

RAS 2527

December 14, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket Nos. 50-250-LR
Florida Power & Light Company)	50-251-LR
)	ASLBP No. 01-786-03-LR
(Turkey Point Units 3 and 4))	

FPL'S OPPOSITION TO JOETTE LORION'S SECOND EXTENSION REQUEST

Florida Power & Light Company ("FPL") hereby responds to and opposes Joette Lorion's "Request to Allow Contention Deadline to Comply with 10 CFR 2.714(b)(1), and, if Possible, To Extend Other Scheduling Deadlines," which Ms. Lorion filed on December 13, 2000. As discussed below, the Licensing Board's Memorandum and Order of December 1, 2000, which establishes December 22 as the date on which the petitioners must file contentions, does not conflict with 10 C.F.R. § 2.714(b)(1); and Ms. Lorion has not justified any extension.

There is no need to modify the Board's schedule to "comply" with 10 C.F.R. § 2.714(b)(1), as Ms. Lorion suggests. As the Commission has ruled, 10 C.F.R. § 2.714(b)(1) establishes only the latest time for filing proposed contentions; and 10 C.F.R. § 2.711(a) permits the Board to alter the schedule for proposed contentions so that the Board and participants have more time to consider responses prior to the Prehearing Conference, which is a common and well-established practice. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 N.R.C. 325, 343-45 (1998), aff'd, National Whistleblower Center v. NRC, 208 F.3d 256 (D.C. Cir. 2000), rehearing en banc denied (June 15, 2000), petition for cert.

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filed (No. 00-422, Sept. 13, 2000). Thus, the Licensing Board's December 1 Memorandum and Order is in full compliance with the Commission's rules of practice.

Nor is it really fair to characterize the Board's schedule as "shortening" the deadline for contentions, as Ms. Lorion does. Rather, the Board has established a reasonable filing date for contentions and has then merely lengthened the interval between responses and the prehearing conference, so that participants have a reasonable opportunity to review those responses prior to the prehearing conference. Otherwise, under the default schedule in 10 C.F.R. § 2.714(b)(1) the Staff's response would be due on the same day as the prehearing conference. Id. at 344-45.

Ms. Lorion also fails to justify any extension of the schedule. As the Commission directed in its initial order in this proceeding, "to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances." Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board, CLI-00-23, slip op. at 7 (Nov. 27, 2000). This standard is also reflected in the Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 21 (1988). Ms. Lorion has not met the Commission's standard.¹

While FPL is sympathetic to the passing away of Ms. Lorion's father last summer and her desire to visit her family this Christmas, the Board's schedule in fact places any burden of working over the holidays on FPL and the NRC staff, and not on Ms. Lorion. Under the schedule established by the Board, contentions are due on December 22, before the Christmas and New Year holidays, while responses by FPL and the NRC staff to the contentions are due on

¹ The Commission has also established milestones in this proceeding to further its policy, including one calling for a decision on intervention petitions and contentions within 90 days of November 27, 2000. See CLI-00-23, slip op. at 6. Granting Ms. Lorion's request would likely prevent the accomplishment of this milestone.

January 9. Consequently, FPL does not see any reason why Ms. Lorion cannot meet the December 22 deadline and still spend the Christmas holiday with her family, which appears the sole ground for her extension request.

Moreover, there is no indication in Ms. Lorion's request that she is unable to meet the filing date for contentions, which is still over a week away, or that she has had insufficient time to prepare such contentions. Indeed, the Commission has previously granted Ms. Lorion an additional month to file her request for hearing, so that she could have this time to review a copy of FPL's license renewal application placed in a local public library just for her benefit.² See Order dated November 6, 2000. Section III of Ms. Lorion's November 22 petition shows that Ms. Lorion has already taken advantage of this opportunity to identify the issues that she intends to raise in this proceeding. Ms. Lorion offers no explanation why she cannot finalize these issues in the more than a week remaining before contentions are due. Perhaps the current schedule is inconvenient for Ms. Lorion, but that is not an adequate basis to disturb the schedule and delay these proceedings.

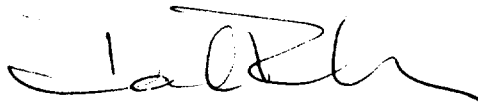
Finally, the timing of the scheduled filings is partly of Ms. Lorion's own making. The date for contentions is close to the holidays only because Ms. Lorion previously requested extra time to review FPL's application before requesting a hearing. FPL does not believe that, having once asked the Commission to delay these proceedings, Ms. Lorion is now entitled to a further extension because the resulting schedule is now inconvenient.

² While the application was available on the NRC's website much earlier, Ms. Lorion requested a hard copy in a local library because she claimed to be a "computer neophyte and unable to obtain them." Letter from J. Lorion to Region 2 Administrator (Oct. 23, 2000). The recent filings by Ms. Lorion now show that she has an America-On-Line membership, as reflected in her e-mail address.

In sum, Ms. Lorion has not shown extreme and unavoidable circumstances warranting a stay. The Commission has established this standard to promote its policy objective of ensuring that hearings are concluded in a fair and timely manner – one which avoids unnecessary delays in the NRC’s review and hearing process. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. at 19, 25. This policy recognizes that licensees are entitled to a prompt resolution of disputes concerning their applications. Id. at 19. Parties to a proceeding are therefore expected to adhere to timeframes established in the NRC rules and in scheduling orders, and Licensing Boards are expected to enforce compliance with these schedules. Id. at 21. Granting Ms. Lorion a second extension in this proceeding just for her convenience, without any showing by Ms. Lorion that the current schedule cannot be met, would be simply contrary to the Commission’s policy, objectives, and considerations of fairness owed just as much to FPL as to Ms. Lorion.

For all these reasons, Ms. Lorion’s request should be denied.

Respectfully Submitted,



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Dated: December 14, 2000

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "FPL's Opposition to Joette Lorion's Second Extension Request," dated December 14, 2000, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by e-mail or facsimile, this 14th day of December, 2000.

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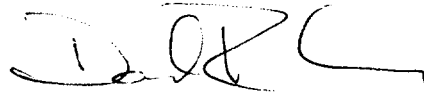
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A handwritten signature in black ink, appearing to read 'D. R. Lewis', written over a horizontal line.

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