

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 6 and 7)

Docket Nos. 52-040-COL
and 52-041-COL

ASLBP No. 10-903-02-COL-BD01

April 5, 2017

MEMORANDUM AND ORDER
(Denying NRC Staff's Motion to Strike)

On March 30, 2017, the NRC Staff filed a motion to strike three sentences in the rebuttal written testimony of Joint Intervenors' expert witness, Mark Quarles, as outside the scope of the admitted contention.¹ For the reasons stated below, we deny the NRC Staff's motion.

I. Background

This proceeding concerns a challenge to Florida Power & Light Company's (FPL) combined license (COL) application for two new nuclear power reactors, Turkey Point Units 6 and 7, to be constructed at FPL's facility near Homestead, Florida. Joint Intervenors'

¹ NRC Staff Motion in Limine to Exclude a Portion of the Joint Intervenors' Rebuttal Testimony or in the Alternative Strike Portions Thereof (Mar. 30, 2017) [hereinafter NRC Staff Motion]. We are informed that Florida Power & Light (FPL) supports the NRC Staff's motion and that the City of Miami and the Village of Pinecrest oppose the motion. See id. at 5 n. 2. Joint Intervenors (i.e., Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association) filed an opposition to the motion. See 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 (Apr. 3, 2017) [hereinafter Joint Intervenors' Response].

Contention 2.1, as subsequently reformulated and amended, is the sole contention pending before the Board and reads as follows:

The Final Environmental Impact Statement (FEIS) is deficient in concluding that the environmental impacts from FPL's proposed deep injection wells will be "small." The chemical concentrations of ethylbenzene, heptachlor, tetrachloroethylene, and toluene in the wastewater injections, see FEIS Table 3-5, may adversely impact the groundwater should they migrate from the Boulder Zone to the Upper Floridan Aquifer.²

Contention 2.1 thus challenges the FEIS's conclusion that the four specifically identified chemicals—ethylbenzene, heptachlor, tetrachloroethylene, and toluene—inserted into the 3,000-foot-deep Boulder Zone by the proposed injection wells, will not migrate upward to the 1,500-foot-deep Upper Floridan Aquifer and adversely affect the groundwater. An evidentiary hearing on this contention is scheduled to commence on May 2, 2017 in Homestead, Florida. See Notice of Hearing, 82 Fed. Reg. 16,241 (Apr. 3, 2017).

II. Analysis

The NRC Staff argues that the Board must strike the following three sentences in Mr. Quarles' written rebuttal testimony:

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.

See NRC Staff Motion at 3 (quoting Pre-filed Rebuttal Testimony of Mark A. Quarles Regarding Joint Intervenors' Contention 2.1 at 13 (undated) [hereinafter Quarles Rebuttal]). The NRC Staff claims that the above statement is impermissibly outside the scope of the admitted contention because it "raises potential issues about decommissioning the proposed plant which have

² Memorandum and Order (Ruling on Motions to Strike or Exclude) at 2 (Mar. 15, 2017) (unpublished).

neither been developed sufficiently by Joint Intervenors nor addressed by the NRC Staff.” Id. We disagree.

Mr. Quarles’ statement merely reaffirms Joint Intervenors’ concerns that the injected wastewater will contaminate the underground source of drinking water in the Upper Floridan Aquifer. See Quarles Rebuttal at 12–13. More specifically, the challenged portion of Mr. Quarles’ rebuttal testimony contests the NRC Staff’s and FPL’s direct testimony that the impact of the injected wastewater on the groundwater will be small because (1) the current location of drinking water supplies is ten miles west and upgradient of the Turkey Point site, and (2) the Upper Floridan Aquifer at the site is currently too saline to be used for drinking water without treatment.³ Mr. Quarles contends that FPL’s and the NRC Staff’s focus on the current location of drinking water supplies is short-sighted given that “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.” Quarles Rebuttal at 13 (emphasis in original). In this context, therefore, Mr. Quarles’ mention of the 40-year license term in the above-challenged sentences does not raise decommissioning issues or any other issues that are beyond the scope of this proceeding; rather, it supports his earlier points regarding the impact of possible groundwater contamination on both present and future users of the underground drinking water source. See Joint Intervenors’ Response at 4–5.

In its motion, the NRC Staff states that it has no objection to Mr. Quarles’ testimony “[t]o the extent Joint Intervenors intend to rebut the NRC Staff direct testimony regarding the foreseeable impact of wastewater injection on groundwater quality.” NRC Staff Motion at 3. Because we conclude that Mr. Quarles’ testimony is limited to rebutting the NRC Staff’s direct testimony, it is unobjectionable.

³ See Ex. NRC-002-R, Revised NRC Staff Testimony of Ann L. Miracle, Daniel O. Barnhurst, Paul D. Thorne, and Alicia Williamson-Dickerson Concerning Contention 2.1 at 14–15, 35 (Mar. 1, 2017); Direct Testimony of Dr. Robert G. Maliva at 7 (Mar. 1, 2017); see also Joint Intervenors’ Response at 3–5.

III. Conclusion

For the foregoing reasons, we deny the NRC Staff's motion to strike.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 5, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket Nos. 52-040 and 52-041-COL
(Juno Beach, Florida))
)
(Turkey Point, Units 6 & 7))

CERTIFICATE OF SERVICE

I hereby certify that copies of the **MEMORANDUM AND ORDER (Denying NRC Staff's Motion to Strike)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001

E. Roy Hawkens
Administrative Judge, Chair
roy.hawkens@nrc.gov

Sara Kirkwood, Esq.
sara.kirkwood@nrc.gov
Patrick Moulding, Esq.
patrick.moulding@nrc.gov
Michael Spencer, Esq.
michael.spencer@nrc.gov
Robert Weisman, Esq.
robert.weisman@nrc.gov
Christina England, Esq.
christina.england@nrc.gov
Anthony C. Wilson, Esq.
anthony.wilson@nrc.gov
Olivia J. Mikula
Olivia.Mikula@nrc.gov

Dr. Michael F. Kennedy
Administrative Judge
michael.kennedy@nrc.gov

Dr. William C. Burnett
Administrative Judge
william.burnett2@nrc.gov

Jennifer E. Scro, Law Clerk
Jennifer.Scro@nrc.gov

Kimberly Hsu, Law Clerk
kimberly.hsu@nrc.gov

OGC Mail Center: Members of this office have received a copy of this filing by EIE service.

Turkey Point, Units 6 and 7, Docket Nos. 52-040 and 52-041-COL
MEMORANDUM AND ORDER (Denying NRC Staff's Motion to Strike)

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Nextera Energy Resources
William Blair, Esq.
william.blair@fpl.com

Florida Power & Light Company
801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
steven.hamrick@fpl.com

Pillsbury, Winthrop, Shaw, Pittman, LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036-3006
Michael G. Lepre, Esq.
michael.lepre@pillsburylaw.com
John H. O'Neill, Esq.
john.oneill@pillsburylaw.com
David R. Lewis, Esq.
david.lewis@pillsburylaw.com
Timothy J. V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Anne Leidich, Esq.
ann.leidich@pillsburylaw.com

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Everglades Law Center, Inc.
3305 College Avenue
Ft. Lauderdale, Florida 33314
Jason Totoiu, Esq.
jason@evergladeslaw.org

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation
Association
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Rd. SE
Atlanta, GA 30322
Mindy Goldstein, Esq.
magolds@emory.edu

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation
Association
Harmon, Curran, Spielberg, & Eisenberg, LLP
1725 DeSales Street NW, Ste. 500
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com

Counsel for the Village of Pinecrest
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
William C. Garner, Esq.
bgarner@ngn-tally.com
Gregory T. Stewart, Esq.
gstewart@ngnlaw.com

Matthew Haber, Esq., Assistant City Attorney
Kerri McNulty, Esq.
Xavier Alban, Esq.
The City of Miami
444 SW 2nd Avenue
Miami, FL 33130
mshaber@miamigov.com
Klmcnulty@miamigov.com
xealban@miamigov.com

[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of April, 2017