

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
October 5, 2016

MEMORANDUM AND ORDER
(Prehearing Conference Call Summary, Case Management
Directives, and Scheduling Order)

In the above-captioned proceeding, this Licensing Board granted a hearing request by Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (hereinafter Joint Intervenors) to challenge a combined license (COL) application by Florida Power & Light Company (FPL) to construct two new nuclear power reactors, Turkey Point Units 6 and 7, at FPL's facility near Homestead, Florida. See LBP-11-06, 73 NRC 149, 190, 251-52 (2011). On Tuesday, September 13, 2016, at 1:00 EDT, this Board convened a conference call with counsel for the parties¹ and an interested local governmental body² in this proceeding to discuss matters relating to case scheduling and management. See 10 C.F.R. § 2.332(a) - (c). This Memorandum and Order summarizes significant aspects of that call, and it establishes a scheduling order and procedural directives.

¹ The parties are (1) Joint Intervenors; (2) FPL; and (3) the NRC Staff.

² The interested local governmental bodies in this proceeding are (1) the Village of Pinecrest, Florida; and (2) the City of Miami, Florida. See LBP-15-19, 81 NRC 815, 828 (2015); LBP-11-06, 73 NRC 149, 251-52 (2011). The Village of Pinecrest declined to participate in this conference call.

I. SUMMARY OF CONFERENCE CALL

During the conference call of September 13, 2016 (which was transcribed),³ counsel for the parties (Joint Intervenors, FPL, and the NRC Staff) and the City of Miami addressed matters relating to case scheduling and management. See Licensing Board Notice of Conference Call at 1-2 (Aug. 16, 2016) (unpublished). The following discussion summarizes significant aspects of that call.

1. Participation by Interested Local Governmental Body in the Evidentiary Hearing

The City of Miami reserved its full rights to participate in the hearing as an interested local governmental body (10 C.F.R. § 2.315(c)).

2. Issuance of FSER and FEIS

The NRC Staff anticipated, with a moderate level of confidence, that the FEIS will be available to the public on ADAMS by October 28, 2016. The NRC Staff agreed to notify all parties on the service list upon the issuance of the FEIS. See Tr. at 499.

The NRC Staff also anticipated, with a moderate level of confidence, that the FSER will be available to the public on ADAMS by November 10, 2016. Tr. at 497. The Staff shall notify all parties on the service list upon the issuance of the FSER.

3. Settlement and Stipulation of Issues

Although FPL indicated its preference for settlement, Joint Intervenors indicated that settlement is unlikely prior to the issuance of the FEIS. See Tr. at 500. The Board encourages the parties to engage in “alternate dispute resolution to address the issues without the need for litigation.” 10 C.F.R. § 2.338.

³ Due to a technical problem experienced by the court reporter, the first two topics of discussion during the conference call — i.e., the City of Miami’s participation in the evidentiary hearing, and a portion of the discourse regarding issuance of the Final Environmental Impact Statement (FEIS) and the Final Safety Evaluation Report (FSER) — were not included in the official transcript.

Additionally, FPL volunteered to draft a list of material facts for stipulation by all parties. Joint Intervenors and the NRC Staff accepted FPL's proposal, and the Board expressed its appreciation to FPL for undertaking this effort to promote adjudicative efficiency. Tr. at 514-15.

4. Summary Disposition

All parties stated they would not file a motion for summary disposition prior to issuance of the FEIS. FPL reserved its right to seek summary disposition after the issuance of the FEIS. See Tr. at 501.

5. Location of Evidentiary Hearing

The Board advised that the ASLBP adhered to a policy of holding evidentiary hearings near the facility in question, which, in this case, would be in or near Homestead, Florida. No party expressed a reason to depart from that policy in this case. See Tr. at 502.

6. Number of Witnesses

Joint Intervenors anticipate presenting one witness. FPL expects to present three or four witnesses. The NRC Staff expects to present four or five witnesses. See Tr. at 502-03.

7. Closed Hearing Not Necessary

No party anticipated the need to close any portion of the evidentiary hearing. See Tr. at 503.

II. SCHEDULE AND DIRECTIVES

The following schedule and directives will govern the remainder of this proceeding:⁴

1. If Joint Intervenors seek leave to file a new or amended contention based on the FEIS or FSER, they shall file a petition within 25 days of the relevant final review document's issuance. FPL and the NRC Staff may file an answer within 20 days of the petition, and Joint Intervenors may file a reply within 5 days of the answer.

⁴ Upon issuance of the final review document, the Board will issue another scheduling order that provides specific dates for the filings and the hearing, taking into account weekends and holidays.

2. All the parties shall update their mandatory disclosures within 14 days of the deadline to file a new or amended contention; or, if a petition for a new or amended contention is filed, within 14 days of the Board's decision on the petition. See 10 C.F.R. § 2.336(d).

3. All the parties shall file their “[i]nitial written statements of position and written testimony with supporting affidavits on the admitted contention[]” (10 C.F.R. § 2.1207(a)(1)) within 105 days of the issuance of the final review document. Parties will have an opportunity to object, including filing motions in limine, within 7 days of the filings of initial statements of position and written testimony. Answers to these objections must be filed within 4 days. See Tr. at 508-12.

The parties should be mindful that, because this is a Subpart L proceeding, their initial written submissions should be crafted with such a degree of clarity, breadth, and specificity that they might reasonably be viewed as constituting a complete, fully supported, and wholly sufficient discussion of their case-in-chief. The written statements should be in the nature of a trial brief that provides a precise “road map” of the party’s case, setting out applicable legal standards and affirmative arguments, identifying witnesses and evidence, specifying the purpose of witnesses and evidence, and stating with particularity how the witness or evidence supports a factual or legal position. The affidavits should set out in detail sufficient for comprehension and confirmation by another expert the specific data and analyses supporting the authoring expert’s conclusions. The “road map” in the written statements should, in turn, refer in detail to the technical data and conclusions in the affidavits, guiding the Board through the party’s case in such a way that the written statement closely parallels what the party contemplates ultimately submitting as proposed findings of fact and conclusions of law.

4. All the parties shall file their “[w]ritten responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants” (10 C.F.R. § 2.1207(a)(2)) within 127 days of the issuance of the final review document. See Tr. at

508-12. Parties will have an opportunity to object within 7 days of the filings of initial statements of position and written testimony. Answers to these objections must be filed within 4 days.

A written response should be in the nature of a response brief, providing a “road map” that identifies the legal and factual weaknesses in an opponent’s position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. Affidavits in support of written responses, like those in support of initial written statements, should set out in detail sufficient for comprehension and confirmation by another expert the specific data and analyses underlying the authoring expert’s conclusions. Being in the nature of rebuttal, the response is not to advance any new affirmative claims or arguments that reasonably should have been, but were not, included in the party’s previously-filed initial written statement.

5. All the parties shall file their “[p]roposed questions for the [Board] to consider for propounding to the persons sponsoring [initial and rebuttal] testimony” (10 C.F.R. § 2.1207(a)(3)(i)) within 146 days of the issuance of the final review document. See Tr. at 508-12. Each party should be mindful that the purpose of providing proposed questions is to assist in the development of an adequate record. Accordingly, each party’s submission should contain a description of the issue or issues on which the proposed examination would be conducted, the objective of the proposed examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective.

The parties’ “[p]roposed questions need not be filed with any other party.” 10 C.F.R. § 2.1207(a)(3)(i). Additionally, [a]ll questions [will] be kept by the [Board] in confidence until they are either propounded by the [Board], or until issuance of the initial decision on the issue being litigated. The [Board] shall then provide all proposed questions to the Commission’s Secretary for inclusion in the official record of the proceeding.” Id. § 2.1207(a)(3)(iii).⁵

⁵ Section 2.1207(b)(6) states in relevant part: “The [Board] will examine the participants and witnesses using questions prepared by the [Board], questions submitted by the participants at

6. An evidentiary hearing shall commence within 175 days of the issuance of the final review document. The Board emphasizes that parties' witnesses should be available for questioning for the duration of the hearing.

7. The parties shall make a joint motion for transcript corrections within 14 days of the final day of the evidentiary hearing.

8. The parties "shall file written post-hearing proposed findings of fact and conclusions of law" (10 C.F.R. § 2.1209) within 24 days of the final day of the evidentiary hearing.

9. The convening of future prehearing conferences will be addressed in subsequent orders.

10. Any objection to this order must be filed within five days after service of this Memorandum and Order. See 10 C.F.R. § 2.329(e).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 5, 2016

the discretion of the [Board], or a combination of both. Questions may be addressed to individuals or to panels of participants or witnesses. No party may submit proposed questions to the [Board] at the hearing, except upon request by, and in the sole discretion of, the [Board]."
10 C.F.R. § 2.1207(b)(6)

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NUCLEAR REGULATORY COMMISSION

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FLORIDA POWER & LIGHT COMPANY) Docket Nos. 52-040 and 52-041-COL
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)
(Turkey Point, Units 6 & 7))

CERTIFICATE OF SERVICE

I hereby certify that copies of the **MEMORANDUM AND ORDER (Prehearing Conference Call Summary, Case Management Directives, and Scheduling Order)** have been served upon the following persons by Electronic Information Exchange.

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

Turkey Point, Units 6 and 7, Docket Nos. 52-040 and 52-041-COL

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of October 2016