

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 Nos. 52-040-COL  
) 52-041-COL  
(Turkey Point Units 6 and 7) )  
) ASLBP No. 10-903-02-COL  
(Combined License) )  
October 22, 2010

**Citizens Allied For Safe Energy Answer In Opposition to Florida Power & Light  
Motion To Strike Portions of CASE’s Reply to FPL’s Answer To CASE’s  
Answer to Florida Power & Light Company’s Answer Opposing  
Revised Petition to Intervene and Request For Hearing**

INTRODUCTION

On October 12, 2010 Florida Power & Light Company (“FPL”) moved to strike portions of the “Reply to Florida Power & Light Company’s Answer Opposing Citizens Allied for Safe Energy, Inc.’s Revised Petition to Intervene and Request for Hearing in Turkey Point Units 6 and 7 Combined Construction and Operating License Application” (“CASE’s Reply”) filed by Petitioner Citizens Allied for Safe Energy, Inc. (“CASE”) in this proceeding on September 30, 2010. In that motion FPL stated: *“CASE’s Reply raises entirely new issues and makes factual claims not found in CASE’s August 20, 2010 “Petition to Intervene and Request for Hearing” (“CASE’s Revised Petition”). CASE’s Reply provides no basis for*

*accepting such late-filed amendments to CASE's contentions, as required by 10 C.F.R. §§ 2.309(c) and (f)(2). Accordingly, the portions of CASE's Reply containing new, late-filed issues and claims must be stricken, together with the materials offered by CASE in support of them."*

CASE opposes the FPL Motion and urges the Board to consider all information offered.

## BACKGROUND

Citizens Allied for Safe Energy, Inc./CASE is a Florida non-profit corporation which advocates safe, renewable, sustainable energy sources and distributed energy production in South Florida. CASE has no paid staff; all work is done by active members, advisors and expert witnesses on a volunteer basis. CASE has filed pro se on behalf of its members who live near the proposed reactors in these proceedings.

In its October 12, 2010 motion, FPL cites several parts of NRC regulations and several cases to support its position that CASE, in its September 30, 2010 filing, has introduced new contentions and has attempted to "reinvigorate thinly supported contentions by presenting entirely new arguments in the reply briefs" (at 5). Further, FPL contends: "... CASE does not limit itself to defending the adequacy of its contentions as pled in its Revised Petition. Rather, CASE makes new allegations to bolster its contentions and attaches four new exhibits, all raising issues and making claims nowhere to be found in the Revised Petition. "

CASE respectfully disagrees. For the reasons set forth below, the Motion to Strike should be denied.

## ARGUMENT

On September 17, 2010, in its Order Granting, In Part, Joint Petitioners' and CASE's Motions for Extension of Time, the Atomic Safety And Licensing Board wrote at 3:

*"... to the extent the additional preparation time facilitates petitioners' ability to file well-organized, well-written, and responsive replies, the extension will inject significant efficiencies in the Board's decision-making process".*

CASE took this direction as a charge to respond diligently and pointedly to objections and concerns raised by FPL. It was, and is, not CASE's purpose or intention to raise new issues; no additional contentions were made in CASE's reply. No new issues or allegations were raised. Rather, as the Board requested, facts and information which spoke directly to the issues in the various contentions were presented to clarify issues raised by FPL's response to CASE's original contentions. FPL's challenges will be discussed below for each contention; the basic message and concern of each contention was not changed in CASE's reply.

The assertion by FPL that CASE's contentions are "thinly supported" and, by implication, require additional facts and citations to support them, seems specious since FPL, in its filing on September 13, 2010 found the CASE revised petition strong enough to oppose the entire filing in the very title of the motion thereby obviating the possibility that CASE could present any fact, idea, opinion or suggestion which might be of benefit or value in the review of and planning for the entire Turkey Point 6 & 7 project. And, just to be sure FPL's negative position was affirmed, it challenged the credentials of every expert witness at some point in its reply. CASE's contentions were well made and well supported and are worthy of consideration by all parties involved in the review of the proposed enterprise. CASE's expert witnesses are well qualified, respected and leading

professionals in their respective fields.

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## **CASE RESPONSE TO EACH CONTENTION CHALLENGE**

### **CONTENTION 1 -- FAILURE AND OMISSION OF THE FPL COL FOR THE PROPOSED TURKEY POINT NUCLEAR REACTORS 6&7 TO PROVIDE FOR AN ADEQUATE PUBLIC SAFETY PLAN**

FPL states:

*As presented in the Revised Petition, the focus of Contention 1 is an unspecified “emergency plan on file with Miami-Dade County” (Revised Petition at 11), which CASE claims contains certain deficiencies. Contention 1, as submitted, does not challenge any aspect of the Turkey Point Plant Radiological Emergency Plan For Turkey Point Units 6 & 7, included in Part 5 of the Application, nor does it challenge the State of Florida Radiological Emergency Management Plan nor its Annex A, Appendix II, Turkey Point Nuclear Power Plant Site Plan. The contention also does not even mention, let alone challenge, the Evacuation Time Estimates (“ETE”) Report prepared in support of the Application.*

*In its Reply, CASE presents an entirely new analysis, apparently prepared by Dr. Philip Stoddard, professor of biology at Florida International University. CASE’s Reply at 16. In this analysis, CASE adds nearly thirty new claims, including among others challenges to the ETE, impacts of the timing of containment failure and wind speed, shelter capacity, KI issues, alleged threats to the health of pregnant women, unborn babies and children, and efficacy of sheltering.*

CASE Reply:

CASE initially contended that the time for evacuating people from the area surrounding Turkey Point was not sufficient to ensure their safety in the event of a General Nuclear Emergency. FPL criticized Dr. Stoddard's contention, objecting that he did not cite particular documents in substantiating the points he made. Some of those documents, FPL observed, had deliberately been made inaccessible to the public. To construct CASE's reply, CASE obtained and cited those documents to show that FPL's own figures substantiated the same points made in CASE's initial contention. CASE considers its presentation of facts in FPL's own documents (evacuation time estimates) to be fair cross-examination of evidence FPL raised in its initial rebuttal to CASE's Contention 1:

“Thus, CASE provides no factual support for its claim that evacuation of affected individuals could not be achieved in a timely manner in the event of a radiological emergency at Turkey Point Units 6 & 7.”

FPL also states that NRC regulations call only for protection of people living within 10 miles of Turkey Point, and therefore they need not consider the safety of people residing farther away. That may be minimum legal requirement, but the review of FPL's own Evacuation Time Estimate (ETE) study in CASE's reply shows that FPL expects a far larger group of people to evacuate in the event of a General Emergency. Based on the limited area sampled in FPL's survey their number can only be considered a significant underestimate of people entering the three main northbound roadways. Extra people clogging the roadways make FPL's estimate of 6-14 hours a significant underestimate. The 17 hours needed for a hurricane evacuation that we initially cited, is based on experience of emergency managers, not the estimates of engineers who conducted paper surveys in a limited population area. Even so, the precise evacuation time hardly

matters: even a moderate wind would still overtake evacuees irrespective of whether they took the 6-14 hours FPL estimates, or the 17 hours that emergency managers estimate for a hurricane evacuation.

**CONTENTION 2 - FAILURE AND OMISSION OF THE FPL  
COL FOR THE PROPOSED TURKEY POINT NUCLEAR  
REACTORS 6&7 TO PROVIDE FOR THE SAFE AND  
ORDERLY EVACUATION OF THE POPULATION DURING  
OR FOLLOWING A NUCLEAR EVENT (UNUSUAL NUCLEAR  
OCCURANCE)**

FPL states:

“Contention 2 (alleges) that the evacuation times in the event of a radiological emergency at Turkey Point 6 and 7 are:

“... too long to protect the health and safety of the public ...In its Reply on Contention 2, CASE makes new factual assertions not found in the Revised Petition, including claims relating to wind speed impacts on the spread of the radioactive plume and evacuation effectiveness.”

FPL asks: what does “too long mean”. If this exercise is supposed to be a dialogue, notwithstanding that at no point in its answers, replies, or response does FPL address material facts or statements, but only issues legal challenges, then, an explanation of what “too long” means must be related to the movement of the plume of air over land and over time. Ergo, the speed of the wind along

the plume exposure pathway is, by definition, included in the explanation of why the plan now in place for evacuation of over 187,000 people in one direction on

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three roads will not work. The inclusion of the average wind speed in our reply, about 9 mph, merely illustrates the initial statement that “Even a moderate wind from the south would overtake people fleeing the evacuation area.” Anyone in the area at the time of a nuclear event will have little time or opportunity to escape.

**CONTENTION 3 - FAILURE AND OMISSION OF THE FPL COL  
FOR THE PROPOSED TURKEY POINT NUCLEAR  
REACTORS 6&7 BY RELEASING AEROSOL WITH 471.6  
TONS OF PARTICULATES INTO THE ATMOSPHERE  
ANNUALLY**

FPL states:

*“CASE’s Reply on Contention 3 Includes new Factual Claims and Three Exhibits that were not part of the Revised Petition. Contention 3 claims that FPL’s Application is deficient because it fails to address the effects of particulate matter which will allegedly be deposited on areas surrounding the Turkey Point Units 6 and 7 site due to cooling tower drift. CASE describes such particulates as including hormones, pharmaceuticals, antibiotics, and other compounds that are “typically” found in modern wastewater facilities. Revised Petition at 26-27.*

*CASE’s Reply on Contention 3 includes half a dozen paragraphs that contain new factual assertions and three exhibits (Exhibits 1, 3 and 4) that were not part of the Revised Petition. CASE now alleges a host of health impacts from radiation exposure, from living in South Florida, and from proximity to transmission lines. See Attachment 1. All of those paragraphs*

*and the three exhibits they cite and attach represent new arguments in support of original Contention 3 and must be stricken.”*

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CASE reply: In CASE’s reply to FPL’s motion opposing CASE’s Revised Petition (September 29, 2010) CASE states (at 24):

The issue (Contention 3) is within the scope of this proceeding. At 27 in the Revised Petition, CASE sites the Title 1, Chapter 1 of the Atomic Energy Act which requires that the processing and utilization of nuclear material must be done to protect the health and safety of the public. This statement lies in the preamble to the Act, which sets the standards and tone for the entire document. The preambles to the Constitution of the United States and the Declaration of Independence are precious and deemed by the courts to be relevant to all human life in our nation; is it not so with the preamble to the Atomic Energy Act? Can that text be ignored? Is the protection of public health and safety not the master template for the rest of the Act?

So, when FPL asserts that Contention 3 is inadmissible because CASE fails to (1) demonstrate that the issue is within the scope of this proceeding, (2) provide facts or expert opinion to support the contention; and (3) demonstrate the existence of a genuine dispute with the Applicant on a material issue of law or fact, FPL is denying the relevance to the citation in paragraph above and the presentation of factual assertions by expert witnesses which, as the Board requested, are “responsive replies [which] will inject significant efficiencies in the Board’s decision-making process.”

The creation of a masterful system of delivery of particulate matter day-in and day-out over the Plume Exposure Pathway for Turkey Point 6 & 7 should be of concern to all who are responsible for and answerable to the Atomic Energy Act. No relevant facts, information or current research should be omitted from the



deliberations. Rather, they should be sought and welcomed. This is the last chance for the facts to come out.

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**CONTENTION 4 - FAILURE AND OMISSION OF THE FPL  
COL FOR THE PROPOSED TURKEY POINT NUCLEAR  
REACTORS 6&7 TO ADEQUATLY CONSIDER AND PLAN  
FOR ACCIDENTS INVOLVING RADIOACTIVE MATERIALS**

FPL states:

*“CASE Contention 4 reads: ‘The COL fails to completely address the radiation exposure that would be caused by a radiological accident. Specifically, there is no radiation dosage given for persons a) fishing and/or b) consuming marine-based food.’*

*This is a contention of omission. In replying to FPL’s answer opposing the admission of Contention 4, which specifies where in the Application the allegedly omitted information can be found, CASE impermissibly changes the contention to one that now challenges the validity of the analyses of radiological doses that CASE Contention 4 originally alleged were omitted. See Attachment 1. This is a challenge to the Application raised for the first time in the Reply.*

*These newly-minted challenges to the methodology used in the Application’s evaluation of severe accident mitigation alternatives must be stricken, as well as Exhibit 2 to CASE’s Reply, which purportedly supports them.”*

CASE Reply on Contention 4:

The FPL Turkey Point Units 6 and 7 COL fails to completely address the radiation exposure that would be caused by a radiological accident. The COL simply addresses doses received by persons exposed to accidents involving other reactors. Those reactors are not Toshiba Westinghouse AP1000 reactors,

and those reactors are not at Turkey Point. The accident data compiled was neither for the atmospheric conditions nor the water conditions found at Turkey Point.

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The marine species exposure route did not include food species found at Turkey Point. Furthermore, the Toshiba Westinghouse AP1000 has a rather unique accidental radiological release mechanism, which needs to be addressed specifically in order to make a valid estimate of the radiation doses received by persons exposed during an accident. Therefore, The Turkey Point COL fails to address the radiologic doses received by persons exposed to an accidental release by a Toshiba Westinghouse AP1000 reactor located at the proposed site.

(Please see the attached document for an explanation of the Toshiba Westinghouse AP1000 unique design flaw.)

**CONTENTION 5 – FAILURE AND OMISSION OF THE FPL COL FOR THE PROPOSED TURKEY POINT NUCLEAR REACTORS 6&7 ANALYSIS TO CONSIDER OR INCORPORATE ANY SCIENTIFICALLY VALID PROJECTION FOR SEA LEVEL RISE AND CLIMATE CHANGE THROUGH THE END OF THIS CENTURY AND BEYOND.**

FPL wrote:

*“CASE’s Reply on Contention 5 Includes new Legal and Factual Claims that Should be Stricken In Contention 5, CASE argues that FPL’s FSAR and ER must be considered invalid because neither considers nor incorporates any scientifically valid projection for sea level rise through this century and beyond. In its Reply, CASE seeks to bolster its contention by, for the first time, citing the Atomic Energy Act as requiring a sea level rise analysis. CASE’s Reply at 32. CASE also alleges, for the first time, that a*

*rise in the sea level will adversely affect the plant's equipment, facilities, and support structures. Id. These new legal and factual allegations should be stricken."*

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CASE Reply on Contention 5

This challenge of Contention 5 addresses the nature of Dr. Wanless' presentation of his scientific information as a layman and as a volunteer, pro se intervenor in these proceedings. Dr. Wanless was speaking out of heartfelt concern of a dedicated professional geologist and resident of Miami-Dade County for the safety of his neighbors and for the workers and visitors involved. No penalty should or can be imposed on his open expression of his expert testimony because he may not be versed in the law. He was speaking to his contention that failure and omission of the FPL COL to include scientifically valid projections for sea level rise and climate change for the rest of this century and beyond.

Further, in his statement in the Revised CASE Petition, Dr. Wanless speaks to sea level rise throughout. Sea level was not newly introduced as an issue; it is the issue. Any additional clarification in CASE's reply on September 29, 2010 introduced no new issues or contentions. Rather, it was a discussion of the logical and logistical extension of facts and information already presented by Dr. *Wanless. Rising water inundates all land and everything on it; is that a new fact or contention?* Does FPL really believe that it can build new reactors at Turkey Point and ignore this information? Can proposed construction at Turkey Point or anywhere in South Florida not include planning for well documented projections by local, federal and international authorities of sea level rise and climate change in the area?

#### CONCLUSION

CASE has shown that, in its reply to FPL on September 30, 2010, CASE did not

introduce new contentions and only provided information in response to FPL's motion on September 13, 2010. CASE's reply of September 30, 2010 should be accepted in its entirety by the Board.

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Respectfully submitted,

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Authorized Representative  
Citizens Allied for Safe Energy, Inc.

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
Before the Atomic Safety and Licensing Board

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	)	52-041-COL
(Turkey Point Units 6 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Citizens Allied for Safe Energy, Inc. Answer to Florida Power & Light Company's Motion to Strike Portions of CASE's Reply to FPL Answer Opposing Petition to Intervene and NRC Staff Answer to Petition to Intervene** were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 22nd day of October, 2010.

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