

May 2, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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

**FLORIDA POWER & LIGHT RESPONSE OPPOSING PETITION TO SUSPEND  
ALL PENDING LICENSING DECISIONS AND RELATED RULEMAKING  
DECISIONS PENDING INVESTIGATION OF LESSONS LEARNED FROM THE  
FUKUSHIMA DAIICHI NUCLEAR POWER STATION ACCIDENT**

In accordance with the Commission’s Order of April 19, 2011, Applicant Florida Power & Light Company (“FPL”) hereby responds to and opposes essentially identical filings, originally made on April 14, 2011 and subsequently amended on April 18, 2011 in the above captioned proceeding by intervenors Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (“Joint Intervenors”) and Citizens Allied for Safe Energy, Inc. (“CASE”) (collectively, the “Intervenors”). The Joint Intervenors amended filing is entitled “Amendment and Errata to Emergency Petition to Suspend all Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident” (“Amended Filing”).<sup>1</sup> CASE’s amended filing is entitled

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<sup>1</sup> The Amended Filing was also filed on April 18, 2011 in the Turkey Point Units 6 and 7 docket by the City of Pinecrest (“Pinecrest”). The Pinecrest filing is being addressed separately below because, in addition to suffering from other deficiencies in the Petition, it is an unauthorized filing since Pinecrest is not a party to the proceeding but has been admitted only as an “interested State” pursuant to 10 C.F.R. § 2.315(c).

“Emergency Petition to Suspend all Pending Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from the Fukushima Daiichi Nuclear Power Station Accident.” Both amended filings will be referred herein as “Petition.” The page citations herein will refer to the pages in the Amended Filing.<sup>2</sup>

The same Petition is being filed in no less than twenty six separate proceedings by some fifty individuals and organizations who are intervenors in pending Commission proceedings or “seek a renewed opportunity to participate in licensing proceedings that have been closed to public participation but that are still pending before the agency.”

Petition at 5. The Petition requests that the Commission take a two-page list of actions, which can be summarized as including: 1) suspension of all decisions pending completion of the NRC’s review of the Fukushima accident; 2) suspension of all proceedings, hearings or opportunities for public comment on any issue considered in that review; 3) performance of an environmental analysis of the accident; 4) performance of a safety analysis of the accident’s regulatory implications; 5) establishment of procedures and a timetable for raising of new issues in pending licensing proceedings; 6) suspension of all decisions and proceedings pending the outcome of any independent Congressional, Presidential or NRC investigations; and 7) request for a Presidential investigation.

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<sup>2</sup> The Joint Intervenors state in their Amended Filing that the changes from the original Petition delete Bellefonte Units 1 and 2 from the filing and make several editorial corrections. Amended Filing at 3-4. CASE’s amended Petition does not specify what changes have been made to the original Petition filed by CASE on April 14, 2011, but it appears that it CASE has made the same changes reflected in the Amended Filing. None of the changes made in either amended filing affect the content of the Petition as it pertains to Turkey Point Units 6 and 7.

On April 19, 2011, the Joint Intervenors submitted a Declaration of Dr. Arjun Makhijani in Support of Emergency Petition to Suspend all Pending Reactor Licensing Decisions and Relating Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (April 19, 2011) (“Makhijani Declaration”). This additional filing is discussed below.

As further discussed below, petitions to the Commission to suspend proceedings are treated as motions under 10 C.F.R. § 2.323. While the NRC rules require that motions in a pending proceeding be addressed to the Presiding Officer, the Commission has previously indicated that suspension motions are best addressed to it. *AmerGen Energy Company, LLC et al.* (Oyster Creek Nuclear Generating Station et al.), CLI-08-23, 68 NRC 461, 476 (2008); *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23 56 NRC 230, 237 (2002). Given the sweeping actions requested in the Petition and the fact that it is being filed in numerous pending proceedings, FPL agrees that the Petition should be decided by the Commission instead of by individual licensing boards.

The Petition, however, fails to comply with the procedural and substantive requirements for granting motions. In addition, the relief it seeks is without legal basis, is unnecessary, and would be inimical to the interests of license applicants such as FPL and to the NRC's commitment to expeditious and efficient decision-making. For those reasons, the Petition must be denied.

## **BACKGROUND**

### **A. The NRC Response to the Fukushima Accident**

On March 11, 2011, the Tohoku-Taiheiyou-Oki Earthquake occurred near the east coast of Honshu, Japan. This magnitude 9.0 earthquake and the subsequent massive tsunami caused significant damage to at least four of the six units of the Fukushima Daiichi nuclear power station as the result of a sustained loss of both the offsite and on-site power systems. NRC Information Notice 2011-05, Tohoku-Taiheiyou-oki Earthquake Effects on

Japanese Nuclear Power Plants (Mar. 18, 2011) (“Information Notice 2011-05”) at 1 (ADAMS Accession No. ML110950110).

The Commission has been closely monitoring developments in Japan and reviewing all information available.<sup>3</sup> It has dispatched a team of experts to Japan, to support both the Japanese authorities and the U.S. embassy. In addition, the Commission is already conducting extensive reviews to identify and apply the lessons learned from the Fukushima accident.

The Commission has created a Task Force, made up of current senior managers and former NRC experts with relevant experience, to conduct both short term and long term analysis of the lessons that can be learned from the Fukushima accident. In the short term, to be completed in 90 days, the Task Force has been directed to:

- evaluate currently available technical and operational information from the events that have occurred at the Fukushima Daiichi nuclear complex in Japan to identify potential or preliminary near term/immediate operational or regulatory issues affecting domestic operating reactors of all designs, including their spent fuel pools, in areas such as protection against earthquake, tsunami, flooding, hurricanes; station blackout and a degraded ability to restore power; severe accident mitigation; emergency preparedness; and combustible gas control.
- develop recommendations, as appropriate, for potential changes to inspection procedures and licensing review guidance, and recommend whether generic communications, orders, or other regulatory requirements are needed.

Tasking Memorandum – COMGBJ-11-0002 – NRC Actions Following the Events In

Japan (Mar. 23, 2011) at 1 (ADAMS Accession No. ML110950110). This effort will be

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<sup>3</sup> Statement by Chairman Jaczko to the Senate Environment and Public Works Committee and Clean Air and Nuclear Safety Subcommittee (Apr. 12, 2011) (ADAMS Accession No. ML111020070) (“Jaczko April 12 Statement”).

informed by stakeholder input, and the Task Force report will be released to the public. *Id.* The longer term actions will begin as soon as the NRC has sufficient technical information from the events in Japan, with the goal of no later than the completion of the 90 day near term report. They will include evaluation of all technical and policy issues related to the event to identify potential research, generic issues, changes to the reactor oversight process, rulemakings, and adjustments to the regulatory framework that should be conducted by NRC. *Id.* at 2. They will also include evaluation of potential interagency issues such as emergency preparedness. *Id.*

The longer term review will receive input from and interact with all key stakeholders. *Id.* Within six months, the Task Force will provide a report with recommendations to the Commission, which will be reviewed by the Advisory Commission on Reactor Safeguards and will be released to the public under the NRC's normal procedures. *Id.*

In addition, the nuclear power industry has taken a number of actions at each licensed reactor site, including:

- Verifying each plant's capability to manage major challenges, such as aircraft impacts and losses of large areas of the plant due to natural events, fires or explosions. Specific actions include testing and inspecting equipment required to mitigate these events, and verifying that qualifications of operators and support staff required to implement them are current.
- Verifying each plant's capability to manage a total loss of off-site power. This will require verification that all required materials are adequate and properly staged and that procedures are in place, and focusing operator training on these extreme events.
- Verifying the capability to mitigate flooding and the impact of floods on systems inside and outside the plant. Specific actions include verifying required materials and equipment are properly located to protect them from flood.

- Performing walk-downs and inspection of important equipment needed to respond successfully to extreme events like fires and floods. This work will include analysis to identify any potential that equipment functions could be lost during seismic events appropriate for the site, and development of strategies to mitigate any potential vulnerabilities.

Statement of Charles Pardee (Chief Operating Officer Exelon Generation Company) on U.S. Nuclear Safety after Fukushima, United States Senate Committee on Environment and Public Works, Subcommittee on Clean Air and Nuclear Safety, Apr. 12, 2011, at 5-6, *available at*

[http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=74d96f65-a0cf-4ecd-8424-d79425cb97eb](http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=74d96f65-a0cf-4ecd-8424-d79425cb97eb). These actions by the industry are being taken in conjunction with industry expert organizations such as the Institute for Nuclear Power Operations (“INPO”), the Nuclear Energy Institute (“NEI”) and the World Association of Nuclear Operators (“WANO”). *Id.* at 3-4, 6.

The NRC staff (“Staff”) is also proceeding with independent assessments of nuclear power plant readiness to address beyond design-basis natural phenomena.

Information Notice 2011-05 at 4-5.

The Commission will use the information from these activities to impose any requirements it deems necessary:

NRC has already announced its plan to draw upon "lessons learned" from the Japan events, as the agency has done previously after natural or man-made disasters. As in the past, NRC will conduct rulemaking, or issue orders and other directives, to make upgrades required to implement whatever short-term or longer-term safety improvements emerge from the Task Force directed by the Commission to analyze the Fukushima Daiichi disaster.

Federal Respondents' Memorandum on the Events at the Fukushima Daiichi Nuclear Power Station at 21-22, *New Jersey Env't'l Federation v. NRC*, No. 09-2567 (3d Cir. Apr.

4, 2011) (“Federal Respondents' Memorandum”). The NRC has also made it clear that it has the authority to do so.

In response to the disaster at Fukushima Daiichi, NRC has authority to order . . . licensees of operating nuclear plants[] to adopt whatever measures NRC determines are needed in the short term for continued assurance of the public health and safety while NRC considers longer-term measures, including changes in its safety regulations. Such measures may be subject to site-specific considerations.

*Id.* at 2-3.

While the Commission is carefully examining the implications of the Fukushima accident, its current, informed assessment is that U.S. plants remain safe.

[W]e have been very closely monitoring the activities in Japan and reviewing all currently available information. Review of this information, combined with our ongoing inspection and licensing oversight, gives us confidence that the U.S. plants continue to operate safely.

Jaczko April 12 Statement at 3.

NRC has stated that licensed nuclear power reactors in the United States are currently safe, and may continue to operate under NRC's comprehensive scheme of safety regulations and inspections, pending development of any new safety measures that emerge as NRC's "lessons-learned" project moves forward.

Federal Respondents' Memorandum at 3.

It is evident that the Commission is already conducting extensive reviews to identify and apply the lessons learned from the Fukushima accident and will use the information from these activities to impose any new licensing requirements it deems necessary to protect public health and safety. In a parallel effort, the nuclear industry (including individual plant operators, INPO, NEI, and WANO) and the NRC Staff are also acting to enhance the safety of nuclear reactor operations in light of the Fukushima events.

**B. Status of Turkey Point 6 and 7 Licensing Proceeding**

On June 30, 2009, FPL submitted an Application (“Application”) for a combined license (“COL”) for two AP1000 pressurized water nuclear reactors to be located at the Turkey Point site near Homestead, Florida. *See* Letter from Mano K. Nazar, Senior Vice President and Chief Nuclear Officer, FPL, to Michael Johnson, Director, NRC Office of New Reactors (June 30, 2009). The Application references the standard design certification for the AP1000 issued to Westinghouse Electric Company, as amended, including Revisions 16 and 17. The proposed nuclear reactors would be known as Turkey Point Units 6 and 7.

On September 4, 2009, the Staff accepted the Application for docketing. *See* 74 Fed. Reg. 51,621 (Oct. 7, 2009). On June 14, 2010, the NRC issued a Notice of Hearing and Opportunity to Petition for Leave to Intervene, which provided members of the public the opportunity to file a petition for leave to intervene in the proceeding. 75 Fed. Reg. 34,777 (June 18, 2010) (“Notice of Hearing”).

In response to the Notice of Hearing, Joint Intervenors, CASE, and Pinecrest filed petitions to intervene and tendered proposed contentions. The Joint Intervenors submitted nine proposed contentions; CASE submitted eight; Pinecrest submitted three. On February 28, 2011, the Atomic Safety and Licensing Board (“Board”) established to oversee the proceeding on the Application ruled on the petitions to intervene and accepted for litigation a portion of one of the contentions submitted by the Joint Intervenors<sup>4</sup> and two of the

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<sup>4</sup> The admitted contention by Joint Intervenors, as reformulated by the Board, alleges that “the ER fails to analyze and discuss the potential impacts on groundwater quality of injecting into the Floridan Aquifer via underground injection wells heptachlor, ethylbenzene, toluene, selenium, thallium, and etrachloroethylene, (Footnote continued on next page)

contentions submitted by CASE.<sup>5</sup> All the contentions submitted by Pinecrest were rejected.<sup>6</sup> None of the contentions admitted for adjudication bear any relationship to the Fukushima accident.

The proceeding before the Board is in its initial stages, with the first mandatory disclosures by the parties having being filed on April 8, 2011. The Staff's current estimate is that the Environmental Impact Statement ("EIS") for Turkey Point 6 and 7 will be issued in October 2012, and the Safety Evaluation Report ("SER") will be issued in December 2012,<sup>7</sup> although those dates are being re-evaluated and are expected to slip.

## ARGUMENT

The Commission has stated on numerous occasions that suspension of licensing proceedings is a "drastic" action that is not warranted absent "immediate threats to public health and safety." *Oyster Creek*, CLI-08-23, 68 NRC at 484; *Private Fuel Storage, LLC*, (Independent Spent Fuel Storage Installation) ("*PFS*"), CLI-01-26, 54 NRC 376 (2001).

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which have been found in injection wells in Florida but are not listed in FPL's ER as wastewater constituent chemicals." Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC \_\_\_, slip op. at 36 (Feb. 28, 2011) ("*LBP-11-06*").

<sup>5</sup> The first of the CASE contentions admitted by the Board, Contention 6, states (as modified by the Board): "Because there currently is no access to an offsite LLRW disposal facility for proposed Units 6 and 7, and because it is reasonably foreseeable that LLRW generated by normal operations will need to be stored at the proposed site for longer than the two-year period contemplated in FPL's ER, the analysis in the ER is inadequate because it fails to address environmental impacts in the event the applicant will need to manage Class B and Class C LLRW on the Turkey Point site for a more extended period of time." *LBP-11-06* at 104. The second CASE contention admitted for litigation, Contention 7, reads (as modified by the Board): "FPL's COLA fails to provide information sufficient to enable the NRC to reach a final conclusion on safety matters regarding the means for controlling and limiting radioactive material and effluents and radiation exposures within the limits set forth in Part 20 and ALARA in the event FPL needs to manage Class B and Class C LLRW for an extended period." *Id.* at 112.

<sup>6</sup> Pinecrest had requested, as an alternative to becoming a party, to participate as an interested local governmental body pursuant to the "interested State" provisions 10 C.F.R. § 2.315(c). The Board granted Pinecrest that status, given that all of its proposed contentions were rejected. *Id.* at 119.

<sup>7</sup> See Transcript of March 16, 2011 telephone prehearing conference at 277 (ADAMS Accession No. ML110830609).

See also *Diablo Canyon*, CLI-02-23, 56 NRC at 230; *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393 (2001); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000). Here, continuing to conduct the Turkey Point 6 and 7 licensing reviews and the ongoing licensing proceeding poses no immediate threat to the public health and safety, thus suspension of the proceeding is not warranted. Moreover, the Petition is deficient both procedurally and substantively.

## **I. THE PETITION IS PROCEDURALLY DEFECTIVE**

### **A. The Petition does not Meet the Requirements for Motions to Stay**

Petitions to the Commission to suspend proceedings are treated as motions under 10 C.F.R. § 2.323. *AmerGen Energy Co., LLC, et al.* (Oyster Creek Nuclear Generating Station, *et al.*), Unpublished Order (Jan. 11, 2008) at 1 (ADAMS Accession No. ML080110284); *Diablo Canyon*, CLI-02-23, 56 NRC at 237. Because of the nature of the relief sought, a request for suspension is, in effect, a motion for stay of a proceeding.

Commission regulations establish that, in order to decide whether to grant a motion for a stay, the Commission will weigh four factors, which are derived from federal court case law:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.

10 C.F.R. § 2.342(e). *See also, Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Site), CLI-10-08, 71 NRC \_\_\_, slip op. at 11 (Jan. 7, 2010); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C.Cir.1958). Failure to address these factors requires that a motion to stay be denied. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-2, 37 NRC 55, 58 & n.2 (1993).

Intervenors have not addressed, let alone satisfied, any of these factors. The most important of the four is the second, irreparable injury to the moving party if the stay is not granted. *Shieldalloy*, CLI-10-08 at 12. The NRC requires “a showing of a ‘threat of immediate and irreparable harm’ that will result absent a stay.” *Id.*, citing *AmerGen Energy Company* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008). No such harm exists here. The injury claimed by Intervenors is:

If the Commission fails to [grant the relief sought], intervenor groups will be placed in the position of rushing to file contentions, rulemaking comments, and motions to re-open closed hearing records, based on whatever evaluations they are able to make of slowly-emerging and ever-evolving information from the accident. Such a process would not only be cumbersome, but its effectiveness would be limited by whatever limitations the intervenors or petitioners had on their resources for making a technical evaluation of the information yielded by the accident. It would place an unfair burden on intervenors and petitioners by forcing them to perform analyses that should be performed by the government in the first instance.

Petition at 23-24. Not only is this alleged injury speculative, but it does not constitute the type of harm that supports a motion to stay. The cost and inconvenience of litigating challenges to pending applications are not the kind of injury that warrants postponing licensing proceedings, and a petitioner “is not injured or prejudiced in a cognizable sense simply because it may incur litigating costs and inconvenience from moving forward with

the adjudication before the generic review is completed.” *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 400 (2001).

In considering whether moving forward with proceedings would prove an obstacle to fair and efficient decision making, the Commission has specifically rejected arguments like the one presented in the Petition that proceedings should be stayed because the normal processes for filing new contentions, rulemaking comments and motions to reopen would be “cumbersome,” “place an undue burden on intervenors,” and be limited by intervenors’ resources:

We are unpersuaded by [Petitioners’] assertion that the “piecemeal” nature of the adjudication “makes it impossible to perform a complete or effective presentation of the issues . . . with the scope of the current hearing” and “is wasteful of [the Petitioners’] resources.” . . . We have repeatedly rejected such resource-related arguments in prior proceedings, and do so again here. As we stated just this March in *Indian Point*, CLI-01-8, 53 NRC [225] at 229-30 [2001], “litigation inevitably results in parties’ loss of both time and money. We cannot postpone cases by many weeks or months simply because going forward will prove difficult for litigants or their lawyers.”

*McGuire/Catawba*, CLI-01-27, 54 NRC at 391.

In addition, there is no urgency to the Intervenor’s request with respect to the Turkey Point 6 and 7 licensing proceeding. The lack of immediacy of any potential harm to Intervenor is made evident by the fact that the Turkey Point reactors are years away from being licensed, and it will be at least a decade before they go into operation. *See, e.g., FPL Ten Year Power Plant Site Plan 2010-2019* (Apr. 2010), ADAMS Accession No. ML102300616. As the Commission has ruled, “[a] site that currently contains no radiological materials and will not for at least 2 years cannot present an immediate threat to public safety. Therefore, this consideration does not warrant a halt to the current

proceeding.” *PFS*, CLI-01-26, 54 NRC at 381. The Commission’s reasoning in *PFS* applies with even more force to the Turkey Point reactors.

Other factors to be considered in deciding whether to grant a motion to stay are whether the granting of a stay would harm other parties or be inconsistent with the public interest. The NRC has made it clear that it will not grant requests to suspend licensing processes pending consideration of generic issues because it would be contrary to the agency’s duties to the applicants and the general public. *See, e.g., Savannah River*, where the Commission rejected a petition to suspend licensing of a mixed-oxide fuel fabrication facility in the wake of the September 11, 2001 events in the following terms:

During the time when the NRC is pursuing its top-to-bottom reassessment of its regulations and policies on terrorism, the agency must also continue to meet its statutory responsibilities for licensing and regulation of all nuclear facilities and materials in a timely and efficient manner. *See Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998). Permitting unnecessary delays would contravene the Commission’s fundamental duties to the general public, as well as to applicants and licensees. The Commission’s objectives are to provide a fair hearing process, to avoid unnecessary delays in the NRC’s review and hearing processes, and to produce an informed adjudicatory record that supports agency decision making on matters related to the NRC’s responsibilities for protecting public health and safety, the common defense and security, and the environment. *Id.* at 19. Consistent with this policy, the Commission has a history of *not* delaying adjudications to await extrinsic actions, absent special needs of efficiency or fairness. *See Private Fuel Storage*, CLI-01-26, 54 NRC at 381-83, and references cited therein; [*Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2); Catawba Nuclear Station, Units 1 and 2)], CLI-01-27, 54 NRC [385, 390-91 (2001)].

CLI-01-28, 54 NRC at 400 (emphasis in original). In this case, the relief sought by Intervenors – “suspend[ing] all decisions regarding the issuance of construction permits, new reactor licenses, COLs, ESPs, license renewals, or standardized design certification” for an indefinite time would be detrimental to FPL and would contravene the

Commission's fundamental duties to the general public and the NRC's policy to avoid unnecessary delays in the NRC's review and hearing processes.

Finally, the Petition makes no showing that the events at Fukushima are relevant to the admitted contentions in the Turkey Point COL proceeding, nor does it make any showing that the Intervenors would be likely to prevail on the merits of any contentions that they may tender in the future relating to the Fukushima accident.<sup>8</sup>

Failing to meet the requirements for the issuance of a stay, the Petition must be denied.

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<sup>8</sup> The Joint Intervenors mention that one of their proffered contentions, which was rejected by the Board, addressed sea level rise. The Joint Intervenors allege: "[t]hat contention, which concerned the potential environmental impact caused by construction and operation of new reactors in a region threatened by a predicted sea level rise of 1.5 to 5 feet by 2050, has particular relevance in light of the Fukushima disaster. Turkey Point is located less than 25 miles south of Miami on Biscayne Bay along Florida's southeastern coast. The lessons learned from the Task Force's investigation on external events should be applied to these coastal reactors." Petition at 15. The contention proposed by the Joint Intervenors was rejected, among other reasons, because it did not take into account "the extensive safety analysis in FPL's FSAR regarding protection against maximum flooding events." *LBP 11-06* at 71. "Guided by NRC Regulatory Guide 1.59, FPL analyzed the Probable Maximum Storm Surge (PMSS) by, first, using the 10 percent exceedance high spring tide, 2.6 feet NAVD 88, as the antecedent water level. . . . FPL adjusted the antecedent water level to account for expected sea level rise over the design life of the plant, taking the long-term trend in sea level rise in the Miami area, 0.78 foot per century, and conservatively rounding that value up to 1 foot per century. FPL added this 1-foot sea level rise factor to the 2.6 feet NAVD 88 10 percent exceedance high spring tide, generating a 3.6 feet NAVD 88 sea level rise antecedent water level, which FPL used as the initial water level condition in its model to calculate the PMSS height of 21.1 feet NAVD 88. . . . Combining the PMSS with the 3.7 feet maximum wave run-up that would be caused by the maximum hurricane wind speed, FPL concluded the maximum water level due to a probable maximum hurricane, adjusted to account for sea level rise, would be 24.8 feet NAVD 88. . . . The power plant design for Units 6 and 7 incorporated this analysis, providing that the elevations of floor entrances and openings for all safety-related structures are 26 feet NAVD 88." *Id.* at 71-72 (citations and footnotes omitted). Turkey Point 6 and 7 has thus been designed to meet the most extreme sea level rise that could occur in the next century.

**B. Intervenors Failed to Meet the Consultation Requirements of 10 C.F.R. § 2.323 (b)**

As discussed earlier, the Petition is in fact a motion and as such is subject to the requirements of 10 C.F.R. § 2.323.<sup>9</sup> One of the prerequisites to filing a motion in a Commission proceeding is that the motion include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties to the proceeding and resolve the issue raised in the motion, and that the movant's efforts to resolve the issue have been unsuccessful. 10 C.F.R. § 2.323(b).<sup>10</sup> Failure to include such a certification requires that a motion, including a petition to suspend adjudicatory actions, be summarily denied. *Id.*; *U.S. Department of Energy (High Level Waste Repository)*, Unpublished Order (Dec. 22, 2009) (ADAMS Accession No. ML093561409).

In addition, only a few weeks ago, the Board presiding over the Turkey Point COL proceeding warned all participants, both during a telephone prehearing conference and in its subsequent Initial Scheduling Order, that failure to satisfy the consultation requirement of 10 C.F.R. § 2.323(b) would result in the summary rejection of a motion:

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.

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<sup>9</sup> The treatment of the Petition as a motion should be well known to at least some of the intervenors who drafted the Petition. Nuclear Information and Resource Service and the New England Coalition were among the petitioners who sought suspension of several license renewal proceedings in 2008, which the Commission held should be deemed a motion. *Oyster Creek*, CLI-08-23, 68 NRC at 464 n.2.

<sup>10</sup> 10 C.F.R. § 2.323(b), states in relevant part that “[a] motion *must* be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding to resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.” 10 C.F.R. § 2.323(b) (emphasis added).

Initial Scheduling Order And Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) (Mar. 30, 2011) at 9. Despite the directive in the regulations, Commission precedent, and the Board's recent admonition, the Intervenor filed the instant Petition without previous notice to, or attempts at consultation with, FPL. The Commission should therefore "summarily reject" the Petition.

## **II. THERE IS NO LEGAL BASIS FOR THE RELIEF SOUGHT IN THE PETITION**

The Petition asks that the NRC take the following "immediate" actions:

Suspend all decisions regarding the issuance of construction permits, new reactor licenses, COLs, ESPs, license renewals, or standardized design certification pending completion by the NRC's Task Force to Conduct a Near-Term Evaluation of the Need for Agency Actions Following the Events in Japan ("Task Force") of its investigation of the near-term and long-term lessons of the Fukushima accident and the issuance of any proposed regulatory decisions and/or environmental analyses of those issues;

Suspend all proceedings with respect to hearings or opportunities for public comment, on any reactor-related or spent fuel pool-related issues that have been identified for investigation in the Task Force's Charter of April 1, 2011 (NRC Accession No. ML11089A045). These issues include external event issues (i.e., seismic, flooding, fires, severe weather); station blackout; severe accident measures (e.g., combustible gas control, emergency operating procedures, severe accident management guidelines); implementation of 10 C.F.R. § 50.54(hh)(2) regarding response to explosions or fire; and emergency preparedness. *Id.* The Commission should also suspend all licensing and related rulemaking proceedings with regard to any other issues that the Task Force subsequently may identify as significant in the course of its investigation. The proceedings should be suspended pending completion of the Task Force's investigation into those issues and the issuance of any proposed regulatory decisions and/or environmental analyses of those issues;

Conduct an analysis, as required by NEPA, of whether the March 11, 2011 Tohoku-Chihou-Taiheiyo-Oki earthquake and ensuing radiological accident poses new and significant information that must be considered in

environmental impact statements to support the licensing decisions for all new reactors and renewed licenses;

Conduct a safety analysis of the regulatory implications of the March 11, 2011 Tohoku-Chihou-Taiheiyo-Oki earthquake and ensuing radiological accident and publish the results of that analysis for public comment;

Establish procedures and a timetable for raising new issues relevant to the Fukushima accident in pending licensing proceedings. The Commission should allow all current intervenors in NRC licensing proceedings, all petitioners who seek to re-open closed licensing or re-licensing proceedings, and all parties who seek to comment on design certification proposed rules, a period of at least 60 days following the publication of proposed regulatory measures or environmental decisions, in which to raise new issues relating to the Fukushima accident.

Suspend all decisions and proceedings regarding all licensing and related rulemaking proceedings, as discussed above, pending the outcome of any *independent* investigation of the Fukushima accident that may be ordered by Congress or the President or instigated by the Commission to complement or supersede the work of the Task Force.

Request that the President establish an independent investigation of the Fukushima accident and its implications for the safety and environmental impacts of U.S. reactors and spent fuel pools similar to the President's Commission on the Accident at Three Mile Island, chaired by John G. Kemeny.

Petition at 1-3 (emphasis in original). Intervenors claim that both the Atomic Energy Act ("AEA") and the National Environmental Policy Act ("NEPA") require that the NRC take these actions. *Id.* at 24-25.

Intervenors acknowledge, as they must, that under the AEA the NRC has wide discretion to proceed with reactor licensing while it investigates the potential applicability of the Fukushima accident to the licensing of domestic nuclear facilities. *Id.* at 25. As the Supreme Court has held, absent constitutional constraints or extremely compelling circumstances, administrative agencies should be free to fashion their own rules of procedure to pursue methods of inquiry capable of permitting them to discharge their

multitudinous duties. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978).

The NRC has already exercised this discretion by allowing pending licensing actions to continue without interruption while the agency evaluates the regulatory significance of the Fukushima events. Thus, in the early stages of the Fukushima accident, the NRC approved the renewal of the operating license of the Vermont Yankee nuclear power plant, a facility with a General Electric reactor similar to the one in place at Fukushima Unit 1. *See* 76 Fed. Reg. 17,162 (Mar. 28, 2011). Even after the Petition was filed, the NRC proceeded to approve the renewal of the licenses for all three Palo Verde Nuclear Generating Station units. *See* 76 Fed. Reg. 24,064 (Apr. 29, 2011). The AEA provides no legal support for requiring the NRC to change course and take the actions sought in the Petition.<sup>11</sup>

Nor is there a precedent in NRC case law and the agency's practice for the extraordinary relief sought in the Petition. To the contrary, it is the practice of the NRC to decline to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications. *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC \_\_\_, slip op. at 10 (July 8, 2010). *See also, Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-4, 57 NRC 273, 275-77 (2003);

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<sup>11</sup> Intervenor nonetheless claim that to continue licensing actions “would constitute a [sic] abuse of the NRC’s discretion in its interpretation of the ‘adequate assurance’ standard, because in the current climate of uncertainty, it would be almost impossible for the NRC to reach the ‘definitive finding’ on safety required by *Power Reactor Development Corp.* [v. *Int’l Union of Elec., Radio & Mach. Workers*, 367 U.S. 396, 402-03 (1961)].” Petition at 26. Such an argument represents only the opinion of these Intervenor and lacks legal significance.

*Diablo Canyon*, CLI-02-23, 56 NRC at 237-40; *PFS*, CLI-01-26, 54 NRC at 380-84; *McGuire/Catawba*, CLI-01-27, 54 NRC at 389-91; *Savannah River*, CLI-01-28, 54 NRC at 399-401.

The Three Mile Island Unit 2 (“TMI-2”) precedent cited by Intervenors (Petition at 4) does not provide support for the relief they seek and Intervenors’ description of the NRC’s post-accident actions (i.e., that the NRC “suspended all licensing decisions until conclusion of the lessons learned process”) (*id.* at 22) is incorrect. In reality, as the Commission explained in the *PFS* proceeding,

Immediately after the accident, the Commission chose not to halt ongoing licensing proceedings, but instead temporarily stopped issuing licenses for any new facilities pending its assessment of the accident. Later, the Commission issued a Statement of Policy announcing that pending consideration of changes in safety requirements and procedures, the Commission itself would decide whether to grant final approval for new construction permits, limited work authorizations, or operating licenses for reactors. All other adjudicatory proceedings, including enforcement and license amendment proceedings, were allowed to continue. The agency also rejected a petition claiming that the TMI-2 incident required that all similar operating reactors be immediately shut down.

*PFS*, CLI-01-26, 54 NRC at 381-82 (footnote omitted).<sup>12</sup> Thus, even the TMI-2 accident, which had a much more direct and significant impact on U.S. reactors, did not elicit from the NRC the wide-ranging actions sought in the Petition.

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<sup>12</sup> The temporary suspension in issuing new licenses was not prompted by safety concerns but was due to administrative reasons. The NRC’s resources were diverted from reviewing operating licensing reviews to focus on addressing TMI-2 issues. *See, e.g.*, letter dated June 29, 1979 from Lee V. Gossick (NRC Executive Director of Operations) to Congressman John Breaux, available in ADAMS (Legacy Library), Accession No. 7907310244. The letter states at 1 that “[t]he accident at Three Mile Island Unit 2 on March 28, is diverting significant managerial and technical resources of the Office of Nuclear Reactor Regulation (NRR) from its previous work. It is clear that certain activities related to that accident require higher priority. As a result of the realignment of resources and priorities, the expected accomplishments on casework related to the issuance of construction permits (CPs) and operating licenses (OLs) will be severely limited.” No such situation exists at the present time.

The Petition also asserts that, under NEPA, the Commission “must take all necessary measures to protect the integrity of the NEPA decision-making process, by immediately suspending all pending licensing and related design-certification rulemaking decisions until it has addressed the significance of the new information revealed by the Fukushima accident in environmental assessments and/or EISs.” Petition at 27 (footnote omitted). This interpretation of the requirements of NEPA is erroneous. The courts have held that “a supplemental EIS is only required where new information provides a *seriously* different picture of the environmental landscape.” *Nat’l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis in original; internal quotations omitted) (quoting *City of Olmsted Falls v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002)). See also *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209, 1215-16 (11th Cir. 2002) (significant impact not previously covered); *S. Trenton Residents Against 29 v. FHA*, 176 F.3d 658, 663 (3d Cir. 1999) (“seriously different picture of the environmental impact”). The Commission has adopted this standard. *Hydro Resources, Inc.*, CLI-01-4, 53 NRC 31, 52 (2001) (“The new circumstance must reveal a seriously different picture of the environmental impact of the proposed project”) (citation omitted).<sup>13</sup> The Petition does not point to any “seriously different” picture of the environmental impact of the Turkey Point 6 and 7 units. Indeed, other than vague, generalized claims, the Petition presents no information suggesting that either the probabilities or consequences of severe accidents are

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<sup>13</sup> Also, NEPA does not prescribe how an agency is to determine the existence of new and significant information that would require supplementation under NEPA. *Price Rd. Neighborhood Ass’n v. DOT*, 113 F.3d 1505, 1509-10 (9th Cir. 1997); see also *Idaho Sporting Cong., Inc. v. Alexander*, 222 F.3d 562, 566 (9th Cir. 2000) (“NEPA and the CEQ regulations are silent on the issue of how agencies are to determine the significance of new information”). Accordingly, the courts have allowed agencies to employ different approaches that utilize various types of non-NEPA processes and documentation for determining whether alleged new impacts are sufficiently significant to warrant supplemental analysis and formal supplementation of existing NEPA documents.

significantly different because of Fukushima from those presented in the existing NRC guidance documents, either generically or on a plant-specific basis.<sup>14</sup>

The Joint Intervenors have submitted the Makhijani Declaration in support of their NEPA claim, but that Declaration, which does not even make specific reference to the Turkey Point 6 and 7 units, is largely irrelevant to those units.<sup>15</sup> Also, while Dr. Makhijani's Declaration claims that the Fukushima accident affects the NRC's NEPA severe accident determinations, the events and facts relied upon by Dr. Makhijani do not support his assertions.

Dr. Makhijani focuses mainly on spent fuel pool accidents.<sup>16</sup> He claims that Fukushima "significantly undermines the NRC's conclusion that high-density pool storage

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<sup>14</sup> The Petition incorrectly claims that, "by its own admission, the NRC has new information that concededly could have a significant effect on its regulatory program and the outcome of its licensing decisions for individual reactors." Petition at 26-27. The NRC has never stated or admitted that Fukushima alters the probability or consequences of severe accidents as previously determined by the NRC. The impact of Fukushima, if any, on these determinations will be established by the Commission's subsequent investigation and evaluation.

<sup>15</sup> Dr. Makhijani provides no information showing that U.S. plants (particularly those on the East Coast like Turkey Point Units 6 and 7) are vulnerable to accident scenarios such as that which occurred at Fukushima. In particular, he makes no showing that these plants would be susceptible to station blackout conditions caused by a tsunami. Nor does either Dr. Makhijani's Declaration or the Petition make a showing that a tsunami affecting Turkey Point would likely exceed the maximum probable flood established in the design basis of the Turkey Point 6 and 7 units.

<sup>16</sup> The only specific claim regarding severe reactor accidents is Dr. Makhijani's assertion that the occurrence of accidents at three reactors should change the underlying frequency data that go into computing the probability of a severe accident at a given reactor. Makhijani Declaration at ¶¶ 16-19. This claim, however, is clearly erroneous because severe reactor accident frequency is calculated on the basis of the probability of occurrence of events that could cause a severe accident at a particular reactor. *See, e.g.*, Final Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle ESP Electric Generating Plant Site (NUREG-1872) (Aug. 2008) at 5-81. The fact that the same event could cause severe accidents at more than one plant does not, by itself, change the frequency of basis for calculating the occurrence of that particular initiating event for purposes of calculating the severe accident frequency for a given reactor. Likewise, because the frequency of severe accidents is calculated on a per year of reactor operation basis, the analysis of consequences of severe accidents at sites with multiple reactors can be determined from summing the annual frequency for each unit being considered. *See* NUREG-1872 at 5-81 ("The risks presented in the tables that follow are risks per year of reactor operation. Southern has indicated that the VEGP site could hold two reactors of the Westinghouse AP1000 reactor design. . . . [I]f two new Westinghouse AP1000 reactors were built, the risks would apply to each reactor, and the total risk for new reactors at the site would be twice the risk for a single reactor.").

of spent fuel poses a “very low risk” (citing the NRC’s 2008 denial of the rulemaking petitions filed by the Massachusetts and California Attorneys General).<sup>17</sup> Makhijani Declaration at ¶ 21. He refers to an apparent hydrogen explosion at the Fukushima Unit 4 spent fuel pool, and claims that hydrogen explosions were not considered in the NRC analysis of spent fuel fires. *Id.* at ¶ 22. However, Dr. Makhijani ignores the fact that the most recent study (NUREG-1738)<sup>18</sup> relied upon in the Rulemaking Denial “conservatively assumed” that, for any drop of the spent fuel pool water level below the top of the spent fuel, a “zirconium fire involving all of the spent fuel would occur . . .”<sup>19</sup> This conservative assumption would automatically encompass any SFP event during which hydrogen is generated. Thus, the Commission’s studies bound and do not ignore hydrogen explosions as a potential mechanism. As noted by the Rulemaking Denial, even with its conservative assumptions NUREG-1738 “found the risk of an SFP fire to be low and well within the Commission’s Safety Goals.” 73 Fed. Reg. at 46,207.

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<sup>17</sup> The Attorney General of Commonwealth of Massachusetts; the Attorney General of California; Denial of Petitions for Rulemaking, 73 Fed. Reg. 46,204, 46,207 (Aug. 8, 2008) (“Rulemaking Denial”). In its denial of the rulemaking petitions, the NRC referred to a long series of NRC studies which showed that the risk of a spent fuel pool fire is “very low” as well as provisions made at U.S. plants to provide mitigative measures to deal with a complete loss of both offsite and emergency power.

<sup>18</sup> Although NUREG-1738 is a study of spent fuel pool accident risk at decommissioned plants, the Commission has treated NUREG-1738 as the latest in the line of NRC studies for spent fuel accidents also applicable to operating plants. *See, e.g.*, Rulemaking Denial, 73 Fed. Reg. at 46,208-209; Waste Confidence Decision Update, 75 Fed. Reg. 81,037, 81,069-70, 81,073 (Dec. 23, 2010). NUREG-1738 conducted analyses for plants that had only recently been shut down (starting at 30 or 60 days after final shutdown depending on the analyses) and moreover assumed that, because the plant was permanently shutting down, the full core would be unloaded into the spent fuel pool. NUREG-1738 at 2-1, 3-28, A1A-3 – A1A-4, A4-2. Because of its assumption that the full core had just recently been off-loaded to the spent fuel pool, the analysis in NUREG-1738 would generally be conservative compared to an operating plant where typically only one-third of the core is off-loaded to the spent fuel pool at each refueling outage.

<sup>19</sup> 73 Fed. Reg. at 46, 207. In fact the actual assumption in NUREG-1738 was even more conservative. NUREG-1738 assumed that a spent fuel fire involving all of the spent fuel assemblies would occur whenever the “water level reached 3 feet from the top of the spent fuel.” NUREG-1738 at 3-1.

Dr. Makhijani also claims, based on apparent boiling behavior at three of the Fukushima spent fuel pools, that the “NRC’s estimate of loss of cooling probability accompanied by a fire is far too low.” Makhijani Declaration at ¶ 22. However, there have been no reports of fire at any of the Fukushima spent fuel pools, and the loss of cooling events at all three units were precipitated by the same event -- station blackout. The NRC study of the potential of spent fuel pool fires (NUREG-1738) takes into account loss of power scenarios.<sup>20</sup> Also, as noted, the fact that an event causes accidents at multiple units does not, by itself, drastically change the underlying severe accident frequency. Moreover, as with his other assertions, Dr. Makhijani provides no analysis, reference, or any other basis to support his spent fuel pool fire probability claims.

Finally, Dr. Makhijani provides no explanation of how the spent fuel pool performance in the BWR Mark I reactors at Fukushima has any bearing on spent fuel pool risk at Turkey Point Units 6 and 7. The AP1000 units proposed for Turkey Point do not have elevated spent fuel pools in the reactor building, like the BWR Mark I design. Instead, the spent fuel storage facility is located within the seismic Category 1 auxiliary building structure. AP1000 Design Control Document (Rev. 17) at § 9.1.2.2. Further, the passive design of the plant is sufficient to provide spent fuel pool cooling for at least 7 days without power, using only onsite makeup water. *Id.* at § 9.1.3.5 and Table 9.1-4. In addition, unlike the units at Fukushima, FPL is required to include measures to maintain and restore spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire, in accordance with 10 C.F.R. §

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<sup>20</sup> NUREG-1738 at A2A-33 to A2A-52.

50.54(hh). Consequently, there is no relationship between the accident at Fukushima and the probability or consequence of a spent fuel pool accident at Turkey Point Units 6 and 7.

In summary, the information presented in the Petition and in Dr. Makhijani's Declaration does not suggest the existence of new and significant information from the Fukushima events that would materially affect, and paint a *seriously* different picture of the environmental landscape, from that previously considered by the NRC and in FPL's Application.

Moreover, in the specific case of Turkey Point Units 6 and 7, issuance of the EIS for Turkey Point Units 6 and 7 is at least one and a half years away. *See* <http://www.nrc.gov/reactors/new-reactors/col/turkey-point/review-schedule.html>. There is sufficient time to incorporate any applicable lessons from the Fukushima accident (which are going to be identified in a few months, once the Task Force completes its short and long term analyses) into the EIS without need to suspend the Turkey Point licensing proceeding. As the Commission observed in *McGuire/Catawba*:

[T]o the extent the Commission does, during a later stage of this adjudication, modify this agency's safety, environmental, or safeguards rules in a manner that affects issues material to this adjudication, our procedural rules allow for the possibility of late-filed contentions to address such new developments. Moreover, if our generic review leads to new rules applicable here, there will be time enough to apply them.

CLI-01-27, 54 NRC at 391 (footnote omitted). That observation is equally applicable to the Turkey Point proceeding. In addition, the Commission's rules provide appropriate procedures for submitting new contentions if the NRC's review of the Fukushima Daiichi accident identifies new requirements or concerns that give rise to admissible contentions.

### **III. THE RELIEF SOUGHT BY INTERVENORS IS UNNECESSARY**

In addition to been unsupported in law, the relief sought by Intervenors is unnecessary because, as discussed earlier, the NRC is already taking effective actions to address the implications of the Fukushima event. The Commission has created a Task Force, made up of current senior managers and former NRC experts with relevant experience, to conduct both short term and long term analyses of the lessons that can be learned from the Fukushima accident and develop recommendations for any required regulatory changes. The NRC Staff is also proceeding with independent assessments of nuclear power plant readiness to address beyond design-basis natural phenomena. NRC Information Notice 2011-05 at 4-5.

The Commission has made it clear that it will use the information from the ongoing activities to impose any requirements it deems necessary. Federal Respondents' Memorandum at 21-22.

In short, the NRC has developed a comprehensive plan that will allow the agency to develop in the near future any required changes to the licensing framework for new facilities, such as the Turkey Point 6 and 7 reactors, without needing to suspend the ongoing proceedings and Staff reviews for those facilities. Accordingly, the relief sought by Intervenors is unnecessary.<sup>21</sup>

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<sup>21</sup> The approach currently being followed by the Commission is essentially the same as that which it employed after the TMI-2 accident. *See PFS*, CLI-01-26, 54 NRC at 381-82.

#### **IV. THE PINECREST PETITION IS AN IMPROPER FILING AND MUST BE DENIED**

As noted, Pinecrest has filed a document which appears to be a verbatim copy of the Amended Filing submitted by the Joint Intervenors. As such, Pinecrest's filing should be rejected for all of the reasons discussed above. In addition, Pinecrest's Petition is not cognizable by the Commission because Pinecrest is not a party to the Turkey Point COL proceeding and, as an "interested State," it has no independent right to file motions with the Board or the Commission.

The rights of an interested State are limited. They include:

The representative [of an interested State] shall be permitted to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under § 2.341 with respect to the admitted contentions.

10 C.F.R. § 2.315(c). Those rights do not extend to filing motions, which can only be filed by parties to a proceeding. This limitation means that, unless otherwise authorized by the Commission or presiding officer, a nonparty motion will not be entertained.<sup>22</sup>

*Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 330, 333 (1983) (holding that, in light of petitioner's failure to intervene in a proceeding, the Commission would not entertain petitioner's disqualification motion). *See also Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), 1986 WL 328110 at \*1 (July 11, 1986) (unpublished Appeal Board decision) (holding that a petitioner whose

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<sup>22</sup> The Commission does allow motions by persons who have submitted petitions to intervene and are awaiting rulings – *see McGuire/Catwaba*, CLI-01-27, 54 NRC at 398 n.8 – but that is not the situation here.

intervention petition is denied “is not a proper party to seek a stay of any Licensing Board action in this operating license proceeding”).<sup>23</sup> Not having requested or obtained leave from the Commission to file its Petition, Pinecrest’s filing is unauthorized and must be rejected.

## CONCLUSION

For the above stated reasons, the Petition, as filed by the Joint Intervenors, CASE, and Pinecrest, must be denied.

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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<sup>23</sup> The Commission’s ruling in the *Vermont Yankee* and *Pilgrim* petitions by the Massachusetts Attorney General cases are not to the contrary. In those cases, the Massachusetts Attorney General had requested that the final decisions in the Pilgrim and Vermont Yankee license renewal proceedings be stayed until a pending rulemaking petition was resolved. The Commission ruled that an interested governmental entity participating under 10 C.F.R. § 2.315 may file a request to stay proceedings (pending a rulemaking) because there was an explicit provision in the regulations in 10 C.F.R. § 2.802(d) that authorized the filing of such petitions. *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station & Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 22 n.37, *reconsideration denied*, CLI-07-13, 65 NRC 211, 214-14 (2007). The current Petition is not submitted under 10 C.F.R. § 2.802(d).

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**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 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Florida Power & Light Response Opposing Petition to Suspend All Pending Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from the Fukushima Daiichi Nuclear Power Station Accident” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 2<sup>nd</sup> day of May, 2011.

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