b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the potential licensing action;
  - c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;
4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.
5. A request for access to SUNSI will be granted if:
- a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;
  - b. The proposed recipient of the information has demonstrated a need for SUNSI;
  - c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order



setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

- d. The presiding officer has issued a protective order concerning the information or documents requested.<sup>2</sup> Any protective order issued shall provide that the petitioner must file SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this

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<sup>2</sup> If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

proceeding,<sup>3</sup> and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff, the NRC staff shall briefly state the reasons for the denial. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI (including with respect to standing) by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

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<sup>3</sup> Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>4</sup>

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

Dated at Rockville, Maryland, this 21st day of August 2009.

For the Nuclear Regulatory Commission.

*/RA/*

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Annette L. Vietti-Cook,  
Secretary of the Commission.

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<sup>4</sup> As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (August 28, 2007; 72 FR 49139). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

**Attachment 1 - General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) in This Proceeding**

Day	Event
0	Publication of [Federal Register notice / other notice of proposed action and opportunity for hearing], including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: supporting the standing of a potential party identified by name and address; and describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
[20, 30 or 60]	Deadline for submitting petition for intervention containing:  (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document

processing (preparation of redactions or review of redacted documents).

25

If NRC staff finds no “need” for SUNSI or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff’s denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds “need” for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff’s grant of access.

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Deadline for NRC staff reply to motions to reverse NRC staff determination(s).

40

(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

A

If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.

A+3

Deadline for filing executed Non-Disclosure Affidavits. Access provided to

SUNSI consistent with decision issuing the protective order.

A+28

Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

A+53 (Contention receipt +25)

Answers to contentions whose development depends upon access to SUNSI.

A+60 (Answer receipt +7)

Petitioner/Intervenor reply to answers.

B

Decision on contention admission.