

March 1, 2013

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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| 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) |) | |

**FLORIDA POWER & LIGHT COMPANY’S ANSWER OPPOSING
JOINT INTERVENORS’ MOTION FOR LEAVE TO FILE A NEW CONTENTION
CONCERNING THE SITING AND ENVIRONMENTAL IMPACTS OF A RECLAIMED
WATER TREATMENT FACILITY AND ASSOCIATED PIPELINES**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), Applicant Florida Power & Light Company (“FPL”) hereby answers and opposes the Motion for Leave to File a New Contention Concerning the Siting and Environmental Impacts of a Reclaimed Water Treatment Facility and Associated Pipelines at the Turkey Point Nuclear Power Plant (“Motion”), filed on February 5, 2013 by intervenors Southern Alliance for Clean Energy, National Parks Conservation Association, Dan Kipnis, and Mark Oncavage (“Joint Intervenors”) in the combined license (“COL”) proceeding for Turkey Point Units 6 and 7 (“the Turkey Point Units”). The Motion seeks to litigate a new contention concerning the potential relocation of the proposed reclaimed water treatment facility (“RWTF”) and associated pipelines at the Turkey Point Units, based on a January 10, 2013 decision by the Miami-Dade County Board of County Commissioners that denied FPL’s request for an “unusual use approval” to construct the RWTF at the location identified in the

Environmental Report (“ER”), which is part of FPL’s COL Application. Motion at 2-3. The Joint Intervenors’ proposed new contention reads:

The ER for Turkey Point Units 6 & 7 does not satisfy the National Environmental Policy Act (“NEPA”) because it does not properly identify the location of the reclaimed water treatment facility and associated pipelines and does not include a discussion of the environmental impacts of constructing and operating the reclaimed water treatment facility and associated pipelines in the location and manner approved by the Miami-Dade County Commission.

Id. at 3.

For the reasons set forth below, the Atomic Safety and Licensing Board (“Board”) should deny the Motion and reject the underlying contention, which is premature and does not satisfy the admissibility requirements of 10 C.F.R. § 2.309(f)(1), and in particular, fails to raise a genuine dispute on a material issue of fact or law with FPL’s Application.

II. FACTUAL BACKGROUND

The Turkey Point Units will use closed-cycle, mechanical draft cooling towers for both circulating water system cooling and service water system cooling. The primary source of makeup water for the circulating water cooling towers is reclaimed water supplied by the Miami Dade Water and Sewer District - South District Wastewater Treatment Plant (“MD-SDWTP”), which is located approximately 9 miles north of the Turkey Point plant property. ER, Rev. 4, Section 2.3.2.1.4.2 at 2.3-47. A delivery pipeline will be constructed from the MD-SDWTP facility to the location of the RWTF at the Turkey Point Plant property.

FPL plans to build an approximately 44-acre RWTF on a parcel of land between SW 344th Street/Palm Drive and the test canals (immediately north of the industrial wastewater treatment facility). *Id.*, Section 4.3.1.1 at 4.3-3. This facility is required to provide further treatment of the reclaimed water to meet the water quality requirements of the circulating water cooling system. Delivery pipelines will extend south from the RWTF to the makeup water

reservoir. *Id.* The location of the proposed RWTF is shown in Figure 3.9-1, sheet 2 of 4 of ER, Rev. 4, at 3.9-21.

One of the regulatory approvals to be obtained from State and local agencies in order to construct and operate the Turkey Point Units is a Miami-Dade County (“County”) “unusual use approval” (zoning approval) to permit a nuclear power plant and ancillary structures and equipment to be constructed in the County. Sections 33-13(3)(e) (Unusual Uses), 33-314(C)(16) and 33-311(a)(3), Code of Miami-Dade County Florida. Such an approval was issued by the County’s Board of County Commissioners on December 24, 2007 via Resolution Z-56-07, which granted an unusual use zoning approval permitting the construction of a nuclear power plant and ancillary structures and equipment for the Turkey Point Units. *See* ER (Rev. 4), Table 1.2-1, sheet 6 of 7, at 1.2-9. Subsequently, on July 3, 2012, FPL applied to the County for another unusual use approval, this time covering the RWTF and other facilities and structures. This application was submitted in response to comments received from County staff that an unusual use approval was required for the RWTF, among other needed approvals.¹

On December 13, 2012 and January 10, 2013, the County Board of County Commissioners held public hearings to consider FPL’s unusual use approval requests. The requests were approved, with the exception that the Commissioners did not approve the proposed location of the RWTF, but approved an alternate location approximately 2,000 feet south and west of the location shown in the ER. *See* Attachment A, Figure 1 at 7.²

¹ Attachment A to this Answer, which is Attachment 1 to FPL’s July 3, 2012 application, provides a description of the proposed RWTF and the evaluation of several alternative locations (including the one ultimately approved by the Commissioners). *See* Attachment A at 4-8. As the attachment shows, FPL considered several alternate locations for the RWTF at the County’s request. In the application, FPL requested approval of both the proposed location and an alternate location.

² Attachment B hereto is a site plan for the Turkey Point Units showing the alternate location of the RWTF approved by the County. Notably, the legend for the plan includes a footnote that states: “3. The information

On January 31, 2013, the County issued its land use and zoning consistency determination (“Determination”) for the Turkey Point Units under Fla. Stat. § 403.50665(2). The County’s Determination addresses land use and zoning consistency only for the alternate RWTF location, and excludes the proposed location. The County’s Determination is one of a number of local rulings that will be considered by the Florida Siting Board in its decision whether to approve the certification of the Turkey Point Units.³

FPL will have to decide whether it intends to seek approval, in the Florida site certification proceeding, for the currently proposed RWTF location (either in addition to or in lieu of the alternate RWTF location). FPL’s decision as to whether it intends to seek approval for the currently proposed RWTF location may be set forth in FPL’s position statement in the prehearing stipulation of the parties to the site certification proceeding. That prehearing

shown on this conceptual plan is illustrative only (other than the Proposed Unusual Use Boundary, the legal description of which is titled ‘Subject Property’ and has been submitted in Exhibit 2.1 of the public hearing application, ‘Subject and Contiguous Property Legal Descriptions and Sketches’). It depicts the general distribution of uses, and does not specify the exact location, size or characteristics of any proposed structure. The configuration of buildings, ancillary structures, driveways, parking lots, and other uses on site, as well as the location of proposed access roadways, will be further developed and reviewed as part of NRC Combined Construction and Operating Licensing process and State of Florida Site Certification Application process.”

Thus, while the County’s approval calls for FPL to build the RWTF at the alternate location, the site plan legend shows that there actually is flexibility regarding the RWTF’s precise location.

³ The Florida Electrical Power Plant Siting Act (“PPSA”) certification proceeding is the State of Florida’s centralized process for obtaining necessary permits and approvals for construction and operation of new electrical power plants of greater than 75 megawatts of generating capacity. That proceeding culminates in a “state position” with respect to the site for an electrical power plant. Fla. Stat. § 403.502 (2010). The site certification combines and procedurally preempts state, regional, and local permits and approvals regarding the location, construction, and operation of the electrical power plant and any “associated facility,” including, among other things, pipelines, roads, railway lines, and electrical transmission lines. Fla. Stat. § 403.511(1) (2010). The Florida Department of Environmental Protection (“DEP”) administers and oversees the processing of the certification application under the PPSA. Fla. Stat. § 403.504 (2010). Affected agencies, districts, local governments (such as the County), and regional planning councils, as well as the Florida Fish and Wildlife Conservation Commission are required to prepare agency reports on the project for submittal to the DEP. The agency reports include a recommendation for approval or denial of the utility’s Site Certification Application (“SCA”) along with any recommended conditions of certification. Fla. Stat. § 403.507(3)(b) (2010).

After the DEP determines the SCA complete, it must prepare a separate project analysis report, which includes its “recommendation” as to disposition of the SCA. Fla. Stat. §§ 403.507(5)(d), 403.526(3)(d) (2010). After an opportunity for an evidentiary hearing, the final decision as to whether an application for site certification should be approved or denied is made by Florida’s Governor and Cabinet sitting as the state Siting Board. Fla. Stat. § 403.509(3) (2010).

stipulation is expected to be filed in late June or early July 2013. If FPL pursues approval of the originally proposed RWTF location instead of the one approved by the County, the issue will be addressed through testimony and evidence at a July 8 to August 9, 2013 consolidated hearing. *See Fla. Stat. § 403.509(3).*⁴ The Siting Board will make a final decision on the RWTF location, as well as other siting issues, at its expected December 10, 2013 hearing on any final certification for the Turkey Point Units.

Thus, a final decision on the RWTF's location may not be made until December 2013, when the Siting Board issues any final order approving the state's site certification. If FPL decides to request state approval for only the alternate location for the RWTF or if only the alternate location for that facility is approved by the Siting Board, FPL will include in an amendment to the ER a description of the new location for the facility and the routing of the piping connecting the MD-SDWTP to the relocated RWTF and the delivery piping from that facility to the makeup water reservoir. The amended ER will also analyze the environmental impacts of the construction and operation of the relocated facility and the piping that runs into and out of it, or may provide an analysis showing that the impacts from the RWTF currently described in the ER bound the impacts associated with the alternate location of the RWTF. Until such changes are incorporated into the ER, the current description of the RWTF and associated piping and the assessment of their respective environmental impacts remains the applicable, and best available, information.

⁴ This portion of the PPSA sets out the criteria that must be met for the Siting Board to approve the "location, construction and operation of the electrical power plant" which includes its associated facilities. *See* definition of "electrical power plant" in Fla. Stat. § 403.503(14).

III. ARGUMENT

A. Applicable Commission Case Law on Contention Admissibility

The Commission has set forth strict contentions admissibility requirements in 10 C.F.R. § 2.309(f)(1). *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *reconsideration denied*, CLI-02-1, 55 NRC 1 (2002). Failure to comply with any of the admissibility criteria in Section 2.309(f)(1) warrants rejection of a contention. *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006). Of particular relevance here, a contention must provide adequate factual allegations or expert opinion to support its assertions, and must demonstrate that it raises material issues that present a genuine dispute with the application.

The proposed contention fails to comply with either of these criteria. *First*, each contention must “[p]rovide a concise statement of the alleged facts or expert opinions which support [the petitioner’s] position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which [the petitioner] intends to rely to support its position on the issue.” 10 C.F.R. § 2.309(f)(1)(v). A petitioner’s failure to present the factual information or expert opinions necessary to support its contention requires that the contention be rejected. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). “A petitioner’s issue will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’” *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000)).

Second, each contention must “provide sufficient information to show that a genuine dispute exists with the applicant . . . on a material issue of law or fact.” 10 C.F.R. § 2.309(f)(1)(vi). A contention will be rejected if it inaccurately describes an applicant’s proposed actions or ignores or misstates the content of the licensing documents. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2076 (1982); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1804 (1982); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1504-05 (1982). As the Commission has emphasized, the Section 2.309(f)(1)(vi) criterion bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003).

B. The Proposed Contention is not Supported by Facts or Expert Opinion

The proposed contention is based entirely on speculative assumptions, not facts or expert opinions. The Motion asserts that the siting of the RWTF to another location “will *likely* necessitate the reconfiguration and relocation of the proposed pipelines extending from the South District Wastewater Treatment Plant to the reclaimed water treatment facility to the makeup water reservoir.” Motion at 3 (emphasis added). The Motion further claims that “[b]ecause FPL will be required to construct the reclaimed water treatment facility and pipelines in a different location, *a new area* (along with a new set of habitats and species) *will be impacted* by the proposed project.” *Id.* at 5 (emphasis added). None of these speculative assumptions is accompanied by any actual facts or expert opinions, thus the proposed contention is inadmissible. *See, e.g., Florida Power & Light Co.* (Turkey Point Units 6 & 7), LBP-11-6, 73 NRC 149, 196 (2011) (where this Board found inadmissible a contention filed by the Joint

Intervenors which failed to provide facts or expert opinion demonstrating that the alleged defect was “reasonably foreseeable, rather than simply speculative”).

C. The Proposed Contention Fails to Raise a Genuine Dispute with the Application on a Material Issue of Fact

The Commission’s rules prescribe that environmental contentions must be based on the applicant’s documents and on the data and conclusions in the NRC Staff’s draft or final environmental impact statements. 10 C.F.R. § 2.309(f)(2). Here, as discussed above, the ER sections that describe the RWTF and associated pipelines have not changed since the Application was filed and had not been challenged by the Joint Intervenors up to the filing of their currently proposed contention. Indeed, as explained above, these ER sections may not change at all, despite the County’s Board of County Commissioners’ decision.

The Joint Intervenors allege: “*Presumably*, FPL will now construct the facility in the location approved by Miami-Dade County.” Motion at 4 (emphasis added). Such a “presumption” as to what FPL will do does not raise a material issue of fact with the Application. Contentions that are based on anticipated changes to an application, not reflected on the application currently before the NRC, are not sufficient to support admission of contention. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 294 (2002); *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 480 (2006); *Shaw Areva MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 479 (2008) (“a contention dealing with changes that have not yet been presented to the agency (e.g., as an amendment to the Application) must fail because a possible future action must at least constitute a proposal pending before the agency to be ripe for adjudication.”) (internal quotations and footnote omitted). Indeed, “an NRC licensing proceeding is not an occasion for far-reaching speculation about unimplemented and uncertain

plans of applicants or licensees.” *Duke Energy Carolinas, LLC* (Combined License Application for William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 454-55 (2008), citing *McGuire/Catawba*, CLI-02-14, 55 NRC at 293 (internal quotations omitted).

Here, the Joint Intervenors’ challenge to the ER is premised upon pure speculation as to potential future plans of FPL that are not before the Commission and thus would be futile to litigate at this juncture. The proposed contention is premature, unsupported, and does not raise a dispute with the Application as it currently stands. It must accordingly be rejected.

IV. CONCLUSION

FPL may in the future decide (or be required) to relocate the RWTF, and the relocation may necessitate rerouting the attendant pipelines. Such changes, if they come to pass, will be reflected in an amendment to the ER that describes them and assesses their environmental impact or provides an assessment showing that the impacts associated with the relocated RWTF are bounded by the impacts already assessed in the ER. If such changes were to come to pass, Joint Intervenors could then propose a contention based on the changes, whose admission would be subject to the Commission requirements of admissibility and timeliness. Now is not the time to consider such a contention.

For the above reasons, the Motion should be denied and the proposed contention rejected.

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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CERTIFICATE OF SERVICE

I hereby certify that copies of Florida Power & Light Company's Answer Opposing Joint Intervenors' Motion for Leave to File a New Contention Concerning the Siting and Environmental Impacts of a Reclaimed Water Treatment Facility and Associated Pipelines were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 1st day of March, 2013.

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