

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Michael M. Gibson, Chairman

Dr. Michael F. Kennedy

Dr. William W. Sager

In the Matter of

FLORIDA POWER & LIGHT COMPANY

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

Turkey Point Nuclear Generating,
Units 3 and 4)

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

August 1, 2016

CITIZENS ALLIED FOR SAFE ENERGY
ANSWER TO NRC STAFF AND FPL REGARDING
PETITION FOR REVIEW

Pursuant to 10 C.F.R. § 2.341(b) (3), Citizens Allied for Safe Energy, Inc., (CASE) is providing this answer to the NRC Staff's Response and Florida Power and Light Company's (FPL) Answer, both dated July 22, 2016, to CASE's Petition For Review (June 27, 2016) of the Board's Initial Decision (May 31, 2016). Since they make similar arguments CASE is providing a joint response.

INTRODUCTION

On October 14, 2014, alarmed at the implications for the impact on the environment of the UHS license amendment granted to FPL by the NRC on July 31, 2014 for the Turkey Point Cooling Canal System (CCS), CASE

filed a Petition to Intervene and Request For a Hearing on behalf of its members (INT-038). On March 23, 2015 CASE was granted standing and one Contention was admitted by Board ORDER. The Initial Decision found that CASE's Contention One was proved beyond any reasonable doubt and provided what the Board considered an appropriate remedy. CASE is challenging that remedy and questioning whether it provides sufficient and appropriate redress to its members who, to this day, are still suffering from as yet undefined and unresolved, and increasing, threats from the operation of the CCS. CASE is asking that the Commission, in its review of the remedy provided consider the entirety of the extensive information CASE has provided in this matter. The Board found that the EA, and thus the FONSI, was deficient and, CASE contends, so is the remedy. CASE's members have not been well served and their concerns are still unresolved without any indication that they ever will be. And NEPA has embarrassingly not been honored.

NRC STAFF AND FPL ARGUMENTS

The NRC Staff and FPL, in their referenced filings, are challenging CASE's rejection of the remedy provided in the Initial Decision and also challenge the Board's ruling that the 2014 EA and FONSI failed and was deficient at many turns.

The NRC states, at 17,

For unknown reasons, CASE decided to forgo presenting any qualified expert testimony (at the evidentiary hearing)

FPL describes, at 7-10, how CASE made several furtive attempts to obtain expert witnesses which, as CASE describes below, were thwarted by governmental agencies and by the Board, and then states, at 2,

The Board's decision followed a full evidentiary hearing during which CASE had ample opportunity to provide testimony or other reliable evidence relevant to its contention. It did not.

at 9, *Based on CASE's **lack of relevant testimony**, FPL*

argued that CASE had not demonstrated standing and had not provided evidence sufficient to satisfy CASE's "burden of going forward."

This is a Catch 22 situation. As quoted in CASE SECOND MOTION REQUESTING SUBPOENAS, December 9, 2015, the Department of the Interior stated, at 5,

*In response to your e-mail of November 16, the employees will not voluntarily testify in the NRC matter as you requested. Be advised that even if they did, because you are seeking their expert testimony they are required by NPS regulations at 43 CFR 2.290 to first obtain the approval of the agency ethics office. That approval has not yet been sought, **and will not until the employees receive a subpoena from the NRC.** (emphasis added)*

All three governmental agencies, Miami-Dade County, South Florida Water Management District and DOI, parent agency of the Biscayne National Park which abuts the CCS and who's director, in a letter he voluntarily supplied to CASE and is cited by CASE as having concerns in this matter, PETITION at 16-17 (INT-038) and Exhibit 4, all refused to cooperate with CASE. Then another government agency, the NRC, denies relief. So CASE is really in a classic Catch 22 situation where the system seems stacked against those not part of it, possibly constituting a concerted institutional denial of due process. And the NRC Staff and FPL

ask “Where are your experts? These are the “**unknown reasons**” for the “**lack of relevant testimony**”.

In the Board ORDER (Denying CASE’s Application for Subpoenas) November 12, 2015, at 2, we read:

...it is unclear what efforts, if any, CASE has taken to obtain testimony voluntarily from these witnesses.

In the Board’s ORDER Denying Application for Subpoenas, Denying Motion for Summary Disposition, and Granting in Part and Denying in Part Motions to Strike) , December 22,2015, at 3, we read,

*...comparable experts are unavailable. Because this proceeding concerns groundwater migration and saltwater intrusion, **any qualified hydrogeologist could provide an expert opinion on the matter .. (emphasis added)***

These statements deny two factors. First, no hydrologist in South Florida would testify (CASE asked many) for fear of offending their employer or others who might employ their services; they feared for their jobs and their livelihood. Second, to say that any hydrologist could have testified in this matter denies the vast complexity of the issues involved, witness the large amount of data and information which CASE has provided in this matter. Being a scientist does not assure specific relevant understanding of the operation and of the environmental impact of the CCS. Any review of this Petition should take these factors into account.

The Board has ruled that CASE proved its case; the NRC Staff’s 2014 EA and its FONSI on which the NRC Staff based its issuance of the applicant’s license amendment are unequivocally deficient. CASE is only challenging the remedy of the Initial Decision which does not remove or address the potential for injury to CASE’s members. Nor will the remedy provided reveal and address root causes of the CCS problems

NEPA DISHONORED and IGNORED

In the NRC Staff's Response, at 7-8, we read:

*NEPA requires the NRC to consider the environmental impacts of its licensing actions **prior** to issuing licenses.²⁸ **NEPA is procedural** and does not mandate a specific outcome or action.²⁹ NEPA only requires that the agency take a "hard look" at the environmental impacts of a proposed action. NEPA's procedural requirements are intended to foster informed decision-making and provide public disclosure of the relevant impacts.³¹ (emphasis added)*

If NEPA requires that the NRC Staff, and all agencies, consider the environmental impacts of their actions **PRIOR** to their actions, logically, how can one conclude that anything but reconsideration or revisiting the actions after the fact can remedy any shortcomings, all twenty pages of them, (pages 17 to 37 of the Initial Decision), of the original act? Perhaps the answer is in the rest of the paragraph which denigrates NEPA to merely being **procedural** as opposed to being a mandated or required standard and which counterintuitively states the Decision's exact conclusion looking for an *informed* decision and relevant *impacts* which were no where in sight. This might explain the mind set of the NRC staff in approaching the 2014 EA by cavalierly putting NEPA in the category of suggestions, like the Ten Suggestions. CASE clearly and strongly presented the important and central role of NEPA in these matters in its Initial Statement Of Position (INT-000) at 58 -75. The failure to fully allow for the impact of the license amendment they were approving on the Turkey Point Wetland, as confirmed *de facto* by the Miami-Dade County Notice of Violation (INT-005) and monetary fine (INT-006), of FPL for pollution outside of the CCS (October, 2015), as well as their disrespect for NEPA, warrants, in CASE's opinion, a review by the Commission of the Initial Decision and CASE respectfully requests such an action.

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

Respectfully submitted,

/S/ (Electronically) Barry J. White

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Dated at Miami, Florida
this First Day of August, 2016

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Units 3 & 4)	LA-BD01

CERTIFICATE OF SERVICE

I, Barry J. White, hereby certify that copies of the foregoing
CITIZENS ALLIED FOR SAFE ENERGY ANSWER TO NRC STAFF AND
FPL REGARDING PETITION FOR REVIEW have been submitted to the
Electronic Information Exchange.

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

Respectfully submitted,

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