

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawken, Chairman
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 6 and 7)

Docket Nos. 52-040-COL and 52-041-COL

ASLBP No. 10-903-02-COL-BD01

September 17, 2010

ORDER

(Granting, In Part, Joint Petitioners' and CASE's Motions for Extension of Time)

On September 14, 2010, Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (collectively, Joint Petitioners) filed a motion seeking a two-week extension, to and including October 4, 2010, to file replies to the answers of Florida Power & Light Company (FPL) and the NRC Staff to their petition to intervene.¹ In their motion, Joint Petitioners represent that (1) Petitioner Village of Pinecrest and Petitioner Citizens Allied for Safe Energy, Inc. (CASE) do not oppose a two-week extension, (2) NRC Staff consents to a one-week, but not a two-week extension, and (3) FPL opposes any extension.²

¹ Joint Petitioners' Motion for Extension of Time to Reply to Responses to Petition to Intervene (Sept. 14, 2010) at 1 [hereinafter Joint Petitioners' Motion].

² Id. at 2. FPL also submitted an answer opposing Joint Petitioners' Motion. See Florida Power & Light Company's Answer Opposing Joint Petitioners' Motion for Extension of Time to Reply to Responses to Petition to Intervene (Sept. 15, 2010) [hereinafter FPL Answer to Joint Petitioners' Motion].

Joint Petitioners assert they satisfy the “good cause” standard in 10 C.F.R. § 2.307(a) for being granted a two-week extension of time, because the answers submitted by FPL and the NRC Staff total 291 pages of text and involve complex issues, necessitating additional time to review the material and to prepare an adequate reply. Additionally, Joint Petitioners assert that their counsel possess limited resources, and the requested extension will lead to a more cogent and meaningful reply, contributing, in turn, to a more efficient proceeding.³

On September 15, 2010, CASE also filed a motion seeking a two-week extension, to and including October 4, 2010, to file its reply to the answers of FPL and NRC Staff.⁴ In its motion, CASE represents that (1) Petitioner Village of Pinecrest and Joint Petitioners do not oppose a two-week extension, (2) NRC Staff consents to a one-week, but not a two-week extension, and (3) FPL opposes any extension.⁵

CASE’s extension request, like Joint Petitioners’ request, asserts the “good cause” standard for a two-week extension is satisfied because CASE must review a voluminous amount of material in the answers submitted by FPL and the NRC Staff, and the issues are complex and require extended consideration and analysis. In addition, argues CASE, a two-week extension is necessary to accommodate two days of religious holidays for some CASE advisors, to allow CASE’s pro se representative to undergo and recover from a scheduled medical procedure, and to provide sufficient time for CASE to communicate with its experts around the country.⁶

³ Joint Petitioners’ Motion at 2-3.

⁴ Petitioner’s Motion for Extension of Time to Reply to Responses to Petition to Intervene (Sept. 15, 2010) at 1 [hereinafter CASE’s Motion].

⁵ Id. at 1-2. FPL also submitted an answer opposing CASE’s motion. See Florida Power & Light Company’s Answer Opposing CASE’s Motion for Extension of Time to Reply to Responses to Petition to Intervene (Sept. 16, 2010) [hereinafter FPL Answer to CASE’s Motion].

⁶ CASE’s Motion at 2.

The Board finds that Joint Petitioners and CASE have demonstrated good cause for an extension. We further find that an extension will not prejudice any party to this proceeding, nor will an extension result in undue delay. Rather, to the extent the additional preparation time facilitates petitioners' ability to file well-organized, well-written, and responsive replies, the extension will inject significant efficiencies in the Board's decision-making process.

We do not, however, grant Joint Petitioners and CASE a full two-week extension for the filing of their replies. Notwithstanding the length of the answers and the complexity of the issues, we believe that extending the deadline for an additional eleven days and thus providing Joint Petitioners and CASE with a total of eighteen days to file their replies should give them sufficient time to read the answers, confer with their experts, and prepare cogent and meaningful replies. As FPL correctly states,⁷ "a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation."⁸ "[T]hat 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."⁹

⁷ FPL Answer to CASE's Motion at 4; FPL Answer to Joint Petitioners' Motion at 4.

⁸ Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983).

⁹ Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 730 (1985) (quoting Statement of Policy on Conduct of Licensing Proceedings, CLI-81-08, 13 NRC 452, 454 (1981)).

We therefore grant, in part, Joint Petitioners' and CASE's extension requests, and we direct them to file their reply to FPL's and NRC Staff's answers no later than Friday, October 1, 2010.¹⁰

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹¹

/RA/
E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 17, 2010

¹⁰ We emphasize that the granting of additional time to prepare a reply should not be viewed by petitioners as license to raise new arguments, to add new bases to their contentions, or to inject new issues into this proceeding. See Louisiana Energy Serv., L.P. (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004).

¹¹ Copies of this order were sent this date by the agency's e-filing system to: (1) counsel for Joint Petitioners Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association; (2) counsel for Petitioner Village of Pinecrest; (3) the representative for Citizens Allied for Safe Energy, Inc.; (4) counsel for Applicant Florida Power and Light Company; and (5) counsel for the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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)	
Florida Power & Light Company)	Docket Nos. 52-040 and 52-041-COL
(Juno Beach, Florida))	
)	
(Turkey Point, Units 6 & 7))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (GRANTING, IN PART, JOINT PETITIONERS' AND CASE'S MOTIONS FOR EXTENSION OF TIME) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 52-040 and 52-041-COL
ORDER (GRANTING, IN PART, JOINT PETITIONERS' AND CASE'S MOTIONS FOR
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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 17th day of September 2010.