

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 52-040-COL
Florida Power & Light Company	)	52-041-COL
	)	
Turkey Point Units 6 and 7	)	ASLBP No. 10-903-02-COL
(Combined License Application)	)	

**FLORIDA POWER & LIGHT COMPANY’S MOTION TO STRIKE  
PORTIONS OF THE CITY OF MIAMI’S INITIAL STATEMENTS OF  
POSITION AND DIRECT TESTIMONY FOR CONTENTION 2.1**

**INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.319, 2.323, and 2.337, and in accordance with the Licensing Board’s (“Board”) Final Scheduling Order of November 15, 2016, Florida Power & Light Company (“FPL”) files this Motion to Strike Section II, and portions of the Conclusion, of the City of Miami’s (“City”) Initial Statements of Position and Direct Testimony for Contention 2.1, dated March 1, 2017 (“Initial Statement”), as well as the entire Affidavit of Dr. Jean-Pierre Bardet dated February 28, 2017 (COM-001) (“Bardet Affidavit”).

The City’s filings raise issues regarding the potential seismic impact of wastewater injection that are beyond the scope of Contention 2.1 and the bases upon which it was admitted. In addition, allowing the City to raise what amounts to a new contention three weeks before the deadline for submitting rebuttal testimony would improperly permit the City to circumvent Commission regulations requiring timely filings of contentions as well as the Board’s order in this case regarding disclosure of expert witnesses and relevant documents.

## BACKGROUND

On June 10, 2015, the Board issued a Memorandum and Order denying the City's petition to intervene in this proceeding, but granting its request to participate as an interested local governmental body pursuant to 10 C.F.R. § 2.315(c).<sup>1</sup> Neither FPL nor the NRC Staff opposed the City's request to participate in this manner.<sup>2</sup> After Joint Intervenors were granted an unopposed request for extension of time on March 1, 2017, the City filed its Initial Statement, including the Bardet Affidavit, with no prior notice to the parties.

## DISCUSSION

### **I. Section II of the City's Initial Statement Improperly Attempts to Broaden the Scope of Contention 2.1.**

Section II of the City's Initial Statement (as well as the last two lines of the Initial Statement's Conclusion) and the Bardet Affidavit impermissibly raise seismic issues that are beyond the limited scope of Contention 2.1—which involves the environmental impacts of certain chemicals in Turkey Point's wastewater—and the bases on which it was admitted.

There are significant limitations on the scope of the subject matter that a party may address at hearing. The scope of an admitted contention cannot be expanded beyond the specific bases proffered and accepted by the Board.<sup>3</sup> As the Commission has explained, “[t]he 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 the Commission's rules. Otherwise, NRC adjudications

---

<sup>1</sup> *Florida Power & Light Company* (Turkey Point Units 6 & 7), LBP-15-19, 81 NRC 815, 827 (2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100–01 (2010).

quickly would lose order.”<sup>4</sup> This standard allows both the parties and the Board to be on notice of the issues being litigated and ensures focused and fair proceedings.<sup>5</sup>

In *Pilgrim*, the Commission reiterated that longstanding precedent requires a Board to examine a contention’s bases to determine the scope of a contention because the “reach of a contention necessarily hinges upon its terms *coupled with* its stated bases.”<sup>6</sup> Parties “may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset. . . . [The Commission does] not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their reasonably inferred bounds.”<sup>7</sup> 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.”<sup>8</sup>

Moreover, the participation of interested local government bodies such as the City is limited to contentions which have already been admitted.<sup>9</sup> In 2012, the NRC amended 10 C.F.R. § 2.315(c) to clarify that local government bodies allowed to participate in hearings must “take the proceeding as they find it, consistent with longstanding NRC case law.”<sup>10</sup> Section II of the City’s Initial Statement and the Bardet Affidavit raise for the first time the potential risk of induced seismicity that may result from the injected wastewater, arguing that “additional research and studies should be conducted to identify the risks associated

---

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.*

<sup>6</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (citation omitted).

<sup>7</sup> *Id.* at 288.

<sup>8</sup> 10 C.F.R. § 2.319(d).

<sup>9</sup> 10 C.F.R. § 2.315(c) (“The participation of any State, local government body . . . shall be limited to unresolved issues and contentions.”).

<sup>10</sup> NRC Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46562, 46583 (Aug. 3, 2012).

with fluid induced seismicity.”<sup>11</sup> Seismicity was not been raised as an issue in the bases supporting Contention 2.1.<sup>12</sup>

The Bardet Affidavit mentions the “low probability” that fluid injections will trigger “submarine and coastal landslides” and the “possibility that wastewater injection wells . . . may induce earthquakes” with “enough force to potentially destabilize soft sediments in coastal margins and generate landslide tsunamis.”<sup>13</sup> The Affidavit cites to unspecified United States Geological Surveys regarding earthquakes.<sup>14</sup> It discusses how risks related to submarines and landslides can be very high “on nuclear facilities.”<sup>15</sup> It mentions the potential of “local tidal waves impacting nuclear facilities,” and states that “engineering solutions” can be devised to mitigate those risks.<sup>16</sup> Clearly, the Bardet Affidavit is focused on potential safety issues relating to the impact of wastewater injection-induced earthquakes *on nuclear plants*, and not on the environmental impacts to the groundwater of the four chemicals at issue in Contention 2.1. Indeed, nowhere in the Affidavit that supposedly supports Section II of the City’s Initial Statement are the four chemicals, much less their impact on the environment, even mentioned.

Moreover, the City had ample opportunity to raise this issue previously. The potential impacts of earthquakes on the proposed new plant have been referenced in many places throughout this proceeding, including in the Final Safety Analysis Report (FSAR) submitted by FPL in June 2009, and in the NRC’s November 2016 Final Safety Evaluation

---

<sup>11</sup> Bardet Affidavit at 4.

<sup>12</sup> See Joint Petitioners’ Petition for Intervention at 26–30 (Aug. 17, 2010) (ADAMS Accession No. ML102300582).

<sup>13</sup> Bardet Affidavit at 3–4.

<sup>14</sup> *Id.* at 2–3.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

Report (FSER).<sup>17</sup> In fact, the NRC Staff concluded in the FSER that “there is no potential for the effects of human activity (i.e., mining activity or *groundwater injection* or withdrawal) to compromise the safety of the site.”<sup>18</sup> This is precisely the issue that the City and the Bardet Affidavit incorrectly allege has not been addressed.<sup>19</sup>

If the City was concerned about these issues, they should have been raised in a contention years ago. The Board should not allow the City to circumvent the Commission’s regulations regarding timely filings and introduce at this point in the proceeding what amounts to a new contention.<sup>20</sup> As the Commission has held, “[a]llowing contentions to be added, amended, or supplemented at any time would defeat the purpose of the specific contention requirements.”<sup>21</sup>

## **II. Fairness Demands that the City Not Be Permitted to Raise a New Issue while Circumventing Disclosure Requirements.**

In addition to being outside the scope of Contention 2.1 and the bases on which it was admitted, including Section II of the Initial Statement and the Bardet Affidavit in this proceeding would violate principles of fundamental fairness by allowing the City to raise a new issue at this late stage of the proceeding while avoiding the disclosure requirements established by the Board.

Even if the City believed that seismic issues were relevant to Contention 2.1, it had an obligation to comply with the disclosure requirements set out in 10 C.F.R. § 2.336 and the

---

<sup>17</sup> See Final Safety Evaluation Report at § 2.5 (Nov. 10 2016) (ADAMS Accession No. ML16264A045).

<sup>18</sup> *Id.* at § 2.5.1.6 (emphasis added).

<sup>19</sup> Initial Statement at 4.

<sup>20</sup> Moreover, the City has not attempted to demonstrate good cause for submitting an untimely contention (10 C.F.R. § 2.309(c)), nor has it attempted to demonstrate how such a contention satisfies the Commission’s admissibility standards (10 C.F.R. § 2.309(f)(1)).

<sup>21</sup> *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 N.R.C. 619, 622–623 (2004).

Board's March 30, 2011 initial scheduling order.<sup>22</sup> However, the City did not disclose its expert until its March 1, 2017 filing, and the City has never identified the documents upon which its expert is relying.<sup>23</sup> As a result, if the Board were to conclude that Section II of the Initial Statement and the Bardet Affidavit are within the scope of this proceeding, FPL would have only twenty-one days to (1) identify an expert to rebut the Bardet Affidavit, (2) develop responses to the new arguments proffered, and (3) review the documents supporting those arguments, which the City has not provided to the parties. Requiring FPL do to so in such a short period of time would defeat the very purpose of regulations requiring the timely filing of contentions and disclosures.<sup>24</sup>

### **CONCLUSION**

For the foregoing reasons, FPL respectfully requests that Section II of the City's Initial Statement (and the last two lines of the Initial Statement's Conclusion), as well as the entire Bardet Affidavit, be stricken from the record as outside the scope of this proceeding.

---

<sup>22</sup> Section 2.315(c) of the Commission's regulations allows an interested local governmental body that has not been admitted as a party to participate in a hearing as an interested non-party. However, "[a]n interested state, once admitted to a proceeding, must observe the procedural requirements applicable to other participants." *Houston Lighting and Power Co.* (South Texas Project, Units 1 & 2), LBP-83-26, 17 NRC 945, 947 (1983).

<sup>23</sup> 10 C.F.R. § 2.336(a)(1)–(2).

<sup>24</sup> *South Carolina Electric and Gas Co.* (Virgil C. Summer Nuclear Station Unit 1), ALAB-642, 13 NRC 881, 886 (1981) ("Simple fairness to [the parties]—to say nothing of the public interest requirement that NRC licensing proceedings be conducted in an orderly fashion—demand[] that the Board be very chary in allowing one who had slept on its rights to inject itself and new claims into the case as last minute trial preparations were underway.").

## **CERTIFICATION**

As required by 10 C.F.R. § 2.323(c), FPL has consulted with the NRC Staff, Joint Intervenors, and the City. The NRC Staff does not object to FPL's Motion. The Joint Intervenors do not take a position on FPL's Motion, and the City of Miami objects to it.

Respectfully Submitted,

/Signed electronically by Anne R. Leidich/

William S. Blair  
FLORIDA POWER & LIGHT COMPANY  
700 Universe Blvd.  
Juno Beach, FL 33408  
Telephone: 561-304-5238  
Facsimile: 561-691-7135  
william.blair@fpl.com

Steven Hamrick  
FLORIDA POWER & LIGHT COMPANY  
801 Pennsylvania Avenue, N.W. Suite 220  
Washington, DC 20004  
Telephone: 202-349-3496  
Facsimile: 202-347-7076  
steven.hamrick@fpl.com

Michael G. Lepre  
Anne R. Leidich  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 Seventeenth Street, NW  
Washington, DC 20036  
Telephone: 202-663-8707  
Facsimile: 202-663-8007  
michael.lepre@pillsburylaw.com  
anne.leidich@pillsburylaw.com

Counsel for FLORIDA POWER & LIGHT COMPANY

March 8, 2017

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 52-040-COL
Florida Power & Light Company	)	52-041-COL
	)	
Turkey Point Units 6 and 7	)	ASLBP No. 10-903-02-COL
(Combined License Application)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies FPL's Motion to Strike have been served through the EFiled system on the participants in the above-captioned proceeding, this 8th day of March, 2017.

/signed electronically by Anne R. Leidich/

Anne R. Leidich  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 Seventeenth Street, NW  
Washington, DC 20036  
Telephone: 202-663-8707  
Facsimile: 202-663-8007  
anne.leidich@pillsburylaw.com  
Counsel for FLORIDA POWER & LIGHT COMPANY