

June 21, 2012

**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 COMPANY’S RESPONSE OPPOSING
PETITIONS TO SUSPEND FINAL LICENSING DECISION**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323 and the Order of the Secretary issued on June 19, 2012,¹ Applicant Florida Power & Light Company (“FPL”) hereby responds to and opposes substantially identical Petitions “to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings,” filed in the above captioned proceeding for the issuance of combined licenses for FPL’s Turkey Point Units 6 and 7 (“the Turkey Point Units”) by intervenors Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (“Joint Intervenors”) (on June 18, 2012) and by former intervenor Citizens Allied for Safe Energy, Inc. (“CASE”) (on June 19, 2012) (collectively, the “Petitioners”).² The Petition, which was filed in nineteen separate proceedings by some twenty-four individuals and organizations that assert they have

¹ Order (Jun. 19, 2012) (directing that any response to the Petitions be filed no later than 12:00 p.m. EDT Monday June 25, 2012).

² The identical petitions filed by the Joint Intervenors and CASE will be collectively referred to as “Petition.”

intervened, or attempted to intervene, in opposition to those proceedings, requests the (1) suspension of all final licensing decisions in pending NRC licensing proceedings until completion of the proceedings on the Commission's Waste Confidence Decision Update ("WCD Update") and Temporary Storage Rule ("TSR") remanded by the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit");³ and (2) establishment of special procedures and timetable for petitioners to comment on any generic determinations that result from the remanded proceedings, and to submit contentions on site-specific issues where a petitioner believes a generic determination is insufficient. Petition at 3, 10-11.

The Commission has previously indicated that petitions to suspend proceedings or to hold them in abeyance are treated as motions under 10 C.F.R. § 2.323 and are best addressed to the Commission. *Ameren Missouri et al.* (Callaway Plant, Unit 2, *et al.*), CLI-11-05, 74 NRC ___ (Sep. 9, 2011), slip op. at 19 & n.65; *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).

The Petition, however, is without legal basis and the relief it seeks is unnecessary. There is no current schedule for the completion of the Staff's safety and environmental reviews for the COLs for the Turkey Point Units. May 10, 2012 letter from NRC Staff to Licensing Board, ADAMS Accession No. ML12131A672. The former schedule had called for completion of the Final Safety Evaluation Report in November 2013 and completion of the Final Environmental Impact Statement in February 2014. November 3, 2011 letter from NRC Staff to Licensing

³ *State of New York, et al. v. Nuclear Regulatory Comm'n*, No. 11-1045, 2012 WL 2053581 (D.C. Cir. Jun. 8, 2012).

Board, ADAMS Accession No. ML11307A504. Thus, the earliest date that a final licensing decision could be made by the Commission would be two years away. Any request to suspend *now* the proceeding's final decision is premature, to say the least.

Further, the Commission considers a request to suspend a licensing proceeding, including a request to suspend a final licensing decision, a “drastic” action that is not warranted absent “immediate threats to public health and safety.” *Callaway*, CLI-11-05, 74 NRC ___, slip op. at 19, quoting *Oyster Creek*, CLI-08-23, 68 NRC at 484. See also *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000). Petitioners neither address nor satisfy this standard, and otherwise provide no information even remotely suggesting any threat to public health and safety. Nor could they make any such showing, particularly in light of the fact that a final licensing decision for the Turkey Point Units is far off in the future.

Nor should Petitioners (or any other person) be accorded any special procedural rights with respect to commenting on the WCD Update and TSR remand proceedings, or for requesting late-intervention or hearings on late-filed contentions. Although the Commission has not yet indicated how it will handle the generic remand proceedings, public participation should be consistent with the established processes for any actions the Commission directs be taken in response to the D.C. Circuit remand. *Callaway*, CLI-11-05, 74 NRC ___, slip op. at 37. And with respect to individual licensing proceedings, the Commission has previously rejected similar requests for special procedures and timetables, making it abundantly clear that its existing procedures are more than adequate. *Id.* at 35.

In addition, CASE is no longer a party to this proceeding because the Atomic Safety and Licensing Board herein (“Licensing Board”) has dismissed all of its contentions and terminated

its participation herein. Therefore, CASE is not entitled to seek suspension of the proceeding and its Petition should be denied also on that basis.

II. DISCUSSION

A. **Suspension of Final Licensing Decisions is Premature and Inappropriate in the Absence of any Immediate Threat to Public Health and Safety**

The Commission should reject the Petition in the first instance because it is premature. As an initial matter, Petitioners acknowledge that the mandate has not issued from the D.C. Circuit. Petition at 4 n.1. Indeed, the mandate could be further delayed should, for example, reconsideration of the Court's decision be requested. Thus, there is no basis for the Commission to grant the relief requested in the Petition now. And even beyond the status of the Court's mandate, any suspension request is premature because it will be two or more years before the NRC Staff completes its environmental and safety reviews, any hearings are held, and the Commission authorizes issuance of the COL for the Turkey Point Units. There simply is no need for the Commission to suspend this proceeding now, or even when the Court's mandate issues. *See Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station & Pilgrim Nuclear Power Station)*, CLI-07-3, 65 NRC 13, 22 n.37 (2007) (holding that a request to withhold final decisions pending action on a rulemaking petition was premature when final decisions are not expected "for another year or more").

Further, the Petition falls far short of the Commission's high standard for suspending a final licensing decision. Petitioners do not even address the standard. The Commission has rejected analogous petitions that requested, among other things, suspension of final licensing decisions in numerous matters in light of the Commission's ongoing review of the Fukushima accident. *Callaway*, CLI-11-05, 74 NRC ___, slip op. at 3, 20. The Commission applied its longstanding precedent holding that such suspension would be a "drastic" action that is not

warranted absent “‘immediate threats to public health and safety.’” *Id.* at 19, quoting *Oyster Creek*, CLI-08-23, 68 NRC at 484. See also *Vermont Yankee*, CLI-00-20, 52 NRC at 173-74.

The same analysis applies here. Petitioners specifically request “suspension of] final licensing decisions in all pending NRC licensing proceedings.” Petition at 3, 4. The Commission should reject the Petition because Petitioners do not even claim, let alone show, any threat to the public health and safety. (The Petition does not even address a safety issue, but rather concerns the Commission’s obligations under the National Environmental Policy Act.)

Moreover, with respect to this proceeding, there is no such threat. A final decision here is not expected until 2014 at the earliest, and plant operation could not occur until a number of years thereafter. As the Commission has previously held in similar circumstances, “[a] site that currently contains no radiological materials and will not for [a number of years] cannot present an immediate threat to public safety.” *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 381 (2001) (denying petition to suspend licensing proceeding for proposed independent spent fuel storage installation pending review of terrorism related rules and policies following the 9/11/2001 events).

Petitioners contend that the Commission’s decision in *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-10-19, 72 NRC 98 (2010) is “precedent” applicable here. Petition at 5, 10-11. They, however, mischaracterize *Indian Point*. Contrary to the Petition’s assertions (*see* Petition at 10), the Commission did not order suspension of the *Indian Point* license renewal decision pending resolution of the Commission’s initial waste confidence ruling. The Commission only ruled that a proffered contention seeking to challenge onsite waste storage issues was inadmissible under “longstanding NRC policy” that licensing boards should not accept in individual licensing proceedings contentions that are, or are about to become, the

subject of a general rulemaking by the Commission. *Indian Point*, CLI-10-19, 72 NRC at 100. The Commission stated that, at that time, its “deliberations on the waste confidence update” were “continuing,” and that “in any event [the Commission] will not conclude action on the Indian Point license renewal application until the rulemaking is resolved.” *Id.* The Commission’s statement amounted to the observation that, as a practical matter, it would complete action on the waste confidence rulemaking before renewing Indian Point’s operating license, which is, in fact, what occurred.⁴ Moreover, the *Indian Point* decision provides no indication that the Commission intended to suspend the proceeding pending resolution of the rulemaking. For example, nowhere did the Commission address the high threshold that is required for such a suspension – a showing of an immediate threat to public health and safety. Thus, Petitioners’ characterization of CLI-10-19 as precedent for suspending a proceeding pending completion of a rulemaking is far off the mark and provides no support for the present suspension requests.

B. No Special Procedures or Timetable are Required

The Commission should reject Petitioners’ requests for special procedures and timetables on the same grounds that the Commission rejected similar requests in *Callaway*. The Petition requests that the Commission allow Petitioners to comment on any generic determination that the NRC may make with respect to the remanded WCD Update and TSR. Petition at 11. Also, the Petition requests that, if the Commission prepares an environmental assessment to address the remanded issues, the Commission provide Petitioners an opportunity to comment on that assessment. Finally, the Petition requests that the Commission allow petitioners to raise contentions in individual licensing proceedings if they believe that the generic rulemaking is

⁴ At the time CLI-10-19 issued, the Staff had not yet released the final safety evaluation report or the final supplemental environmental impact statement supporting license renewal, and would not do so for many months. See Milestone Schedule for Indian Point Units 2 and 3 License Renewal, available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/indian-point.html#schedule>. The WCD Update issued in December 2010, whereas the *Indian Point* proceeding remains ongoing.

insufficient to address their concerns, and that they be provided with at least 60 days to seek consideration of site-specific safety or environmental concerns raised by the remanded proceeding. *Id.*

These requests are premature and unsupported, because the Commission has not yet established the processes it will employ to address the generic issues raised by the D.C. Circuit remand, and there is no basis for demanding a higher level of public participation than that which typically accompanies agency processes. Once the Commission determines how it will address these generic issues, any public participation should be “consistent with the established processes for any actions that [the Commission] directs the NRC Staff to undertake.” *Callaway*, CLI-11-05, slip op. at 37 (rejecting the Commonwealth of Massachusetts’ request for “additional reasonable time following completion of the release of the NRC’s own findings on the lessons of Fukushima to comment on them and propose licensing or regulatory changes as appropriate”). The Petition does not seek to justify any deviation from the normal course.

Likewise, “[n]either new procedures nor a separate timetable for raising new issues” are warranted. *Callaway*, CLI-11-05, slip op. at 35. When rejecting similar requests for new procedures and new timetables, including a sixty-day period for raising new issues following the publication of regulatory proposals or environmental decisions, the Commission held in *Callaway* that its

procedural rules contain ample provisions through which litigants may seek admission of new or amended contentions, seek stays of licensing board decisions, appeal adverse decisions, and file motions to reopen the record, as appropriate.

Id. at 35.

Thus, for example, should a petitioner conclude that any generic rulemaking promulgated to address the issues raised by the remand is insufficient to address its site-specific concerns, the petitioner would be free to petition for waiver of that rule under 10 C.F.R. § 2.335.⁵ In other words, the Commission's rules already provide adequate means for Petitioners or anyone else to seek redress of any site-specific concern they may have.

C. CASE is not a Party Entitled to seek Suspension of this Proceeding

CASE is no longer a party to the COL proceeding for the Turkey Point Units and, therefore, cannot seek to suspend decisions in the proceeding. On March 29, 2012, the Licensing Board dismissed the last proposed CASE contentions that remained pending and “because it no longer has a contention or an unresolved pleading pending before this Licensing Board, we dismiss CASE from this proceeding.” Memorandum and Order (Denying CASE's Motions to Admit Newly Proffered Contentions 9 and 10, and Dismissing CASE from this Proceeding), LBP-12-07, 75 NRC __ (Mar. 29, 2012), slip op. at 22. Despite being advised of its right to seek Commission review of its dismissal, *id.*, CASE failed to do so.⁶

The Commission's rules are clear that, aside from being permitted to make oral or written limited appearance statements in a proceeding, nonparties “may not otherwise participate in the proceeding.” 10 C.F.R. § 2.315(a). This limitation means that, unless otherwise authorized by the Commission or presiding officer, a nonparty motion will not be entertained. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No.1), CLI-83-25, 18 NRC 327, 330, 333 (1983); *see also Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), 1986 WL

⁵ One of the four criteria used to evaluate a Section 2.335 petition for waiver is that the waiver petition raises “circumstances . . . unique to the facility rather than common to a large class of facilities.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-560 (2005) (quotations and citations omitted).

⁶ In its Petition, CASE describes itself as a “[f]ormer intervenor in Turkey Point COL Proceeding.” Petition at 8.

328110 at *1 (July 11, 1986) (holding that a petitioner whose intervention petition is denied “is not a proper party to seek a stay of any Licensing Board action in this operating license proceeding”). Similarly, the Commission has held that only a party to a proceeding (or an Interested State with similar rights) may seek stay of final decisions under 10 C.F.R. § 2.802 (pending a petition for rulemaking). *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station & Pilgrim Nuclear Power Station), CLI-07-13, 65 NRC 211, 214-14 (2007). The authorization in 10 C.F.R. § 2.802(d) would be meaningless if non-parties had a general right to seek stay or suspension of final decisions in proceedings. Under normal standards of statutory construction, 10 C.F.R. § 2.802(d), which allows a party to seek suspension of a proceeding, implies that a non-party has no such right.

III. CONCLUSION

For all of the above stated reasons, the Petitions should be denied.

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Florida Power & Light Company’s Response Opposing Petitions to Suspend Final Licensing Decision” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 21st day of June, 2012.

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