

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY

In the Matter of Florida Power and Light Company Turkey Point Units 3 and 4)))))	Docket Nos. 50-250/251-SLR
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**SOUTHERN ALLIANCE FOR CLEAN ENERGY’S
MOTION TO EXTEND DEADLINE FOR ALL HEARING
REQUESTS REGARDING TURKEY POINT SUBSEQUENT
LICENSE RENEWAL APPLICATION**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.307 and 2.323, Southern Alliance for Clean Energy (“SACE”) hereby requests an extension until October 1, 2018, of the deadline for filing hearing requests on Florida Power & Light Company’s (“FPL’s”) application for “subsequent” license renewal (“SLR”) for the Turkey Point nuclear power plant, Units 3 and 4. As established by the U.S. Nuclear Regulatory Commission’s (“NRC’s”) hearing notice, the current deadline is July 2, 2018. 83 Fed. Reg. 19,304 (May 2, 2018). SACE respectfully submits that pursuant to 10 C.F.R. § 2.307, “good cause” exists to extend the deadline for SACE and all other potential parties, because of “unavoidable circumstances” that necessitate a longer time frame for preparation of hearing requests. *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998).

II. GROUNDS FOR EXTENSION REQUEST

For the following reasons, good cause exists to extend the hearing request deadline for SACE and all other potential parties:

1. FPL’s application is the first of a kind: no other reactor licensee has sought subsequent license renewal. By renewing FPL’s operating license for a second time, the NRC would allow

operation of Turkey Point Units 3 & 4 for a full 80 years – twice the length of its original operating license. Because of the lack of experience operating a nuclear plant that has aged so many years, the case raises unprecedented safety and environmental concerns that warrant careful and time-consuming review, for which SACE has found the current period of 60 days to be insufficient.

2. This proceeding raises at least one significant legal issue of first impression: whether the NRC’s regulation 10 C.F.R. Part 51, Appendix B, Table B-1 -- which clearly excuses first-time license renewal applicants from addressing certain environmental issues -- also excuses SLR applicants from addressing those issues. FPL relies on Table B-1 throughout its Environmental Report, and therefore apparently considers it to be applicable here. In 1996, however, when Table B-1 was promulgated (61 Fed. Reg. 28,467 (June 5, 1996)), the NRC was focused exclusively on renewal of original operating licenses. As the NRC stated in the Generic Environmental Impact Statement (“GEIS”) upon which Table B-1 rests:

This GEIS examines how these plants and their interactions with the environment would change if such plants were allowed to operate (under the proposed license renewal regulation 10 CFR Part 54) for a maximum of 20 years past the term of the original plant license of 40 years.

NUREG-1437, Vol. 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants at 2-1 (1996) (“1996 License Renewal GEIS”). While the 1996 License Renewal GEIS was revised and updated in 2013, the NRC made no claim to expand its temporal scope beyond

20 years after the initial license term.¹ To SACE's knowledge, this issue has not been addressed by the Commission and thus is one of first-impression.

The applicability of Table B-1 is a significant and relevant legal issue in this proceeding. If Table B-1 is not applicable, then a significant number of issues, considered by FPL to be exempt from consideration under Table B-1, must be addressed. For example, SACE is currently evaluating the adequacy of FPL's analysis of the environmental impacts of spent fuel pool accidents. The environmental impacts of spent fuel pool accidents, however, are exempt from consideration in a license renewal proceeding under 10 C.F.R. Part 51, Appendix B, Table B-1. In order to file an admissible contention on the subject, SACE must either file a waiver petition or demonstrate that Table B-1 is inapplicable. Thus, SACE's counsel must conduct extensive and time-consuming legal research into the regulatory history of 10 C.F.R. Part 51 and the License Renewal GEIS. SACE respectfully submits that the current July 2 deadline does not provide sufficient time to conduct the extensive research required to prepare a hearing request.

3. SACE plans to raise a contention challenging the adequacy of FPL's discussion, in its Environmental Report, of the environmental impacts of the Turkey Point Cooling Canal System ("CCS"). SACE will rely for its contention on experts it has retained for a federal district court lawsuit challenging the CCS' noncompliance with the Clean Water Act ("CWA"). *Southern Alliance for Clean Energy, Tropical Audubon Society, Inc., and Friends of the Everglades, Inc. v. Florida Power & Light Co.*, No. 1:16-cv-23017-DPG (filed (Oct. 11, 2016) ("CWA lawsuit").

SACE intends to rely for its contention on a significant amount of information and expert

¹ By its own terms, the 2013 revised License Renewal GEIS "reviews and reevaluates the issues and findings of the 1996 GEIS in compliance with the requirement to review the material in Appendix B to Subpart A of 10 CFR Part 51 and update it on a 10-year cycle, if necessary." License Renewal GEIS, Vol. 1, Rev. 1 at 1-7 (2013). The 2013 GEIS does not state that the findings of the 1996 GEIS are expanded to encompass another 20 years beyond the first 60 years of an initial and renewed operating license.

opinion that has been and is being developed in that case. SACE's experts, however, have made previous commitments to the CWA lawsuit and are unavailable to provide expert support for the NRC case until mid-August. To wit, all of SACE's experts in the CWA case are currently engaged in discovery and the preparation of expert rebuttal reports. The experts served their original expert reports on May 14, 2018; they must review FPL's expert reports that were served June 14; and their rebuttal expert reports are due July 18. Further, depositions of SACE's experts are now being conducted with an expert discovery cutoff date of August 15. SACE's counsel also has long-planned family vacations scheduled for July 4-15 and August 8-21. And SACE's expert on spent fuel pool environmental impacts has scheduled vacation for August 20-23. Thus, due to the unavoidable circumstances of the CWA lawsuit and counsel's personal plans, it will be impossible for SACE and its counsel and experts to find time to work together on contentions until late August at the earliest.

4. The NRC chose to conduct the scoping process for the EIS for Turkey Point Units 3 and 4 during the same period it designated for preparing hearing requests. 83 Fed. Reg. 19,304 (May 2, 2018). NRC conducted two scoping meetings on May 31, 2018, and scoping comments are due tomorrow, June 21. SACE participated in the May 31 scoping meetings, and plans to submit comments on the scope of the DEIS. These obligations have taken time away from SACE's preparation of a hearing request.

5. SACE respectfully submits that there is good cause to extend the deadline for hearing requests by *all* potential parties to this case, not just SACE. As discussed above, this SLR proceeding is the first of its kind, raising unique safety, environmental, and legal issues. The significance of these issues warrants the provision of more time, as a general matter and for all prospective parties, to review FPL's SLR application, to evaluate its adequacy, and to prepare

hearing requests. SACE is in correspondence with two organizations, for example, who recently became aware of FPL's SLR application and are interested in participating as co-petitioners with SACE in this proceeding. But have not had sufficient time to evaluate whether to join SACE because of obligations in another legal proceeding. SACE and these organizations seek more time to compare their concerns about FPL's SLR application and consider a joint intervention. In addition, the other organizations and individuals who are participating in the scoping process should be given sufficient time to prepare hearing requests in addition to their attendance at scoping meetings and submission of written scoping comments.

6. Finally, SACE is not the only party who has requested an extension of the deadline for requesting a hearing in this proceeding. *See* Letter from Geoffrey H. Fettus and Richard E. Ayres to Annette L. Vietti-Cook re: 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 (June 4, 2018), requesting an extension until October 30, 2018 for Friends of the Earth ("FOE") and Natural Resources Defense Council ("NRDC"). SACE respectfully submits that it would be most efficient to set a single extended deadline for all parties.

SACE respectfully submits that an extension until October 30, as requested by FOE and NRDC, is reasonable and justifiable under the unusual circumstances of this first-impression proceeding. Whether or not the NRC grants FOE's and NRDC's request, SACE respectfully submits that in our case, a deadline of October 1, 2018 is minimally necessary to allow SACE's counsel and experts sufficient time to conduct legal research, evaluate the Environmental Report and other analyses of environmental issues, and work with experts to prepare a hearing request in this proceeding.

III. CONCLUSION

For the foregoing reasons, good cause exists to extend the deadline for hearing requests in this proceeding until October 1, 2018.

Respectfully submitted,

 /signed electronically by/

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June 20, 2018

CERTIFICATE OF COUNSEL

Pursuant to 10 C.F.R. § 2.323(b), I certify that on June 20, 2018, I consulted counsel for FPL and the NRC Staff in a sincere effort to resolve the issues raised by this motion. Counsel for FPL stated that “FPL opposes the 90-day extension request, as FPL believes that SACE has not established the requisite good cause. FPL, however, would not oppose a 7-day extension to the due date or until July 9, 2018 to account for the 4th of July holiday.” Counsel for the NRC Staff stated that “the NRC Staff opposes the motion, and will file a response in opposition shortly.”

 /signed electronically by/

Diane Curran