

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

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

**JOINT PETITIONERS' MOTION REGARDING
APPEARANCES BY STUDENT ATTORNEYS**

Pursuant to 10 C.F.R. § 2.323, petitioners in the above-captioned Combined License (“COL”) proceeding, Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (collectively, “Joint Petitioners”), hereby move this Atomic Safety and Licensing Board to allow student attorneys from the Turner Environmental Law Clinic at Emory University’s School of Law, under the supervision of Lawrence Sanders and Mindy Goldstein, to appear before it in any evidentiary hearing or prehearing conference related to this COL proceeding, including participating in oral argument at the initial pre-hearing conference to be held at the City of Homestead City Hall on November 19, 2010.

The Turner Environmental Law Clinic (the “Clinic”) is currently staffed in part by second and third-year student attorneys. The Clinic’s mission is to train law students to be effective environmental attorneys with high ethical standards. In furtherance of missions similar to the Clinic’s, all states recognize the ability of law students to represent clients in court under the direct supervision of a licensed attorney.¹ Because most state rules do not govern appearances in administrative proceedings, *see e.g.* O.C.G.A. §§ 15-18-22, 17-12-43 (2006), decisions of whether to allow students to appear before administrative agencies are often made on an ad hoc basis.

Although it is widely accepted practice before other judicial bodies, the regulations governing Nuclear Regulatory Commission administrative hearings do not specifically address whether a law student under the supervision of a licensed attorney may appear before an Atomic Safety and Licensing Board (“ASLB”) panel. Instead, the presiding officer of the ALSB has broad discretion to administer the hearing in the manner he chooses, so long as it promotes impartiality and fairness and is in accordance with the Atomic Energy Act of 1954, the corresponding regulations, and the Administrative Procedures Act. 10 C.F.R. § 2.319(r). Thus, while it is clear that an institution may be represented at a hearing before an ASLB panel by a “duly authorized member or officer, or by an attorney-at-law,” *id.* § 2.314(b), the presiding officer may also permit student attorneys, under the supervision of a licensed attorney, to appear before the ASLB.

Indeed, an ASLB panel has previously allowed student attorneys from the Clinic to appear before it in evidentiary and pre-hearing conferences, finding that allowing “student attorneys to appear before the Board under the supervision of [licensed attorneys] would not

¹ Cheri Wyron Levin, *The Doctor Is In: Prescriptions for Teaching Writing in a Live Client In-House Clinic*, 15 CLINICAL LAW REVIEW 157, 160 n.27 (2008) (internal citations omitted).

interfere with the Board's ability to conduct a fair and impartial hearing in accordance with applicable law." Memorandum and Order Regarding Appearances by Student Attorneys at 2. *In Re Southern Nuclear Operating Co. (Vogtle ESP Site)*. NRC 52-011-ESP (January 27, 2009).²

Accordingly, Joint Petitioners respectfully request the Board's permission to allow Clinic student attorneys, under the supervision of Lawrence Sanders and Mindy Goldstein, to appear before it in any evidentiary hearing or pre-hearing conference related to the Turkey Point COL proceeding. Pursuant to 10 C.F.R. § 2.323(b), Joint Petitioners have contacted counsel for Florida Power and Light Company, NRC staff, and the other petitioners in this proceeding regarding this request, and none has objected.³

² In the Vogtle proceeding, the Clinic moved only to admit the appearance of third-year law students; the ASLB granted the request. In this Motion, Joint Petitioners request that the Board exercise its broad discretion to allow both second-year and third-year law students to appear. In the event the Board decides that the appearance of second-year law students would interfere with its ability to conduct a fair and impartial hearing in accordance with applicable law, Joint Petitioners respectfully request that the Board still allow third-year students to appear. As noted above, such an appearance is in accordance with state law and previous NRC practice.

³ In giving its consent to this Motion, FPL made the following two caveats: (1) all student attorney must adhere to the standards of practice set forth in 10 C.F.R. §2.314, and (2) no more than one student attorney may appear before the Board for each contention (in other words, one contention cannot be subdivided so that several students appear before the Board regarding that single contention).

Respectfully submitted this 13th day of October, 2010.

/signed (electronically) by/

Lawrence D. Sanders, Esq.
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
(404) 712-8008
Email: lawrence.sanders@emory.edu

/signed (electronically) by/

Mindy Goldstein, Esq.
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
(404) 727-3432
Email: mindy.goldstein@emory.edu

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION REGARDING APPEARANCE OF STUDENT ATTORNEYS** 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
Office of General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
Marian Zobler, Esq.
Sara Kirkwood, Esq.
Patrick Moulding, Esq.
Sara Price, Esq.
Joseph Gillman, Paralegal
E-mail: marian.zobler@nrc.gov;
sara.kirkwood@nrc.gov; sap1@nrc.gov;
patrick.moulding@nrc.gov; jsg1@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

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

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

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

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

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

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
Mitchell S. Ross, Vice President and General
Counsel – 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 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

Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, FL 33176
Barry J. White
E-mail: bwtamia@bellsouth.net

Dated: October 13, 2010

/signed (electronically) by/

Lawrence D. Sanders
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Phone: (404) 712-8008
Fax: (404) 727-7851
Email: lsande3@emory.edu