

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

Before Administrative Judges:

E. Roy Hawkens, 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

March 30, 2011

INITIAL SCHEDULING ORDER AND ADMINISTRATIVE DIRECTIVES
(Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory
Disclosures, Initial Scheduling Order, and Administrative Directives)

On February 28, 2011, this Licensing Board granted hearing requests by two intervenors – (1) Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (hereinafter referred to collectively as Joint Intervenors) and (2) Citizens Allied for Safe Energy, Inc. (CASE) – to challenge a Combined License Application (COLA) by Florida Power & Light Company (FPL) to construct and to operate two new Westinghouse AP1000 nuclear reactors, Turkey Point Units 6 and 7, at FPL’s Turkey Point site in Homestead, Florida. See LBP-11-06, 73 NRC __, __ (slip op. at 1-2, 119-20) (Feb. 28, 2011). We also granted interested governmental entity status to the Village of Pinecrest, Florida (Pinecrest) pursuant to 10 C.F.R. § 2.315(c). See id. at __ (slip op. at 1-2, 119).

On March 7, 2011, the parties submitted a Joint Motion seeking to modify their obligations for mandatory disclosures under NRC regulations. See Joint Motion Regarding Mandatory Disclosures (Mar. 7, 2011) [hereinafter Joint Motion].

On March 16, 2011, we convened a pre-hearing teleconference to discuss case management and scheduling, as well as aspects of the Joint Motion. This Order summarizes

significant aspects of that call, grants the Joint Motion as modified by the parties' during the call, establishes an initial scheduling order pursuant to 10 C.F.R. § 2.332(a), and provides administrative directives that shall apply to the conduct of this proceeding.

I. SUMMARY OF CONFERENCE CALL

During the March 16 conference call (which was transcribed), counsel for the parties (Joint Intervenors, CASE, FPL, and the NRC Staff) and Pinecrest addressed questions asked by the Board relating to their Joint Motion and case scheduling and management generally. The following discussion summarizes significant aspects of that conference call.

A. Mandatory Disclosures

The Board observed that it had received a Joint Motion from the parties regarding their obligations surrounding mandatory disclosures. See Tr. at 271. We address those obligations and that motion infra.

B. Safety And Environmental Evaluations

Counsel for the NRC Staff confirmed that the projected time frames for issuance of the Final Environmental Impact Statement (FEIS) and Final Safety Evaluation Report (FSER) in this proceeding continued to be October 2012 and December 2012, respectively, but stated that those dates are subject to change. Tr. at 276-77. Counsel for the NRC Staff agreed to submit monthly status reports estimating its schedule for issuing these documents to the Board and the other parties. Id. at 277-78.

C. Settlement

The Board advised the parties that it stood ready to provide assistance if they wished to employ "alternate dispute resolution to address the issues without the need for litigation." 10 C.F.R. § 2.338; see Tr. at 281.

D. Motions

As of the teleconference, none of the parties evinced an intent to file motions in the next few months, but Joint Intervenors and FPL held out the option to do so. See Tr. at 278-79.

E. Disclosure Obligations

Each party at the teleconference agreed to submit their respective initial mandatory disclosures (see 10 C.F.R. § 2.336(a)-(b)) by April 8, 2011, and the NRC Staff agreed to endeavor to create its Hearing File by that date. See Tr. at 291; see also 10 C.F.R. § 2.1203(a)(1). All parties agreed that subsequent mandatory disclosures will be due on the second Friday of each month. Tr. at 289-92; see infra Part II.J. FPL stated, with the assent of the other parties and the Board, that it would submit a monthly certification to the Board that its disclosures have been complete, in lieu of producing those documents monthly to the Board. See Tr. at 282-87; see also 10 C.F.R. § 2.336(c).

II. THE PARTIES' JOINT MOTION

As mentioned supra at p. 1, the parties submitted a Joint Motion that requests to modify their mandatory disclosure obligations under NRC regulations. See Joint Motion at 2-5. The Board grants the Joint Motion, as modified by the parties during the conference call, as follows:

A. The Parties need not identify draft versions of any document, data compilation, correspondence, or other tangible thing that must be disclosed.

B. If the same relevant e-mail exists in multiple locations, each party may produce only one copy of that e-mail. If the e-mail exists in both sender and recipient e-mail folders, the party will produce the sender's copy of the e-mail.

C. The Parties need not identify or produce any document that has been served on the Parties to this proceeding.

D. The Parties need not identify or produce press clippings.

E. In connection with the Staff's submittal of the Hearing File, the Staff will identify all relevant documents available via the NRC's website or ADAMS, as required by 10 C.F.R. §§ 2.336(b), 2.1203. The Parties shall not otherwise be required to identify or produce docketed correspondence or other documents available via the NRC's website or ADAMS.

F. The Parties need not produce documents that are publicly available, but the Parties shall produce a log of such documents and where they can be obtained.

G. The Parties agree to waive the obligation to provide a privilege log required by 10 C.F.R. § 2.336(a)(3), (b)(5). For example, the Parties agree not to produce a log identifying attorney-client privileged material, attorney work product, or information subject to the deliberative process privilege. However, the Parties shall produce a log of the documents withheld as containing proprietary information. The Parties agree to preserve and maintain all discoverable privileged documents during the pendency of this proceeding.

H. The Parties shall have fourteen (14) days from the date that the first proprietary document is requested to negotiate a protective order and nondisclosure agreement and submit those documents to the Board for approval. Any deadlines for filing motions to compel disclosure of proprietary information set forth in such a protective order or in 10 C.F.R. Part 2 shall be tolled until the earlier of (a) an approval by the Board of a protective order and nondisclosure agreement, or (b) expiration of the fourteen-day period set forth in this paragraph.¹

I. Until the Staff issues the FSER or FEIS, as applicable to the admitted contentions, the continuing obligation of the Parties under 10 C.F.R. § 2.336(d) to update their respective disclosures is modified so that information or documents subsequently developed or obtained

¹ During the teleconference, FPL predicted there would be no safeguards information or sensitive unclassified nonsafeguards information (SUNSI) it would claim as exempt from disclosure. See Tr. at 276.

must be disclosed within thirty (30) days.² Following issuance of the FSER or FEIS, as applicable, the continuing obligation of the Parties to disclose information or documents will revert to the fourteen-day update period required by 10 C.F.R. § 2.336(d).

J. The Parties other than the Staff will provide initial disclosures, and the Staff will produce its initial Hearing File and mandatory disclosures, on or before April 8, 2011. The Parties shall update their disclosures and the Hearing File on the second Friday of every month beginning with the month following that in which the initial disclosures are made. Each subsequent disclosure update will cover all documents in the possession, custody, or control of each party as of the last day of the month preceding the disclosure.

K. Each of the Parties subject to the provisions of 10 C.F.R. § 2.336(a)(1) shall identify any person on which it may rely upon as a witness as soon as the identity of that person becomes known. Depending on the testimony eventually filed by the Parties, the Parties reserve the right to present rebuttal witnesses not previously identified in these mandatory disclosures.

L. A party requesting documents from another party will pay the related expenses. To the extent reasonably practicable, each party will provide electronic copies of the requested documents. If the requested documents cannot be provided electronically, other arrangements will be made, including if appropriate in-person inspection.

M. If a party seeks to obtain full disclosure of another party's disclosures, in the absence of an agreement establishing another mutually acceptable request submission date approved by the Board, a party must submit the request to the party from whom full disclosure is sought

² This extends the disclosure intervals established in NRC regulations. See 10 C.F.R. § 2.336(d) ("The duty of disclosure under this section is continuing, and any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days."). NRC regulations, however, authorize the Board, in regulating the conduct of proceedings, to modify the intervals for such disclosure. See id. § 2.332(a)(1), (b)(3).

within ten (10) days of the initial or subsequent disclosure. Thereafter, in the absence of the party's agreement to make the disclosure, the party seeking full disclosure must file a motion to compel disclosure with the Board in accordance with 10 C.F.R. § 2.323. The provisions in this paragraph apply only to proprietary documents. There will be no time deadline for requesting to see non-proprietary documents. Nothing in this paragraph, however, shall affect the timeliness requirements for the submittal of new contentions set forth in 10 C.F.R. § 2.309.

N. All the Parties may, at their option, update their disclosures under 10 C.F.R. § 2.336(d) through the use of e-mail alone. The Staff, however, will make the Hearing File available via the Electronic Hearing Docket. See Tr. at 282-86.

III. SCHEDULE

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, we establish the following scheduling requirements for this initial stage of the proceeding:

A. The parties shall comply with the mandatory disclosure and hearing file provisions of 10 C.F.R. §§ 2.336 and 2.1203, as modified supra Part II.

B. In its monthly report advising about the existence vel non of additional mandatory disclosures, counsel for the NRC Staff shall advise as to whether the predicted dates for issuance of the DEIS (currently predicted for October 2011), the Advance Final SER without Open Items (predicted for May 2012), the FSER (predicted for December 2012), and the FEIS (predicted for October 2012) have changed. The Staff's report shall update this estimate on a monthly basis, even if only to reflect no change. See supra Part I.B.

C. Consistent with 10 C.F.R. § 2.332(b) and (d), it is presumed that the scheduling of significant events in this proceeding will be keyed to the issuance of the FSER or FEIS (whichever is issued later), as provided in the model milestones for 10 C.F.R. Part 2, Subpart L

hearings. See 10 C.F.R. Part 2, app. B, § II. However, as recognized in subsections 2.332(b) and (d), the schedule may be modified based, for example, on the existence of new or additional contentions, the complexity of issues presented, or the ability to expedite the proceeding without adversely affecting the development of the record or impeding the fair resolution of the issues. Pursuant to subsection 2.332(d), at this juncture we do not envision conducting a hearing before issuance of the Staff's final documents, but we might adjust that schedule if doing so could inject significant efficiencies in the hearing process.

D. At this juncture, no party has requested that any aspect of the contested evidentiary hearing in this proceeding be conducted pursuant to Subpart G. Accordingly, absent contrary direction from this Board, and as we ordered in our February 28 Memorandum and Order (LBP-11-06, 73 NRC at ___ (slip op. at 120 & n.117)), the contested evidentiary hearing in this proceeding shall be conducted pursuant to 10 C.F.R. Part 2, Subpart L. See, e.g., 10 C.F.R. § 2.310(a); Tr. at 279-80.

E. The convening of future prehearing conferences will be addressed in subsequent orders. See 10 C.F.R. § 2.332(a)(2).

F. A final scheduling order, keyed to the model milestones in Appendix B of 10 C.F.R. Part 2, will be issued before, but more proximate to, issuance of the FEIS and FSER. See 10 C.F.R. § 2.332(a)-(d).

IV. ADMINISTRATIVE DIRECTIVES

Pursuant to 10 C.F.R. §§ 2.319 and 2.332(a), the following standard administrative directives shall apply to this proceeding as supplemental to the NRC's Rules of Practice in 10 C.F.R. Part 2.

A. Notice of Appearance

If they have not already done so, within seven (7) days after receipt of this Order, each counsel or representative for each participant shall file (or ensure she or he already has filed) a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b).

B. Additional Contentions

A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a nontimely new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the explanation for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). A motion and proposed new or amended contention as specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the motion should cover the three criteria of section 2.309(f)(2) and the eight criteria of section 2.309(c)(1) (as well as the six criteria of section 2.309(f)(1)).

Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.³

³ This procedure resolves difficulties that have arisen in prior proceedings concerning the interplay of the sequence and timing for motions under 10 C.F.R. § 2.323 (motion, answer), and the sequence and timing for contentions under 10 C.F.R. § 2.309(h) (contention, answer, reply). Further, this procedure expedites the process by collapsing an apparent two-step process into a single step.

C. Good Faith Consultation

To maximize the early resolution of issues without Board intervention, motions will be summarily rejected if they are not preceded by a sincere attempt to resolve the issues and include the certification specified in 10 C.F.R. § 2.323(b). See Tr. at 280-81. Each party shall endeavor to make itself available for consultation and shall cooperate in attempting to resolve the issues. Without revealing the substance of any settlement discussions, the required certification shall state if the other potential party was not available or refused to discuss the matter.

D. Service on the Licensing Board and on Other Participants

For each pleading or other submission filed before the Licensing Board or the Commission in this proceeding, parties shall submit these pleadings pursuant to the requirements of 10 C.F.R. §§ 2.304 and 2.305 through the agency's e-filing system.

E. Limitations on Pleading Length and Reply Pleadings

1. Page Limitations

Any motion filed after the date of this Order, and any related responsive pleadings to such a motion, shall not exceed twenty-five (25) pages in length (including signature page) absent preapproval by the Licensing Board. A request for Board preapproval to exceed this page limitation shall be sought in writing no less than three (3) business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must: (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

Pursuant to the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Licensing Board approval to file a reply shall include the reply itself and be sought in writing no later than five (5) business days after receipt of the response to which it is directed. A request to file a reply must: (1) indicate whether the request is opposed or supported by the other participants to this proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

F. Motions for Extension of Time

A motion for extension of time filed with the Licensing Board shall ordinarily be submitted in writing at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must: (1) indicate whether the request is opposed or supported by the other participants to this proceeding; and (2) demonstrate good cause for permitting the extension. See 10 C.F.R. § 2.307(a).

G. Opposing a Request to Exceed Page Limitations, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served no later than one (1) business day after the request at issue.

H. Attachments to Filings

If a participant files a pleading or other submission with the Licensing Board that has documents appended to it as attachments, a separate alpha or numeric designation (e.g., Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth supra Part IV.E.1.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴
/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 30, 2011

⁴ Copies of this Order were sent this date by the agency's e-filing system to: (1) counsel for Joint Intervenors; (2) the representative for CASE; (3) counsel for Pinecrest; (4) counsel for FPL; and (5) counsel for the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
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 INITIAL SCHEDULING ORDER AND ADMINISTRATIVE DIRECTIVES (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

E. Roy Hawkens
Administrative Judge, Chair
E-mail: roy.hawkens@nrc.gov

Dr. Michael F. Kennedy
Administrative Judge
E-mail: michael.kennedy@nrc.gov

Dr. William C. Burnett
Administrative Judge
E-mail: william.burnett2@nrc.gov

Joshua Kirstein, Law Clerk, ASLBP
E-mail: josh.kirstein@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4M
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Marian Zabler, Esq.
Sara Kirkwood, Esq.
Patrick Moulding, Esq.
Sara Price, Esq.
Joseph Gillman, Paralegal
Karin Francis, Paralegal
E-mail: marian.zabler@nrc.gov;
sara.kirkwood@nrc.gov;
Patrick.moulding@nrc.gov
sara.price@nrc.gov ;
joseph.gilman@nrc.gov;
karin.francis@nrc.gov

OGC Mail Center: Members of this office have received a copy of this filing by EIE service.

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

DOCKET NO. 52-040 and 52-041-COL
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Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order,
and Administrative Directives)

Counsel for the Applicant
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Alison M. Crane, Esq.
John H. O'Neill, Esq.
Matias F. Travieso-Diaz, Esq.
Maria Webb, Paralegal
E-mail: alison.crane@pillsburylaw.com
John.ONeill@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com
maria.webb@pillsburylaw.com

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Rd. SE
Atlanta, GA 30322
Lawrence D. Sanders, Esq.
Mindy Goldstein, Esq.
E-mail: lsande3@emory.edu
E-mail: magolds@emory.edu

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Everglades Law Center, Inc.
3305 College Avenue
Ft. Lauderdale, Florida 33314
Richard Grosso, Esq.
E-Mail: richard@evergladeslaw.org

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Mitchell S. Ross
Vice President & General Counsel – Nuclear
E-mail: mitch.ross@fpl.com

Florida Power & Light Company
801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
Mitchell S. Ross
E-mail: steven.hamrick@fpl.com;
Mitchell.ross@fpl.com

Counsel for the Village of Pinecrest
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
William C. Garner, Esq.
Gregory T. Stewart, Esq.
E-mail: bgarner@ngnlaw.com
E-mail: gstewart@ngnlaw.com

(CASE) Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, FL 33176
Barry J. White
E-mail: bwtamia@bellsouth.net

[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 30th day of March 2011.