

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250-LR and 50-251-LR
(Turkey Point Nuclear Generating Units 3 and 4)	)	NRC-2018-0074
	)	June 15, 2018

**APPLICANT’S ANSWER TO THE NATURAL RESOURCES DEFENSE COUNCIL’S  
AND FRIENDS OF THE EARTH’S REQUEST FOR EXTENSION**

**I. INTRODUCTION**

The Natural Resources Defense Council and Friends of the Earth (collectively, “Petitioners”) submitted a letter to the Secretary of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) dated June 4, 2018 requesting a 120-day extension, until October 30, 2018, for Petitioners to file a request for hearing and petition for leave to intervene on Florida Power & Light Company’s (“FPL”) Subsequent License Renewal Application (“SLRA”) for Turkey Point Nuclear Generating Units 3 and 4.<sup>1</sup> If granted, the extension request would afford Petitioners a total of 180 days in which to file their hearing request and intervention petition—three times the 60-day period specified by the Commission in its May 2, 2018 Notice of Hearing Opportunity,<sup>2</sup> consistent with NRC regulations and other NRC license renewal proceedings.<sup>3</sup>

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<sup>1</sup> Letter, from NRDC to Office of the Secretary of the Commission, Extension of time for opportunity to request a hearing and petition for leave to intervene in the NRC’s review of FPL License Renewal Application, Docket ID NRC-2018-0074, dated June 4, 2018 (“Extension Request”).

<sup>2</sup> See Florida Power & Light Company; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; License Renewal Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene, 83 Fed. Reg. 19,304-06 (May 2, 2018) (“Notice of Hearing Opportunity”).

<sup>3</sup> See 10 C.F.R. § 2.309(b)(3)(i) (referring to “the time specified in any notice of hearing or notice of proposed action” or “sixty (60) days from the date of publication in the *Federal Register*”). See, e.g., Entergy Operations, Inc.; River Bend Station, Unit 1; License Renewal Application; Opportunity to Request a Hearing and to

Pursuant to 10 C.F.R. § 2.323(c), FPL submits this Answer opposing Petitioners' 120-day Extension Request because the request fails to comply with the basic procedural requirements of the Notice of Hearing Opportunity and to establish the good cause required by 10 C.F.R. § 2.307. But, as discussed further below, FPL would not oppose a 7-day extension, or until July 9, 2018, as the current July 2 due date for intervention petitions falls within the week of the July 4th holiday.

## II. PETITIONERS FAILED TO COMPLY WITH THE FILING REQUIREMENTS

The Notice of Hearing Opportunity states that “*All documents filed in NRC adjudicatory proceedings, including...any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene...must be filed in accordance with the NRC’s E-Filing rule.*”<sup>4</sup> It further states that “Participants who believe that they have good cause for not submitting documents electronically must file an exemption request ... stating why there is good cause for not filing electronically[.]... Participants filing adjudicatory documents in this manner *are responsible for serving the document on all other participants.*”<sup>5</sup> Despite this clear direction, which is consistent with long-standing NRC practice and is intended to provide fair notice to all other participants—including FPL as the applicant—Petitioners failed to comply with either requirement.<sup>6</sup> As a result, FPL was not served with the Extension Request and only learned of it on June 10, 2018 through discussion with NRC Staff counsel on an unrelated matter. FPL was not formally notified of the Extension Request by the NRC until June 12, 2018—more

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Petition for Leave to Intervene, 82 Fed. Reg. 37,908, 37,909 (providing 60 days for the filing of requests for hearing and petitions to intervene) (August 14, 2017).

<sup>4</sup> Notice of Hearing Opportunity, 83 Fed. Reg. at 19,305 (emphasis added).

<sup>5</sup> *Id.* at 19,306 (emphasis added).

<sup>6</sup> Petitioners, who are experienced participants in NRC adjudicatory proceedings, should be well aware of the filing requirements and have both the knowledge and resources to comply with those requirements.

than a week after it was submitted. The failure of Petitioners to comply with the NRC's fundamental filing requirements in the very first hearing-related filing in this proceeding is alone a sufficient basis for rejecting the Extension Request.<sup>7</sup>

### III. PETITIONERS FAIL TO ESTABLISH GOOD CAUSE

Hearing requests in this proceeding are currently due on July 2, 2018, 60-days after publication of the Notice of Hearing Opportunity.<sup>8</sup> Petitioners seek a 120-day extension to this deadline, or until October 30, 2018. Petitioners assert that they need this extension primarily for three reasons: (1) because a “detailed public review and careful consideration of the license application and the accompanying and referenced reports ... cannot take place in a short, 60 day time span”; (2) there is no harm to any party by the provision of a few extra months for review; and (3) during the summer months, many individuals, including expert witnesses whose review is necessary for analysis of the materials, are on long-planned family vacations.<sup>9</sup>

NRC regulations, 10 C.F.R. § 2.307(a), allow extensions only upon a demonstration of “good cause.” The Commission has explained that, in the context of adjudicatory filings, “good cause” requires a showing of “unavoidable and extreme circumstances.”<sup>10</sup> As explained below, no such circumstances are present here.

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<sup>7</sup> Petitioners also were required to make “a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion” pursuant to 10 C.F.R. § 2.323(b). We are unaware of any such efforts by Petitioners. Section 2.323(b) provides that a “motion must be rejected” if no such effort is made.

<sup>8</sup> Notice of Hearing Opportunity at 19,304.

<sup>9</sup> Extension Request at 1.

<sup>10</sup> *See, e.g., Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998), *petition for review denied sub nom., Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000) (holding that “the Commission did not abuse its discretion in adopting the ‘unavoidable and extreme circumstances’ test” to give content to the “good cause” standard in ruling on extension requests). *See also Tenn. Valley Auth.* (Bellefonte Nuclear Plant, Units 1 & 2), CLI-10-26, 72 NRC 474, 476 (2010) (applying the “unavoidable and extreme circumstances” standard to a petitioner’s appeal of a Licensing Board decision denying intervention); *In re Bjella*, 806 F.2d 211, 216 (10th Cir. 1986) (en banc) (“There is no significant distinction between a showing of good cause and a showing of unusual or extreme circumstances.”).

First, the length of the Turkey Point SLRA is immaterial to whether good cause exists for such a lengthy extension. The SLRA is no more complex than the many other original license renewal applications considered by the NRC that were also subject to the 60-day deadline in 10 C.F.R. § 2.309(b) following publication of a notice of an opportunity to request a hearing. Moreover, the NRC made the Turkey Point SLRA available to the public on March 22, 2018, via a Press Release and placement in ADAMS,<sup>11</sup> and noticed receipt of the SLRA in a April 18, 2018 *Federal Register* Notice.<sup>12</sup> As such, it already has been available for public review for almost three months. Granting Petitioners' October 30, 2018 due date would provide them with an unprecedented nine months to review the application and submit a request for hearing. Nothing in the Request for Extension or the SLRA justifies such an extended period.

Second, Petitioners assert that as the "FPL 80-year license extension...is not due to take effect *until 2032*...there is no harm to any party by the provision of a few extra months for review."<sup>13</sup> FPL disagrees there will be no harm if the Extension Request is granted. As noted in the NRC's April 26, 2018 letter to FPL accepting the Turkey Point SLRA for detailed technical review, the Staff issued an 18-month schedule to complete the reviews required by 10 C.F.R. Parts 51 and 54.<sup>14</sup> The 18-month schedule was derived from years of effort by the NRC and the industry to ensure a thorough but timely review of SLR applications, based on decades of experience from many approved original license renewal applications.<sup>15</sup> While the Staff's

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<sup>11</sup> NRC Office of Public Affairs, Press Release No. 18-009, "NRC Makes Available First Subsequent License Renewal Application From Turkey Point Nuclear Power Plant" (Mar. 22, 2018) (ML18085A035).

<sup>12</sup> 83 Fed. Reg. 17,196 (Apr. 18, 2018) ("Notice of Receipt").

<sup>13</sup> Extension Request at 1 (emphasis in original).

<sup>14</sup> See Letter from George A. Wilson, NRC, to Mano Nazar, FPL (Apr. 26, 2018), Encl. 1 (Turkey Point Nuclear Generating Unit Nos. 3 and 4 Subsequent License Renewal Application Review Schedule) (ML18003A047).

<sup>15</sup> Cf. *Nat'l Whistleblower Ctr.*, 208 F.3d at 264 ("The NRC has expressed a clear and reasonable goal of expediting nuclear power plant license renewal proceedings, both to accommodate the large number of cases to be heard and to ensure fair processes for applicants and would-be intervenors alike.").

schedule does not include milestones for hearing activities, a four-month delay to the *start* of any hearing-related activities would all but ensure that the 18-month schedule could not be met and thereby set a poor precedent for future SLR applications. Further, any substantial delays to the commencement of hearing-related matters will in fact have adverse financial impacts on FPL, through increased staffing, contractor and legal costs caused by a prolonged application review and contested hearing schedule.<sup>16</sup> And early resolution of contested issues (not the convenience of the litigants) is in the public interest.<sup>17</sup>

Third, Petitioners mention of “August holidays” as a basis for the four-month delay also fails to demonstrate “unavoidable and extreme circumstances.” As an initial matter, an “August holiday” clearly does not interfere with Petitioners ability to meet the July 2 filing date. Also, while FPL does not dispute the importance of family vacations, there will likely be many intervening religious and secular holidays and other unanticipated cases of personnel unavailability throughout this proceeding. Granting an extended delay for the first of these events again will set an unfavorable precedent for this and future SLRA proceedings. But recognizing that the current July 2 due date falls within a holiday week, during which many families take vacation, FPL would not oppose a 7-day extension of the due date, or until July 9, 2018.

Finally, Petitioners cite to 10 C.F.R. § 2.309(c)(1)(viii) and “assist[ance] in developing a sound record” as a further basis for their request. The cited regulation does not currently exist in 10 C.F.R. Part 2, and the “development of a sound record” standard applies to discretionary

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<sup>16</sup> For example, the Indian Point original license renewal application was filed in 2007 and is still under NRC review. While many factors have contributed to the extended duration of that proceeding, repeated approvals of numerous requests for extensions by intervenors in that proceeding substantially contributed to delays in the hearing schedule.

<sup>17</sup> See *Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 550-52 (1975).

intervention requests filed pursuant to 10 C.F.R. § 2.309(e)—not to requests for extensions of time.

#### IV. CONCLUSION

For the reasons discussed above, Petitioners have not complied with the NRC's mandatory filing requirements and have not identified good cause for a 120-day extension. Therefore, the Extension Request should be rejected. Nonetheless, FPL would not oppose a reasonable 7-day extension to the due date or until July 9, 2018.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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*Counsel for Florida Power & Light Company*

Dated in Washington, D.C.  
This 15th day of June 2018

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “Applicant’s Answer to the Natural Resources Defense Council’s and Friends of the Earth’s Request for Extension” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

*Signed (electronically) by Stephen J. Burdick*

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