

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of
FLORIDA POWER & LIGHT COMPANY
(Turkey Point Units 6 and 7)

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

ASLBP No. 10-903-02-COL-BD01

November 8, 2010

ORDER

(Outlining Format and Questions for Oral Argument)

As stated in our previous order, this Licensing Board will hear oral argument on November 19, 2010 from: (1) counsel for the Village of Pinecrest, Florida (Village); (2) the representative for Citizens Allied for Safe Energy, Inc. (CASE); (3) counsel for Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (collectively, Joint Petitioners); (4) counsel for the Applicant, Florida Power & Light Company (FPL); and (5) counsel for the NRC Staff. See Licensing Board Order (Setting Oral Argument) (Oct. 25, 2010) at 1 (unpublished).

The proceeding will commence at 9:00 AM, break at an appropriate time for lunch, and resume in the afternoon. We will adjourn no later than 5:00 PM.

The oral argument will proceed as follows. After the Licensing Board Chairman makes an introductory statement, the Board will hear argument on the petitions in the following order: (1) the Village's petition, (2) CASE's petition, and (3) Joint Petitioners' petition. The allocation of time for arguments is as follows, organized by each petition:

- (1) The Village -- 20 minutes (including rebuttal)
FPL and the NRC Staff -- 20 minutes (total for both participants)¹
- (2) CASE -- 60 minutes (including rebuttal)
FPL and the NRC Staff -- 60 minutes (total for both participants)
- (3) Joint Petitioners -- 80 minutes (including rebuttal)
FPL and the NRC Staff -- 80 minutes (total for both participants)

Designated participants shall address questions and concerns listed below and endeavor to answer any additional questions asked by the Board during the argument. Should it be necessary, the Board may grant a participant additional time if, in the Board's judgment, additional time is required for the Board to fully understand an issue. Otherwise, the time allocated for arguments on each petition will be strictly enforced. Accordingly, participants are urged to prepare answers that are responsive and concise.

A. The Village's Petition -- The following questions and areas of concern should be addressed by the Village, FPL, and the NRC Staff.

(1) In its Reply, the Village appears to argue principally that it intends to participate as an interested local governmental body pursuant to 10 C.F.R. § 2.315(c). Does this signal that the Village no longer is pressing for the admission of some or all of its contentions?

(2) Regarding Contention 1, please explain with specificity whether alleged attempts by state agencies to obtain information from FPL and alleged concerns held by state agencies regarding FPL's application satisfy the strict admissibility requirements in 10 C.F.R. § 2.309(f)(1).

(3) Regarding Contention 2, please explain with specificity whether this contention of omission satisfies the strict admissibility requirements in 10 C.F.R. § 2.309(f)(1).

¹ For their responses to each petition, FPL and the NRC Staff may arrange among themselves to divide their time as they see fit.

(4) Please explain with specificity whether the deficiencies alleged in Contention 3 are material to the findings the NRC must make in the license application process, and whether this contention otherwise satisfies the strict admissibility requirements in 10 C.F.R. § 2.309(f)(1).

B. CASE's Petition -- The following questions and areas of concern should be addressed by CASE, FPL, and the NRC Staff.

(1) Regarding Contention 1, which appears to consist of four discrete contentions challenging FPL's emergency plan, please discuss the material differences between the emergency plans currently on file with Miami-Dade County and the proposed plan in FPL's application, and please explain with specificity whether each of the alleged deficiencies in the latter satisfies the strict admissibility requirements in 10 C.F.R. § 2.309(f)(1)(v)-(vi).

(2) Regarding Contention 2, please explain with specificity whether the alleged deficiencies in FPL's proposed emergency plan satisfy the strict admissibility requirements in 10 C.F.R. § 2.309(f)(1)(iii)-(vi), focusing with particularity on (a) the alleged inaccuracy in the plan concerning population growth, (b) the alleged deficiency in the plan concerning evacuation relative to sheltering, and (c) the alleged failure of the plan to consider transient or seasonal populations. Please also explain with specificity whether FPL's plan for Units 6 & 7 may be deemed inadequate based on the conclusions in the document entitled "Evacuation Behavior in Response to Nuclear Power Plant Accidents."

(3) Regarding Contention 4, which raises issues relating to radiation exposure caused by a radiological accident, please explain with specificity whether the contention satisfies the strict admissibility requirements in 10 C.F.R. § 2.309(f)(1)(v)-(vi). Please also explain: (a) whether FPL (and ultimately the NRC) may appropriately rely on the analysis and findings in NUREG-1437 for this combined license application; and (b) whether CASE's challenge in its Reply to FPL's reliance on NUREG-1437 is timely.

(4) Regarding Contentions 6 and 7, which raise issues relating to the extended storage of low-level radioactive waste, please explain with specificity whether the contention satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1). On page 71 of FPL's Answer addressing Contention 7, FPL states that "regulations are in place to protect public health and safety and both FPL and Studsvik are bound to comply with those regulations." Please address whether the existence of regulations relieves an applicant of its duty to describe the "means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20" under 10 C.F.R. § 52.79(a)(3). Please address whether the existence of a letter from Studsvik for "up to one year" of storage plus an additional year of storage from Waste Control Specialists is sufficient to satisfy 10 C.F.R. § 52.79(a)(3). Please address whether the 10 C.F.R. § 50.59 process, reference to the framework of NUREG-0800, and the license amendment process demonstrate compliance with 10 C.F.R. § 52.79(a)(3) on a site-specific level. Finally, in light of the contingency element of the low-level radioactive waste storage plan, please address the adequacy of the planned two-year storage capability in relation to the timeframe required to implement the contingency plan.

(5) Regarding Contention 8, which deals with limited work authorization and is a new contention that CASE – without explanation – included in an amended petition that was submitted three days after the filing deadline, please address with specificity whether it is timely and, if it is timely, whether it satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1). If it is not timely, please address whether it satisfies the requirements of 10 C.F.R. § 2.309(c)(1).

C. Joint Petitioners' Petition -- The following questions and areas of concern should be addressed by Joint Petitioners, FPL, and the NRC Staff.

(1) Contention 1 (and its subparts) claims that FPL's application inadequately addresses impacts to salinity levels in groundwater and surface water arising from the construction and

operation of radial collector wells. Please address (a) how FPL arrived at the conclusions it drew regarding these impacts, and (b) what level of detail FPL is required to provide in its application regarding these matters. Because the ER should contain adequate information to aid the Commission in the performance of its NEPA analysis, what deference, if any, should be accorded to a representation by the NRC Staff that an ER is adequate to “aid” the Staff in the performance of its NEPA analysis before the Staff has completed its Draft Environmental Impact Statement? Please identify the adjudicative decision (Commission case law or federal appellate case law) that best supports your position regarding the appropriate level of detail that is required to aid the Commission in the performance of its NEPA analysis. Please explain with specificity whether the contention satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1).

(2) Contention 2 (and its subparts) claims that FPL’s application inadequately addresses impacts of Turkey Point’s proposed reclaimed wastewater system to groundwater, air, surface water, wetlands, and the Comprehensive Everglades Restoration Plan (CERP). Please address with specificity whether the contention satisfies the admissibility requirements of 10 C.F.R. § 2.309(f)(1). Joint Petitioners’ Reply (pp. 25-26) cites the United States Environmental Protection Agency’s “documentation of vertical migration of injected fluids” to support the argument that vertical migration of fluids at Turkey Point is reasonably foreseeable and thus needs to be studied in FPL’s ER. Please address whether the referenced document provides the requisite alleged facts or expert opinion necessary to support the claim that proposed Units 6 and 7 will result in the same environmental impacts. What kinds of impacts would FPL be required to study? Please address the criticism advanced in Joint Petitioners’ Reply (pp. 28-29) at the model used by FPL.

(3) Regarding Contention 3, in the same vein as the question asked about Contention 1, what level of detail in FPL's application is required to address the impacts from transmission lines on wetlands, wildlife, and CERP as outlined in Contention 3? Please identify the adjudicative decision (Commission case law or federal appellate case law) that best supports your position regarding the appropriate level of detail that is required. Please explain with specificity whether the contention satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1).

(4) Regarding Contention 4, which challenges the adequacy of the ER's consideration of the environmental impacts of constructing and operating access roads on wetlands and wildlife, please explain with specificity whether the contention satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1).

(5) Regarding Contention 5, what level of detail is required in evaluating alternatives to and mitigation commitments for the proposed transmission lines and access roads? Please identify the adjudicative decision (Commission case law or federal appellate case law) that best supports your position regarding the appropriate level of detail that is required. Please explain with specificity whether the contention satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1).

(6) Regarding Contention 6, which claims the ER fails adequately to address the cumulative impacts of proposed Units 6 and 7 on salinity levels in the waters surrounding Turkey Point, please explain with specificity whether the contention satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1).

(7) Regarding Contention 8, which raises issues regarding whether the ER adequately addresses the need for power, please explain with specificity whether the contention (and its subparts) satisfies the strict admissibility requirements of 10 C.F.R. § 2.309(f)(1). Please

address the assertion in Joint Petitioners' Reply (p. 94) that a petitioner who challenges an applicant's "need for power" analysis is not obliged to conduct its own cost-benefit analysis of need for power to support its contention. Please address the materiality of the assertion in Joint Petitioners' Reply (p. 99) that the reference in FPL's ER to an old Demand Side Management framework renders it neither systematic nor comprehensive.

Participants should be aware that the above questions and areas of concern are not all-inclusive, and the Board may inquire into other matters raised in the parties' pleadings. In preparing answers, participants should keep in mind that the Board has read their pleadings. Therefore, participants should not merely repeat what has been submitted in their written pleadings, but should endeavor to provide answers that are responsive to the Board's written questions and other questions asked during the argument. Participants will not be permitted to present new or materially different arguments or supporting documentation at the argument.²

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 8, 2010

² For the benefit of participants who are not attorneys, the Licensing Board will not entertain objections to, or interruptions of, a participant's presentation of oral argument from other participants.

³ Copies of this order were sent this date by the agency's e-filing system to: (1) counsel for Joint Petitioners; (2) counsel for Petitioner Village of Pinecrest; (3) Barry J. White; (4) counsel for Applicant FPL; and (5) counsel for the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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Florida Power & Light Company) Docket Nos. 52-040 and 52-041-COL
(Juno Beach, Florida))
)
(Turkey Point, Units 6 & 7))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Outlining Format and Questions for Oral Argument) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 52-040 and 52-041-COL
ORDER (Outlining Format and Questions for Oral Argument)

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 8th day of November 2010.