

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
December 22, 2015

CASE ANSWER TO 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, Citizens Allied for Safe Energy, Inc. (CASE) files this timely answer to the NRC Staff of the U.S. Nuclear Regulatory Commission (“Staff”) Motion in Limine or in the alternative a Motion to Strike (Motion) of December 14, 2014 challenging some aspects of Citizens Allied for Safe Energy, Inc., Rebuttal Testimony and Rebuttal Statement of Position (“Rebuttal SOP”).

MATTERS OF NRC STAFF CONCERN

1. Testimony of Dr. Phillip K. Stoddard (Rebuttal SOP at 4-11);

The NRC Staff Motion holds, at 2 that

'the testimony and other reported statements of Dr. Philip K. Stoddard, Biologist, should be excluded from the evidentiary hearing because the information is not reliable, relevant, or material to findings that the Board must make.

CASE ANSWER:

It is unclear on what basis the NRC Staff asserts that the testimony of a fully qualified, dedicated, respected and storied professional (and three term Mayor of South Miami, Florida who has received national recognition for his mayoral work) with years of professional research, experience and outstanding credentials, as presented in Rebuttal SOP, at 4,5, can be judged or asserted to be “not reliable”. This is a questionable and unsupported statement.

In the NRC Staff Motion, at 7, we read

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 (CASE NOTE: No reference provided)

CASE ANSWER

Dr. Stoddard's credentials were presented in the Rebuttal SOP at 4,5, as follows:

Q2 Please provide your educational background relevant to the current proceedings

A2 BA biology, Swarthmore College PhD animal behavior and physiology, University of Washington, Postdoctoral Fellow, neurobiology and behavior, Cornell University

If there was a mention of psychology in the referenced citation obviously it was a typographical error since there is no mention of psychology in Dr. Stoddard's vita nor has he ever, in this writer's six year acquaintance with him, ever mentioned such a degree or training.

As cited above the NRC Staff holds that Dr. Stoddard's testimony

"...the information is not ... relevant, or material to findings that the Board must make."

CASE ANSWER

CASE made every effort to assure that Dr. Stoddard's testimony was exactly that. The questions posed to him were drafted to assure that that was the case:

Q4 Have you read the NRC's Environmental Assessment And Final Finding Of No Significant Impact (2014 EA) (copy attached) issued July 31, 2014?

Q5. Based on the following Contention as formulated by the Atomic Safety Licensing Board of the Nuclear Regulatory Commission in its Order of March 23, 2015, in your professional opinion, do you find any statements in the 2014 EA which would support the following Contention 1:

The NRC Staff Motion reads, at 2:

Dr. Stoddard does not address the Statements of Position or testimony submitted by Florida Power & Light Co. ("FPL") of the Staff

Quite right. CASE did not understand that it was to be Dr. Stoddard's obligation or role to review and critique the referenced testimony. CASE understood that his role is exactly as described above and as he was requested to provide comments and insights regarding Contention 1 and the 2014 EA. As a professional academic who's full time employment includes guiding and reviewing the research work of others, Dr. Stoddard seems imminently qualified to comment on the thoroughness of the 2014 EA in regard to his profession of Biology with a specialty in flora and fauna interacting with the environment. That is all that is on the table and all that Dr. Stoddard asked to comment on.

2. Other Statements attributed to Dr. Stoddard in CASE's SOP (id. at 26, 27);

CASE ANSWER:

These statements were not provided as sworn testimony; the Board can admit them or not. They are the judgements and observations of a pure scientist void of polemics.

3. Arguments related to the American Crocodile and other flora and fauna (id.at 6-9, 37, 41-43);

The NRC Staff Motion reads, at 5.6:

Dr. Stoddard's testimony is directed towards one issue — the impacts of higher temperatures and chemical treatments on the American crocodile. ...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.

Actually, his testimony was about the adequacy of the 2014 EA; his testimony regarding the biology involved was a way of showing, by example, what could and should have been considered, a *lingua franca*, if you will. And, by definition, it would be new information because the 2014 EA did not include it.

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

CASE ANSWER:

The NRC Staff Motion states, at 8,9:

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 intrusion and corresponding impacts of mitigation of CCS salinity on saltwater intrusion

CASE ANSWER:

CASE stands with its arguments and their importance in the EA and EIS processes and the work of the Licensing Office but CASE defers to the Board as to the admissibility of the matters of concern in Nos. 4 and 5.

CONCLUSION

CASE considers the valuable testimony of Dr. Philip K. Stoddard to credible and relevant to this inquiry and requests that it be fully considered in the Boards' deliberations.

Respectfully submitted,

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

/S/ (Electronically) Barry J. White

Barry J. White
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305-251-1960

Dated at Miami, Florida
this 22nd day of December, 2015

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CERTIFICATE OF SERVICE

I, Barry J. White, hereby certify that copies of the foregoing

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have been submitted to the Electronic Information Exchange.

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

Respectfully submitted,

/S/ (Electronically) Barry J. White

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