

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 and 52-041
)
Turkey Point,) ASLBP No. 10-903-02-COL-BD01
Units 6 and 7)

February 29, 2012

CITIZENS ALLIED FOR SAFE ENERGY REPLY TO
NRC STAFF OPPOSITION TO CONTENTION 9

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board (Board) Scheduling Order in this proceeding,¹ Citizens Allied For Safe Energy, Inc. (CASE) hereby replies to the NRC STAFF ANSWER TO “MOTION FOR LEAVE FOR CITIZENS ALLIED FOR SAFE ENERGY TO FILE A NEW CONTENTION” dated February 21, 2012. See CASE Motion, Attachment 1, CASE Contention 9: Florida Power & Light Company's Revised Long Term Low-Level Nuclear Waste [Management Plan] from Turkey Point 6 and 7 is Inadequate to Protect Public Health and Safety [in] all Circumstances (Feb. 3, 2012) (Proposed Contention 9).

NRC STAFF ISSUES AND CASE REPLIES

NRC Staff is opposing Contention 9 for the for the following reasons, at 8, with CASE's reply to each point:

"First, though CASE asserts that Contention 9 is based on the Applicant's revised LLRW management plan, Contention 9 is very similar in language and expert opinions to previous CASE Contentions 1, 2, 5, and 7, and CASE has failed to show that Contention 9 is based on new and materially different information as required by 10 C.F.R. § 2.309(f)(2)(i)-(ii). "

The Applicant's revised LLRW management plan introduces new and previously undisclosed approaches to handling long term storage of LLW at Turkey Point. Prior to this revision, LLW waste was to be moved off site. In the revision, FPL proposes either to (one) move it offsite while, newly, recognizing that this might not be possible due to the uncertain availability of offsite storage. This precipitated a new plan to store the LLW on site for more than two years. The proposed plan would be to (two) erect buildings on site for this. It is these two new and materially different solutions from any previous LLW long term storage plan which require that all possible regulatory and material concerns related to this new situation be evaluated and these new plans, which could affect public safety, be addressed exhaustively. By definition, this even includes events and situations that might have been raised before since they must be newly analyzed against all possible occurrences.

Second, CASE does not address the applicable factors in 10 C.F.R. § 2.309(c)(1) and therefore Contention 9 cannot be admitted as a nontimely contention.

Contention 9 was precipitated by and is warranted based on new information and plans presented in FPL COL Revision 3. CASE's filing was admitted as being timely.

Third, even if Contention 9 satisfied either the timeliness requirements or the nontimely filing requirements, each of its arguments fails to satisfy the general contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

In preparing Contention 9 CASE meticulously followed the requirements of 10 C.F.R. § 2.309(f)(1). As described below, CASE questions if all aspects and the spirit of that regulation have been followed by FPL in these proceedings.

Finally, to the extent that Contention 9 concerns the sufficiency of the Applicant's LLRW management plan with regard to safety, CASE should have made this argument in response to the Applicant's motion for summary disposition of Contention 7, which

specifically addresses the issue. Any sufficiency argument regarding the safety of the Applicant's LLRW management plan is not a *new contention* but a *nontimely answer to the Applicant's motion*. See 10 C.F.R. § 2.1205(b) (requiring that any answer to a motion for summary disposition be served within twenty days after service of the motion).

As noted, at 8, in CASE's filing of February 3, 2012, "Pursuant to 10 C.F.R. § 2.307(a) and the Atomic and Safety Licensing Board's (the "Board") March 30, 2011 Initial Scheduling Order and Administrative Directives, CASE is proffering a new contention (attached) in a timely manner.":

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. 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.

CASE'S new contention is based on new information provided in FPL's filing of January 3, 2012 referenced above.

FPL FAILURE TO ADDRESS MATERIAL ISSUES

CASE would like to reference the following:

10 C.F.R. § 2.309(f)(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

In this regulation, the petitioner or intervenor must show that the contention is material to the findings that the NRC must make; CASE submits that this was done extensively and exhaustively by CASE in the current filing and in all previous filings in this matter. However, there does not seem to be a corresponding requirement that the Applicant and, indeed, all parties to the matter, address the enumerated material issues directly. For the most part, only their legal and regulatory aspects have been considered by FPL, NRC Staff and the ASLB with almost all contentions being eventually dismissed, as a challenge to regulations and/or, more to the point, being immaterial. CASE submits that for

this Contention, materiality has not been addressed by FPL or by NRC Staff. Life and safety are in danger of being challenged and threatened; it would be difficult to find more material concerns. The predictions and warnings of authoritative scientists have been ignored, disparaged and rejected at every turn. No responsible party to these proceedings has adequately acknowledged the pending and potential storm surge, climatic and sea level rise threats to Turkey Point and the related consequences. The regulations and responsible concern for public safety require this; it is incumbent upon those charged with issuing the subject license to enforce the regulations even handedly and to fully address valid material concerns now; it will be too late to do so when most of Turkey Point is under water and the rest must be reached by row boat or after Turkey Point has been laid waste by a tropical cyclone.

The Fukushima-Daichi disaster was not an accident; it was an actuarial event waiting to happen precipitated by governmental and industry intransigence; Turkey Point is no different. The inundation of Turkey Point is not only probable, it is inevitable.

CONCLUSION

CASE requests that Contention 9 be admitted so that the important concerns presented can be addressed and considered thoroughly to determine if all public safety requirements have been met.

Respectfully submitted,

Dated: February 29, 2012

/signed electronically by/
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Combined License Application for)
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_____)

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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