

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of:	)	
	)	Docket Nos. 50-250-SLR-2 &
FLORIDA POWER & LIGHT COMPANY	)	50-251-SLR-2
	)	
(Turkey Point Nuclear Generating Units 3 and 4)	)	November 2, 2023
	)	

**FLORIDA POWER & LIGHT COMPANY ANSWER IN OPPOSITION TO MIAMI  
WATERKEEPER EXTENSION REQUEST**

On November 1, 2023, Miami Waterkeeper filed a document titled “Miami Waterkeeper Emails to [U.S. Nuclear Regulatory Commission (“NRC”)] Secretary Regarding Extension Request for Turkey Point” on the adjudicatory docket for the above captioned proceeding (“Motion”).<sup>1</sup> That document contained an email and a letter from Miami Waterkeeper, dated October 30, 2023, and October 27, 2023, respectively, requesting the NRC Secretary to “withdraw the notice of hearing” for the above-captioned proceeding and, alternatively, requesting a “60-day extension” of the hearing request deadline. That request is appropriately viewed as a motion under the NRC’s Rules of Practice and Procedure in 10 C.F.R. Part 2.<sup>2</sup> Accordingly, pursuant to 10 C.F.R. § 2.323(c), Florida Power and Light Company (“FPL”) timely submits this Answer opposing the Motion.

As a procedural matter, the Motion must be denied because Miami Waterkeeper failed to consult with FPL prior to filing the Motion. NRC regulations expressly state that “[a] motion

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<sup>1</sup> Miami Waterkeeper Emails to NRC Secretary Regarding Extension Request for Turkey Point (e-filed Nov. 1, 2023) (ML23305A127) (“Motion”) [pin citations herein are PDF page numbers].

<sup>2</sup> Even though not styled as one, Miami Waterkeeper’s extension request is, in fact, a motion. *See Motion*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A written or oral application requesting a court to make a specified ruling or order”).

must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion and that the movant’s efforts to resolve the issue(s) have been unsuccessful.”<sup>3</sup> The Motion contains no such certification. Thus, as a matter of law, the regulations provide no discretion—the Motion “*must* be rejected.”<sup>4</sup>

Aside from that dispositive procedural defect, NRC regulations at 10 C.F.R. § 2.307(a) allow extensions of adjudicatory deadlines only upon demonstration of “good cause.” As the Commission has explained, “good cause” for an extension requires a showing of “unavoidable and extreme circumstances.”<sup>5</sup> As detailed below, no such circumstances are present here.

First, Miami Waterkeeper claims that publication of the hearing opportunity notice after the issuance of the draft SEIS (as opposed to the final SEIS) was “unexpected” and thus Miami Waterkeeper was “unprepared for it.”<sup>6</sup> However, that is neither an unavoidable nor extreme circumstance. On August 17, 2022, the NRC held a public meeting to announce, among other things, the timing of hearing opportunities following the supplemental environmental reviews contemplated in CLI-22-2, CLI-22-3, and CLI-22-4, which included the Turkey Point Subsequent License Renewal proceeding.<sup>7</sup> The meeting was open to the public. In fact, it was “attended by nearly 100 participants including representatives of licensees and environmental

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<sup>3</sup> 10 C.F.R. § 2.323(b).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *See Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998) (holding that “construction of ‘good cause’ to require a showing of ‘unavoidable and extreme circumstances’ constitutes a reasonable means of avoiding undue delay”); *see also Hydro Res., Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87210), CLI-99-1, 49 NRC 1, 3 n.2 (1999) (“We caution all parties in this case, however, to pay heed to the guidance in our policy statement that ordinarily only ‘unavoidable and extreme circumstances’ provide sufficient cause to extend filing deadlines”); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

<sup>6</sup> Motion at [4].

<sup>7</sup> Public Meeting Announcement, 8/17/23 Public Meeting on Path Forward for Site-Specific Environmental Reviews of Subsequent License Renewal (Aug. 10, 2022) (ML22222A129).

organizations, as well as members of the public.”<sup>8</sup> At that meeting, the NRC openly and transparently communicated that it would “issue a 60-day notice of opportunity for hearing upon publication of a *draft* SEIS or *draft* SEIS supplement, on a site-specific basis.”<sup>9</sup> As promised more than a year ago, the NRC followed that exact process here.<sup>10</sup> Thus, the timing of the hearing opportunity is certainly no surprise.

Second, Miami Waterkeeper notes that it is preparing comments on the draft SEIS and participating in a separate proceeding by the U.S. Fish and Wildlife Service and therefore lacks the resources to participate in an adjudicatory proceeding.<sup>11</sup> However, the claimed inconvenience and time commitment required to voluntarily challenge a licensing application is not the type of unavoidable or extreme circumstance that warrants an extension of time.<sup>12</sup> As the Commission has long recognized, although “multiple simultaneous proceedings place burdens on the parties . . . [w]e cannot postpone cases for many weeks or months simply because going forward will prove difficult for litigants or their lawyers.”<sup>13</sup>

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<sup>8</sup> Summary of August 17, 2022 Public Meeting on the Path Forward for Site-Specific Environmental Reviews of Subsequent License Renewal at 1 (Sept. 6, 2022) (ML22238A305).

<sup>9</sup> *Id.* at 2 (emphasis added). See also NRC Slides, Path Forward for Site-Specific Environmental Reviews for Subsequent License Renewal at 15 (Aug. 17, 2023) (ML22228A253).

<sup>10</sup> Moreover, Miami Waterkeeper’s assertion that CLI-22-3 prohibits commencement of the hearing opportunity before the entire “environmental review *process* is complete” (Motion at [4] (emphasis added)) is misguided. As an initial matter, there is no precedent for deferring a hearing opportunity until issuance of a final EIS in license renewal proceedings. In addition, the Commission stated that, “[a]fter each site-specific *review* is complete, a new notice of opportunity for hearing . . . will be issued.” *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-22-3, 95 NRC 40, 42 (2022) (emphasis added). In all material respects, the Staff’s site-specific *review* of the applicant’s site-specific application materials is complete upon issuance of the draft SEIS. To complete the overall *process*, the Staff will then respond to public comments and make any necessary adjustments before issuing the final SEIS. Miami Waterkeeper offers no clear explanation as to how publication of the hearing opportunity here expressly conflicts with CLI-22-3. Further, the timing is not mandated by any statute or other legal requirement; it is a discretionary matter for the Commission, which can revise or clarify such timing as needed, which the Staff did during the August 17, 2022 Public Meeting.

<sup>11</sup> Motion at [4–5].

<sup>12</sup> See *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 400 (2001) (noting that the cost and inconvenience of litigation is not relevant to consideration of a motion to suspend a proceeding).

<sup>13</sup> *Consol. Edison Co. of N.Y.* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229–30 (2001).

Lastly, Congress has expressed its desire that the NRC conduct licensing proceedings in an efficient and expedient manner. In fact, just yesterday, two Senators remarked on the “problematic” trend in schedule slippage in SLR proceedings.<sup>14</sup> Granting the Motion here would only exacerbate that trend, particularly for the Turkey Point SLR application which has been pending for nearly six years. Thus, consistent with Congress’ stated goals and the NRC’s own policy,<sup>15</sup> the Commission should adhere to its longstanding practice of granting deadline extensions only in “unavoidable and extreme circumstances.” Because no such circumstances are presented here, the Commission should DENY the Motion.

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, DC  
this 2nd day of November 2023

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<sup>14</sup> See Letter from The Honorable Shelley Moore Capito and The Honorable Pete Ricketts to The Honorable Christopher T. Hanson (Nov. 1, 2023), available at <https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018b-8b9a-da71-a98f-abff5d500000>.

<sup>15</sup> See *Values*, NRC.GOV, <https://www.nrc.gov/about-nrc/values.html> (listing the NRC’s “Principles of Good Regulation”).

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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 “FLORIDA POWER & LIGHT COMPANY ANSWER IN OPPOSITION TO MIAMI WATERKEEPER EXTENSION REQUEST” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

*Signed (electronically) by Ryan K. Lighty*  
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