

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Michael F. Kennedy
Dr. William W. Sager

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Nuclear Generating, Units 3 and 4)

Docket Nos. 50-250-LA and 50-251-LA

ASLBP No. 15-935-02-LA-BD01

September 11, 2015

ORDER

(Denying Motion to Invalidate Environmental Assessment)

Citizens Allied for Safe Energy, Inc. (CASE), the intervenor in this license amendment proceeding,¹ has moved to invalidate an Environmental Assessment (EA) and Final Finding of No Significant Impact that was issued on July 31, 2014.² CASE argues that the EA is invalid because the notice was not placed in the Federal Register by the project manager even though an NRC Staff guidance document states that “[i]f the EA results in a [Finding of No Significant Impact], it is also the licensing [project manager’s] responsibility to prepare the Federal Register notice of the EA finding and the basis for those findings.”³ The NRC Staff and the Florida Power and Light Company oppose the motion.⁴

¹ LBP-15-13, 81 NRC 456, 459 (2015).

² Citizens Allied for Safe Energy Motion to Invalidate Nuclear Regulatory Commission Environmental Assessment of July, 31, 2014 (Aug. 25, 2015) [hereinafter “Motion to Invalidate”]; see also Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4, 79 Fed. Reg. 44,464, 44,470 (July 31, 2014).

³ Motion to Invalidate at 3 (quoting Office of Nuclear Material Safety and Safeguards, NRC, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, NUREG-1748, at 1-5 (Aug. 2003) (ADAMS Accession No. ML032450279)).

⁴ NRC Staff Answer to Citizens Allied for Safe Energy Motion to Invalidate Nuclear Regulatory Commission Environmental Assessment of July [31], 2014 (Sept. 3, 2015); Florida Power &

In addition to being untimely,⁵ CASE's motion rests on the mistaken assumption that NRC Staff guidance imposes a regulatory obligation.⁶ Guidance documents are not binding,⁷ so there was no requirement for the project manager to be the one to prepare the Federal Register notice. Accordingly, the Board denies CASE's motion.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 11, 2015

Light Company's Answer to CASE's Motion to Invalidate Nuclear Regulatory Commission Environmental Assessment (Sept. 4, 2015).

⁵ It is unclear if the Motion to Invalidate is a motion under 10 C.F.R § 2.323 or a new contention filed pursuant to 10 C.F.R. § 2.309(c). In either case, it is untimely because the EA became publicly available more than a year ago. See 10 C.F.R § 2.323(a)(2) ("All motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises."); 10 C.F.R. § 2.309(c)(1)(iii) ("The filing" must be "submitted in a timely fashion based on the availability of the subsequent information.").

⁶ Motion to Invalidate at 4 ("Clearly, the framers of NUREG-1748 expected the Regulation to be observed and binding; the regulations are not suggestions.").

⁷ Areva Enrichment Servs., LLC (Eagle Rock Enrichment Facility), CLI-11-4, 74 NRC 1, 8 n.35 (2011) ("NRC guidance documents are not legally binding, and compliance with them is not required . . ."); S. Tex. Project Nuclear Operating Co. (S. Tex. Project, Units 3 & 4), CLI-10-24, 72 NRC 451, 467 (2010) ("[A] guidance document does not create binding legal requirements.").

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket Nos. 50-250 and 50-251-LA
)
)
(Turkey Point Nuclear Generating)
Units 3 & 4)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying Motion to Invalidate Environmental Assessment)** have been served upon the following persons by Electronic Information Exchange or via electronic mail as indicated by an asterisk.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
Washington, DC 20555-0001

Michael M. Gibson, Chair
Administrative Judge
E-mail: michael.gibson@nrc.gov

Dr. Michael F. Kennedy
Administrative Judge
E-mail: michael.kennedy@nrc.gov

Dr. William W. Sager
Administrative Judge
E-mail: william.sager@nrc.gov

Nicole Pepperl, Law Clerk,
E-mail: nicole.pepperl@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
Brian Harris, Esq.
David Roth, Esq.
Edward Williamson, Esq.
Catherine Kanatas, Esq.
Christina England, Esq.
Daniel Straus, Esq.
John Tibbetts, Paralegal
E-mail: brian.harris@nrc.gov
david.roth@nrc.gov
edward.williamson@nrc.gov
catherine.kanatas@nrc.gov
christina.england@nrc.gov
daniel.straus@nrc.gov
john.tibbetts@nrc.gov

Turkey Point, Units 3 & 4, Docket Nos. 50-250 and 50-251-LA
ORDER (Denying Motion to Invalidate Environmental Assessment)

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Nextera Energy Resources
William Blair, Esq.
E-mail: william.blair@fpl.com

Citizens Allied for Safe Energy, Inc. (CASE)*
10001 SW 129 Terrace
Miami, FL 33176
Barry J. White
E-mail: bwtamia@bellsouth.net

Florida Power & Light Company
801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
E-mail: steven.hamrick@fpl.com

[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of September, 2015