

September 15, 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 52-040-COL
)	52-041-COL
(Turkey Point Units 6 & 7))	
)	ASLBP No. 10-903-02-COL
(Combined License))	

**Florida Power & Light Company's Answer
Opposing Joint Petitioners' Motion for Extension
of Time to Reply to Responses to Petition to Intervene**

Applicant Florida Power & Light Company ("FPL" or "Applicant") hereby opposes Joint Petitioners' Motion for Extension of Time to Reply to Responses to Petition to Intervene ("Motion"). On September 14, 2010, Petitioners filed a motion seeking a two-week extension of the time to file a reply to FPL's and the NRC Staff's Answers to its Petition to Intervene in this proceeding. For the reasons set forth below, FPL submits that the Board should deny Petitioners' Motion.

The Petition was filed on August 17, 2010. FPL's and the NRC Staff's Answers were timely filed on September 13, 2010. 10 C.F.R. § 2.309(h)(2) provides that replies to answers to petitions to intervene "must be filed within 7 days after service of the answer." Therefore, Petitioners must file any replies by September 20, 2010. The Commission's Policy Statement on Adjudications explains that hearing participants "are expected to adhere to the time frames specified in the Rules of Practice in 10 CFR Part 2 for filing" and boards should only consider extending those time frames "when warranted by

unavoidable and extreme circumstances.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). The Motion requests the Board to triple the amount of time allowed to Petitioners for filing a reply, from seven days to 21 days, and the reasons they propound for their request do not show good cause for an extension.

First, Petitioners argue that seven days is an insufficient amount of time to file a reply to the lengthy Answers. Motion at 2. This argument is unavailing, since “no rule or regulation of the Commission, or any provision thereof ... is subject to attack by way of ... argument, or other means in any adjudicatory proceeding subject to this part. 10 C.F.R. § 2.335(a). Also, the length of the Answers filed by FPL and the NRC Staff is a direct result of the length of Petitioners’ original filing. Petitioners filed a 66-page petition proffering 15 separate contentions that are supported by almost two thousand pages of exhibits. FPL and the NRC Staff were required to address this voluminous submittal, which necessitated lengthy Answers.

The Commission set the seven day period for replies in its 2004 rulemaking that revised 10 C.F.R. Part 2. Final Rule, “Changes to Adjudicatory Process,” 69 Fed. Reg. 2,182, 2,203 (Jan. 14, 2004). Because “[a]ny reply should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer,” the Commission determined that “a seven-day period to prepare such a focused reply is not unreasonable.” *Id.* The discussion in the Statement of Considerations also shows that, contrary to Petitioners’ assertions (see Motion at 3), the Commission contemplated exactly these circumstances and concluded that seven days would be sufficient.

The Commission stated in its Statements of Consideration for the Part 2 rulemaking that if “special circumstances” arise, a petitioner “may request a short extension [of the seven day time period for replies] from the presiding officer.” *Id.* Tripling the amount of time for a reply is not “a short extension.” And, the mere length of the Answers in this case cannot qualify as the “special circumstances” the Commission identified as the basis for extending time to file replies. Indeed, lengthy Answers to Petitions for leave to intervene are common in COL proceedings and are necessitated, as is the case here, by the numerous claims raised in the petitions.¹

Second, Petitioners argue that “the issues raised by Joint Petitioners and answered by FPL and the NRC Staff are novel, complex, and wide-ranging, requiring extensive additional factual and legal research enquiry to draft an appropriate response.” Motion at 2. But a reply to an answer may not be used as a vehicle to raise new arguments or claims not found in the original contention or be used to cure an otherwise deficient contention. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 N.R.C. 223, 225 (2004). Thus, an extension of time may not be based on a desire to perform “additional factual and legal research” towards developing new claims or providing new support for the proffered contentions. As the Commission has explained, because of the limited scope of a permissible reply, seven days is adequate time to prepare and file one.

Third, Petitioners argue that their “pro bono counsel have limited resources at their disposal, as well as teaching responsibilities and obligations in other matters, which

¹ Petitioners are not the first to have to reply to lengthy answers to petitions to intervene in COL proceedings. The Applicants’ Answers in each of the following recent COL proceedings were at least 100 pages in length: Levy County (206 pages); South Texas Project (139 pages); Comanche Peak (106 pages); Shearon Harris (132 pages); Bellefonte (100 pages).

severely limits their ability to reply to the FPL and NRC Staff answers” in a timely manner. Motion at 2. The Motion was filed by Petitioners’ counsel from the Turner Environmental Law Clinic of the Emory University School of Law. Petitioners do not discuss the availability of the two lawyers from the Everglades Law Center who also signed the Petition. Presumably, they could assist with drafting the replies, but Petitioners do not address their availability. Moreover, it is a basic Commission principle that “a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation.” *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983). The mere fact “that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.” Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 730 (1985); *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1261 n.29 (1982). Participants “in an NRC proceeding should anticipate having to manipulate [their] resources, however limited, to meet [their] obligations.” *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-719, 17 NRC 387, 394 (1983).

Fourth, Petitioners argue that the NRC’s “interest in efficiency is better served by granting an extension because it permits Joint Petitioners to submit a single cogent reply to both answers, thereby permitting the Board and the parties to identify and focus on genuine material issues of fact and law in dispute.” Motion at 2. In setting the seven day deadline, the Commission recognized that petitioners would be answering both the

applicant and the NRC Staff. *See* 69 Fed. Reg. at 2,203 Yet, the Commission made clear its expectation that, absent “special circumstances,” replies to both Answers could and should be prepared in seven days. *See id.* In any event, Petitioners do not explain why it would take longer to draft a single reply than it would to draft two separate replies.

Finally, Petitioners argue that the Motion would have a negligible impact on the overall hearing schedule and so would not adversely affect FPL. Motion at 3. But any undue extension of the NRC hearing process would by definition be prejudicial to the expeditious processing of the FPL Application, Petitioners’ assertions to the contrary notwithstanding.

Accordingly, FPL respectfully submits that Petitioners' Motion should be denied.

Respectfully Submitted,

/Signed electronically by Antonio Fernández/

Mitchell S. Ross
Antonio Fernández
FLORIDA POWER & LIGHT COMPANY
700 Universe Blvd.
Juno Beach, FL 33408
Telephone: 561-691-7126
Facsimile: 561-691-7135
E-mail: mitch.ross@fpl.com
antonio.fernandez@fpl.com

Steven Hamrick
FLORIDA POWER & LIGHT COMPANY
801 Pennsylvania Avenue, NW Suite 220
Washington, DC 20004
Telephone: 202-349-3496
Facsimile: 202-347-7076
E-mail: steven.hamrick@fpl.com

John H. O'Neill, Jr.
Matias F. Travieso-Diaz
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Telephone: (202) 663-8148
Facsimile: 202-663-8007
E-mail: john.o'neill@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com

Counsel for FLORIDA POWER & LIGHT
COMPANY

September 15, 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 52-040-COL
)	52-041-COL
(Turkey Point Units 6 & 7))	
)	ASLBP No. 10-903-02-COL
(Combined License))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Florida Power & Light Company’s Answer Opposing Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association’s Motion for Extension of Time” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 15th day of September, 2010.

Administrative Judge
E. Roy Hawken, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: erh@nrc.gov

Administrative Judge
Dr. Michael Kennedy
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: michael.kennedy@nrc.gov

Administrative Judge
Dr. William Burnett
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: wxb2@nrc.gov

Secretary
Att’n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAMAIL@nrc.gov

Lawrence D. Sanders
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Email: Lawrence.Sanders@emory.edu

Patrick D. Moulding
Sarah W. Price
Russell E. Chazell
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Patrick.Moulding@nrc.gov
Sarah.Price @nrc.gov
Russell.Chazell@nrc.gov

Gregory T. Stewart
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
E-mail: gstewart@ngnlaw.com

Barry J. White
Authorized Representative
CASE/Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, FL 33176
Email: bwtamia@bellsouth.net

/Signed electronically by Antonio Fernández /

Antonio Fernández