

December 14, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION IN LIMINE TO EXCLUDE PORTIONS OF THE  
PREFILED REBUTTAL TESTIMONY OR IN THE ALTERNATIVE STRIKE PORTIONS OF THE  
PREFILED REBUTTAL TESTIMONY AND REBUTTAL STATEMENT OF POSITION

INTRODUCTION

In accordance with 10 C.F.R. §§ 2.319, 2.323, 2.337, 2.1204, and the Atomic Safety and Licensing Board's ("Board") scheduling Order of May 8, 2015, and Order (Granting request for Extension of Time) of October 19, 2015, the staff of the U.S. Nuclear Regulatory Commission ("Staff") files this Motion *in Limine* or in the alternative a Motion to Strike the following matters from Citizens Allied for Safe Energy, Inc., ("CASE") Rebuttal Testimony and Rebuttal Statement of Position ("Rebuttal SOP")<sup>1</sup>:

1. Testimony of Dr. Phillip K. Stoddard (Rebuttal SOP at 4-11);
2. Other Statements attributed to Dr. Stoddard in CASE's SOP (*id.* at 26, 27);
3. Arguments related to the American Crocodile and other flora and fauna (*id.* at 6-9, 37, 41-43);
4. Arguments related to the time used to prepare the EA (*id.* at 38-39);
5. Arguments related to the consultations with various federal agencies (*id.* at 43); and

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<sup>1</sup> Citizen's Allied for Safe Energy's Joint Rebuttal to NRC Staff's and FPL's Initial Statements of Position, Exhibit List, and Exhibits (Dec. 1, 2015).

6. Arguments related to the discussion of alternatives (*id.* at 40-41).

Dr. Stoddard's testimony and other reported statements<sup>2</sup> referenced in the Rebuttal SOP should be excluded from the evidentiary hearing because the information is not reliable, relevant, or material to findings that the Board must make. His other attributed statements were not provided under oath. Further, Dr. Stoddard's testimony and attributed statements are not within the proper scope of rebuttal testimony, and should have been proffered as part of its case-in-chief. Dr. Stoddard does not address the Statements of Position or testimony submitted by Florida Power & Light Co. ("FPL") of the Staff. Although CASE was given an opportunity to supplement its initial statement of position and testimony, the Board warned that any testimony submitted in support of the Rebuttal SOP should be confined to issues of rebuttal.<sup>3</sup> The Rebuttal SOP, however, strays into issues that have been excluded from this proceeding, are not material to the contention as reformulated by the Board, and should be excluded from evidence or stricken. Accordingly, Dr. Stoddard's testimony and other attributed statements and CASE's arguments regarding issues outside the limited scope of this proceeding should be excluded from evidence or in the alternative stricken.

## DISCUSSION

### I. Legal Standards Governing Motions in Limine

"Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and

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<sup>2</sup> Because CASE choose to embed Dr. Stoddard's testimony and affidavit within the Rebuttal SOP, it makes it very difficult to identify what statements were made under oath and subject to perjury and which statements are simply being reported by CASE. For the purposes of this motion, the Staff considers Dr. Stoddard's testimony to appear on pages 4-10 of the Rebuttal SOP and concludes with a declaration from Dr. Stoddard. The Staff considers the other statements of Dr. Stoddard to be reflected in the Rebuttal SOP at pages 26 and 27. These statements at pages 26 and 27 are not reflected in Dr. Stoddard's testimony and do not appear to be covered by his declaration.

<sup>3</sup> Order (Denying CASE's Application for Subpoena) at 2 (Nov. 12, 2015).

excluded so far as is practicable.” 10 C.F.R. § 2.337(a). While the “strict rules of evidence do not apply to written submissions,” the Board may “on motion or on the presiding officer’s own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative,” and may “[r]estrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments.” See 10 C.F.R. § 2.319(d)-(e).

NRC hearings are limited to the scope of the admitted contentions. The Commission has warned against allowing “distinctly new complaints to be added at will as litigation progresses, [and thereby] stretching the scope of admitted contentions beyond their reasonably inferred bounds.” *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (emphasis added).

In this regard, it is well established that if an intervenor proffers testimony or evidence outside the scope of the admitted contentions, it will be excluded. See, e.g., *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100 (2010) (agreeing with the Staff that the licensing board had properly excluded the intervenors’ testimony and exhibits that were outside the scope of the admitted contention).<sup>4</sup> As the Commission explained:

The scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with our rules. Otherwise, NRC adjudications quickly would lose order. Parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing. Our procedural

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<sup>4</sup> *Accord, Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 401 (2005); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), 2009 NRC LEXIS 13 (Feb. 23, 2009), at 6-7.

rules on contentions are designed to ensure focused and fair proceedings.

*Id.* at 100-01 (internal footnotes omitted). Recently, the Commission emphasized:

We have long required contention claims to be set forth “with particularity,” stressing that it “should not be necessary to speculate about what a pleading is supposed to mean.” Our proceedings would prove unmanageable—and unfair to the other parties—if an intervenor could freely change an admitted contention “at will as litigation progresses,” “stretching the scope of admitted contentions beyond their reasonably inferred bounds.” “Petitioners must raise and reasonably specify at the outset their objections to a license application.”

*Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-01, 75 NRC at 309 (Feb. 9, 2012) (slip op. at 22-23) (internal citations omitted).<sup>5</sup>

For rebuttal testimony, the scope is more limited. In addition to being restricted to the matters raised in the contention, rebuttal testimony may be admitted only insofar as it is responsive to the other parties’ statements of position and evidentiary submissions. Thus, Boards have limited the scope of rebuttal statements of position and rebuttal testimony.<sup>6</sup> For example the Indian Point Board stated that “Intervenors should not revise their entire original statements of position but rather present only responsive arguments.”<sup>7</sup> Moreover, rebuttal

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<sup>5</sup> In addition, an expert opinion is only admissible if the witness is competent to give an expert opinion and adequately states and explains the factual basis for the expert opinion. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 NRC 71, 81 (2005). An admissible expert opinion must be “based upon sufficient facts or data to be the product of reliable principles and methods that the witness applied to the facts of the case.” *Id.* at 80. The proponent of the testimony bears the burden of demonstrating that its witness is qualified to serve as an expert. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004). “A witness may qualify as an expert by knowledge, skill, experience, training, or education to testify [i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” *Id.* at 27-28 (internal quotation marks omitted, alteration in original).

<sup>6</sup> See, e.g., *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-15, 63 NRC 591, 620 (2006) (reciting the Board’s action striking portions of prefiled rebuttal testimony “that fell outside the scope of any admitted contention and/or the permissible scope of rebuttal testimony”).

<sup>7</sup> See, e.g., *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-15, 63 NRC 591, 620 (2006) (reciting the Board’s action striking portions of prefiled rebuttal testimony “that fell outside (footnote continued)

testimony may only address matters which the party could not have raised earlier; fundamental fairness requires that it may not raise matters for the first time that reasonably should have been, but were not raised in the party's case-in-chief.<sup>8</sup>

II. Dr. Stoddard's Testimony and Other Reported Statements Are Not Within the Scope of Rebuttal Testimony

Dr. Stoddard's substantive testimony consists of a single answer beginning on page 6 of CASE's Rebuttal Statement of Position and continuing to page 10. Rebuttal SOP at 6-10. Instead of addressing the issues raised in the Staff's Initial Statement of Position, pre-filed testimony, and supporting exhibits, Dr. Stoddard's testimony addresses his analysis of the EA without reviewing any of the supporting documents including the Biological Assessment, any testimony submitted by FPL or the Staff, or even CASE's Initial Statement of Position<sup>9</sup> ("SOP"). Rebuttal SOP at 5. His substantive testimony addresses issues that should have been raised in CASE's case-in-chief.<sup>10</sup> Dr. Stoddard's testimony is directed towards one issue — the impacts

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the scope of any admitted contention and/or the permissible scope of rebuttal testimony").

<sup>8</sup> See, e.g., *Progress Energy Florida, Inc.* (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640, 655 (2009) ("Being in the nature of rebuttal, the response, rebuttal testimony and rebuttal exhibits are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously filed initial written statement"); *Amergen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), 2007 NRC LEXIS 54 (April 17, 2007), at 9 ("Being in the nature of rebuttal, the response is not to advance any new affirmative claims or arguments that reasonably should have been, but were not, included in the party's previously-filed initial written statement"); *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), 2006 NRC LEXIS 64 (March 1, 2006), at 6 ("Being in the nature of rebuttal, the response and rebuttal testimony are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously-filed initial written statement") *Rockwell International Corp. Rocketdyne Division* (Special Material License Number SNM-21), LBP-89-27, 30 NRC 265, (1989) (permitting rebuttal testimony "only with respect to new or surprise material" included in the opposing party's submittals).

<sup>9</sup> Citizens Allied For Safe Energy Initial Statement of Position, Testimony, Affidavits and Exhibits (For January, 2015 Evidentiary Hearing) ("SOP") (Oct. 9, 2015).

<sup>10</sup> As explained in Section III, Dr. Stoddard's testimony is outside the limited scope of the contention before the Board and therefore, should be stricken for independent reasons.

of higher temperatures and chemical treatments on the American crocodile.<sup>11</sup> See Rebuttal SOP at 6-10. CASE should not be allowed to supplement testimony that should have been provided with its case-in-chief. Allowing CASE to make its case-in-chief in its rebuttal testimony results in substantial unfairness to the other parties and essentially reverses the Board's careful laid-out plan to have CASE proceed with testimony prior to the other parties' testimony. Since Dr. Stoddard's testimony is outside the limited scope of rebuttal testimony and could have been raised in CASE's case-in-chief, it should be excluded from evidence or in the alternative stricken.

III. Dr. Stoddard's Testimony Is Not Material or Relevant to the Contention Before the Board

Dr. Stoddard substantive testimony confines itself to impacts from the changes in the CCS and chemical treatments of the CCS to the American crocodile. In the Order admitting Contention 1, the Board determined that CASE had not identified a material dispute regarding potential impacts on the American crocodile from increasing allowable temperature limits prior to plant shutdown for the CCS, the use of algaecides in the CCS, or the impact of salinity. LBP-15-13, 81 NRC at 477-78. The Board stated, "CASE fails to show that a genuine dispute exists, as required by 10 C.F.R. § 2.309(f)(1)(vi), since the EA does in fact discuss those impacts." *Id.* at 478 (discussing impacts on the American Crocodile from algaecide treatments). The contention as reformulated by the Board is limited to the "impact of increased temperature and salinity in the CCS on saltwater intrusion ...." *Id.* at 476. Dr. Stoddard's testimony regarding temperature and salinity impacts on the American crocodile and other flora and fauna is not material to the issue to be decided by the Board, and thus, his testimony and unattributed statements should be stricken.

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<sup>11</sup> As discussed below, these issues surrounding the American crocodile have been specifically excluded from Contention 1.

IV. Dr. Stoddard Has Not Presented Sufficient Information to Qualify as an Expert Witness

In order to be qualified as an expert, CASE must demonstrate that Dr. Stoddard is qualified by knowledge, skill, training, or education” to render an opinion. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 NRC 71, 80-81 (2005). Examining Dr. Stoddard’s testimony, he provides no evidence that he has any particular expertise, training, education, experience regarding thermal-hydraulic analyses and/or hydrogeology to evaluate whether a small 4 °F change in the upper limit of the allowable CCS temperature for what is expected to be short durations would alter the saltwater intrusion. As such, Dr. Stoddard’s attributed statement regarding saltwater intrusion should be excluded. Similarly, Dr. Stoddard’s testimony does not demonstrate that he is qualified to opine on the impacts of temperature and salinity on the American crocodile. The testimony provides a scant 7 lines on his qualifications without any supporting documentation. Rebuttal SOP at 4-5. The testimony states that his doctorate was in “[A]nimal [B]ehavior and [P]hysiology,” but his declaration in the combined operating license proceeding for Turkey Point, Units 6 and 7, stated that his doctorate was in Psychology. Expert Declaration by Dr. Phillip K. Stoddard in Support of Petitioner’s Standing to Intervene in this Proceeding at 1, Attachment A, (ADAMS Accession No. ML102300763). His recitation of experience does not demonstrate any particular experience with the thermal-hydraulics, hydrogeology, or the American Crocodile. See Rebuttal SOP at 5. Thus, his testimony is unreliable and should be excluded from evidence.

V. CASE Failed to Disclose Material and Relevant Information Related to Dr. Stoddard’s Testimony

CASE did not disclose numerous documents relied upon by Dr. Stoddard for his testimony and appears to have not disclosed several meetings or communications with Dr.

Stoddard that are identified in the Rebuttal SOP. See, e.g., Rebuttal SOP at 10-11, 26, 27.<sup>12</sup>

Many of documents listed at the end of Dr. Stoddard's sworn testimony have not appeared in CASE's disclosures. See Rebuttal SOP at 10-11. Because CASE's has not disclosed relevant and material information related to Dr. Stoddard's testimony, the testimony should be excluded or stricken.<sup>13</sup>

VI. The Rebuttal SOP Addresses Issues Well Outside the Limited Scope of Contention 1

In response to CASE's Initial SOP, FPL moved to exclude or strike portions of the SOP that were outside the scope of the admitted contention.<sup>14</sup> To the extent that CASE continues to raise issues outside the scope of Contention 1, they should be stricken for all the reasons provided in FPL's Motion and the Staff's Answer in support of FPL's Motion.<sup>15</sup> In particular, CASE challenges (1) the pace of the Staff's Environmental Assessment ("EA") preparation, (2) the range of alternatives discussed in the EA, (3) the impact to crocodiles and other wildlife, and (4) the consultation with other agencies. These four issues are outside the scope of the Contention 1, which was limited by the Board to the impact of CCS conditions on the saltwater

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<sup>12</sup> Dr. Stoddard's testimony identifies 10 articles/reports that have not been disclosed in discovery.

<sup>13</sup> 10 C.F.R. § 2.320 authorizes the presiding officer to impose various sanctions on a party for its failure to, among other things, comply with a discovery order. See *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), LBP-83-56, 18 NRC 421, 433 (1983). The failure of a party to comply with a Board's discovery order constitutes a default for which a Board may make such orders in regard to the failure as are just. *Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LBP-86-4, 23 NRC 75, 80 (1986); *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), LBP-83-29A, 17 NRC 1121, 1122 (1983).

<sup>14</sup> FPL Motion to Strike at 8-12 (Oct. 19, 2015). FPL's Motion has been fully briefed by the parties and remains pending.

<sup>15</sup> NRC Staff's Answer to Florida Power & Light Company's 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 at 5 (Oct. 26, 2015).

intrusion and corresponding impacts of mitigation of CCS salinity on saltwater intrusion.<sup>16</sup> The Rebuttal SOP should be stricken of these arguments.

VII. Arguments Unsupported by Qualified Testimony and Exhibits Should be Stricken

CASE readily admits that it has no testimony or witness sponsored exhibits for most of its arguments. CASE states unequivocally that it is not qualified to respond to the testimony provided by FPL or the Staff. Specifically, CASE stated that “these ... statements [Staff’s Testimony] are ... beyond the scientific ability of this writer to contest.” Rebuttal SOP at 26; see *id.* at 27, 30, 31. CASE, attempting to excuse its lack of diligence in obtaining testimony, makes vague promises that some future testimony will address these issues.<sup>17</sup> However, the time for providing supporting testimony has passed and CASE should not be allowed to ambush the other parties by presenting witnesses and testimony at the hearing for the first time.<sup>18</sup> Thus, CASE’s arguments on these unsupported issues should be excluded or stricken from the record.

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<sup>16</sup> *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-15-13, 81 NRC 456, 476 (2015).

<sup>17</sup> Rebuttal SOP at 26, 27, 30, 31.

<sup>18</sup> The Staff will respond to CASE’s second request for subpoenas in accordance with the Board’s ISO and the regulations.

CONCLUSION

Dr. Stoddard's testimony and other statements are not within the scope of the admitted contention or material to the issue before the Board. His testimony is not properly within the limited scope of rebuttal testimony. CASE failed to disclose discoverable information related to Dr. Stoddard's testimony in contravention of the Board's orders and the Commission's regulations. Dr. Stoddard does not appear qualified to provide testimony to the limited issue admitted in Contention 1 or appear particularly qualified to provide the testimony reflected in the Rebuttal SOP. Dr. Stoddard's testimony and other statements should be excluded or stricken. Due to Dr. Stoddard's lack of expertise regarding thermal-hydraulics or hydrogeology, he should be excluded from testifying on these issues. Finally, CASE has presented arguments that in its Rebuttal SOP that are unsupported by the testimony of Dr. Stoddard or any witness and should be stricken.

Respectfully submitted,

**/Signed (electronically) by/**

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Telephone: (301) 415-1392  
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Dated at Rockville, Maryland  
this 14th day of December 2015

CERTIFICATION OF COUNSEL

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. Counsel for FPL indicated that FPL supports the motion. Mr. White, representative for CASE, indicated that CASE would oppose the motion

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 14th day of December 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY OF THE COMMISSION

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In the Matter of	)	
Florida Power and Light, Inc;	)	Docket No. Turkey Point 52-040
Application for the Turkey Point	)	and 52-041-COL
Nuclear Power Plant Units 6 & 7	)	
Combined Operating License	)	

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EXPERT DECLARATION BY DR. PHILIP K. STODDARD IN SUPPORT OF  
PETITIONER’S STANDING TO INTERVENE IN THIS PROCEEDING

Under penalty of Perjury, I, Philip K. Stoddard, Ph.D. Mayor of South Miami

A. EDUCATION, RESEARCH, AND PROFESSIONAL WORK EXPERIENCE

**1. Name** – My name is Philip K. Stoddard. I am the elected Mayor of the City of South Miami, Florida, and a Professor in the Department of Biological Sciences at Florida International University. My business address is City of South Miami, 6130 Sunset Drive, South Miami, FL, 33143.

**2. Advanced degrees** – I received a Bachelor of Arts degree in Biology (1979) from Swarthmore College, a doctoral degree in Psychology (1989) from the University of Washington.

**3. Research focus** - My research is on ecology, neurobiology, and biophysics of bioelectric communication. In addition, I was co-founder of the not-for-profit citizen / scientist organization Citizens Allied for Safe Energy (CASE).

**4. Teaching experience** – At Florida International University I teach undergraduate courses in zoology and graduate courses in research methods and data analysis.

**5. Research grants** – I have received major research grants from the National Institutes of Health and the National Science Foundation to study bioelectric signals and communication.

**6. Published literature** – I read broadly and I am familiar with the literature on effects of magnetic fields on cancer and public health, on the epidemiology of residents near high voltage transmission lines, and on public health following the Three Mile Island accident. I have published over 50 peer-reviewed papers in the scientific literature on animal communication, physiology, and biophysics. My publications are listed in my CV (Stoddard Exhibit A).

## **B. INADEQUATE PUBLIC SAFETY PLAN IN THE PROPOSED TURKEY POINT 6&7 COL APPLICATION**

### **B.1 Statement of issue**

**7. Emergency plans** – The emergency plan on file with Miami-Dade County, upon which TPN Units 6 & 7 COL Application relies does not adequately assure protection of public health and safety in the event of a radiation release during a General Emergency.

### **B.1 Explanation of basis**

**8. Addressing the risks to public health & safety posed by the current emergency plan** – The NRC Regulations 10(CFR) § 50.47 requires that no initial operating license for a nuclear power reactor will be issued by the NRC unless adequate safety measures can and will be undertaken pending a radiological emergency. A contention is filed in this petition showing adequate safety measures cannot be undertaken pending a radiological emergency.

### **B.1 Statement of facts and opinions supporting the dispute and deficiencies within the scope of this proceeding**

**9. Analysis of flaws in the existing emergency plan** – Because of the frequency of hurricanes in South Florida, and because of my position as Mayor of South Miami, I have familiarized myself with emergency procedures, emergency shelters, and local evacuation routes. I have familiarized myself with the World Health Organization reports on radiological emergencies. I have analyzed the radiological emergency plans in place within Miami-Dade County.

**10. Examples of specific inadequacies in current emergency plan** – The emergency plan cannot be implemented to protect public health and safety in the event of a radiological emergency. Should radiation be released into the environment, the plan would not protect large number of people from exposure to airborne radioisotopes.

#### **Orderly evacuation cannot be carried out in a timely manner**

Should radiation be released into the environment, residents cannot be evacuated in sufficient time to protect them from radiological exposure. Nor do the plans take into account complication posed by the large number of people outside the evacuation area who would chose to evacuate by car.

#### **Evacuation facilities are inadequate**

The emergency facilities designated to receive evacuees cannot hold even 2% of those living in the 10-mile radius circle surrounding Turkey Point nuclear facility who would be subject to mandatory evacuation.

#### **Potassium iodide distribution plan cannot reach people before exposure**

The current plan for treatment with potassium iodide cannot reach evacuees or stay-at-home residents before they are exposed to radiation, and therefore will not provide sufficient protection from thyroid cancer.

**Enhanced risk means enhanced urgency to get this right**

The reactor design for Units 6 & 7 has features that make it more likely to leak radiation into the environment than designs currently in operation, making the inadequacy of the emergency plan all the more serious a threat to public safety and welfare.

**C GRANTING A COMBINED LICENSE (COL) TO FLORIDA POWER AND LIGHT CO. (FPL) TO CONSTRUCT AND OPERATE PROPOSED TURKEY POINT UNITS 6 AND 7 WOULD RESULT IN THREATS TO PUBLIC SAFETY**

**C.1. Statement of issue**

**11. Residents of 10 mile EPZ cannot be evacuate in sufficient time to prevent exposure to airborne radiation in the event of a radiological release.**

**C.2. Explanation of basis**

**12. Wind-borne radiation can cover the area before people have sufficient time to evacuate.** The County estimates that 17 hours would be required to evacuate coastal regions in advance of a hurricane. But a radiation cloud could cover the 10-mile EPZ in less than two hours under normal wind condition, and in 20 minutes under windy conditions. None of the estimates have taken into account how the three main roads would be congested if residents attempted to escape sooner, or if significant numbers of people outside the mandatory evacuation area attempted to escape, as occurred during the Three Mile Island accident.

**D.1. Statement of issue**

**13. Evacuation screening and shelter provisions of Miami-Dade County are inadequate to hold mandatory evacuees.**

**D.2. Explanation of basis**

**14. Over 100,000 people live within 10 miles of Turkey Point, but the Tamiami Emergency Reception Center (ERC) has capacity for less than 2000.** The County plans for people downwind of a radiological release to be transported to Tamiami Park, a 20 mile drive up Florida's Turnpike. The pavilion at the park has a stated capacity of 1000 people, and is estimated to hold 1450 people.

**E.1. Statement of issue**

**15. Potassium iodide prophylaxis for radioiodine release cannot be administered to people in sufficient time to protect them**

**E.2. Explanation of basis**

**16. Potassium iodide, given to people before exposure to radioisotopes of iodine, released in a general emergency at a nuclear facility, is protective against thyroid cancer.** NOTE, the potassium iodide should be taken BEFORE exposure to radioiodine vapors. Potassium iodide is stored adjacent to the Tamiami ERC, thus cannot be administered until people arrive there. Wind conditions, traffic, and the sheer number

of people needing potassium iodide would preclude treatment of most people prior to exposure to windborne radiation.

**F.1. Statement of issue**

**17. Reactor design proposed by FPL for TPN Units 6 & 7 has potential for corrosion leaks and venting of radiation into the environment**

**F.2. Explanation of basis**

**18. Nuclear engineer Arnie Gunderson has filed a report [Exhibit-Gundersen Declaration Filed 08-13-10 Vogtle COL] indicating elevated risk of corrosion, and a chimney design that would vent leaked radiation directly into the environment.** According to Gunderson's analysis, the steel containment shell of the AP 1000 has a high potential for through-hole corrosion, and cannot be visually inspected for corrosion. Further the surrounding containment has a hole that would create a chimney effect, venting any leaked radiation directly into the environment, rather than containing it as is case with reactor designs currently in service. Thus, the reactor design is more likely to leak radiation than existing designs, increasing the importance of emergency procedures adequate to protect the public.

**D. SUMMARY**

**19. The Miami-Dade County emergency plan for protecting the public in the event of accidental radiation release from TPN Units 6 & 7 does not meet the mandate of NRC Regulations 10(CFR) § 50.47.** (i) The plan cannot evacuate people with sufficient speed, (ii) the emergency receiving center cannot hold sufficient numbers of evacuees, (iii) the plan for distributing prophylactic potassium iodide cannot reach the majority of people prior to exposure, and (iv) the reactor design is considered more prone to radiation release than prior designs, elevating all these concerns.

I declare, under penalty of perjury, that the factual statements above are true and correct, to the best of my knowledge, and the expression of opinion stated above are based on my best professional judgment.



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Philip K. Stoddard, Ph.D.  
Mayor of South Miami

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
)  
FLORIDA POWER & LIGHT CO. ) Docket No. 50-250-LA  
) 50-251-LA  
(Turkey Point Nuclear Generating )  
Unit Nos. 3 and 4) )

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the foregoing “NRC Staff’s Motion *in Limine* to Exclude Portions of the Prefiled Rebuttal Testimony or In The Alternative Strike Portions of the Prefiled Rebutal Testimony and Rebuttal Statement of Position” and Attachment 1 – Dr. Stoddard’s Declaration (undated) have been served upon the following persons by the Electronic Information Exchange, the NRC’s E-Filing System, in the above-captioned proceeding, this 14th day of December, 2015.

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board  
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Administrative Judge  
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