

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY  
COMMISSION**

**BEFORE THE COMMISSION**

|   |   |                       |
|---|---|-----------------------|
| In the Matter of:                                     | ) |                       |
|   | ) |                       |
| FLORIDA POWER & LIGHT COMPANY                         | ) | Docket No. 50-250-SLR |
|   | ) | Docket No. 50-251-SLR |
| (Turkey Point Nuclear Generating Station, Unit Nos. 3 | ) |                       |
| and 4)  | ) | July 19, 2019         |
|   | ) |                       |

**INTERVENORS’ MOTION TO EXTEND TIME TO  
APPEAL DISMISSAL OF CONTENTIONS**

Pursuant to 10 C.F.R. § 2.323, Friends of the Earth, Inc., Natural Resources Defense Council, Inc., and Miami Waterkeeper, Inc. (collectively, “Intervenors”) request a 7-day extension of time to appeal the Atomic Safety and Licensing Board’s March 7, 2019 and July 8, 2019 orders dismissing Intervenors’ August 1, 2018 contentions.

Intervenors filed their initial contentions on August 1, 2018.<sup>1</sup> On March 3, 2019, the Board partially admitted two contentions but denied the remaining ones.<sup>2</sup> On April 2, 2019, the Board issued a revised scheduling order governing those portions of the admitted contentions.<sup>3</sup> The Order authorized Applicant Florida Power & Light Co. (“Applicant”) to file dispositive motions based on the the issuance of the Draft Supplemental Environmental Impact Statement

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<sup>1</sup> Request for Hearing and Petition to Intervene Submitted by [Intervenors] (Aug. 1, 2018) (ML18213A418).  
<sup>2</sup> *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-3, 89 NRC \_\_, \_\_ (Mar. 7, 2019) (slip op.). Intervenors did not immediately appeal the denial of their remaining contentions from this Order as, under Nuclear Regulatory Commission regulations and precedent, it would be a disfavored interlocutory appeal. *See* 10 C.F.R. § 2.311; *Private Fuel Storage L.L.C.*, (Independent Spent Fuel Storage Installation) CLI-01-1, 53 NRC 1, 5 (Jan. 10, 2001) (“We have repeatedly held that refusal to admit a contention, where the intervenor’s other contentions remain in litigation, does not constitute a pervasive effect on the litigation calling for interlocutory review.”).  
<sup>3</sup> Order (Granting in Part Intervenors’ Joint Motion for Partial Reconsideration of Initial Scheduling Order) (Apr. 2, 2019) (ML19092A386).

(“DSEIS”) for the subsequent license renewal application by May 20, 2019.<sup>4</sup> Consistent with the scheduling order, Applicant moved to dismiss the admitted contentions as moot.<sup>5</sup> On June 10, 2019, Intervenors opposed Applicant’s Motions to Dismiss while the NRC Staff supported them.<sup>6</sup> On July 8, 2019, the Board granted Applicant’s Motions to Dismiss.<sup>7</sup> Pursuant to 10 C.F.R. § 2.341(b)(1), Intervenors have 25 days from the July 8, 2019 Order dismissing the remaining contentions to appeal to the Commission for relief. That deadline falls on August 2, 2019.

While the Board’s July 8, 2019 Order dismissed each of Intervenors’ admitted contentions in their entirety, the Board’s April 2, 2019 Scheduling Order provided Intervenors the opportunity to file new or amended contentions based on the DSEIS.<sup>8</sup> Intervenors thereafter filed New and Amended Contentions on June 24, 2019.<sup>9</sup> Intervenors anticipate that both the NRC Staff and Applicant will file a response to the New and Amended Contentions by the July 19, 2019 deadline set forth in the Scheduling Order.<sup>10</sup> Intervenors would then have until July 26, 2019 at the latest to file a response.<sup>11</sup>

Thus, under the current schedule, Intervenors would be required to meet a July 26 deadline on the New and Amended Contentions and then file a merits appeal on the dismissed

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

<sup>5</sup> FPL’s Motion to Dismiss Joint Petitioners’ Contention 1-E as Moot (May 20, 2019) (ML19140A355); FPL’s Motion to Dismiss Joint Petitioners’ Contention 5-E as Moot (May 20, 2019) (ML19140A356).

<sup>6</sup> Joint Petitioners’ Answer Opposing FPL’s Motion to Dismiss Joint Petitioners’ Contention 1-E as Moot (June 10, 2019) (ML19161A360); Joint Petitioners’ Answer Opposing FPL’s Motion to Dismiss Joint Petitioners’ Contention 5-E as Moot (June 10, 2019) (ML19161A361).

<sup>7</sup> Memorandum and Order (Granting FPL’s Motions to Dismiss Joint Intervenors’ Contentions 1-E and 5-E as Moot), LBP-19-06 (July 8, 2019) (ML19189A252).

<sup>8</sup> Order (Granting in Part Intervenors’ Joint Motion for Partial Reconsideration of Initial Scheduling Order) at 3 (Apr. 2, 2019) (ML19092A386).

<sup>9</sup> [Intervenors’] Motion to Migrate Contentions & Admit New Contentions In Response to NRC Staff’s [DSEIS] (June 24, 2019).

<sup>10</sup> Order (Granting in Part Intervenors’ Joint Motion for Partial Reconsideration of Initial Scheduling Order) at 3 (Apr. 2, 2019) (ML19092A386).

<sup>11</sup> *Id.*

contentions exactly one week later. It will take considerable time, effort, and resources to meet the July 26 deadline for replying to both the NRC Staff's and Applicant's likely opposition to the New and Amended Contentions. Indeed, Intervenor may need to engage experts to review opposing briefs, compose, and then finalize declarations within one week.

Intervenor also submit that their attorneys have longstanding commitments during the 25-day appeal timeframe, including client and family commitments that cannot be rescheduled (Attorney Fettus); a medical procedure, client, and family commitments that cannot be rescheduled (Attorney Rumelt); family commitments that cannot be rescheduled (Attorney Reiser); and a family commitment that cannot be rescheduled (Attorney Cox). Intervenor also note that any final decision on the pending subsequent license renewal application would not impact Applicant's operations until 2032 when its current license for Unit 3 is set to expire. A one-week delay in this proceeding 13 years before the current license is set to expire will not prejudice Applicant in any way.

### **CONCLUSION**

For the foregoing reasons, Intervenor respectfully request a one-week extension of time to file an appeal of the Board's dismissal of Intervenor's contentions in this proceeding.

Respectfully submitted,

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July 19, 2019

## CERTIFICATE OF COUNSEL

Pursuant to 10 C.F.R. § 2.323(b), I certify that on July 18 and 19, 2018, I consulted counsel for Applicant and the NRC Staff in a sincere effort to resolve the issues raised by this motion.

Counsel for the NRC Staff stated that the Staff does not oppose the requested extension of time until August 9, 2019, provided an additional week is also provided for filing the Staff's response, due to scheduled vacations and the intervening Labor Day holiday weekend. Counsel for Applicant stated that Applicant does not object to the request for a one week extension, and join Staff's request for an additional week for Staff and Applicant to file a response for similar reasons.

          /signed electronically by/          

Caroline Reiser

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**CERTIFICATE OF SERVICE**

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Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing INTERVENORS’ MOTION TO EXTEND TIME TO APPEAL DISMISSAL OF CONTENTIONS was served upon the Electronic Information Exchange (“EIE,” the NRC’s E-Filing System), in the above-captioned docket, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

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July 19, 2019