

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board
Administrative Law Judges:
Michael M. Gibson, Chairman
Dr. Michael F. Kennedy
Dr. William W. Sager

In the Matter of)	
)	
Florida Power & Light Company)	Docket No. 50-250-LA
)	and 50-251-LA
(Turkey Point Units 3 and 4))	
)	ASLBP No. 15-935-02-LA-BD01

October 29, 2015

CITIZENS ALLIED FOR SAFE ENERGY'S ANSWER TO FLORIDA POWER & LIGHT COMPANY'S FLORIDA POWER & LIGHT COMPANY'S (FPL)MOTION (Motion) TO STRIKE PORTIONS OF CASE'S "INITIAL STATEMENT OF POSITION, TESTIMONY, AFFIDAVITS AND EXHIBITS" OR, IN THE ALTERNATIVE, MOTION IN LIMINE TO EXCLUDE IT AND ITS CITED DOCUMENTS FROM EVIDENCE.

Pursuant to 10 C.F.R. §§ 2.319, 2.323, and 2.337, and in accordance with the Licensing Board's Initial Scheduling Order of May 8, 2015 (Order) CASE hereby files this timely answer to FPL'S MOTION (Motion) TO STRIKE PORTIONS OF CASE'S "INITIAL STATEMENT OF POSITION, TESTIMONY, AFFIDAVITS AND EXHIBITS" (Statement) OR, IN THE ALTERNATIVE, MOTION IN *LIMINE* TO EXCLUDE IT AND ITS CITED DOCUMENTS FROM EVIDENCE.

BACKGROUND

As directed in the May 8, 2015 Board Order, on October 9, 2015 CASE filed its *INITIAL STATEMENT OF POSITION, TESTIMONY, AFFIDAVITS AND EXHIBITS (For January, 2015 Evidentiary Hearing)*. On October 19, 2015 FPL filed its Motion to Strike.

FPL ARGUMENTS

The FPL Motion cites the following reasons for striking, at 1,

- 1) *“the CASE filing ... does not contain any sworn expert testimony.”*
- 2) *“CASE raise issues beyond the limited scope of Contention 1 as admitted by the Board in this proceeding.”*

1) “THE CASE FILING DOES NOT CONTAIN ANY SWORN EXPERT TESTIMONY”

AS stated in CASE’s Statement, at 5,

“CASE has no testimony or affidavits to submit at this time. None of these potential expert witnesses would voluntarily provide sworn testimony. CASE will file a motion requesting that subpoenas be issued for expert witnesses to provide sworn testimony.”

CASE then names four expert witnesses for whom it plans to request subpoenas; additional witnesses will be added to that list.

On October 19, 2015 the Board issued an Order (Granting Request for Extension of Time) to the NRC Staff revising the Motion *In Limine*/Motions to Strike to December 15, 2015. That Order states, at 9,

C. List of Witnesses

By December 4, 2015, each party shall file its final list of the witnesses on whose testimony it intends to rely at hearing, in accordance with 10 C.F.R. § 2.336(a)(1).

CASE seeks clarification from the Board. Since the Final Witness List date in the May 8 Order is the same December 4, 2015 date as the original Motion *in Limine*/Motions to Strike date, can we assume that the date to file Final Witness List will also be December 15, 2015? In either case, by the date set by the Board or before, CASE will have identified its witnesses indicating which position each will be asked to support. CASE will attempt to provide at least one expert witness and sworn testimony for each issue and position presented in its pleadings.

2) “CASE RAISE(S) ISSUES BEYOND THE LIMITED SCOPE OF CONTENTION 1”

The Board’s March 23, 2015 MEMORANDUM AND ORDER (Granting CASE’s Petition to Intervene) restated Contention 1 as follows, at 24,

“The NRC’s environmental assessment, in support of its finding of no significant impact related to the 2014 Turkey Point Units 3 and 4 license amendments, does not adequately address the impact of

increased temperature and salinity in the CCS on saltwater intrusion arising from (1) migration out of the CCS; and (2) the withdrawal of fresh water from surrounding aquifers to mitigate conditions within the CCS.

Of course, the question whether the EA is, in fact, sufficient to satisfy the NRC Staff's NEPA requirements is not the focus of our inquiry here but must await consideration at a full evidentiary hearing”.

As the CASE Statement states, at 7

Given the proposition inherent in the restated Contention, that the 2014 EA inadequately addressed the impact of the actions approved on the various aspects of the environment in question, this discussion will look at the impact of what was authorized and the impact of not considering other factors which could have or should have also been considered; commission and omission are both at play.”

Regarding the scope of Contention 1, the task was to define the impact of what was *not* considered by the NRC Staff, CASE presented exactly that for each element of the restated Contention: Temperature, Salinity and Freshwater, Migration. All scientific information in the CASE Statement is only presented to represent what could have been investigated in an adequate and thorough EA. By definition, you must present examples of what was omitted or not considered. The substance of such citations, as CASE has said several times, is not at issue.

MATTERS BEYOND THE SCOPE OF CONTENTION 1

The FPL Motion contends, at 8,

: *“SIGNIFICANT PORTIONS OF THE CASE STATEMENT AND ITS EXHIBITS ARE BEYOND THE SCOPE OF CONTENTION 1 AND SHOULD BE STRICKEN”*

The Motion enumerates subsequently:

A. Biscayne Bay

“The CASE Statement argues, for the first time, that CCS water may impact the water of Biscayne Bay, as opposed to the Biscayne Aquifer, which underlies both Biscayne Bay and the Turkey Point site.²³ Neither CASE’s Petition nor its Reply ever asserted that hypersaline water from the CCS would intrude into Biscayne Bay.²⁴ In its Petition, CASE cited a document discussing the “high salinity groundwater plume from the cooling canals as it moves to the east under the Bay.”²⁵ CASE certainly never argued that CCS water would affect Biscayne Bay. Thus, the scope of the CASE contention should exclude impacts to Biscayne Bay.”

CASE Answer: As stated above, the NRC staff might have predicted and addressed the impact of the measures it was approving beyond the CCS if it had made an effort to do so and to objectively analyze them. The Contention, as restated, makes the impact on the area beyond the CCS, including Biscayne National Park and the Biscayne Bay Estuary, relevant to CASE’s positions. The FPL Motion states, in a footnote, at 9,

*“ 24 At the prehearing conference, Mr. White engaged in a lengthy discussion with Judge Kennedy regarding the results of FPL monitoring wells at location TPGW-10, shown in slide 8 to CASE Petition Exhibit 1. See Tr. at 109-115, discussing CASE Pet. Ex. at 8. As demonstrated in that slide and in Mr. White’s discussion, the slide (CASE Exhibit INT-060, Illustration 1 below) represents three wells at various depths in the ground near the Biscayne Bay shoreline, with the higher values of the dense hypersaline water in the deepest part of the aquifer as would be expected. None of these groundwater readings involved measurements in the Bay itself. See also Pet. Ex. 1 at 7 (INT-059) and 9 (INT-062) (providing “contours based on **deep well** tritium results”) (emphasis added).”*

CASE sought clarification on this matter yesterday, October 28, 2015 from the Miami-Dade County DERM staff which prepared INT-002. *Units 3 & 4 Uprate Implementation Water Quality Impacts DERM. Geologist Craig Grossenbacher of the staff replied today, October 29, 2015, email in full:*

Grossenbacher, Craig (RER) <GrossC@miamidade.gov>

To

'Barry White'

CC

Otero, Luis (RER) Burzycki, Gwen (RER)

Today at 9:13 AM

The answer to your question is yes, the slides are data compilations from all of the groundwater monitoring wells. This is a type of computer simulation that extrapolates the concentrations between the data points

based on the concentrations where sampling is conducted. The more sampling points, the better the computer contouring. This particular well is actually located under Biscayne Bay. The contour plots use only the deepest wells at each monitoring location in order to map the plume contours at or near the base of the Biscayne aquifer. There is wide acceptance that this monitoring location reveals that the plume from the cooling canals was not at this monitoring location initially and that during the monitoring program, sampling revealed that the plume had reached this location and has migrated beyond it towards the NE.

As I believe we explained per your previous questions, one goal of the monitoring plan is to determine the extent of the plume and whether or if it expands outward once the uprate project is on line.

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Thus, we see that Slide 8, Illustration 1, below, and related representations, are based on more than the FPL statement cited above indicates. The DERM email states “*data compilations from all of the groundwater monitoring wells. (many are identified in Slide 8) and “This particular well is actually located under Biscayne Bay.”* Clearly, Slide 8 does show that migration from the CCS is in all directions.

Contours Based On Deep Well Tritium Results From the June 2011 Quarterly Sampling

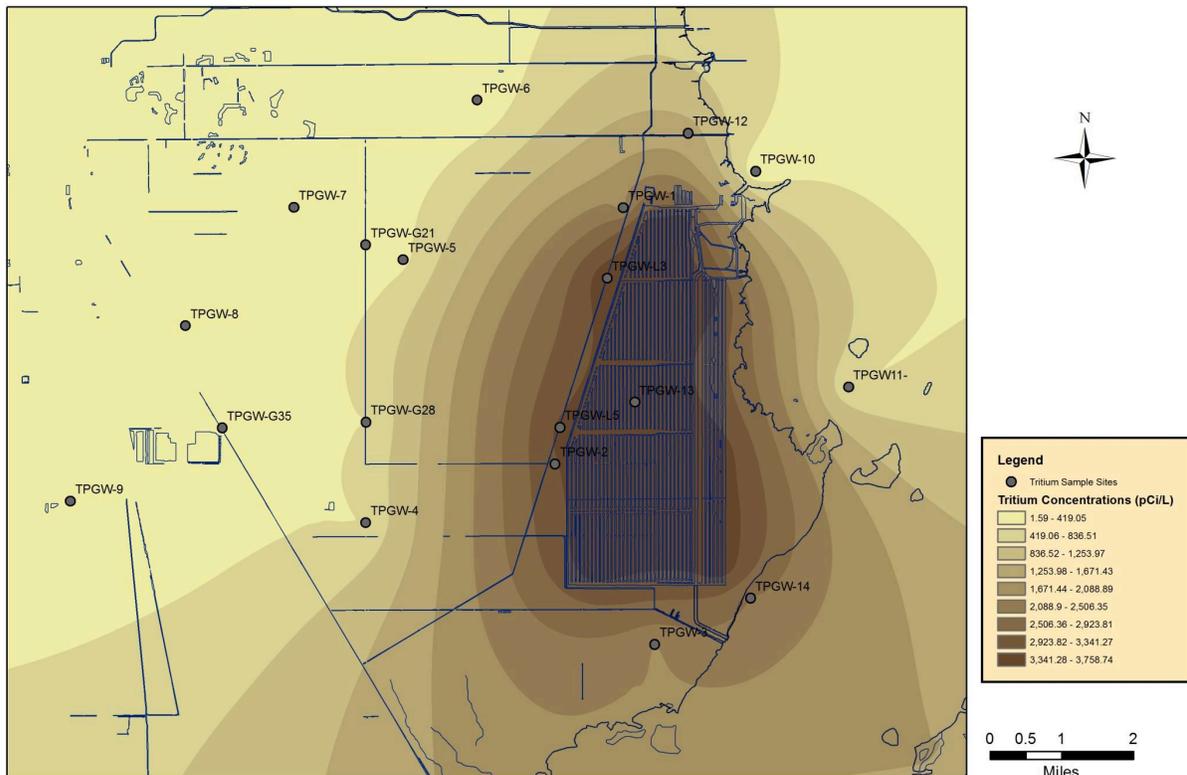


Illustration 1. INT-002, Slide 8 (INT-060) Units 3 & 4 Uprate Implementation Water Quality Impacts DERM

In FPL's Motion at 9,

"B. Need for Monitoring

The CASE Statement also devotes a considerable amount of attention to the alleged failure of the EA to properly address monitoring, including several pages of emails from Miami-Dade County representatives.²⁶ The CASE Petition and the admitted contention do not include consideration of this issue

CASE Answer: Migration of water from the CCS is not prescribed; migration, as Illustration 1 (INT-002, Slide 8 (INT-060)) shows (presented above), is in all directions, including eastward into Biscayne National Park and the Biscayne Bay Estuary. Indeed, the Notice of Violation issued to FPL by Miami-Dade County RER DERM on October 5, 2015 (INT-005) specifically points to the inadequacy of monitoring migration from the CCS.

In FPL's Motion at 9,

"C. Impact of Algae Remediation on Crocodiles

The CASE Statement alleges that the EA failed to properly consider the impacts of copper sulfate on crocodiles.²⁷ Although this claim was raised in CASE's original petition, the Board expressly rejected this allegation because the EA does, in fact, discuss this issue.²⁸"

CASE Answer: That this is exactly the point; crocodiles per se are not at issue but the depth and breadth of the NRC staff discussion and inquiry into the impact of Copper Sulfate, *a toxic metal salt*, is. The analysis was limited and did not uncover the affect it has on crocodile reproduction and what would become of it in nature. The 2014 EA was cursory and inadequate on this matter. The information provided by CASE's Statement, to some extent, illustrates where.

FPL Motion, at 10

D. Bacchus Paper

CASE excerpts the Abstract from a paper by Dr. Sydney Bacchus,

entitled "Knowledge of Ground Water Responses - Critical Factor in Saving Florida's Threatened and Endangered Species Part I: Marine Ecological Disturbances."29 This paper discusses impacts to marine resources from activities such as the underground injection of wastewater, aquifer storage and recovery, and mining and impacts related to disease, pathogens, antagonistic evolution and endocrine disruptors. CASE raised none of these issues in its Petition and none was admitted by the Board as part of Contention 1.

Dr Bacchus clearly understood what we are addressing in this inquiry: the inadequacy of governmental regulation. As the Statement cites, at 34,

*"Florida's marine species, including threatened and endangered species, are subjected to adverse environmental conditions due to groundwater alterations because agencies charged with implementing and enforcing the Clean Water Act and Endangered Species Act **fail to consider those impacts.**"*

As CASE's Statement reports marine life in and near the CCS has been severely reduced due to cumulative and recent action to make the CCS work. Potentially toxic cyanobacteria is growing out of control; hundreds of millions of precious freshwater are being used, and will be used, to attempt to reduce salinity in the CCS with guarded prognosis of success. Nothing can survive with salinity three times that of seawater; nothing can exist in an Industrial Waste Facility. No one really knows the impact of injecting billions of gallons of hypersaline and waste water half a mile into the Earth.

Every action in such an environment has consequences. Dr. Bacchus enumerates some.

FPL Motion, at 10

E. General NEPA Considerations

Finally, CASE devotes a large section of its Statement to a discussion of general NEPA principles not presented in its Petition.³⁰ Among other out-of-scope issues, CASE discusses the NRC's considerations of alternatives, evaluation of unresolved conflicts, consultation with other agencies, and the speed with which the NRC completed its review. None of these issues were raised by CASE or admitted by the Board.

CASE Answer: As cited above, the Board followed its restatement of Contention 1 with this statement:

"Of course, the question whether the EA is, in fact, sufficient to satisfy the NRC Staff's NEPA requirements is not the focus of our inquiry here but must await consideration at a full evidentiary hearing".

Could it be any clearer that NEPA concerns must be addressed in this pleading and must be a part of CASE's Statement of Position? They do not apply to FPL but they certainly apply to the NRC Staff. CASE would have been remiss not to address them exhaustively.

ATTACHMENT INT-002

Attachment INT-002, *Units 3 & 4 Uprate Implementation Water Quality Impacts* prepared by the Miami-Dade County Regulatory and Economic Resources (RER) Department of Environmental Research Management (DERM) based on FPL data is exactly the same as *Exhibit 1 Units 3 & 4 Uprate Implementation Water Quality Issues B (pdf graphs).key* from CASE's Petition Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing filed October 14, 2014.

CONCLUSION

In its Statement, CASE attempted to respond directly to Contention 1 as restated by the Board. CASE focused on the adequacy of the 2014 EA and has shown, in many ways, that it was not. The CCS, as it has evolved since 1973, has become a grave and imminent threat to the Turkey Point Wetland, a rare and fragile ecological site and a vital resource for over 1.5 million people. Those charged with administering it and with using it responsibly and respectfully seem to have forgotten this. Before any measures which directly impact the area are approved, the decisions should include sincere and sensitive appreciation for the land, the people and the flora and fauna which cannot speak for themselves. Good management practices and the drafters of NEPA demand no less.

CERTIFICATION

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.

Executed in Accord with 10 CFR § 2.304(d).

Respectfully submitted,

/S/ (Electronically) Barry J. White

Barry J. White
Authorized Representative
Citizens Allied for Safe Energy, Inc.
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305-251-1960

Dated at Miami, Florida
this 29th day of October, 2015