

**UNITED STATES OF AMERICA**  
**U.S. NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE 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	)	

August 29, 2011

Citizens Allied for Safe Energy, Inc. Response To  
Florida Power & Light Company's Response Opposing  
CASE's Motion For Reconsideration and  
CASE'S Proffered New Contentions

INTRODUCTION

On August 12, 2011 Citizens Allied for Safe Energy, Inc., (CASE) filed a document entitled "Citizens Allied for Safe Safe Energy, Inc. Motion for Reconsideration of Amended Contentions 1,2 and 5 and New Contentions Following Fukushima Near-Term Task Force Recommendations" followed by a Revised submission on August 15, 2011 correcting some computer generated text placement errors and some typographical errors. On August 20, 2011, Florida Power & Light Company's Response Opposing CASE's Motion For Reconsideration and CASE'S Proffered New Contentions was filed. CASE will respond here to the matters of substance addressed in FPL's response.

## Timeliness of Filing

The ASLB Initial Scheduling Order of March 30, 2011 states, at 8:

### B. Additional Contentions

A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a nontimely new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the explanation for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). 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). If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the motion should cover the three criteria of section 2.309(f)(2) and the eight criteria of section 2.309(c)(1) (as well as the six criteria of section 2.309(f)(1)). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.<sup>3</sup>

The ASLB Memorandum And Order of June 29, 2011 states, at 2 :

The NRC Staff “anticipate[s] that ongoing review and evaluation of the events in Japan by the NRC Staff and the Task Force will identify actions to further enhance the safety of U.S. nuclear facilities based on the lessons from the Japanese event.”<sup>2</sup> If the Task Force’s recommendations result in changes to regulations that are relevant to Florida Power & Light Company’s (FPL’s) Combined License (COL) application, FPL’s compliance with those regulations would become part of the NRC Staff’s technical review. See *id.* Additionally, such changes, or any other new and material information that emerges from the Fukushima event and its aftermath, might give rise to an opportunity to proffer new contentions in this proceeding.

Either CASE or FPL misunderstands these directives from the ASLB. CASE maintains that these statements set the time frame for timely filing and give CASE leave to re-file contentions and to raise new contentions based on the letter, the spirit and the tenor of the Task Force’s Report.

## Consultation

The FPL motion states, at 2,

In addition, without notice to or consultation with the other parties, CASE propounds two new contentions (Contentions 9 and 10) and in so doing it fails to comply with NRC requirements and the provisions of the Board's Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) of March 30, 2011 ("Initial Scheduling Order"). Applicant Florida Power & Light Company ("FPL") hereby responds in opposition to the relief sought in CASE's Motion...

CASE responds with a copy of the following email:

### **RE: Good Faith Consultation RE: COL 52-040 and 52-041**

Wednesday, August 10, 2011 9:45 AM

From:

"Travieso-Diaz, Matias F." <matias.travieso-diaz@pillsburylaw.com>

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To:

"Barry White" <bwtamia@bellsouth.net>

Cc:

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Mr. White: FPL will strongly oppose any motions seeking to relitigate twice-dismissed CASE Contentions 1, 2 and 5, and will also oppose any new CASE contentions relating to the NRC Fukushima Task Force recommendations.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

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Does this not show that CASE attempted meaningful consultation?

## CASE CONTENTIONS AND RESPONSES TO FPL OPPOSITION

### 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

**Contention 1 only addressed the distribution of Potassium Iodide. FPL, at 8, states:**

*The second rationale alleged by CASE for admitting Amended Contention 1 is a concern about the adequacy of the mechanisms for the distribution of potassium iodide ("KI") in the event of a radiological emergency at Turkey Point 6 & 7. **The Task Force Report refers to KI distribution only in the context of recommending that the NRC Staff [c]onduct training, in coordination with the appropriate Federal partners, on radiation, radiation safety, and the appropriate use of KI in the local community around each nuclear power plant. Task Force Report at 62, Section 11.4. CASE fails to explain how this public education recommendation supports its claim that the mechanism for the distribution of KI following a radiological release at Turkey Point 6 & 7 is inadequate.***

CASE has provided extensive and exhaustive information in these proceedings regarding the totally inadequate distribution plan for Potassium Iodide (KI) in Miami-Dade County in relation to a possible nuclear event at Turkey Point. CASE requests that the ASLB recognize the several statements in the Task Force Report which highlight the need for insightful review of all such plans and, also, that the Task Force recommendation, at 62, for training of the public in relation to Potassium Iodide be seen as an insufficient remedy to the inadequacy of the current placement of KI in Miami-Dade County, the unfeasibility of the distribution plan preceding and following a nuclear event and the failure to follow and to learn from the experience and plans of other locations throughout the nation.

It would be helpful to be able to look at the Japanese government's KI distribution plan for Fukushima but, we now learn that, if they had one, they did not use it. This report was posted on March 21, 2011:

*(NaturalNews) A Japanese nuclear safety official has now publicly admitted the Japanese government improperly **withheld potassium iodide from the public for three days** (emphasis added) following the Fukushima power plant explosion. Kazuma Yokota says the Japanese government was "caught off guard" by the nuclear catastrophe and didn't realize its people needed potassium iodide until three days later.*

*Associated Press distributed this statement, which has been carried by hundreds of mainstream news organizations:*

*"A Japanese nuclear **safety** official, Kazuma Yokota, acknowledged that the **government** only belatedly realized the need to give **potassium iodide** pills that help reduce chances of **thyroid** cancer to those living within 12 miles (20 kilometers) of the nuclear complex." [http://www.naturalnews.com/031780\\_potassium\\_iodide\\_thyroid.html](http://www.naturalnews.com/031780_potassium_iodide_thyroid.html)*

If the goal is to learn lessons from the Fukushima event, this lesson is very clear. There must be a viable plan in place for the distribution of KI and it must have a reasonable chance of being effectively implemented. We certainly would not want to see such a report following a nuclear event in the U.S.A. CASE contends that the current plan is not and that the Task Force's work must result in full review of all such plans. The plan for Turkey Point will not and cannot effectively provide Potassium Iodide at Turkey Point, not for the present reactors, and not for future reactors. An objective review of CASE's information provided by its learned experts will reveal this.

Contention 1, as a mechanism for assuring that the highest level of public safety at Turkey Point is met, should be admitted.

**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)**

In its Response of August 20, 2011 FPL, (placing the discussion under Contention 1 which only addressed Potassium Iodide instead of under Contention 2 which addresses evacuation), at 7 states:

*As to the inability to evacuate the 10-mile plume exposure pathway emergency planning zone, CASE points to the Task Force Report's recommendation that the station blackout regulations in 10 C.F.R. § 50.63 be strengthened (Task Force Report at 32-39), and argues that this recommendation requires admission of Amended Contention 1. CASE's Motion at 8. The Task Force's discussion of station blackout **makes no reference to evacuation issues**, (emphasis added) nor does it in any way suggest that in the event of a station blackout a potential evacuation of Turkey Point Units 6 & 7 (or any other plant) would be impeded.*

CASE would refer FPL to pages 60 and 61 in the Fukushima Report which discusses evacuation and which CASE referenced in its filing of August 12, 2011 as part of Contention 2. Evacuation is discussed and considered in several aspects. Unfortunately, the Summary of Detail Recommendations by Implementation Strategy, Appendix A, of the Report only does not mention evacuation at all. Can this not be of concern, or, kindly, is this being reserved for consideration as part of the Longer Term study? Otherwise, this is truly an omission.

At 8, FPL states:

*(Contention 2) is not supported by any information in the Task Force Report and should be summarily rejected.*

On the contrary, CASE presented exhaustive information and reasons why Contention 2 should be accepted, especially based on the omission in the Report of matters which should have been considered.

Conclusion

Since FPL did not address any of the substance of the issues CASE raised, no further comment can be made by CASE by way of response on Contention 2 other than to hold that FPL is not correct in its comments on or

opinion of this contention. Timely and safe evacuation at Turkey Point remains a concern which has not been sufficiently or fully addressed in the FPL Turkey Point 6 & 7 COL or in the Task Force Report. Contention 2 should be admitted so that, in consideration of public safety, a full discussion of all related issues can be had.

**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.**

In the FPL Response of August 20, 2011, at 12, we read:

*It defies comprehension how CASE could invoke the Task Force Report in support of its motion for reconsideration of Amended Contention 5, **when the topic of the contention was not even discussed in the Report.** (emphasis added) The contention was appropriately dismissed and needs no re-examination.*

This is exactly CASE’S point. As an act of omission, in regard to the potential impact of climate change and sea level rise, the Task Force Report was not responsive to the Tasking Memorandum of March 23, 2011 which, at 1, directed it to

The staff should establish a senior level agency task force to conduct a methodical and systematic review of our processes and regulations to determine whether the agency should make additional improvements to our regulatory system and make recommendations to the Commission for its policy direction. The review should address the following near term and then longer term objectives.

Near Term Review

- This task force should evaluate currently available technical and operational information from the events that have occurred at the Fukushima Daiichi nuclear complex in Japan to identify potential or preliminary near term/immediate operational or regulatory issues affecting domestic operating reactors of all designs, including their spent fuel pools, in areas such as protection against earthquake, tsunami, flooding, hurricanes; station blackout and a degraded ability to restore power; severe accident mitigation; emergency preparedness; and combustible gas control.
- The task force should develop recommendations, as appropriate, for potential changes to inspection procedures and licensing review guidance, and recommend whether generic communications, orders, or other regulatory requirements are needed.

As FPL has correctly stated, the topic of CASE's contention is not even mentioned in the charge to the Task Force. And, while flooding is mentioned in the charge and in the report, it is clear that it is not addressing sea level rise or climate change. If there were to be a "methodical and systematic review of our processes", as the Tasking Memorandum directs, this might include a full review of CASE's filings in these proceedings using a new template and new criteria to evaluate the merit and relevance of the facts and arguments presented instead of only challenging the manner in which the information is presented. If this were to be done, it might be seen that CASE's initial petition and FPL's response do show that, based on Dr. Wanless's climate change predictions and FPL's COL statements Turkey Point 6&7 will be two to four under water if placed at 26 feet in relation to current placement. FPL used a figure of, nominally, one foot of sea level rise per century at Turkey Point; Dr. Wanless predicts 3 to 5 feet of sea level rise per century. So at a minimum, if we accept Dr. Wanless's authoritative opinion, Turkey Point 6 & 7 will be two feet under water possibly by the end of this century.

Dr. Wanless, at 35 in CASE's initial petition states that

*7c. Incorporating future sea level changes will change the safety of the complex during major storms...*

*7d. Incorporating future sea level changes will change the ability of the ability of the associated cooling complex to function...*

FPL, in its response of September 13 2010, at 59, states

*Further, Dr. Wanless claims that "[i]ncorporating future sea level changes will change the ability of the complex to contain any nuclear accidents." Revised Petition at 35. Dr. Wanless offers no support for this assertion other than **his own speculation. Id. Dr. Wanless is a geologist and does not present himself as having any expertise in nuclear safety or reactor engineering. See Wanless Curriculum Vitae. Regardless, CASE and Dr. Wanless fail to explain the process by which sea level changes could affect the operation of the containments of Turkey Point Units 6 & 7. For these reasons, CASE Contention 5 is fatally defective and should be rejected.***

Dr. Wanless's points are clear. But, through obfuscation and logical inconsistency, FPL contends the contention is "fatally defective." If Dr. Wanless is, as FPL states, "a geologist", how can one characterize his geological observations and predictions as "his own speculation"? CASE presented Dr. Wanless as an expert witness; cavalierly dismissing his expert testimony because it was not presented in the proper format does not serve the public welfare and does not speak well of a firm given a special franchise and financial protection to fulfill a public need.

CASE submits that one result of the Task Force's work should be to discourage such an unfettered adversarial posture by the industry and, to some extent, by the NRC staff. We cannot always be wrong. In this case, as explained above, a review of CASE's presentation of Contention 5 based on the merits and facts presented would reveal that Turkey Point 6 & 7 will be under water two feet of water, probably before the end of the century and that the entire Turkey Point complex could be over twenty feet under water by then. At no point in the past year of these proceedings was this recognized by FPL or by NRC staff, nor were many other well stated and presented arguments accepted. If the directions of the Tasking Memorandum are to be followed by the Task Force, perhaps petitions, such as this one file by CASE, can receive a more objective review. As it is, contentions are rarely found to have merit. The Task Force and the Commission will have failed in its work if this pattern of handling petitions is not recognized and the way the game is played does not change.

Contention 5 is immanently with merit and should be accepted for further consideration.

**CONTENTION 9 (A New Contention) – ALL PENDING LICENSURE PROCEDURES FOR ALL UNLICENSED NUCLEAR REACTORS SHOULD BE SUSPENDED FOR AT LEAST TWO YEARS OR UNTIL THE NRC BOARD OF COMMISSIONERS ACCEPTS THE TASK FORCE REPORT AND ALL NEAR-TERM AND LONGER TERM RECOMMENDATIONS ARE FULLY DEFINED AND IMPELMENTED**

FPL holds that this contention should be presented directly to the Commission. While flooding is mentioned in the charge and in the report, it is clear that it is a commission. If CASE is advised by the ASLB that this is the case, that can be done. It does seem that the matter is related to the over evaluation and comments on the Task Force Report and what can be learned from the events in Japan. If there are lessons to be learned, it is CASE's position that they should be applied immediately, not retroactively or piecemeal later on and the only way to do that is to stop all matters in process now and to meaningfully apply the new policies and procedures on work in process.

Conclusion

Contention 9 should be adopted for consideration now if there is truly a desire to learn from the unfortunate events at Fukushima.

**CONTENTION 10 (A New Contention) – THE COMMISSION MUST ESTABLISH AND ENFORCE NEW GUIDELINES FOR THE SEPERATION OF THE NUCLEAR INDUSTRY FIRMS AND REPRESENTATIVES FROM PARTICIPATION IN STAFF DELIBERATIONS, DECISIONS AND ACTIONS.**

As stated under Contention 10, this contention can be submitted to the Commission, if that is the correct procedure. CASE stands by its discussion and arguments regarding Contention 10 in the submittal of August 12, 2011.

Conclusion

As observed by Commissioner Jaczko in the Tasking Memorandum of March 23, 2011 "The task force efforts ... should be independent of industry efforts". This should apply no less to the consideration of properly submitted petitions from the public before the ASLB by the NRC staff. Or re-consideration.

Contention 10 should be accepted.

Respectfully submitted,

Dated: August 29, 2011

/signed electronically by/

Barry J. White

Authorized Representative

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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 )  
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Combined License Application for )  
Turkey Point Units 6 & 7 )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I, Barry J. White, hereby certify that copies of the document above and all documents related to this motion were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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Dated: August 29, 2011

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