

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Florida Power and Light Company
Turkey Point Units 6 and 7

Docket Number: 52-040-COL and 52-041-COL

ASLBP Number: 10-903-02-COL-BD01

Location: teleconference

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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In the Matter of: : Docket No.
FLORIDA POWER & LIGHT : 52-040-COL & 52-041-COL
COMPANY : ASLBP No.
TURKEY POINT, : 10-903-02-COL-BD01
UNITS 6 & 7 :

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Tuesday, September 13, 2016

Teleconference

BEFORE:
ROY HAWKENS, Chair
MICHAEL KENNEDY, Administrative Judge
MARK BARNETT, Administrative Judge

1 APPEARANCES:

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P R O C E E D I N G S

1:34 p.m.

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3 MR. WISEMAN: And the Environmental
4 Protection Agency --

5 COURT REPORTER: Your Honor?

6 MR. WISEMAN: -- will issue a notice of
7 availability that would be scheduled for the 4th of
8 November. I want to add that this is, this schedule
9 is one that we have moderate confidence in. It is an
10 optimized schedule with no contingencies. So in the
11 event that there's, if there's some unfortunate event
12 that could delay us, there isn't any allowance in the
13 schedule for that. That's why it is a, why we have
14 moderate confidence in that.

15 In regard to the SER, the Safety
16 Evaluation Report, the staff plan is to make the SER
17 available in ADAMS on the 10th of November, which is
18 earlier than we projected in the last, in our last
19 communication with the Board. We had said the Board
20 should rely on the 30th of November. The staff plans
21 to issue a press release, but there will not be any
22 Federal Register notice associated with the issuance
23 of the SER.

24 JUDGE HAWKENS: And what is your level of
25 confidence in that, the 10 November date?

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1 MR. WISEMAN: I'm sorry. That is the same
2 level of confidence as in the FEIS. It is an
3 optimized schedule, but it does not allow for any
4 contingencies. So that is where we are.

5 JUDGE HAWKENS: Thank you. Mr. Wiseman,
6 and can you, when you say a moderate level of
7 confidence, it would make more sense to me if you
8 endeavored to quantify it. Would that be between,
9 say, 40 and 60 percent? I know these are rough
10 numbers, but less than 50 percent? What does moderate
11 confidence mean?

12 MR. WISEMAN: Well, I'll put it more in
13 evidentiary kind of terms. It's more likely than not,
14 so I'd say greater than 50 percent.

15 JUDGE HAWKENS: That is helpful. All
16 right, thank you. Does either FPL or the joint
17 intervenors have any questions regarding the predicted
18 issuance of those documents? Joint intervenors?

19 MS. GOLDSTEIN: This is Mindy Goldstein.
20 We do not.

21 JUDGE HAWKENS: Thank you. How about FPL?

22 MR. LEPRE: This is Mike. We perhaps have
23 one question, Mr. Wiseman, as to whether he will
24 notify, whether the NRC will notify the parties on the
25 date that the FEIS becomes available in ADAMS so we

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1 know what date that is.

2 MR. WISEMAN: This is Bob Wiseman. I
3 would be happy to agree to let you know when the EIS
4 is available in ADAMS, and we'll make sure that the
5 staff notifies me so I can notify you.

6 MR. LEPRE: Thank you.

7 JUDGE HAWKENS: Terrific. This is Judge
8 Hawkens. Would you also be notifying the interested
9 municipalities, Mr. Wiseman?

10 MR. WISEMAN: Oh, certainly. We'll send
11 out an email to all those who are listed on the
12 service list.

13 JUDGE HAWKENS: Good, thank you. The
14 second talking topic, do the parties believe there's
15 a reasonable likelihood that the pending contention
16 could be susceptible to settlement? Let me start with
17 the joint intervenor. Ms. Goldstein?

18 MS. GOLDSTEIN: Sure. This is Mindy
19 Goldstein for the joint intervenors. We do not see
20 this contention being likely to settle before the
21 final EIS is published. We'll certainly review the
22 final EIS and determinate at that point whether
23 settlement is possible. So given kind of our
24 preliminary conversations with the staff and FPL, we
25 think that seems unlikely at this time.

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1 JUDGE HAWKENS: Thank you. Mr. Lepre, do
2 you have anything to add on behalf of FPL?

3 MR. LEPRE: Yes, FPL would like to be able
4 to settle the case. It obviously would delay in costs
5 and save resources, etcetera. We see this as a NEPA
6 issue, and we think that the possibility to settle the
7 case if we better understood what the intervenors feel
8 the FEIS needs to say in order to satisfy them, and we
9 think that we'd be willing to settle on the basis of,
10 consider settling on the basis of the intervenors
11 expressing exactly what they think the FEIS needs to
12 say to describe the impact of the constituents, which
13 are below drinking water levels. And so we think
14 there could be a possibility of settling if we better
15 understood exactly what the intervenors would like the
16 FEIS to say.

17 JUDGE HAWKENS: All right. Well, Mr.
18 Lepre, I encourage you to be in touch with Ms.
19 Goldstein and get her fully-considered views on that.
20 To the extent the parties were able to settle that, it
21 would be in the parties' interest; there's no doubt
22 about that.

23 NRC staff, do you have anything to add?

24 MR. WISEMAN: No, your Honor, we don't
25 have anything to add. Thank you.

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1 JUDGE HAWKENS: Thank you. The third
2 talking topic, does any party contemplate filing a
3 motion for summary disposition on the pending
4 contention? And before polling the parties on that,
5 let me express a view of the Board, and that is that
6 after issuance of the last review document, the Board
7 will be strongly inclined to focus on the hearing
8 preparation, rather than on any summary disposition
9 pleading.

10 So with that background, let me ask the
11 joint intervenors, do you contemplate filing a motion
12 for summary disposition on the pending contention?

13 MS. GOLDSTEIN: We do not.

14 JUDGE HAWKENS: Thank you. Mr. Lepre?

15 MR. LEPRE: We do not contemplate filing
16 a motion for summary disposition prior to staff's
17 issuance of the FEIS. We would reserve our right to
18 consider whether we're going to file a motion for
19 summary disposition after the FEIS is issued,
20 depending upon what it says.

21 JUDGE HAWKENS: I understand. Thank you.
22 Mr. Wiseman?

23 MR. WISEMAN: Your Honor, the staff does
24 not plan to file a motion for summary disposition
25 before the FEIS is issued.

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1 JUDGE HAWKENS: All right. Thank you.
2 The fourth issue goes to venue. As a matter of Agency
3 policy, boards typically hold their hearings near the
4 facility in question. And we wonder whether there's
5 any reason in this case not to hold a hearing near the
6 Turkey Point facility. Ms. Goldstein?

7 MS. GOLDSTEIN: Your Honor, we'd be happy
8 to have the hearing down in Florida or in Rockville,
9 whatever the Board's choice.

10 JUDGE HAWKENS: All right. Thank you.
11 Mr. Lepre?

12 MR. LEPRE: FPL would also be happy to
13 have the hearing in Florida or in one of your public
14 hearing rooms in Rockville, if that's what the Board
15 preferred.

16 JUDGE HAWKENS: Thank you. Mr. Wiseman?

17 MR. WISEMAN: The NRC staff also does not,
18 does not object to locating the hearing here or in
19 South Florida, either one.

20 JUDGE HAWKENS: Thank you. The fifth
21 question, what is each party's estimates regarding the
22 number of witnesses who will provide written testimony
23 on the pending contention? And before polling the
24 parties on this, I want to remind them that all
25 witnesses who do provide written testimony are

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1 expected to be available for questioning throughout
2 the evidentiary hearing.

3 So with that in mind, let me hear from Ms.
4 Goldstein.

5 MS. GOLDSTEIN: We expect to have one
6 witness. Mark Quarrel.

7 JUDGE HAWKENS: Thank you. Mr. Lepre?

8 MR. LEPRE: We expect to have three or
9 four witnesses. We haven't decided entirely yet. It
10 depends on what's in the FEIS, of course. So three or
11 four witnesses is our projection right now.

12 JUDGE HAWKENS: All right, thank you. Mr.
13 Wiseman?

14 MR. WISEMAN: The NRC staff projects the
15 current estimate is four or possibly five witnesses.

16 JUDGE HAWKENS: All right, thank you.
17 Sixth question, whether any party anticipates a need
18 to close any portion of the hearing. Ms. Goldstein?

19 MS. GOLDSTEIN: We do not.

20 JUDGE HAWKENS: Thank you. Mr. Lepre?

21 MR. LEPRE: We do not either.

22 JUDGE HAWKENS: Thank you. And Mr.
23 Wiseman?

24 MR. WISEMAN: The staff doesn't see any
25 reason to close any portion of the hearing either.

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1 JUDGE HAWKENS: All right, thank you. In
2 the August 23rd email which the Licensing Board sent
3 to the parties, we also provide a list which provided
4 events leading up to the evidentiary hearing, as well
5 as scheduling milestones for those events. And the
6 milestones were guided by two considerations: first,
7 to begin a hearing within 175 days of the last review
8 document to be issued; and, second, to provide the
9 Board (telephonic interference) as we thought was
10 reasonable to require the parties to provide it. And
11 all though our milestones are slightly more aggressive
12 than those in the regulations, we believe they're
13 reasonable based on the fact we're dealing with a
14 single issue and, excuse me, a single contention, and
15 the issues in that contention have recently been
16 explored in the context of the summary disposition
17 motion.

18 So with that background, rather than going
19 through each particular event in the suggested
20 milestone, I'm going to ask each counsel whether
21 there's any event they wish to add or delete and if
22 they have any views they'd like to share about the
23 proposed milestones. And let's start again with
24 counsel for joint intervenors, Ms. Goldstein.

25 MS. GOLDSTEIN: Yes, this is Mindy

1 Goldstein. We are fine with the schedule as proposed
2 but would like the chance to respond to any suggested
3 revision by any of the other parties.

4 JUDGE HAWKENS: Of course, of course. All
5 right, thank you. Counsel for FPL, Mr. Lepre?

6 MR. LEPRE: Yes, we have a couple of
7 comments and proposals with respect to the milestone
8 schedule. Our first one has to do with the date which
9 initial written statements of position and direct
10 testimony would be due. In the proposed schedule,
11 it's within 120 days of issuance of the final review
12 document. FPL has a strong interest in moving this
13 forward as quickly as possible. It's been a number of
14 years that this has been pending before the ASLB. We
15 feel the parties have had an ample opportunity to
16 explore and develop their positions with all the
17 summary judgment briefing, etcetera, that's gone on.

18 Frankly, we'd be ready to go very quickly
19 after the final review document is issued, even within
20 30 days or 60 days. We realize that the others may
21 find that too soon and that would also bump up around
22 the holidays. We would like to propose that the
23 initial written statement of position and direct
24 testimony would be due within 90 days of issuance of
25 the final review document. Also --

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1 JUDGE HAWKENS: I'm sorry. You're talking
2 about the initial written statements of position and
3 direct testimony you said within 90 days?

4 MR. LEPRE: Correct, instead of the 120
5 that's in the proposed milestones.

6 JUDGE HAWKENS: All right. You initially
7 mentioned you'd be willing to do it on an even more
8 accelerated basis, within 30 or 60, and then your
9 final proposal was within 90. Did I understand you
10 correctly?

11 MR. LEPRE: That's correct, Judge.

12 JUDGE HAWKENS: Okay. Anything else?

13 MR. LEPRE: Two other points, as well.
14 With respect to the dates for written response and
15 rebuttal testimony, we noticed that that would be due
16 within 14 days of the initial written statements of
17 position, and then there's the optional written reply
18 to follow. We'd propose eliminating the optional
19 written reply and adding those eight days onto the end
20 of the time period for written response and rebuttal
21 testimony so that there would be 22 days to do written
22 response and rebuttal testimony and no optional
23 written reply.

24 JUDGE HAWKENS: All right. Let me repeat
25 that back just to make sure I understood it. You

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1 would eliminate the optional written reply, and you
2 would extend the written response and rebuttal
3 testimony to 22 days after the initial written
4 statements.

5 MR. LEPRE: Correct.

6 JUDGE HAWKENS: All right. Anything else?

7 MR. LEPRE: One other. We would like for
8 the Board and the parties to consider building in a
9 date for motions in limine after written response and
10 rebuttal testimony to address the possibility if there
11 is some rebuttal testimony that it would be on the
12 schedule, that we'd have something built in the
13 schedule to address that.

14 JUDGE HAWKENS: As I read our milestones,
15 we already provide for that, an opportunity to object
16 within seven days and an answer within four days of
17 the objection.

18 MR. LEPRE: Okay. We were contemplating
19 motions in limine. I see that. Okay.

20 JUDGE HAWKENS: Okay. So you're concerned
21 about motions for limine are already provided for in
22 this list?

23 MR. LEPRE: With that understanding, if
24 that's what was intended there, yes.

25 JUDGE HAWKENS: Yes. Anything else?

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1 MR. LEPRE: That's all we had. Thank you.

2 JUDGE HAWKENS: All right, thank you. Ms.
3 Goldstein, before coming back to you to get your
4 reaction, let's hear from the NRC staff, and then you
5 can provide a response that addresses both FPL's and
6 the NRC staff's statements.

7 MS. GOLDSTEIN: Okay.

8 JUDGE HAWKENS: Okay. Mr. Wiseman, what
9 would you like to say about the proposed events and
10 the proposed milestones?

11 MR. WISEMAN: Bob Wiseman from the NRC
12 staff, and the staff can -- challenges this Board --
13 proposed hearing schedule. The staff would request
14 that the Board consider that the staff may need to
15 allocate resources to participate in both the
16 mandatory and contested hearings. Our current
17 information is that the mandatory hearing in this
18 proceeding could be scheduled for early February of
19 2017 or possibly by January, and that could create
20 some conflicting needs for the staff resources.

21 But in either case, whether it's early
22 February or late January, the staff, I cannot support
23 a schedule for filing initial written statements of
24 position and direct testimony 90 days after the
25 issuance of the FEIS. In either case, in one case,

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1 that date would come out right after the mandatory
2 hearing, and in the other case it would come out just
3 before the mandatory hearing. So that would be very
4 difficult for the staff to comply with that schedule.

5 But having said that, the staff could
6 support making the filings in the contested
7 proceedings, statements of position and the direct
8 testimony, as early as 105 days after issuance of the
9 FEIS. So we could do it, we could support doing it a
10 little bit earlier.

11 In regard to the applicant's suggestion
12 regarding filing responses and rebuttal testimony, the
13 staff thinks that that may well be useful to help the
14 parties develop a complete record. And in any case,
15 we suggest that, if a party finds something in a
16 reply, I'm sorry, finds something in the responses or
17 the rebuttal testimony that the party thinks warrants
18 a reply, then they still have the option of filing a
19 motion for leave to reply to address that issue. And
20 that's all from the staff.

21 JUDGE HAWKENS: Understand. And let me
22 repeat back to you to make sure I understand Mr.
23 Wiseman. Regarding the first suggestion by FPL, you
24 have no objection to putting it on a faster track, but
25 it's possible that providing the initial written

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1 statement within 90 days may be problematic if the
2 mandatory hearing goes forward as scheduled. And if
3 it does go forward as scheduled, you'd be able to
4 submit that material within 105 days, rather than
5 within 90 days; is that correct?

6 MR. WISEMAN: To be clear, Judge Hawkens,
7 the mandatory hearing is not yet scheduled. The
8 Commission hasn't scheduled that hearing yet. We have
9 only heard some tentative dates of the hearing, for
10 that mandatory hearing. So there is quite a bit of
11 uncertainty involved in that, in what the schedule
12 will be.

13 Our view is that the Board should be able
14 to schedule the contested proceeding activities in
15 consideration of the mandatory hearing, but we don't
16 know what that is yet. We may have better information
17 in a month or so. But, otherwise, you are correct
18 regarding the time frame of 105 days, that we would be
19 willing to support that, given what we know today.

20 JUDGE HAWKENS: Mr. Wiseman, let's assume
21 the Commission announces that the mandatory hearing
22 won't occur until the summer of 2017. In that case,
23 would you be in a position to go on the track proposed
24 by FPL, which is to provide that information within 90
25 days?

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1 MR. WISEMAN: Your Honor, while the staff
2 would consider that possibility a low probability
3 event, yes, we would be able to support the
4 accelerated schedule under those circumstances.

5 JUDGE HAWKENS: All right. And now let me
6 rephrase what you were saying about the response and
7 the optional reply to make sure I understood that, Mr.
8 Wiseman. You did not object to eliminating the
9 optional reply and extending the time for providing
10 the response to 22 days with the understanding that if
11 there was any objectionable material in the response
12 a party would have the option of submitting a motion
13 addressing that objectionable material.

14 MR. WISEMAN: Thank you, your Honor. That
15 is correct.

16 JUDGE HAWKENS: All right. Anything else,
17 Mr. Wiseman?

18 MR. WISEMAN: Nothing else from the staff.
19 Thank you.

20 JUDGE HAWKENS: All right. Thank you.
21 Ms. Goldstein, you have the floor.

22 MS. GOLDSTEIN: Yes. As far as the
23 accelerated schedule, we are very much in favor of
24 keeping the 120-day schedule as proposed. Given the
25 complexity of the issue and our limited resources, we

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1 think this is necessary. We have one expert who will
2 need to prepare to respond to, essentially, what,
3 together, FPL and NRC staff have eight experts doing
4 or maybe nine, depending on how you do the math. And
5 that just takes a bit of time.

6 And while I do my best not to request any
7 special accommodations for the work, for our work to
8 align with student schedules, the students do make up
9 our entire staff and the proposed 120 days aligns with
10 the semester, which means we can be fully staffed in
11 order to prepare an initial written statement that is
12 complete and helps us to ensure full briefings. So we
13 firmly, firmly request 120 days remains.

14 JUDGE HAWKENS: Thank you. We'll take
15 that into consideration regarding the submission of
16 the initial written statements. How about their
17 suggestion regarding the response and the reply?

18 MS. GOLDSTEIN: So the suggestion that,
19 essentially, we have 22 days to respond but drop the
20 optional reply, we are fine with that suggestion and
21 support it.

22 JUDGE HAWKENS: All right, thank you.
23 Anything else you wish to add, Ms. Goldstein?

24 MS. GOLDSTEIN: That's it. Thank you.

25 JUDGE HAWKENS: All right. At this point,

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1 I'd like to ask the parties are there any other
2 matters that we haven't addressed that you'd like to
3 bring to the Board's attention. Ms. Goldstein?

4 MS. GOLDSTEIN: There are no other matters
5 at this time.

6 JUDGE HAWKENS: Thank you. Mr. Lepre?

7 MR. LEPRE: Your Honor, we have one other
8 matter. I'd just like to make one other point on the
9 time periods, if I could. Ms. Goldstein mentioned
10 that she needed time for her one expert to respond to
11 eight or nine experts. Of course, that's just in the
12 rebuttal time period, not in the submittal of initial
13 statements because we're submitting initial statements
14 simultaneously, so they wouldn't be responding
15 necessarily to a number of experts in their initial
16 statement. So I just thought I'd point that out.

17 And as far as an additional item, I
18 believe that in your, in the email from August 23rd,
19 there was also a point whether there would be any
20 disputed factual legal issues that are amenable to
21 stipulation. I don't think we addressed that issue.

22 JUDGE HAWKENS: No, we did not. You're
23 right. That was in the bullet dealing with
24 settlement, and we did not address that. What do you
25 have to say about that?

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1 MR. LEPRE: FPL is willing to put together
2 a draft list of factual and legal issues that are
3 amenable to stipulation for the other parties'
4 considerations and to work together with the other
5 parties to come up with a list. We think there are a
6 number of material facts that are not in dispute based
7 on the Board's prior orders, as well as summary
8 judgment filings. And so we think there are a number
9 of things that are amenable to that, and we would
10 volunteer to take on the task of at least putting
11 together a first draft for the parties and then
12 working with the parties to see if we can streamline
13 the facts and the legal issues for the proceeding.

14 JUDGE HAWKENS: Ms. Goldstein, do you have
15 any objection to that?

16 MS. GOLDSTEIN: No, we do not. We think
17 that's a great idea.

18 JUDGE HAWKENS: Mr. Wiseman?

19 MR. WISEMAN: We agree, and we appreciate
20 FPL taking the lead on putting that together.

21 JUDGE HAWKENS: The Board appreciates it,
22 as well, Mr. Lepre. I think it's a good idea. To the
23 extent that you can stipulate to any material facts,
24 it will be in everybody's interest for promoting
25 efficiency in the evidentiary hearing. So thank you

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1 for suggesting that.

2 MR. LEPRE: You're welcome. We will do
3 that. I don't have anything else.

4 JUDGE HAWKENS: All right. Mr. Wiseman?

5 MR. WISEMAN: The staff has nothing else
6 today. Thank you.

7 JUDGE HAWKENS: All right. Mr. Court
8 Reporter, Tony, do you need to keep the parties on the
9 line to get any information from them before we
10 adjourn?

11 COURT REPORTER: I do not at this time.
12 Hello?

13 JUDGE HAWKENS: Yes. Tony, are you still
14 on the line?

15 COURT REPORTER: Yes, I am.

16 JUDGE HAWKENS: This is Judge Hawkens.
17 It's my great hope that Tony has gotten what he needs.
18 I was going to give him the option or the opportunity
19 to ask the parties if he needed any clarification on
20 spelling or information from them.

21 COURT REPORTER: I'm on a listen-only
22 mode.

23 JUDGE HAWKENS: We will close the loop
24 with the court reporting company after we adjourn.
25 And I thank the parties for their indulgence again at

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1 the beginning, the delays due to the logistical
2 issues. And with that, we will adjourn. Bye-bye.

3 (Whereupon, the foregoing matter went off
4 the record at 2:00 p.m.)

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