

RAS#UU-04

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Florida Power and Light
Turkey Point Units 6 & 7

DOCKETED
USNRC

October 13, 2010 12:30 pm

Docket Number: 52-040-COL, 52-041-COL

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Location: (telephone conference)

Date: Thursday, October 7, 2010

Work Order No.: NRC-483

Pages 1-17

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

Template= SECH-032

DS03

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

On Behalf of the U.S. Nuclear Regulatory
Commission:

SARAH PRICE, ESQ.

RUSSELL CHAZELL, ESQ.

U.S. Nuclear Regulatory Commission

Office of General Counsel

Mail Stop - 0-15 D21

Washington, D.C. 20555

On Behalf of the Village of Pinecrest:

WILLIAM GARNER, ESQ.

Of: Nabors, Giblin & Nickerson, PA

1500 Mahan Dr.

Suite 200

Tallahassee, FL. 32308

Tel: (850) 224-4070

Fax: (850) 224-4073

On Behalf of Florida Power & Light:

ANTONIO FERNANDEZ, ESQ.

of: Florida Power & Light

700 Universe Boulevard

Mail Stop: LAW/JB

Juno Beach, Florida 33408

Tel: (561) 304-5288

1 On Behalf of Florida Power & Light: (cont.)

2 JOHN O'NEILL, ESQ.

3 of: Pillsbury Winthrop Shaw Pittman, LLP

4 2300 N Street, NW

5 Washington, DC 20037

6 Tel: (202) 663-8148

7 Fax: (202) 663-8007

8 On Behalf of the Joint Petitioners:

9 RICHARD GROSSO, ESQ.

10 JASON TOTOIU, ESQ.

11 of: Everglades Law Center

12 Shepard Broad Law Center

13 Nova Southeastern University

14 3305 College Avenue

15 Ft. Lauderdale, FL 33314

16 Tel: (954) 262-6140

17 Fax: (954) 262-3992

18 MINDY GOLDSTEIN, ESQ.

19 of: Turner Environmental Law Clinic

20 Emory University School of Law

21 1301 Clifton Road

22 Atlanta, GA 30322

23 Tel: (404) 727-5542

24 Fax: (404) 727-7851

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P R O C E E D I N G S

2:02 P.M.

CHAIR HAWKENS: This case is Florida Power & Light Company, Turkey Point, Unit 6 and 7, Docket No. 52040COL and Docket No. 52041COL.

My name is Roy Hawkens. I'm the chairman of this Licensing Board and my two fellow Judges are Dr. Michael Kennedy and Dr. William Burnett.

I'm also accompanied this afternoon by our law clerk who I believe the parties have been in communication with, Josh Kirstein, and our administrative assistant, Ms. Karen Valloch.

Will the counsel for the parties please identify themselves and their colleagues who are on the line?

Let's start with the Applicant.

MR. FERNANDEZ: Antonio Fernandez and John O'Neill for the Applicant, Florida Power & Light.

CHAIR HAWKENS: Thank you. NRC staff?

MS. PRICE: Sarah Price with Russ Chazell for the NRC staff.

CHAIR HAWKENS: Thank you. Village of Pinecrest.

MR. GARNER: This is Bill Garner with the firm of Nabors, Giblin and Nickerson for the Village

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of Pinecrest.

2 CHAIR HAWKENS: Case?

3 MR. WHITE: Thank you, Barry White.

4 CHAIR HAWKENS: And finally the Joint
5 Petitioners?

6 MR. GROSSO: Richard Grosso with the
7 Everglades Law Center and I'm joined by --

8 MR. TOTOIU: Jason Totoiu with the
9 Everglades Law Center.

10 MS. GOLDSTEIN: Mindy Goldstein with the
11 turner Environmental Law Clinic.

12 CHAIR HAWKENS: Anybody else from the
13 Joint Petitioners?

14 MS. GOLDSTEIN: That's it.

15 CHAIR HAWKENS: All right. Thank you.
16 When you do speak, please identify yourself for the
17 benefit of the court reporter.

18 The purpose of the conference call is to
19 discuss setting a date for oral argument on contention
20 admissability. And our law clerk has canvassed the
21 parties as to their availability and the news is not
22 good. There's really no date that will not impose a
23 difficulty on someone. So our job here is to try to
24 find a date, number one, when we're going to try to
25 use as a venue the City Hall in Homestead and that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 one criteria driving this.

2 The other is to put the least burden on
3 the parties and unfortunately in the five and a half
4 weeks that we look forward toward in October and
5 November to try to come up with a date, there was no
6 date when everybody was available with the exception
7 of one. That was the 26th of October and regrettably
8 Judge Burnett is going to be on a business trip in
9 Rome, Italy for that entire week.

10 So as I said, what I've looked at is to
11 try to make this to impose the least difficulty on
12 people and I've come up with four dates in November
13 when the City Hall as of now is available and only two
14 parties expressed a difficulty in making it.

15 Those dates are Friday, the 5th of
16 November; Monday, the 8th of November; Monday, the
17 15th of November; and Friday, the 19th of November.
18 On that first Friday, Friday, the 5th, according to
19 our notes, all the Petitioners would be available, but
20 Florida Power & Light and the staff both expressed a
21 difficulty in making it. Does that remain correct,
22 Florida Power & Light and staff?

23 MR. FERNANDEZ: Yes, Your Honor.

24 CHAIR HAWKENS: I understand it would not
25 impose an insurmountable difficulty, but it would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 nevertheless pose a difficulty. Is that correct?

2 MR. FERNANDEZ: That is correct for the
3 Applicant, Your Honor.

4 MS. PRICE: Correct, for the NRC staff.

5 CHAIR HAWKENS: All right, thank you. On
6 the Monday, the 8th, I have the two entities who
7 expressed difficulty would be the Village of Pinecrest
8 and Florida Power & Light.

9 Does that remain correct, for both
10 Pinecrest and FPL?

11 MR. FERNANDEZ: This is Antonio Fernandez
12 for the Applicant again, that remains correct, Your
13 Honor.

14 MR. GARNER: This is Bill Garner for
15 Pinecrest. Actually, the 8th is the most preferable
16 date for our representative who is going to appear.

17 CHAIR HAWKENS: Oh, and this is the
18 Village of Pinecrest. That would not pose a
19 difficulty for Pinecrest on Monday, the 8th of
20 November, is that correct?

21 MR. GARNER: Correct.

22 MR. GROSSO: Richard Grosso here, for the
23 Joint Petitioners. That is a difficult date for us,
24 too. I don't think we could do that date. To be
25 clear, I think if we're talking about the 8th of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 November right now?

2 CHAIR HAWKENS: Correct. Okay, so now
3 that would pose a difficulty for Joint Petitioners and
4 FPL. That would not be the optimal date shall we say
5 for them.

6 Let's move on to the 15th. Our notes
7 indicated that Village of Pinecrest and the NRC staff
8 indicated that would not be a preferred date. Does
9 that remain true for both Pinecrest and the NRC staff?

10 MR. GARNER: That's true.

11 CHAIR HAWKENS: And likewise for Friday,
12 the 19th of November, the Village of Pinecrest and the
13 NRC staff indicated it would be difficult.

14 MR. GARNER: This is Bill Garner for the
15 Village. In the correspondence I have, the email
16 correspondence, the 12th was referred to rather than
17 the 19th. And so I am not aware of what availability
18 our representative has on the 19th.

19 CHAIR HAWKENS: Is that Mr. Garner?

20 MR. GARNER: Yes, that's correct.

21 CHAIR HAWKENS: Would you be presenting
22 the oral argument, Mr. Garner?

23 MR. GARNER: No, another lawyer in our
24 firm named Greg Stewart would be doing the oral
25 argument.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIR HAWKENS: All right. Okay, well,
2 those are the four dates that would inconvenience the
3 fewest people. You know who you are that's
4 inconvenienced, but we would nevertheless like to hold
5 an oral argument. We think there are questions that
6 should be probed and if they could be most efficiently
7 probed during an oral argument.

8 So let me -- let's talk about the -- well,
9 Florida Power & Light and the staff on the 5th. Is
10 that a date --

11 MR. FERNANDEZ: Your Honor, if I may
12 address --

13 CHAIR HAWKENS: Nevertheless, send a
14 representative to argue?

15 MR. FERNANDEZ: This is Antonio Fernandez
16 for the Applicant. On the 5th and the 8th, depending
17 on what matters are set for argument by the Board, and
18 since the Board has only addressed a one-day schedule,
19 we assume that we're not going to be arguing the
20 entirety of the filings before the Board. It will
21 depend on what issues are set for argument, whether
22 that ultimately is not a good day for us or not.

23 Our primary issue during some of the dates
24 is unavailability of certain counsel that would be
25 presenting argument on a particular contention. If we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 had more clarity as to what issues are going to be set
2 for argument, we might be able to open that date up as
3 a viable alternative.

4 CHAIR HAWKENS: I understand, Mr.
5 Fernandez. I'm afraid that we're going to have to
6 again establish a date without providing that
7 information. The parties are going to have to be
8 prepared to answer to the best of their ability the
9 questions that are posed to them on that date. I can
10 tell you that prior to the argument, the Court would
11 be providing counsel with particular issues they are
12 most interested in or questions relating to issues so
13 that counsel can be prepared to answer those items of
14 interest.

15 However, as in any oral argument, the
16 counsel appearing will be encountering questions they
17 may not have anticipated and they simply will have to
18 answer to the best of their ability.

19 MR. FERNANDEZ: And given that possibility
20 our availability is preferred -- we would expect an
21 accommodation for the November 15th or November 19th.
22 Those are the two dates that would work best for the
23 Applicant.

24 MR. O'NEILL: Judge Hawkens, this is John
25 O'Neill.

1 CHAIR HAWKENS: Yes, sir, Mr. O'Neill.

2 MR. O'NEILL: Just to put it clear, I
3 don't think I've ever done this, but those two dates
4 do not work for me and I'm lead outside counsel for
5 FPL and to be clear, I am on my 40th wedding
6 anniversary cruise with my wife through those two
7 days.

8 CHAIR HAWKENS: In light of that move to
9 the 15th and 19th, where the 19th Village of Pinecrest
10 said he was not aware of the availability of counsel,
11 but for both of those dates the NRC staff had
12 expressed difficulty.

13 Staff, given that of those four days,
14 those are the only two days that FLP's lead counsel
15 would be available, would the staff be available to
16 provide a representative on either of those two days?

17 MS. PRICE: We're talking about the 15th
18 and the 19th?

19 CHAIR HAWKENS: Correct.

20 MS. PRICE: We're looking into whether or
21 not someone is available on the 19th. There are three
22 of us and two will not be available on the 15th. At
23 least one will not be available on the 19th. But
24 we're looking into the other one. The 19th was --

25 CHAIR HAWKENS: That sounds promising.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 What I'm hearing is that there will be a
2 representative available on both days?

3 MS. PRICE: There is someone who will be
4 around, yes.

5 CHAIR HAWKENS: Bravo.

6 MS. PRICE: We have the same issue that
7 the Applicant has in that we separated out the work so
8 that it's -- there will certainly be questions that
9 come up on something that we're not as familiar with
10 as we would like to be.

11 CHAIR HAWKENS: I do understand and the
12 petitions received have been lengthy and dense, so I
13 can understand the desire to have somebody there who
14 is prepared.

15 Village of Pinecrest?

16 MR. GARNER: Yes, Your Honor.

17 CHAIR HAWKENS: Looking at the 15th and
18 the 19th --

19 MR. GARNER: I'm certain that Mr. Stewart
20 is unavailable on the 15th. I'm uncertain about the
21 19th. There is a chance that he is available on the
22 19th, so between the two, we would prefer the 19th.

23 MR. GROSSO: Your Honor, Richard Grosso
24 for the Joint Petitioners, and we are available the
25 15th. And the 19th was news to us, but I think we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 could make that work also.

2 CHAIR HAWKENS: All right. And getting
3 back to the Village, Mr. Garner, can you please repeat
4 what you said? I wasn't clear. It sounded like you
5 thought somebody would be available on the 19th. It
6 wasn't clear to me about the 15th.

7 MR. GROSSO: I said that we would prefer
8 the 19th only because we know for certain that Mr.
9 Stewart is not available on the 15th, but there's a
10 chance that he may be on the 19th. I would have to
11 check that.

12 CHAIR HAWKENS: All right.

13 MR. GROSSO: So between the two I would
14 have to pick the 19th.

15 CHAIR HAWKENS: And what is Mr. Stewart's
16 status?

17 MR. GROSSO: He's been designated in our
18 petition as the Village's representative.

19 CHAIR HAWKENS: Okay.

20 MR. WHITE: This is Barry White with
21 Case.

22 CHAIR HAWKENS: Yes, Mr. White.

23 MR. WHITE: Generally, all the dates are
24 available. However, if there's any leaning toward the
25 5th, that would be the most desirable for us.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIR HAWKENS: It looks, Mr. White, as if
2 the 15th and 19th, the center of gravity seems to be
3 there at this point and the Licensing Board is going
4 to go off line for a couple of minutes. We will
5 return. I'll let you know when we return.

6 (Off the record.)

7 CHAIR HAWKENS: Chad, this is Judge
8 Hawkens, we're back on line, back on record.

9 COURT REPORTER: Okay.

10 CHAIR HAWKENS: Having gotten the
11 information from the parties what the Licensing Board
12 is going to do is ask its law clerk to touch base.
13 The 19th and the 15th seem to be the two dates that we
14 should be targeting based on availability, least
15 difficulty on the parties, with the 19th, I believe,
16 being the preferred as between those two dates and the
17 15th being a backup. And so what Josh will be doing
18 is touching base with the City Hall of Homestead,
19 expressing a preference for the 19th. If that doesn't
20 work, trying for the 15th.

21 And I contemplate finishing oral argument
22 in one day and as I said we would be providing
23 information to the parties beforehand as far as issues
24 that seem to us to have most significance and
25 questions within those issues that have the most

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 significance.

2 We're contemplating starting around 9,
3 9:30, breaking for lunch and then continuing until
4 about 4 or 4:30 although we have to again ensure that
5 City Hall can accommodate us during that time frame.

6 MR. GROSSO: Your Honor, may I ask a quick
7 question, Richard Grosso of the Joint Petitioners. I
8 took it from a brief question and answer a few minutes
9 ago that the Board would contemplate that different
10 attorneys representing the same party could
11 participate in the oral argument, i.e., one attorney
12 handle one contention or set of contentions, and a
13 second attorney handle another. Is that correct?

14 CHAIR HAWKENS: Typically -- this is Mr.
15 Grosso?

16 MR. GROSSO: Yes, sir.

17 CHAIR HAWKENS: Typically, in oral
18 arguments, the Board prefers to hear from a single
19 attorney unless the attorneys have worked out the --
20 the parties have worked out among themselves agreement
21 that certain attorneys can handle certain issues.

22 I would have no problem if the parties,
23 and I will start this case off saying that I prefer,
24 far prefer when the parties are able to work out these
25 procedural issues among themselves, so in answer to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 your question, the Board ordinarily would contemplate
2 a single attorney. Here, we have three lengthy
3 petitions, I could well understand why either FPL or
4 the NRC staff might prefer to have one attorney
5 addressing one petition and another attorney
6 addressing another petition, for example. I would
7 like again to have them work that out with the other
8 parties and if the other parties express no
9 disagreement, the Board would have no disagreement.

10 Likewise, if a Petitioner would like to
11 have different individuals address different parts of
12 their petitions, if the other parties had no
13 disagreement to that, the Licensing Board would not
14 either.

15 MR. GROSSO: Thank you.

16 CHAIR HAWKENS: Does that answer your
17 question, Mr. Grosso?

18 MR. GROSSO: It did. Thank you.

19 CHAIR HAWKENS: Does any other party have
20 any questions for us at this time or any other issue
21 they want to raise?

22 NRC staff?

23 MS. PRICE: No, Your Honor.

24 CHAIR HAWKENS: FPL?

25 MR. FERNANDEZ: Nothing from us, Your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Honor.

2 CHAIR HAWKENS: All right, Village?

3 MR. GARNER: No, Your Honor.

4 CHAIR HAWKENS: Joint Petitioners?

5 MR. GROSSO: I'll invite my co-counsel to
6 weigh in, but I do not, speaking for Mr. Grosso.

7 CHAIR HAWKENS: And Mr. White?

8 MR. WHITE: No objections. Thank you.

9 CHAIR HAWKENS: All right, thank you very
10 much. We will look into scheduling this and we will
11 get back to you just as soon as we have further
12 information. Thank you very much.

13 (Whereupon, at 2:24 p.m., the
14 teleconference was concluded.)

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission

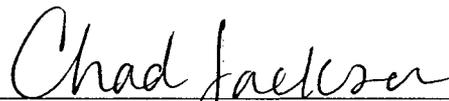
in the matter of: Florida Power & Light
Turkey Point Units 6&7

Name of Proceeding: Pre-Hearing Conference

Docket Number: 52-040-COL, 52-041-COL

Location: (teleconference)

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.



Chad Jackson
Official Reporter
Neal R. Gross & Co., Inc.