

Limited Appearance Statement

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ASLBP Proceedings
Oral Argument in the Matter of Florida Power and Light Company (Turkey Point Units 6 and 7).
Combined License Application for Turkey Point, Units 6 and 7

Docket Nos. 52-040 52-041

Application for a combined license (COL) for two Westinghouse Advanced Passive 1000 (AP1000) Pressurized Water Reactors (PWRs) designated as Turkey Point, Units 6 and 7

Environmental Legal History

1970-1973 - US District Court Southern District of Florida, USA vs. Florida Power and Light

Concerns: Hot water Discharge, Hyper salinity (2 times that of seawater), Westward migration could degrade surface groundwater

1971 Settlement: Construct recirculating cooling canals, No discharge into Biscayne Bay.

Performance and mitigation standards: No discharge into Biscayne Bay, Water temperature, Hyper Salinity, and westward migration concerns to be mitigated by recirculating cooling canals.

1972 Agreement with Central & South Florida Flood Control District (SFWMD)

Change in Performance and mitigation standards: Restrict saline water from CCS Cooling Canal System westward "to those amounts which would occur without the existence of the cooling area", Maintain seaward gradient, Western seepage control (ditch & interceptor pump), Ground water monitoring program.

1983 Agreement between SFWMD & Florida Power and Light

Change in Performance and mitigation standards: Confirm Florida Power and Light performed obligation of 1972 Agreement, Continue seepage control, **Reduce ground water monitoring requirements**, added enforcement.

2009 Uprate Application Reactor 3 & 4

Change in Performance and mitigation standards: SFWMD approved surface water, groundwater, and ecological monitoring, Develop a new agreement with SFWMD, Created a Multi-Agency review (specifics that revised Monitoring plan): Determine the extent of cooling canal water surrounding Turkey Point under existing conditions (delineation), **Detect changes associated with Uprating.**

2009 Monitoring Plan:

Key Components: **Water Budget**, Fingerprint tracer suite monitoring, Temperature & Salinity Surveys, manual and automated.

Monitoring Locations: Ground water, Surface water, Pore water (soil), Ecological

Quality Assurance Program: Phase I (Develop QA Project Plan, Installation of Monitoring devices, Data Interface Development), Phase II (Data collection & evaluation).

Status: **Phase I & II not complete, in progress, per May 4th, 2010 update.**

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This Limited Appearance Statement requests the NRC to use discretion in application of Quasi in rem "as if against a thing", toward Florida Power and Light, and/or application of the Administrative Procedure Act, with regard to FPL's apparent violation of the October 14, 2009 Agreement with SFWMD, by where FPL, in entering the Application for a combined license (COL) for two Westinghouse Advanced Passive 1000 (AP1000) Pressurized Water Reactors (PWRs) designated as Turkey Point, Units 6 and 7, before the October 14, 2009 Agreement was fulfilled, showed a lack of Sui iuris or legal competence.

Furthermore, FPL's current non-execution of the October 14, 2009 Agreement, while concurrently, and in application of their own's prerogative, arbitrarily initiated an EIS Environmental Impact Statement in Application for a combined license (COL) for two Westinghouse Advanced Passive 1000 (AP1000) Pressurized Water Reactors (PWRs) designated as Turkey Point, Units 6 and 7, exposes malfeasance and a lack of accountability, through the non-execution of October 14, 2009 Agreement's order of specific performance and/or Environmental Monitoring Plan.

This Limited Appearance Statement also would like to focus on FPL's lack of financial assurance and premeditated concealment of the Comprehensive Project Construction Contract. This non-standard form of conduct was perpetrated by FPL's management, by decoupling of the COLA Combined Operating License Application and the Long Lead Forging Reservation in June 2009 from the Comprehensive Project Construction Contract. The premeditated nature of FPL's decision to conceal the overall cost of the project was confirmed by the FPSC Florida Public Service Commission and Concentric Energy Advisors, Inc. third party audit.

Another egregious financial malfeasance, highlighted by the FPSC audit, was the arbitrary and concurrent decision by FPL to extend the Long Lead Forging Reservation until March 2011, while, per the FPSC audit, "FPL believed the program was insufficiently funded with undetermined cost, benefits, and responsibilities." Per the Audit, FPL determined that because of "revised cost-schedule estimates, as a result of market & regulatory conditions, long lead contracts & major construction contracts have been deferred."

Although cancelation could cause FPL to lose a portion of its \$10.8 Million reservation fee, FPL's historical and potential cost and project completion over runs far exceed the reservation fee. Examples of this are as follows (per FPSC & Concentric Energy Advisors, Inc. Audits):

Turkey Point 6 & AP1000 Nuclear Generator Plant

Original Completion dates: 2018-2020

New Estimated dates: 2020-2023

FPL has changed cost projections to a wide range of:

\$12.9 billion to \$18.7 Billion for Reactors 6 & 7

Along with estimated increases of \$989.6 Million

May 3, 2010 FP announced new EPU project non-binding cost estimate range for:

St. Lucie 1 & 2: \$2.05 Billion to \$2.30 Billion Turkey Point 3 & 4: \$255.5 Million to \$500.5 Million

Exposing an increase range between 14% to 28% greater than the needed determined estimate.

Reason: LAR Engineering cost, expected increase in engineering, procurement, and construction (EPC) vendor cost, weighted estimation of project risk, and future unidentified projected costs to complete the uprating in 2011 and 2012.

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In 2009, FPL senior management cognitive of its consistent cost over runs and the FPSC audit, made a decision to replace the EPU management team. This act further strengthens the claim that FPL decoupled the COLA and Long Lead Forging Reservation from the Comprehensive Project Construction Contract with intent to conceal their current lack of cost controls. This is not "fair play". Per the FPSC audit, "Senior management appears to have believed the management team could not provide the necessary controls of EPC contractor estimates."

FPSC feels the changes were made because of performance issues. Concentric Energy Advisors, Inc. confirms FPSC audit staff's opinion.

There were two more cost over runs between the above mentioned examples:

FPL's, St. Lucie Unit 2 License Amendment Request from first quarter 2010 to year end 2010, "due to plant technical issues" could incur an undetermined sum in the millions, all in additional costs to submit and support the License Amendment Request.

FPL also initiated a third party assessment and budget estimate by High Bridge Associates, Inc. costing, an undisclosed amount, for Turkey Point Unit 3 to validate necessary work scope, detailed modification estimates, implementation strategies, and provide a close range cost.

The final FPSC Audit claimed in final, "Performance Issues": "Recommendation is that the Commission closely examine associated project costs in a future proceeding."

The final and overarching point of this Limited Appearance Statement is the "Purposeful wrong doing" exposed through the chronology of management decisions, by entering into a new COLA and a Lead Forging Reservation extension, while clearly understanding unfavorable market conditions and uncontrollable internal cost over runs, along with attempting to validate environmental impact while not fulfilling current environmental contract law, per non-execution of the October 14, 2009 Agreement.

This "Purposeful wrong doing" should elicit the NRC to apply the Regulatory Flexibility Act, to the full extent of the potential project cost, with over runs, when seeking Equitable remedy or damages.

And/or apply a writ of mandamus to impose the fairest legal remedy and judicial relief possible, while rejecting FPL's current Turkey Point Reactor 6 & 7 COLA.

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Examples of where FPL's managerial purposeful wrong doing and NRC's position could expose potential concerns. (RAI's)

The staff will work with you and the AP1000 design center working group to implement the review of standard content on a stand-alone basis so that the Turkey Point Units 6 and 7 COLA review schedule is **minimally affected** by the site-specific safety issues that may arise on the RCOLA.

Why is this reassurance stated by the NRC, if review will determine the affect?

As stated in the staff letter dated September 4, 2009, (ML092380248) we have a **concern** that we have still **not received** the additional information related to Final Safety Analysis Report (FSAR) Section 2.5. We cannot initiate our review of Section 2.5 until the information requests identified under the headings of Geology and Seismology and Geotechnical are provided. Therefore, this can introduce uncertainty in the proposed schedule and the schedule may be revised based on the availability of the requested information.

Non-compliance

Our review schedules assume that responses to requests for additional information (RAIs) will be complete and provide sufficient information to address the NRC staff's concerns. Our schedules assume that RAI responses will be submitted within 30 days of receipt of safety RAIs related to areas that involve FPL specific information, and within 45 days of receipt of environmental RAIs and safety RAIs related to areas that involve standard content for all AP1000 COL applications.

Why is anyone assuming, when historically they have not showed to be in compliance, nor have they met schedules?

The review schedule does not model the hearing process. If contentions are admitted, the review schedules in Table 1 of the enclosure may be impacted. The mandatory hearing schedule will be developed by the Commission or the Atomic Safety and Licensing Board; therefore, it is not included in Table 1 of this letter. Both the FEIS and the FSER will be used to support this hearing. As you know, the Commission will not make a determination on whether or not to issue the COL until this hearing is concluded.

This seems like legal advice.

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Points to Review:

NRC's mission:

Protect public health and safety
Promote common defense and security
Protect the environment.

It does not say legal advise.

USACE permit decisions are "federal actions" and must comply with the National Environmental Policy Act.

Federal punishment.

The Nuclear Regulatory Commission (NRC) is the "Lead Agency" in the preparation of this Environmental Impact Statement (EIS).

NRC determines the outcome, while promoting our common defense.

The current 2008 act falls under the USACE Jurisdiction.

Gives some legal jurisdiction to the USACE in this case.

758.4 acres of infill were specified in the July 15, 2010 ENVIRONMENTAL SCOPING MEETING FOR THE TURKEY POINT SITE, UNITS 6 & 7, COMBINED LICENSE APPLICATION.

This is severe Environmental Impact in ratio to the number acres left of lower Florida Grass land on the East coast.

eRAI Tracking No. 4806
02.04.02-3

With respect to the application's analysis of combined flood events, describe the reasons for selecting the particular combination, including the decision not to include a hurricane event. The section "Combined Events Criteria" in SRP Section 2.4.2 states: "The staff reviews the worst flooding at a site that may result from a reasonable combination of individual flooding mechanisms. Some or all of these individual mechanisms could be less severe than their worst-case occurrence but the combination may exceed the most severe flooding effects from the worst-case occurrence of any single mechanism." Consistent with that guidance, describe why the combination of events considered represents a conservative assessment that bounds the range of credible combinations of flooding events for Turkey Point Units 6&7.

eRAI Tracking No. 4808
02.04.03-1

With respect to the analysis of combined flood events, please provide justification supported by quantitative reasoning for the conclusion (FSAR page 2.4.3-2) that canal flooding would not influence the flood levels above the estimated probable maximum hurricane level.

How can they make a claim that the canal flooding would not influence the flood levels above the estimated probable maximum hurricane level, when they did not include a hurricane event on the Combined Events Criteria?

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Key Milestones Completion Date

Actual - A

Target - T Application Tendered 06/30/09 - A Acceptance Review

Acceptance Review Start

06/30/09 - A

Docketing Decision Letter Issued/Acceptance Review Complete

09/04/09 - A

Review Schedule Established/Schedule Letter Issued to Applicant

05/28/10 - A Safety Review

Phase A - Requests for Additional Information (RAIs) and Supplemental RAIs

05/27/11 - T*

Phase B - Advance Final safety evaluation report (SER) without Open Items

05/12 - T*

Phase C - ACRS Review of Advance Final SER

09/12 - T

Phase D - Final SER

12/12 - T Environmental Review

Phase 1 - Environmental impact statement (EIS) scoping summary report issued

11/10 - T

Phase 2 - Draft EIS issued to EPA

10/11 - T

Phase 3 - Final EIS issued to EPA

10/12 - T Hearing

Commission or ASLB hold mandatory hearing

License

Commission decision on issuance of COL application

As stated earlier..

The COLA is in process while current 2008 environmental provisions are non-executed.

Allowing the USACE permit decision on the proposed project to be made after the Final COLA

EIS has been completed, is flawed, for the COLA EIS began prior to FPL meeting their 2008

legal obligation. The current Key Milestone Completion Date schedule does not take into

account the non-compliance to the 2008 law, yet the initial EIS has begun. This offers no

assurances to current performance, nor does it offer accountability, but in the scope meeting of

July 15, 2010, it is stated that final EIS will likely precede NRC combined license decision.

This presumption is made by the NRC and USACE and not the presumptive owner of the current reactor site and COLA submitter, FPL.

I would like to personally thank Josh Kirsten, and Karen Valloch for their informative support. This is a formal submission of a Limited Appearance Statement to be entered into record in the ASLBP Proceedings Oral Argument in the Matter of Florida Power and Light Company (Turkey Point Units 6 and 7).

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All quotes and documents used in the construction and development of this Limited Appearance Statement originated from Florida Power and Light, the Nuclear Regulatory Commission, and the Florida Public Service Commission.

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