

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S ANSWER TO SOUTHERN ALLIANCE FOR CLEAN ENERGY'S  
MOTION FOR EXTENSION OF TIME TO FILE PETITIONS  
TO INTERVENE AND REQUESTS FOR HEARING

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission hereby files an answer in opposition to the motion for an extension of time filed by the Southern Alliance for Clean Energy (“SACE”) on June 20, 2018.<sup>1</sup> Specifically, SACE requests an extension of time of three months, from July 2, 2018 to October 1, 2018, for SACE “and all other potential parties” to file petitions to intervene and/or hearing requests in this proceeding.<sup>2</sup> As set forth below, the Staff opposes SACE’s Motion as unreasonable, excessive, and lacking in good cause – although the Staff would not oppose a brief extension of time (e.g., an extension of ten days, until July 12, 2018) for the filing of petitions to intervene and/or requests for hearing in this proceeding.

BACKGROUND

On January 30, 2018, as later supplemented and revised, Florida Power & Light Company (“FPL”) submitted an application for subsequent license renewal (“SLRA”) of Renewed Facility Operating License Nos. DPR-31 and DPR-41 for Turkey Point Nuclear

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<sup>1</sup> “Southern Alliance for Clean Energy’s Motion to Extend Deadline for All Hearing Requests Regarding Turkey Point Subsequent License Renewal Application” (June 20, 2018) (“Motion”).

<sup>2</sup> *Id.* at 1.

Generating Unit Nos. 3 and 4 (“Turkey Point”), to authorize an additional 20 years of operation, until July 19, 2052 and April 10, 2053, respectively.<sup>3</sup> The current renewed operating license for Unit 3 expires at midnight on July 19, 2032; the current renewed operating license for Unit 4 expires at midnight on April 10, 2033.<sup>4</sup>

On April 18, 2018, the NRC published a notice of receipt of the Turkey Point SLRA,<sup>5</sup> and on May 2, 2018, the NRC published a notice of determination of acceptability and sufficiency for docketing of the SLRA, along with a notice of opportunity for hearing (“Notice”).<sup>6</sup> The Notice required that petitions for leave to intervene and requests for hearing be filed within 60 days – i.e., any interested persons were required to file their petitions to intervene and/or requests for hearing by July 2, 2018.<sup>7</sup>

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<sup>3</sup> See (1) Letter from Mano K. Nazar, FPL, to NRC, “Turkey Point Units 3 and 4 Subsequent License Renewal Application” (Jan. 30, 2018) (Agencywide Documents Access and Management System (“ADAMS”) Package Accession No. ML18037A812); (2) Letter from William D. Maher, FPL, to NRC, “Turkey Point Units 3 and 4 Subsequent License Renewal Application - Supplement 1” (Feb. 9, 2018) (ADAMS Package Accession No. ML18044A653); (3) Letter from William D. Maher, FPL, to NRC, “Turkey Point Units 3 and 4 Subsequent License Renewal Application - Supplement 2” (Feb. 16, 2018) (ADAMS Package Accession No. ML18053A123); (4) Letter from William D. Maher, FPL, to NRC, “Turkey Point Units 3 and 4 Subsequent License Renewal Application - Supplement 3” (Mar. 1, 2018) (ADAMS Package Accession No. ML18072A224); (5) Letter from William D. Maher, FPL, to NRC, “Turkey Point Units 3 and 4 Subsequent License Renewal Application Appendix E Environmental Report Supplemental Information” (Apr. 10, 2018) (ADAMS Accession No. ML18102A521); and (6) Letter from William D. Maher, FPL, to NRC, “Turkey Point Units 3 and 4 Subsequent License Renewal Application - Revision 1” (Apr. 10, 2018) (ADAMS Package Accession No. ML18113A132) (transmitting a revised SLRA).

<sup>4</sup> The construction permits for Units 3 and 4 were issued on April 27, 1967; the initial operating licenses for Units 3 and 4 were issued on July 19, 1972 and April 10, 1973, respectively. The operating licenses for both units were renewed for an additional 20 years on June 6, 2002. See SLRA, Appendix E, “Applicant’s Environmental Report, Subsequent Operating License Renewal Stage, Turkey Point Nuclear Plant Units 3 and 4” (Jan. 2018), at 1-1 and 2-1 (ADAMS Accession No. ML18113A145) (“ER”).

<sup>5</sup> Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4; License renewal application; receipt, 83 Fed. Reg. 17,196 (Apr. 18, 2018).

<sup>6</sup> 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 (May 2, 2018).

<sup>7</sup> *Id.* at 19,304-05.

On June 4, 2018, a letter was submitted to the Secretary of the Commission on behalf of the Natural Resources Defense Council (“NRDC”) and Friends of the Earth (“FOE”), requesting a 120-day extension of time until October 30, 2018, to file hearing requests and petitions to intervene.<sup>8</sup> On June 15, 2018, FPL filed an answer opposing that request, but stated that it would not oppose a 7-day extension of time for filing, until July 9, 2018.<sup>9</sup> On June 20, 2018, SACE filed the instant request, seeking a 91-day extension of time, until October 1, 2018, for the filing of petitions to intervene and hearing requests by all interested persons.

## DISCUSSION

### A. Applicable Legal Standards

The Commission’s regulations specify that petitions to intervene and hearing requests in a proceeding for which a *Federal Register* notice of agency action is published (excluding certain types of proceedings not applicable here) are to be filed “not later than (i) The time specified in any notice of hearing or notice of proposed action . . . ; or (ii) If no period is specified, sixty (60) days from the date of publication of the notice.” 10 C.F.R. § 2.309(b)(3). Pursuant to 10 C.F.R. § 2.307(a), “the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause . . . .” The Commission has interpreted “good cause” to require a showing of “unavoidable and extreme circumstances.”<sup>10</sup>

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<sup>8</sup> Letter from Geoffrey H. Fettus, Esq. and Richard E. Ayres, Esq., to Annette L. Vietti-Cook, Secretary, NRC, “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) (ADAMS Accession No. ML18158A185) (“NRDC/FOE Request”).

<sup>9</sup> “Applicant’s Answer to the Natural Resources Defense Council’s and Friends of the Earth’s Request for Extension” (June 15, 2018).

<sup>10</sup> *Baltimore 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 Center v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000).

The Commission has clearly stated its policy that NRC adjudicatory proceedings are to be conducted in an “expeditious” manner, without “unnecessary delays.”<sup>11</sup> Further, the Commission has sought to assure that the license renewal process is both fair and efficient.<sup>12</sup> Given the breadth and complexity of the issues involved in a typical license renewal proceeding, and considering SACE’s assertion that this proceeding involves “unprecedented safety and environmental concerns” and a “significant legal issue of first impression,”<sup>13</sup> this proceeding could conceivably become somewhat protracted. In that event, there is even more reason to require potential intervenors and parties to abide by the Commission’s rules governing the timely submittal of petitions and other filings, unless good cause is shown for any requested extension of time.<sup>14</sup> As set forth below, SACE’s assertion that “good cause” exists for the grant of an additional period of 91 days for it to submit a petition to intervene must be denied as unreasonable and contrary to Commission policy.

B. SACE’s Motion Fails to Establish Good Cause for its Requested Extension

In support of its Motion, SACE asserts that a 91-day extension of time is required for SACE “and all other potential parties” to file their petitions to intervene and/or hearing requests in this proceeding, beyond the 60 days afforded by the agency’s notice of opportunity for hearing and by the Commission’s rules (i.e., that a total of 151 days is needed for the filing of hearing requests and petitions to intervene), for seven stated reasons:

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<sup>11</sup> “*Policy on Conduct of Adjudicatory Proceedings; Policy Statement*,” CLI-98-12, 48 NRC 18, 19, 24 (1998).

<sup>12</sup> *Calvert Cliffs*, CLI-98-25, 48 NRC at 339.

<sup>13</sup> Motion at 1-3.

<sup>14</sup> See *Calvert Cliffs*, CLI-98-25, 48 NRC at 342 (petitioners did not establish “good cause” for an extension of time for filing contentions, having failed to show “unavoidable and extreme circumstances”).

1. FPL's application is the first SLRA that has ever been filed, thereby raising "unprecedented safety and environmental concerns that warrant careful and time-consuming review";<sup>15</sup>
2. A "significant legal issue of first impression" purportedly exists as to whether Table B-1 of 10 C.F.R. Part 51, Subpart A, Appendix B, applies to subsequent license renewal applications, which will require "extensive and time-consuming legal research" by SACE's counsel;<sup>16</sup>
3. SACE plans to file a contention challenging the adequacy of FPL's discussion of the environmental impacts of subsequent license renewal on the Turkey Point Cooling Canal System ("CCS"), for which SACE will require the assistance of experts who are presently involved in other litigation concerning the CCS and who will be involved in discovery in that proceeding until August 15, 2018;<sup>17</sup>
4. SACE's counsel has scheduled long-planned family vacations for July 4-15 and August 8-21, while SACE's expert on spent fuel pool environmental impacts has scheduled a vacation for August 20-23, 2018;<sup>18</sup>
5. The NRC conducted environmental scoping meetings on May 31, 2018, and set a deadline for the submission of scoping comments on June 21, 2018, which has "taken time away from SACE's preparation of a hearing request";<sup>19</sup>
6. SACE has been in communication with two organizations who have expressed interest in participating as co-petitioners with SACE in this proceeding, but those organizations "have not had sufficient time to evaluate whether to join SACE because of obligations in another legal proceeding";<sup>20</sup> and
7. An extension of time has also been requested by NRDC and FOE, which seek an extension of time until October 30, 2018 – one month more than SACE is requesting.<sup>21</sup>

The Staff respectfully submits that SACE's stated reasons for seeking a 91-day extension of time, beyond the 60 days afforded by regulation and the notice of opportunity for hearing in this matter, do not demonstrate "good cause" (i.e., "unavoidable and extreme

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<sup>15</sup> Motion at 1-2.

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> *Id.* at 3-4.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> *Id.* at 5.

circumstances”) for seeking such a protracted extension of time. First, SACE’s assertion that FPL’s SLRA raises “unprecedented safety and environmental concerns” and a “significant legal issue of first impression,” which purportedly require “extensive and time-consuming legal research” or a “careful and time-consuming review” by SACE’s counsel, does not establish reason to believe that this proceeding differs from any other proceeding in which a petitioner to intervene perceives the existence of serious safety, environmental, or legal concerns. Moreover, where a petitioner perceives that such concerns exist, it should anticipate the need to enlist the assistance of additional attorneys or experts who have the ability and availability to support the petitioner’s timely participation in the proceeding.

Second, the fact that SACE’s expected experts are presently busy with other litigation may warrant that SACE attempt to secure a portion of those experts’ time and attention, or that it seek the assistance of other experts who are available to assist in the filing of its petition. Moreover, while SACE asserts that its experts are busy with litigation tasks in other proceedings, it has not shown that its requested extension of time is required to avert any unusual burden or that any specific conflict exists that would prevent it from filing its petition in a timely manner. The Staff would not, however, oppose a reasonable extension of time for the filing of SACE’s hearing request/petition to intervene – for example, an extension of ten days, until July 12, 2018 – to afford SACE additional time to secure its experts’ assistance.

Third, the fact that SACE’s counsel and experts have scheduled family or other vacations in July and August does not present a reason why those individuals (or other persons) could not have assisted SACE in the preparation of its petition during the 60-day period from May 2 to July 2, 2018, which was afforded for the filing of petitions to intervene by the notice of opportunity for hearing.<sup>22</sup>

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<sup>22</sup> While the Staff recognizes that a 10-day extension of time until July 12, 2018, might affect a portion of SACE’s counsel’s planned vacation for July 4-15, it would not affect his/her planned vacation for August 8-21 or SACE’s expert’s planned vacation for August 20-23, 2018.

Fourth, while the Staff held environmental scoping meetings on May 31 and invited the submission of scoping comments by June 21, 2018, those opportunities did not require a diversion of time or resources from the preparation of petitions to intervene; rather, attendance at scoping meetings and the submission of scoping comments may contribute to a potential intervenor's understanding of the application and of the environmental impacts of the proposed license renewal action. Accordingly, rather than detract from SACE's opportunity to request a hearing, the scoping process actually supports its ability to participate in this proceeding. Moreover, the Staff routinely schedules environmental scoping meetings and establishes similar deadlines for the submission of scoping comments, during the time period afforded for the filing of petitions to intervene. In this regard, the Staff is obliged to conduct an efficient and comprehensive safety and environmental review of the SLRA, regardless of whether SACE or other petitioners file a hearing request or petition to intervene in this proceeding. Accordingly, if SACE elects to file a petition to intervene in this proceeding, it is obliged to allocate its time and resources in a manner that best supports the accomplishment of its objectives.

Finally, while SACE states that other organizations may wish to join with SACE in a petition to intervene, it fails to provide any details to support a claim that those as-yet unidentified organizations have been unable to file or join in a petition to intervene within the time afforded by the notice. Similarly, while SACE points to the fact that a request for extension of time was also filed by NRDC and FOE, it provides no facts showing good cause for those organizations' request for a 120-day extension of time to file a petition to intervene in this proceeding.

CONCLUSION

SACE has not demonstrated sufficient reason to support its request for an extension of time of 91 days to file a petition to intervene and/or hearing request in this proceeding. SACE's request for a 91-day extension of time for the filing of its petition should therefore be denied as lacking in good cause – although, as stated above, the Staff would not oppose a reasonable extension of time (for example, until July 12, 2018) for the filing of SACE's petition to intervene.

Respectfully submitted,

**Signed Electronically by**

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Dated at Rockville, Maryland  
this 21<sup>st</sup> day of June 2018

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

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Dated at Rockville, Maryland  
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