



Opportunity.<sup>2</sup> The 60-day period is consistent with NRC regulations and that afforded interested parties in other NRC license renewal proceedings.<sup>3</sup>

Pursuant to 10 C.F.R. § 2.323(c), FPL submits this Answer opposing Petitioner’s Extension Request, because the request fails to establish the good cause required by 10 C.F.R. § 2.307.<sup>4</sup> 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. PETITIONER FAILS 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>5</sup> Petitioner seeks a 91-day extension to this deadline, or until October 1, 2018. Petitioner asserts that it needs this extension primarily for three reasons: (1) “FPL’s application is the first of a kind: no other reactor licensee has sought subsequent license renewal”; (2) the SLRA purports to raise a “legal issue of first impression: whether the NRC’s regulation 10 C.F.R. Part 51, Appendix B, Table B-1 . . . excuses SLR applicants from addressing [certain environmental issues]”; and (3) to account for competing interests for time of Petitioner’s counsel and prospective expert witnesses.<sup>6</sup>

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<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 (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 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) (Aug. 14, 2017).

<sup>4</sup> FPL, on June 15, filed an Answer opposing a similar extension request filed by the Natural Resources Defense Council and Friends of the Earth. Those entities sought an October 31, 2018 due date.

<sup>5</sup> Notice of Hearing Opportunity at 19,304.

<sup>6</sup> Extension Request at 2-4.

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>7</sup> As explained below, no such circumstances are present here.

Petitioner first asserts that the Turkey Point SLRA is “first of a kind” and that, therefore, the NRC should grant the requested extension in order for SACE to conduct a “time-consuming review.”<sup>8</sup> As a threshold matter, such a generic justification would potentially apply to numerous “first of a kind” licensing actions brought before the agency in the past and likely in the future—and cannot be said to demonstrate extreme circumstances. Furthermore, while FPL may be the first NRC licensee to submit an SLRA, there has been no fundamental change in the underlying regulatory framework for this licensing action. The SLRA is based on, and complies with, the long-standing regulations in 10 C.F.R. Parts 51 and 54. Accordingly, the Turkey Point SLRA and its first of a kind status do not raise “unprecedented” concerns justifying the requested extension.<sup>9</sup>

SACE next asserts that the NRC should grant the requested extension because the SLRA purportedly raises a “legal issue of first impression[.]”<sup>10</sup> Again, that argument also is unsupported and fails to demonstrate “unavoidable and extreme circumstances.” The NRC made

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<sup>7</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.”).

<sup>8</sup> See Extension Request at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

the Turkey Point SLRA available to the public on March 22, 2018, via a Press Release, placement in ADAMS,<sup>11</sup> and further notice in the April 18, 2018 *Federal Register*.<sup>12</sup> As such, Petitioner’s counsel has already had three months to conduct the legal research that she argues warrants a three-month extension. Nothing in the Extension Request, the SLRA, or the underlying regulatory framework justifies delaying a filing deadline for three months in order to allow experienced regulatory counsel to craft a contention.

Finally, Petitioner raises a smattering of other concerns regarding competing priorities for its time, its counsel’s time, and its experts’ time as bases for the three-month delay.<sup>13</sup> These purported issues are again insufficient to demonstrate “unavoidable and extreme circumstances.” As an initial matter, potential competing priorities after July 2 do not interfere with Petitioner’s ability to meet the July 2 filing date. While FPL does not dispute the likely existence of family vacations and other cases of personnel unavailability—all such instances are common and to be expected during the course of any regulatory action. They simply do not rise to the level of unavoidable and extreme circumstances—but rather preference and convenience.<sup>14</sup>

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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 3-4, *noting* that certain prospective experts “have made previous commitments . . . and are unavailable until mid-August”, Petitioner’s “counsel has long-planned family vacations scheduled for July 4-15 and August 8-21”, that Petitioner’s “expert on spent fuel pool environmental impacts has scheduled vacation for August 20-23”, and that Petitioner’s involvement in the scoping process for Turkey Point Units 3 & 4 has “taken time away from [Petitioner’s] preparation of a hearing request.”

<sup>14</sup> Petitioner apparently plans to raise a contention that relies “on a significant amount of information and expert opinion that has been and is being developed” for a case pending in U.S. District Court for the Southern District of Florida. Extension Request at 3-4 (emphasis added). Petitioner is not entitled to an extension when it acknowledges it has already developed much of the information on which it plans to base a forthcoming contention.

Further, the Staff has issued an 18-month schedule to complete its review of the SLRA at issue. While the 18-month schedule does not include milestones for hearing activities, a three-month delay to the contention filing date will set a poor precedent for this and future SLRAs.<sup>15</sup>

Nonetheless, 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.

#### IV. CONCLUSION

For the reasons discussed above, Petitioner has not demonstrated good cause for a 91-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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<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.”).

