

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	Rulemaking Docket No. ____
)	
Florida Power & Light Company)	AND
)	
Turkey Point Units 6 and 7)	Docket Nos. 52-040 and 52-041
Combined License)	
_____)	

**JOINT INTERVENORS' MOTION FOR LEAVE TO REPLY TO FLORIDA
POWER & LIGHT COMPANY'S RESPONSE OPPOSING REQUEST FOR
STAY OF LICENSING PROCEEDINGS PENDING RESOLUTION OF
RULEMAKING PETITION**

Pursuant to 10 C.F.R. § 2.323(c), Joint Intervenors, Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (collectively, "Joint Intervenors"), seek leave to reply to two particularly significant questions raised by Florida Power & Light Company ("FPL") in response to Joint Intervenors' August 11, 2011 Rulemaking Petition to Rescind Prohibition Against Consideration of Environmental Impacts of Severe Reactor and Spent Fuel Pool Accidents and Request to Suspend Licensing Decision (the "Rulemaking Petition"): (a) the scope of Joint Intervenors' request for a stay of the Turkey Point combined licensing ("COL") proceeding, and (b) the relevance to this proceeding of the U.S. Nuclear Regulatory Commission's ("NRC") regulations excusing license applicants and the NRC from addressing the environmental impacts of spent fuel storage during the reactor license term, *i.e.*, 10 C.F.R. Part 51 Appendix B and 10 C.F.R. §§ 51.45, 51.53, and 51.95. *See* Florida Power & Light Company's Response Opposing Request for Stay of

Licensing Proceedings Pending Resolution of Rulemaking Petition at 1 n.1 and 8-10 (August 20, 2011) (the “FPL Response”). While Joint Intervenors do not concede the validity of any of FPL’s other arguments, they believe the circumstances relating to these two issues are “compelling” and therefore warrant a reply under 10 C.F.R. § 2.323(c).¹

First, in response to footnote 1 of the FPL Response, Joint Intervenors wish to clarify that they seek to suspend only the ultimate licensing *decision* for the Turkey Point COL application rather than all aspects of the entire proceeding. Joint Intervenors believe the circumstances of this request are “compelling” because it is extremely important that all parties and the NRC understand that Joint Intervenors seek only that relief which is required by the National Environmental Policy Act as a non-discretionary matter, *i.e.*, the consideration of environmental impacts in advance of taking an action that would allow those impacts to occur. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Silva v. Romney*, 473 F.2d 287, 292 (1st Cir. 1973).

Second, in response to FPL’s argument that it is not subject to the regulations that excuse some license applicants from addressing the environmental impacts of spent fuel storage during the reactor license term (*i.e.*, 10 C.F.R. Part 51 Appendix B and 10 C.F.R. §§ 51.45, 51.53, and 51.95), Joint Intervenors wish to point out that FPL’s own behavior demonstrates the relevance of the regulations: FPL’s Environmental Report (“ER”) completely fails to address the environmental impacts of spent fuel storage at Turkey Point Units 6 and 7 during the COL term, in apparent reliance on those same

¹ Joint Intervenors note that their request to suspend the Turkey Point licensing decision was an integral part of the Rulemaking Petition, filed pursuant to 10 C.F.R. § 2.802(d). Because a petition for rulemaking is not an adjudicatory matter, Joint Intervenors disagree with FPL’s unsupported assertion that the request to suspend should nevertheless be treated as a motion under 10 C.F.R. § 2.323. *See* FPL Response at 2; *see also* Motion at 3 (“Counsel for NRC staff opposed this Motion, since the Petition for Rulemaking is not an adjudicatory matter.”). However, should the Commission find 10 C.F.R. § 2.323 applicable to the Rulemaking Petition, Joint Intervenors request leave to reply to the FPL Response for the reasons set forth in this Motion.

regulations.² In addition, Joint Intervenors wish to present evidence that the NRC itself considers the environmental analysis supporting 10 C.F.R. Part 51 Appendix B and 10 C.F.R. §§ 51.45, 51.53, and 51.95 to excuse it from independently analyzing the environmental impacts of spent fuel storage in its environmental impacts statements for COL applications. These circumstances are compelling because Joint Intervenors could not have anticipated that FPL would deny the relevance of the regulations at the same time that it apparently relies on them to avoid discussing spent fuel storage impacts in its ER.

Consultation Certificate Pursuant to 10 C.F.R § 2.323(b)

Joint Intervenors certify that on August 25, 2011, we contacted counsel for the applicant and the NRC staff in an attempt to obtain their consent to this Motion. Counsel for the applicant opposed the Motion because they did not believe the circumstances dictated the relief request. Counsel for the NRC Staff opposed the Motion, since the Petition for Rulemaking is not an adjudicatory matter.

Respectfully submitted this 29th day of August, 2011.

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² While FPL addresses the environmental impacts of spent fuel storage following termination of the Turkey Point COL (*see* ER Section 5.9), spent fuel transportation (*see* ER Sections 5.7.2. and 7.4), and spent fuel disposal (*see* ER Section 5.7.1.6), no discussion can be found of spent fuel storage impacts during reactor operation.

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**JOINT INTERVENORS' REPLY TO FPL'S RESPONSE OPPOSING
REQUEST FOR STAY OF LICENSING PROCEEDINGS PENDING
RESOLUTION OF RULEMAKING PETITION**

Joint Intervenors, Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (collectively, "Joint Intervenors"), wish to clarify a significant issue and correct the record on another issue in reply to Florida Power & Light Company's Response Opposing Request for Stay of Licensing Proceedings Pending Resolution of Rulemaking Petition (August 20, 2011) (the "FPL Response").

First, Joint Intervenors clarify that they do not seek suspension of all aspects of the combined licensing ("COL") proceeding for Turkey Point Units 6 and 7. *See* FPL Response at 1 n.1. Instead, they seek suspension of the proceeding only to the degree required by the National Environmental Policy Act, *i.e.*, that the U.S. Nuclear Regulatory Commission ("NRC") should not -- and indeed may not -- issue a combined license for Units 6 and 7 until it has addressed the environmental concerns raised by the report of the

Fukushima Task Force. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Silva v. Romney*, 473 F.2d 287, 292 (1st Cir. 1973).

Second, Joint Intervenor agree with FPL that NRC regulations excusing license applicants and the NRC from addressing the environmental impacts of spent fuel storage during the reactor license term (*i.e.*, 10 C.F.R. Part 51 Appendix B and 10 C.F.R. §§ 51.45, 51.53, and 51.95) do not strictly apply to COL applications. FPL Response at 8-10. Nevertheless, it is incorrect for FPL to assert that the regulations are irrelevant. To the contrary, FPL appears to have relied on those regulations because its Environmental Report (“ER”) for Turkey Point Units 6 and 7 completely fails to address the environmental impacts of spent fuel storage during the license term.¹ In addition, in other COL proceedings in which it has issued a Draft or Final Environmental Impact Statement, the NRC has relied on the environmental analysis underlying 10 C.F.R. Part 51 Appendix B and 10 C.F.R. §§ 51.45, 51.53, and 51.95, *i.e.*, the Generic Environmental Impact Statement for Renewal of Nuclear Power Plant Operating Licenses (NUREG-1437, 1996), to conclude that the environmental impacts of spent fuel storage at individual new reactors are “SMALL.” *See, e.g.* NUREG-1947, Final Supplemental Environmental Impact Statement for Combined Licenses (COLs) for Vogtle Electric Generating Plant Units 3 and 4 at 6-4 (2011); NUREG-1941, Draft EIS for Combined Licenses (COLs) for Levy Nuclear Plant Units 1 and 2, Vol. 1 at 6-15 (2010).²

Therefore, it is reasonable for Joint Intervenor to seek suspension of the Turkey Point

¹ While FP&L addresses the environmental impacts of spent fuel storage following termination of the Turkey Point COL (*see* ER Section 5.9), spent fuel transportation (*see* ER Sections 5.7.2 and 7.4), and spent fuel disposal (*see* ER Section 5.7.1.6), no discussion can be found of spent fuel storage impacts during reactor operation.

² The NRC promulgated 10 C.F.R. Part 51 Appendix B and 10 C.F.R. §§ 51.45, 51.53, and 51.95 in reliance on the License Renewal GEIS in 1996. *See* Final Rule, Environmental Review of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,479-80 and 28,483-84 (June 5, 1996).

licensing decision pending reconsideration of the conclusions of NUREG-1437 and the regulations which rely on those conclusions.

Respectfully submitted this 29th day of August, 2011.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 6 and 7)

Rulemaking Docket No. ____

AND

Docket Nos. 52-040-COL and 52-041-COL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **JOINT INTERVENORS' MOTION FOR LEAVE TO REPLY TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE OPPOSING REQUEST FOR STAY OF LICENSING PROCEEDINGS PENDING RESOLUTION OF RULEMAKING PETITION** and **JOINT INTERVENORS' REPLY TO FPL'S RESPONSE OPPOSING REQUEST FOR STAY OF LICENSING PROCEEDINGS PENDING RESOLUTION OF RULEMAKING PETITION** were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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