

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
E. Roy Hawkens, Chairman
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY)
) Docket Nos. 52-040-COL
) and 52-041-COL
)
Turkey Point Units 6 and 7)
)
Combined License Application)

May 16, 2011

**CASE’S REPLY TO FLORIDA POWER & LIGHT’S AND NRC STAFF’S
ANSWER TO CASE’S MOTION TO AMEND CONTENTIIONS 1,2, AND 5 OF THE
CASE REVISED PETITION TO INTERVENE, (AUGUST 20, 2010)**

INTRODUCTION

On April 18, 2011 Citizens Allied for Safe Energy, Inc. (CASE) filed AMENDED CONTENTIONS 1,2 AND 5. On May 9, 2011 FPL filed FLORIDA POWER AND LIGHTS RESPONSE OPPOSSING ADMISSION OF CASE’S LATE FILED CONTENTIONS . On May 13, 2011 NRC Staff filed NRC STAFF ANSWER TO “CITIZENS ALLIED FOR SAFE ENERGY, INC. MOTION TO AMEND CONTENTIONS 1,2, AND 5 OF THE CASE REVISED PETITION TO INTERVENE” AND “AMENDED CONTENTIONS 1,2 AND 5”. CASE will address the issues raised in both filings in this combined response since they present almost identical arguments and objections.

BACKGROUND

Based on a March 18, 2011 travel warning issued by the U.S. Department of State which related a message from the “United States Nuclear Regulatory Commission (NRC)” following the tragic events and experiences at the Fukushima Daiichi nuclear power station in Japan, CASE filed AMENDED CONTENTIONS 1,2, AND 5 on April 18, 2011. The main purposes of this

filing were to bring new information to contentions that CASE originally filed in its Petition to Intervene from a real-time nuclear and geological occurrence unfolding in Japan. CASE views this series of unpredicted and unanticipated events as the basis for re-visiting these Contentions and calls on the ASLB to re-evaluate its findings summarized in the February 28, 2011 Order. Secondly, because thirty days does not even allow for the nuclear crisis to end, let alone the “dust to settle” CASE also takes this opportunity to raise issues related to NRC statements following those events which seem to be at variance with NRC regulations but are relevant to the amendment of the Contentions in the Turkey Point COL proceeding.

Admittedly, if the ASLB does find any of CASE’s new information to have merit it will have an impact on the subject FPL licensing application. In addition to possibly recasting CASES Contentions, the implications of what could be learned by an objective analysis as proposed goes far beyond the license at hand and could impact NRC and nuclear policy broadly, therefore CASE believes that this proceeding has the potential to instruct the Commission. The breadth of the Fukushima events was confirmed by Mr. R. William Borchardt, Executive Director for Operations at the U.S. Nuclear Regulatory Commission, in his testimony on May 12, 2011 (Exhibit One).

On March 30, 2011 the Atomic Safety And Licensing Board (ASLB) issued an INITIAL SCHEDULING ORDER AND ADMINISTRATIVE DIRECTIVES related to its February 28, 2011 MEMORANDUM AND ORDER (Ruling on Petitions to intervene). CASE followed the guidelines therein, with one exception. FPL (May 9, 2011) and NRC Staff (May 13, 2011) filed motions opposing CASE’s AMENDED CONTENTIONS 1,2, AND 5 on these issues:

- 1) THE FILING WAS UNTIMELY
 - 2) CASE DID NOT CONSULT WITH THE OTHER PARTIES
- CONTENTION ONE:
- 3) PROBLEMS WITH EMERGENCY COMMUNICATIONS,
 - 4) RADIOLOGICAL IMPACTS FROM AN ACCIDENT
 - 5) DIFFICULTIES IN THE DELIVERY OF POTASSIUM IODIDE

CONTENTION TWO:

- 6) POSSIBLE NRC VIOLATION OF THE FOURTEENTH AMMENDMENT OF THE U.S. CONSTITUTION
- 7) POSSIBLE LOSS OF ENGINEERED SATEY FEATURES
- 8) THE IMPACT OF AN EMERGENCY ON THE 10 TO 50 MILES BEYOND THE 10 MILE EPZ

CONTENTION FIVE

- 9) SEA LEVEL RISE; RISKY INTERVENTIONS BY WORKERS

CASE REPLY TO FPL AND NRC STAFF

OBJECTIONS AND CHALLENGES:

- 1) THE FILING WAS UNTIMELY AND DISREGARDS THE DIRECTIONS OF THE SCHEDULING ORDER

FPL, at 2 and 3, and NRC Staff, at 2 nd 5, submit that CASE's filing was untimely. However, the Initial Scheduling Order states, at 8,

"B. Additional Contentions ... A motion and proposed new or amended contention as specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based *first becomes available*." (Emphasis added+.

As noted above and as will be referenced below, CASE has keyed its motion to a U.S. State Department travel advice issued on March 18, 2011. CASE filed its Motion To Amend on April 18, 2011. In addition, CASE has cited several reports on events after March 18, 2011 all of which constitute new and material information and real time experiences following from the Fukushima catastrophe the timing of which could not have been reasonably predicted and from which lessons and insights can be gleaned. CASE's filing was timely.

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2) CASE DID NOT CONSULT WITH THE OTHER PARTIES

FPL states, at 1 and 5, that CASE did not contact FPL for consultation prior to filing its Amended Contentions. FPL is correct. It was an oversight on the part of this authorized representative of CASE for which I apologize. The focus of those of us drafting the motion was on the rapidly unfolding events at Fukushima and their relevance to our nuclear program in the United States. We should have advised all parties of our effort and of our plan to file.

CONTENTION ONE:

3) PROBLEMS WITH EMERGENCY COMMUNICATIONS

FPL, at 6-8, (and NRC Staff at 7-10) challenges CASES quotation in its Amended Contention, at 4, that

“ 5. Station black-out is responsible for 50% of the total risk of a major reactor accident, and would also likely interfere with the communications from the reactor site.”

FPL continues: “CASE offers no explanation, analysis or other support for this alleged basis, which is on its face speculative.” The speculation is the NRC’s since this is a citation from NUREG-0396, PLANNING BASIS FOR THE DEVELOPMENT OF STATE AND LOCAL GOVERNMENT RADIOLOGICAL EMERGENCY RESPONSE PLANS IN SUPPORT OF LIGHT WATER NUCLEAR POWER PLANTS. Does FPL mean that CASE must do the required work to justify statements and conclusions from the NRC?

Actually, CASE stated, at 3, in the Amended Contention that the FPL COL application (Part 2 - F-2) “fails to clarify which ... emergency communication systems would be functional in the event of a Station Back-Out...”. CASE should have made the further point that this was an omission in the COL and, therefore, as a statement of fact, requires no additional supporting references or citations.

Indeed, FPL and the NRC Staff seem to miss the point that this entire

Amended filing is aimed at bringing the new experiences from Fukushima to bear on CASE's earlier contentions so that they might be seen in new light by all parties. A major catastrophe happened in Japan; it could happen at Turkey Point. If we ignore to warnings in NUREG-0396, we could one day find ourselves, or, for most CASE members, others, reporting similar stories regarding Turkey Point. The inference is that the lessons and vivid example from Fukushima are that the extensive loss of power will result in a loss of all means of communication for the entire site which, as is the case at Fukushima, includes several power plants at Turkey Point, compounding exponentially any accident or incident. Loss of communications, while critical, is the least of the direct problems resulting from having the site compromised from any of many sources all of which have been ignored so far by the nuclear regulators.

4) RADIOLOGICAL IMPACTS FROM AN ACCIDENT

FPL, at 9, concludes "The thesis of (CASE) Exhibit 7 is that NUREG-0396, which has been in use by the NRC and the industry for over thirty years, underestimates the risk to the population within ten miles of a nuclear power plant in the event of an accident resulting in a core melt." Exactly. This lesson, that business as usual just because it has always been done that way, is dangerous and must be realized as the major lesson from the Fukushima experience. Indeed, Mr. Borchardt, on April 8, 2011, inspired, it would seem, by the events at Fukushiima, issued "FINAL RULE: ENHANCEMENTS TO EMERGENCY PREPAREDNESS REGULATIONS (10 CFR PART 50 AND 10 CFR PART 52) (RIN-3150-AI10) PURPOSE: To obtain Commission approval to publish a final rule to amend certain emergency preparedness (EP) requirements in the regulations that govern the domestic licensing of production and utilization facilities." (Exhiibt two). This document reflects a major step forward for the NRC and speaks directly to the points CASE is trying make. The basic rules for doing business must be revisited and all applications for licensure must be re-evaluated in the manner set out in this FINAL RULE document. There seems to

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be a disconnect between NRC Staff, the ASLB panel and the desires of NRC senior management. CASE is just seeking to get them all on the same page. No one wants to be in the position Japan found itself in where lack of meaningful oversight permitted points of vulnerability in the nuclear installations. So, for FPL to state, at 9, in relation to the 10 mile plume exposure pathway that “Nothing has changed since then that would entitle CASE to file a new contention at this time.” does not seem to square with Mr. Borchardt’s FINAL RULE cited above. More discussion on the 10 mile EPZ is presented below.

5) DIFFICULTIES IN THE DELIVERY OF POTASSIUM IODIDE

FPL, at 10, dismisses CASE’S citations from Fukushima regarding denial of care for victims due to excessive radiation, the requiring of “radiation-free certificates and the delay for three days in the distribution of Potassium Iodide (KI) by the Japanese government by saying: “These anecdotal accounts of the the response by the Japanaese authorities to the Fukushima acciden, even if accurate, are clearly irrelevant to a hypothetical Turkey Point 6 & 7 response to a radiological event at those units.” CASE would ask, “Why are they irrelevant? Does Turkey Point have some Devine Protection from the forces of nature and and the vagaries of reactors or situations, physical or human, which are out of control?

This entire pleading is based on anecdotal information from the press, the governments of Japan and the United States, scientists and victims. The FINAL RULE order from Mr. Borschardt and other actions by the NRC are based on the same anecdotal information.

FPL and NRC staff repeatedly assert that CASE has provided no real information or evidence that the KI distribution plan is faulty neither critic has ever recognized the detailed information CASE has provided regarding the exact distances involved between the point of storage and the point of need, times of travel between these points, the need for pre-distribution and scientific reasons 7

the plans are inadequate. (CASE Revised Petition at 14, CASE Reply to FPL of September 19, 2011 at 12-15, CASE Amended Contention at 11). Instead, FPL and the NRC Staff, and the ASLB Panel have consistently denied the facts and information presented and have not directly addressed the technical information presented. Now, with the experience of Japan as an example, CASE is asking that the information and conclusions CASE has made regarding KI storage and distribution plans be addressed seriously and specifically and either shown to be correct or refuted by the presentation of alternative facts or information instead of being dismissed with denial and obfuscation. Fukushima has taught us that something must change in the way the authorities responsible for administering the production of nuclear energy respond to concerns and positions of the general public and the research of informed, responsible scientists and professionals in the field.

On February 28, 2011, the ASLB said in its Memorandum and Order, at 88, stated:

“Contention 1 is likewise inadmissible under CASE’s third argument, which alleges that KI cannot be delivered in a timely manner to all those affected by an emergency radiation release. This aspect of Contention 1 is inadmissible pursuant to section 2.309(f)(1)(vi) for failing to establish a genuine dispute of material law or fact, because it (1) fails to explain why evacuation times “would be too great to prevent initial exposure to inhaled radioiodines” (CASE Rev. Pet. at 14), and (2) fails to reference the COLA to identify a faulty analysis or conclusion. See FPL Answer to CASE Rev. Pet. at 22-23; NRC Staff Answer to CASE Rev. Pet. at 18- 19.”

CASE holds that there is a dispute in fact regarding KI and other contentions presented but that neither NRC, FPL or the ASLB panel addressed those facts then or now. You cannot move KI 35 miles in time to do any good against people trying to escape from Homestead following a nuclear event; period! CASE admits, in hindsight, that, as FPL observed in its Response Opposing CASES Amended Contentions, at 3, CASE should have sought an interlocutory review of the Board’s ruling by the Commission as allowed by 10 C.F.R. 2.341 (f) (2). Chalk that up to an inexperienced pro se intervenor. However, at this point, the

hard experience of Fukushima should make it clear to all parties that we are taking a great chance in cavalierly and audaciously hiding behind regulations which assure the status quo and allow woefully and obviously deficient plans to remain in place which will not and cannot serve the public good. Something has to change. Someone in authority has to say, "This is not right; it will not work." We should not have to find that out when a real emergency occurs, as it will.

CONTENTION TWO:

6) POSSIBLE NRC VIOLATION OF THE FOURTEENTH AMMENDMENT OF THE U.S. CONSTITUTION

CASE believes it made its argument on this subject fully and clearly in its Amended Contention on April 18, 2011, at 21-23. FPL states, in its Response Opposing CASE's Amended Contentions, at 12,

"This argument is unsound. The Department of States recommendation to evacuate..."

However, a careful reading of the fully quoted U.S. State Department advisory, at 21 in CASE's Amend Contentions, finds this opening statement:

"The United States Nuclear Regulatory Commission (NRC) recommends that U.S.citizens who live with 50 miles (80 kilometers) of the Fukushima Daiichi Nuclear Power Pland evacuate the area..."

Therefore, it was not the U.S. State Department making the recommendation; it was only the messenger. The NRC was making the statement and the recommendation. So, our argument that the NRC, note the State Department, was making new rules and changing and mis-stating old ones holds.

The NRC regulations only address food and liquid beyond the 10 miles EPZ. The NRC was making new policy when it said in the memo transmitted by the State Department that its regulations recommend evacuation beyond 10 miles. Therefore, CASE's position is that, if this indeed is the NRC position, it 9

should be reflected in current regulations immediately and applied to all pending licensure applications as indicated by Mr. Borchardt in the FINAL RULE cited above.

Regarding CASE's position, stated at 22-23 in the Amended Contentions, that by having a 10 mile EPZ stateside and a 50 mile EPZ in Japan, the NRC is in violation of the equal rights provision of the Fourteenth Amendment of the U.S. Constitution, FPL states, at 22,

“No constitutional violation takes place if those recommendations are different from the laws that apply in the United States,...”.

NRC Staff makes similar statements, at 16-18, in its Answer to CASE's Amended Contentions concluding

“The Petitioners have failed to explain why these recommendations represent any discrepancy between protections for U.S. Citizens abroad and in the U.S., much less how they constitute any change in relevant Commission regulation or policy.”

While CASE respects the opinions of the FPL attorneys and the NRC staff on this subject, we do not find them to be relevant. Rather, CASE directed this constitutional question to Administrative Law Judges of the ASLB Panel and would hope that they will evaluate our position as representatives of our judicial system.

7) POSSIBLE LOSS OF ENGINEERED SAFETY FEATURES

FPL at 13-15 in its response to CASE's Amended Contention holds that CASE misunderstands the meaning of Low Population Zone (LPZ) and that “(t)he text has nothing to do with how the plume exposure pathway EPZ should be defined.” FPL goes on to explain, at 14, how the design of the AP1000 reactor “incorporates various features to protect critical plant components (such as the spent fuel pool) against black out conditions”. This is all good and well but,

again, the experience at Fukushima shows us that regardless of the design, nothing and no one can predict accurately and reliably what twist and turns the ocean will visit on a sea level location. Turkey Point is not in Kansas. it is at the edge of a powerful ocean in a hurricane pathway. *And, we must point out, an AP1000 reactor has never been built; all is conjecture and experimentation.*

Things may look great on paper, but reality, as we have, unfortunately, learned, carries different truths. Mr. Amie Gunderson, a leading national authority on the design and construction of nuclear power plants has prepared an insightful analysis of the AP1000 reactor dated May 10, 2011. Please visit:

<http://www.fairewinds.com/AP1000-Containment-Leakage-Report-Fairewinds-Associates-Inc> .

8) THE IMPACT OF AN EMERGENCY ON THE 10 TO 50 MILES BEYOND THE 10 MILE EPZ

FPL rejects CASE's position that the 10 mile EPZ was proven at Fukushima to be inadequate by saying, at 15, that "the 10-mile plume exposure pathway is set by the NRC regulations and cannot be challenged in a licensing proceeding." But, there seem to be chinks in this boiler plate response. For one, as cited above, Mr. Borchardt in his FINAL RULE (Exhibit Two), lays out an immediate program to do just that, to re-visit and re-evaluate NRC regulations in view of Fukushima. Indeed, he sets out some procedures which all licensee applicants must immediately apply to their applications. "The Times They Are A-Changin'.

Further, as CASE has shown above, the NRC notice to U.S. Citizens in Japan following the Fukushima event, directed them to evacuate to 50 miles and even said this is NRC policy. How does this square the FPL's assertion that the 10-mile EPZ is chiseled in stone? Perhaps the implications of such a change are too much for FPL to handle in relation to siting its new reactors. 50 miles from Turkey Point includes all of Miami-Dade County and well into Broward County, and well into the Florida Keys.

So, here is a clear and present example of Fukushima already having

an impact on the way the NRC approaches its administration of its nuclear planning responsibilities. We would request that CASE's comprehensive presentation of this matter in its Amended Contention, at 25-27, be revisited, especially in view of the NRC's recent new approach to evaluating regulations relating to evacuation.

CONTENTION FIVE

9) SEA LEVEL RISE; RISKY INTERVENTIONS BY WORKERS

FPL, at 16-17 and NRC staff, at 19-25, reject CASE's amended contention on the effect of climate change at Fukushima. Following discussion with our expert consultants, including Mr. Gundersen, it does appear, so far, that the monumental force of the Fukushima Tsunami would have only been impacted marginally, if at all, by climate change. Possibly, future scientific analysis will show that there might have been some increased movement inland or increased height or severity of the surge but this is, admittedly speculative.

However, our experts, including Dr. Harold Wanless, are unequivocal about the future impact at Turkey Point of Climate Change, as discussed in CASE's earlier filings. Recent pronouncements and directives by Mr. Borchardt (Exhibits One and Two and by Mr. Jaczko (Exhibit Three), based on their appreciation of the events at Fukushima, can be taken to mean that credible observations on Climate Change, and other issues, should be re-visited.

It should be noted that the reported need to send people into the compromised reactor is reprehensible and any set of circumstance which could result in such a need at Turkey Point or anywhere else, should be anticipated with measures and safeguards to assure it never happens. Allowing economic and political matters to trump scientific and safety concerns could permit such a disgusting need to sacrifice human health and life to occur.

CONCLUSION

CASE has presented Amended Contentions 1,2 and 5 for re-consideration by the ASLB Panel in light of the catastrophic geological and nuclear events at Fukushima. FPL and NRC staff have rejected all of CASE's arguments on procedural grounds. Except for the acceptance of parts of CASE Contentions 6 & 7, they have found no credibility in any of our Contentions. It is hard to discern whether this is due to the weakness and incompleteness of CASE's filings or just a pattern of stonewalling and intransigence on their part. Now, thanks to Fukushima, CASE has had an opportunity to re-submit contentions which relate to that event to attempt to draw lessons and knowledge from it to assure that future reactors are not put into harms way in the same manner or due to similar ill-advised administrative policies and practices.

Encouragingly, NRC senior management seems to be taking steps to revise the way licensees and NRC staff must evaluate certain emergency preparedness measures and, in general, the way in which they evaluate all systems and procedures. (Exhibits Two and Three). In this light, it would seem that the Amended Contentions 1,2 & 6 should be revisited and its information fully vetted for implications for Turkey Point.

Was putting the Fukushima reactors at sea level in proximity to a geological fault line and in an area known to be subject to possible Tsunamis a wise and informed decision? How does this differ from putting nuclear reactors, or any power plants, on the edge of the Atlantic Ocean, below sea level in a known hurricane and storm surge pathway? Or ignoring the physical limitations on evacuating hundreds of thousand of people on two roads in one direction? Or recognizing that the Potassium Iodide distribution plan in place will not work?

So, the most significant lesson from Fukushima might not be a scientific or procedural insight but rather to have the NRC and the Department of Energy re-assess how this nation handles its energy policy and how the NRC does

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business. Perhaps all sources of energy should have an equal seat at the same table with the best source of energy for each given situation being selected apart from political or inappropriate economic influences. This would take an epiphany, but, for any one crazy enough to pursue the quest of having some impact on the way energy is produced and distributed in this nation, everything is possible.

CASE requests that Contentions 1,2 and 5 be re-evaluated and that Turkey Point 6 & 7 not be licensed.

Respectfully submitted,

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UNITED STATES OF AMERICA
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Before the Licensing Board:

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Turkey Point Units 6 & 7)

May 16, 2011

CERTIFICATE OF SERVICE

I, BARRY J. WHITE, hereby certify that copies of the foregoing was served upon the following persons by Electronic Information Exchange and/or electronic mail.

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Dated: May 16, 2011

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