

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 52-040-COL
)	52-041-COL
(Turkey Point Units 6 and 7))	
)	ASLBP No. 10-903-02-COL
(Combined License))	

**Citizens for Safe Energy, Inc. response to Florida Power & Light Company’s
Motion to Strike Proposed Contention 8 in CASE’s Revised Petition to Intervene
in Turkey Point Units 6 and 7 Combined Construction and
Operating License Application**

On September 13, 2010 Florida Power & Light Company (FPL) filed a Motion to Strike Contention 8 which was included in the Citizens Allied for Safe Energy, Inc. (CASE) Revised Petition to Intervene In Turkey Point Units 6 and 7 Combined Construction and Operating License Application filed on August 20, 2010 but which was not included in the Original Petition which, due to circumstances described below, was sent as an email on August 17, 2010 and which was filed through the EIE system on August 18, 2010. CASE acknowledges this fact but submits that the omission of Contention 8 from the Original Petition was a clerical error that resulted from a technical failure of the NRC electronic filing system that was beyond CASE’s control. Contention 8 was inadvertently left out of the Original Petition filed due to the need to hastily compile the final petition for filing before midnight that day. It was very close to the midnight filing

deadline when the Petitioners realized that the EIE system was unavailable (frozen). The failure of the EIE system on the evening of August 17th was verified at that time by allies in North Carolina and in Washington, DC and by repeated efforts by CASE in Miami to access the system. Given the inability to file its petition through the EIE system CASE emailed the Original Petition to Mr. Emile Julian in the Office of the Secretary at 11:56 PM on August 17, 2010.

The final form of Contention 8 was set at 11:00 PM on August 17, 2010 and was not changed or revised before its inclusion in the Revised Petition, which was filed on August 20, 2010, and FPL in its Motion does not allege such a change or revision. CASE hereby requests that Contention 8 be recognized and that it be admitted for consideration in these proceedings.

BACKGROUND

On August 17, 2010 CASE began submitting documents through the EIE system during the day. Exhibit 1 - List of EIE Filings shows the CASE filed two documents on the 17th, one at 10:20:37 (ML102290128) and one at 18:52:57 (ML102290605). At about 10:30 PM on August 17, 2010 CASE was ready to compile and to file the Petition to Intervene. However, an attempt to access the EIE system at that time was unsuccessful. At first, it was suspected that there might be a problem with the computer being used but unsuccessful attempts by our associates in other cities to access the EIE system indicated that the System was not available. Considerable time was use in these inquiries. This

effort was documented in an email to Mr. Emile L. Julian, Assistant for Rulemakings And Adjudication, Office of the Secretary, NRC, (Exhibit 2 - Email to Mr. Emile Julian 08/17/2010,) which was sent at 11:56 PM on August 17, 2010 with the Original Petition To Intervene attached. Subsequently, we learned that a large and possibly incorrectly submitted petition by another agency might have caused the system to be unavailable. Mr. Julian acknowledged receipt of that email in a message distributed to all parties to these proceedings on September 17, 2010 (Exhibit 3 – Email from Mr. Emile Julian on 09/17/2010). In this regard, Exhibit 1 does show a document (ML102290611) filed at 22:20:41(10: 22 PM) on August 17, 2010 by Mindy Goldstein of SACE. No additional documents were filed after that until CASE filed its Revised Petition at 11:25:58 the next day, August 18, 2010. Being concerned that we would not make the midnight filing deadline we also left messages on the Meta Systems Help Desk telephone voice mail (1-866-672-7640) between 10:30 PM and midnight stating that we could not access the EIE filing system; the Help Desk closes from 8PM to 8AM. In the rushed effort and concern to be sure that CASE filed before midnight on August 17, 2010, Contention 8 was left off of the Original Petition. Contention 8, which had been sent to Miami from Savannah in its final form at 11:00 PM that evening, August 17, 2010, (Exhibit 4 – Email from Mary Olson), was added to the Revised Petition without change.

DISCUSSION

The form of Contention 8 as submitted on August 20, 2010 was not altered from the final draft as it was at 11 PM on August 17, 2010 and the FPL motion does not allege a change or revision. Rather, the FPL Motion states that CASE raised a new claim (Contention 8) and that CASE did not provide the basis doing so in the Revised Petition.

CASE does not deny that Contention 8 was not included in the Original Petition. However, 10 C.F.R. § 2.309(c)(1) provides that non-timely contentions will not be entertained absent a determination by the Board that the contentions should be admitted based upon a balancing of the following factors:

- (i) Good cause, if any, for the failure to file on time

CASE contends that the unavailability of the EIE system after 22:20:41 on August 17, 2010 due to the action of other parties made timely filing of the CASE Petition to Intervene impossible and that the resulting rush to compile and file the petition on time occasioned a clerical error, to wit, the omission of Contention 8 from the Original Petition. CASE believes the criteria of good cause has been met since the causal event in this matter, i.e. the unavailability of the EIE system, was out of its control.

CONCLUSION

For the foregoing reasons, FPL's motion should be denied and CASE's Contention 8 and its related Exhibit 1 should be admitted for good cause.

Respectfully submitted this 20th day of September, 2010.

_____/signed (electronically) by/_____

Barry J. White

Citizens Allied for Safe Energy, Inc.

10001 SW 129 Terrace

Miami, FL 33176

(305) 251-1960

Email: bwtamia@bellsouth.net

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

)
In the Matter of)

)
Florida Power & Light Company)

)
Combined License Application for)
Turkey Point Units 6 & 7)
_____)

) Docket No. 52-040 and 52-041

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Citizens for Safe Energy, Inc. response to Florida Power & Light Company's Motion to Strike Proposed Contention 8 in CASE's Revised Petition to Intervene in Turkey Point Units 6 and 7 Combined Construction and Operating License Application** was served upon the following persons by Electronic Information Exchange and/or electronic mail:

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16 C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
Washington, DC 20555-01
E. Roy Hawkens

Administrative Judge, Chair
E-mail: erh@nrc.gov
Dr. Michael F. Kennedy
Administrative Judge
E-mail: michael.kennedy@nrc.gov
Dr. William C. Burnett
Administrative Judge
E-mail: wxb2@nrc.gov
Josh Kirstein, Law Clerk, ASLBP
E-mail: josh.kirstein@nrc.gov

U.S. Nuclear Regulatory Commission
Office of General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
Marian Zabler, Esq.
Sara Kirkwood, Esq.
Patrick Moulding, Esq.
Sara Price, Esq.
Joseph Gillman, Paralegal
E-mail: marian.zabler@nrc.gov;
sara.kirkwood@nrc.gov; sap1@nrc.gov;
patrick.moulding@nrc.gov; jsg1@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16 C1
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

Counsel for the Applicant
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, NW
Washington, DC 20037-1122
Alison M. Crane, Esq.
John H. O'Neill, Esq.
Matias F. Travieso-Diaz, Esq.
E-mail: alison.crane@pillsburylaw.com;
john.oneill@pillsburylaw.com; matias.travieso-diaz@pillsburylaw.com

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
Mitchell S. Ross, Vice President and General
Nuclear
E-mail: mitch.ross@fpl.com
Florida Power & Light Company
801 Pennsylvania Ave. NW, Suite 200
Washington, DC 20004
Steven C. Hamrick, Esq.
Antonio Fernandez, Esq.
E-mail: steven.hamrick@fpl.com;
antonio.fernandez@fpl.com

Counsel for Mark Oncavage, Dan Kipnis, Southern Alliance for
Clean Energy, and National Parks Conservation Association
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road, SE
Atlanta, GA 30322
Lawrence D. Sanders, Esq.
Mindy Goldstein, Esq.
E-mail: lsande3@emory.edu; magolds@emory.edu

Counsel for the Village of Pinecrest
Nabors, Gablin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
William C. Garner, Esq.
Gregory T. Stewart, Esq.
E-mail: bgarner@ngnlaw.com;
gstewart@ngnlaw.com

Everglades Law Center
3305 College Avenue
Ft. Lauderdale, FL 33314
Richard Grosso, Esq.
Jason Totoiu, Esq.
E-mail: richard@evergladeslaw.org;
jason@evergladeslaw.org

Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
E-mail: lsande3@emory.edu