

April 27, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket Nos. 50-250-LA
) 50-251-LA
(Turkey Point Nuclear Generating,)
Units 3 and 4))

NRC STAFF ANSWER TO FLORIDA POWER & LIGHT COMPANY'S
MOTION TO STAY HEARING PENDING COMMISSION REVIEW OF ITS APPEAL

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to "Florida Power & Light Company's ["FPL"] Motion to Stay Hearing Pending Commission Review of Its Appeal" ("Motion") dated April 17, 2015. For the reason set forth herein, the Motion should be denied as premature. The final scheduling order, however, should account for and appropriately disposition the issues raised in FPL's Motion.

BACKGROUND

This proceeding concerns FPL's request for a license amendment to increase the allowable temperature limit in the Technical Specifications for the ultimate heat sink, or the cooling canal system, that would require shutdown actions.

On March 23, 2015, the Board issued LBP-15-13 denying proposed Contentions 2, 3, and 4; however, the Board reformulated Contention 1 and granted CASE's Petition to Intervene.¹ On April 13, 2015, the Board issued a tentative scheduling order setting dates for the hearing, pre-filed testimony, and other deadlines in support of a September 2015 hearing date. On April 17, 2015, both FPL and the Staff filed timely appeals of the Board's decision

¹ The Board declined to admit Contention 3 as a separate contention, and viewed Contention 3 as largely duplicative of Contention 1. *Florida Power and Light Co.* (Turkey Point Nuclear Generating, Units 3 and 4), LBP-15-13, 81 NRC at ___ (slip op. at 26).

granting CASE's petition for a hearing.² The Board has set an April 29, 2015, telephone conference to discuss the tentative scheduling order.³

DISCUSSION

FPL has requested that the Board stay the hearing on CASE's Contention 1 "pending Commission consideration of appeals of LBP-15-13 filed by FPL and the NRC Staff on April 17, 2015."⁴ In support of its Motion, FPL raised several issues with the tentative schedule provided in the Board's order: it provides for very little time to complete and review the discovery provided by the parties;⁵ it could result in resource constraints on the parties because of their involvement in several hearings on related subject matter in different forums;⁶ judicial efficiency could result if State proceedings were allowed to go forward;⁷ and a stay would provide the Commission with an opportunity to rule on the appeals prior to commencing the hearing.⁸

When considering motions to stay, the Commission looks to four factors.⁹ The moving party must show that the factors – likelihood of success on the merits, irreparable harm,

² Florida Power & Light Company's Notice of Appeal Of LBP-15-13 (Apr. 17, 2015); NRC Staff's Notice Of Appeal of LBP-15-13 (Apr. 17, 2015).

³ ORDER (Providing Tentative Schedule and Case Management Information) (April 13, 2015) slip op. at 7.

⁴ Motion at 1.

⁵ Motion at 1-2. The Parties jointly requested that the Board provide a 90-day extension for the completion of initial disclosures because of "significant near-term deadlines and obligations that would demand the same resources as document production." Joint Motion Regarding Mandatory Disclosures (Mar. 26, 2015) at 2. A 30-day extension was granted. ORDER (Extending the Deadline for Submittal of Initial Disclosures) (Mar. 30, 2015) slip op. at 2.

⁶ Motion at 4.

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ *AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399 (2008).*

absence of harm to other parties, and the public interest – weigh in its favor.¹⁰ Given that the Order provided only a tentative schedule and Board's subsequent scheduling of an April 29, 2015, conference call to discuss this schedule, FPL's Motion is premature. Since the Board has not set a final schedule, the concerns that FPL raises about adequate time to review the discovery disclosed by the parties, expert availability to review discovery and develop appropriate testimony, and appropriate Commission review are not yet an immediate and irreparable threat. But, these issues, including the potential unavailability of witnesses because of appearances in other already scheduled proceedings, are important to maintaining the overall fairness of the proceeding for all parties. They should be considered and appropriately balanced in any final scheduling order.

¹⁰ *AmerGen Energy Co., LLC*, (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 399 (2008) (citing *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-06-08, 63 NRC 235, 237 (2006)).

CONCLUSION

For the reasons set forth above, FPL's Motion should be denied, but the Board's final scheduling order should consider the issues raised by FPL in its Motion, including (1) the availability of witnesses scheduled to address similar issues in other forums, (2) allowance for potential efficiencies that may be gained from completion of State proceedings on related issues, (3) unrelated but already scheduled hearings in other proceedings, and (4) providing a reasonable opportunity for the Commission to address the pending appeals.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 27th day of April, 2015

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NUCLEAR REGULATORY COMMISSION

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FLORIDA POWER & LIGHT CO.) Docket No. 50-250-LA
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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO FLORIDA POWER & LIGHT COMPANY'S MOTION TO STAY HEARING PENDING COMMISSION REVIEW OF ITS APPEAL" dated April 27, 2015, have been served upon the following persons by the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, or via electronic mail as indicated by an asterisk, this 27th day of April, 2015.

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