

April 3, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

E. Roy Hawkens, Chair
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of)
)
Florida Power & Light Company) Docket Nos. 52-040 and 52-041
)
Turkey Point,) ASLBP No. 10-903-02-COL-BD01
Units 6 and 7)
_____)

**JOINT INTERVENORS' OPPOSITION TO NRC STAFF'S
MOTION IN LIMINE TO EXCLUDE A PORTION OF THE JOINT
INTERVENORS' REBUTTAL TESTIMONY OR IN
THE ALTERNATIVE STRIKE PORTIONS THEREOF**

I. INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Order (Amending Final Scheduling Order) (Nov. 22, 2016), Joint Intervenors hereby oppose the Nuclear Regulatory Commission ("NRC") Staff's Motion in Limine to Exclude a Portion of the Joint Intervenors' Rebuttal Testimony or in the Alternative Strike Portions Thereof (Mar. 30, 2017) ("NRC Staff Motion"). The NRC Staff asks the ASLB to either exclude or strike a paragraph of Answer 19 from Joint Intervenors' Rebuttal Testimony of Mark A. Quarles Regarding Joint Intervenors' Contention 2.1 (filed Mar. 23, 2017) ("Quarles' Rebuttal Testimony"). NRC Staff

seeks to exclude or stike the paragraph as “beyond the scope of Contention 2.1, in that it raises new bases to support Contention 2.1 that were not previously raised.” NRC Staff Motion at 1. The Staff’s argument is entirely without merit. The Quarles’ Rebuttal Testimony is well within the scope of Contention 2.1. Moreover, as conceded by the NRC Staff, it is responsive to the Staff’s own testimony, and therefore it is relevant and admissible. By making such an unfounded request to exclude relevant and responsive testimony, NRC Staff wastes the time of the ASLB and parties, and imposes an unnecessary and unfair burden on Joint Intervenors, who need to use their limited time and resources in preparation for the upcoming hearing.

II. FACTUAL BACKGROUND

Contention 2.1, as most recently revised by the ASLB, asserts that:

The DEIS [Draft Environmental Impact Statement] is deficient in concluding that the environmental impacts from FPL’s proposed deep injection wells will be “small.” The chemicals ethylbenzene, heptachlor, tetrachloroethylene, and toluene in the wastewater injections at concentrations listed in DEIS Table 3-5 may adversely impact the groundwater should they migrate from the Boulder Zone to the Upper Floridan Aquifer.¹

In originally admitting Contention 2.1, the ASLB stated that Joint Intervenors had “asserted (with adequate supporting information . . .) that these specified chemicals might be in the wastewater discharged via deep well injection wells into the Boulder Zone of the Lower Floridan Aquifer, and that the wastewater could possibly migrate into the Upper Floridan Aquifer, contaminating the groundwater (including potential drinking water) with these chemicals.”²

In their testimony, Florida Power & Light (“FPL”) and the NRC Staff made statements to the effect that the environmental impacts of ethylbenzene, heptachlor, tetrachloroethylene, and

¹ Memorandum and Order (Granting in part and Denying in Part FPL’s Motion for Summary Disposition), LBP-16-03, 83 NRC 169, 186 (2016).

² Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC 149, 191 (2011).

toluene on potential drinking water would be insignificant because current and planned sources of drinking water are located at some distance from the Turkey Point site, because the site is host to a nuclear plant, and because the EPA-designated Underground Source of Drinking Water (“USDW”) beneath Turkey Point is too salty to be potable without treatment. In ¶14 of his Initial Testimony, for instance, Dr. Maliva states that “[t]he nearest existing or planned Floridan Aquifer public supply wells are located over 10 miles west of the Turkey Point site, in the up-gradient direction...” He also asserts that “it is highly unlikely that any future potable water supply wellfields will be placed closer to or to the east of Turkey Point, due to the presence of the plant and proximity to the coast.” FPL-003, Maliva Testimony, ¶14. *See also* NRC-002, NRC Staff Testimony, A24 (asserting that the Upper Floridan Aquifer beneath the Turkey Point site is “too saline . . . to be used for drinking water without treatment.”)

In Q19 of his pre-filed Rebuttal Testimony, Mr. Quarles was asked to address the question of whether, in light of the above-cited testimony by FPL and the NRC Staff, “it is appropriate to judge the significance of impacts based on the current location of drinking water supplies.” He responded as follows:

A19: No. These statements related to drinking water wells are short sighted and inconsistent with the federal Safe Drinking Water Act. The purpose of designating aquifers as Underground Sources of Drinking Water (USDW) is to ensure that they are protected for both present *and* future uses. As defined in federal Safe Drinking Water Act regulations, a USDW includes not just current sources of drinking water, but aquifers containing “a sufficient quantity of ground water to supply a public water system,” if they contain fewer than 10,000 mg/l total dissolved solids. 40 C.F.R. § 144.3(a)(2)(ii). Given the high and expanding population of Florida, and given the limited supply of fresh water (and particularly the shallowness of the Biscayne Aquifer used in Southeast Florida), any aquifer with the potential to provide drinking water should be protected.

The Florida Department of Environmental Protection (FDEP) has acknowledged that demand for water will continue to increase in Florida, and that additional and diversified water sources are needed to maintain a reliable supply of water for the expected increase in demand. FDEP, Regional Water Supply Planning, 2015 Annual Report. A copy is attached as **Exhibit INT-020**. The fact that an aquifer may require desalinization at some

point in the future does not provide valid grounds for failing to protect it like any other USDW, because desalinization is likely to become necessary in the future to support the population in the state.

In addition, the license term for the proposed Turkey Point Units 6 and 7 reactors is limited to 40 years. It is my understanding that after the license terminates, the goal of the NRC is that the site will be in a condition that it can be released for any type of public use. If that is the goal, it should include use of the groundwater beneath the site as a drinking water source.

The NRC Staff now seeks to strike the final paragraph of A19, on the ground that it falls outside the scope of Contention 2.1. NRC Staff Motion at 3.

III. DISCUSSION

It is unclear why the NRC Staff has filed its motion, because the Staff itself concedes Mr. Quarles' testimony is admissible if it is intended to rebut another party's testimony. NRC Staff Motion at 3 ("To the extent Joint Intervors intend to rebut the NRC Staff direct testimony regarding the foreseeable impacts of wastewater injection on groundwater quality, the Staff does not object to that testimony being admitted into the record."). There can be no doubt that Mr. Quarles' A19 directly responds to testimony by FPL and the NRC Staff; in fact, the FPL and NRC Staff testimony to which Mr. Quarles responds is cited in Q19. The scope of "[p]ermissible inquiry" at a hearing "extends to every matter within the reach of the testimony submitted by applicants and accepted by the Board." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 94 (1977).

Nor is there any merit to the Staff's argument that Joint Intervenors have used Mr. Quarles' testimony to unfairly expand the scope of Contention 2.1 to add the "new" issue of decommissioning. NRC Staff Motion at 3. The Staff argues that Joint Intervenors unfairly failed to provide the Staff with prior notice and an opportunity to submit testimony regarding "any

future use of the Turkey Point site or any issues relating to decommissioning the site.” NRC Staff Motion at 3-4.

This argument is absurd. Mr. Quarles’ purpose in citing the NRC decommissioning rule was clear and narrow: to respond to FPL’s implication that the environmental impacts of injectate on the USDW at the Turkey Point site are insignificant, because the site is a permanent sacrifice zone by virtue of the fact that it hosts a nuclear plant, and that therefore it is disqualified from providing drinking water in the future. This issue is well within the scope of the contention. The significant environmental impacts of the Turkey Point injectate on potential drinking water sources was recognized by the ASLB as a legitimate subject of Contention 2.1 in LBP-11-06, 73 NRC at 191. The question of whether the presence of a nuclear plant above a USDW somehow disqualifies it from subsequent use for drinking water falls well within the “reasonably inferred bounds” of the contention. *Entergy Nuclear Generation Co. (Pilgrim Nuclear Station)*, CLI-10-11, 71 NRC 287, 309 (2010).³ If the ASLB holds otherwise, then it must also strike the corresponding portion of FPL’s testimony.

NRC’s additional claim that it “has no jurisdiction over the classification of groundwater” has no bearing on the relevance of Mr. Quarles’ testimony. NRC Staff Motion at 4. As the Staff previously acknowledged, EPA has designated the Upper Floridan aquifer at the Turkey Point as a USDW. NRC Staff Initial Testimony, A24. In addition, the NRC Staff’s Initial Testimony shows it understands that: “to comply with NEPA,” the Staff must determine how “changes to water quality of surrounding aquifers could impact the ‘important attributes of the resource,’ such as availability or reliability, with respect to present and *future known uses and users of the*

³ In *Entergy*, the NRC rejected an attempt, in a summary disposition proceeding, to expand the subject matter of a contention from economic effects of a loss of tourism to health-related costs. No such change of subject matter is proposed in Mr. Quarles’ testimony.

water.” NRC Initial Testimony, A14 (citing NUREG-1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants at 2.3.2-1, 2.3.3-1 (1999) (emphasis added). Under NEPA, NRC’s lack of jurisdiction over the classification of a drinking water supply is irrelevant.

IV. CONCLUSION

For the foregoing reasons, the NRC Staff’s Motion is entirely without merit and should therefore be denied.

Respectfully submitted this 3rd day of April, 2017.

 /signed electronically by/
Mindy Goldstein
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Phone: (404) 727-3432
Fax: (404) 727-7851
Email: magolds@emory.edu

 /signed electronically by/
Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1725 DeSales Street N.W., Suite 500
Washington, D.C. 20036
240-393-9285
dcurran@harmoncurran.com

Counsel for Joint Intervenors

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Florida Power & Light Company) Docket Nos. 52-040 and 52-041
)
Turkey Point,) ASLBP No. 10-903-02-COL-BD01
Units 6 and 7)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2017, **JOINT INTERVENORS' OPPOSITION TO NRC STAFF'S MOTION IN LIMINE TO EXCLUDE A PORTION OF THE JOINT INTERVENORS' REBUTTAL TESTIMONY OR IN THE ALTERNATIVE STRIKE PORTIONS THEREOF**, was posted on the NRC's Electronic Information Exchange System.

Respectfully submitted this 3rd day of April, 2017.

 /signed electronically by/
Mindy Goldstein
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Phone: (404) 727-3432
Fax: (404) 727-7851
Email: magolds@emory.edu