

October 1, 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
FLORIDA POWER & LIGHT COMPANY)	Docket Nos. 50-250-SLR
)	50-251-SLR
(Turkey Point Nuclear Generating,)	
Unit Nos. 3 and 4))	

NRC STAFF'S RESPONSE TO MONROE COUNTY,
FLORIDA'S REQUEST TO PARTICIPATE AS AN
INTERESTED GOVERNMENTAL ENTITY

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i), the NRC Staff hereby files its response to the request to participate in this proceeding as an interested governmental entity, filed by Monroe County, Florida, on September 20, 2018.¹ As more fully set forth below, the Staff does not oppose Monroe County's participation in this proceeding as an interested governmental entity under 10 C.F.R. § 2.315(c). In accordance with that regulation, Monroe County's participation would be limited to the scope of the contentions identified in its Request, as admitted by the Board; further, its participation would be subject to compliance with the Commission's Rules of Practice in 10 C.F.R. Part 2 and rulings by the Atomic Safety and Licensing Board ("Board") and the Commission in this proceeding.

BACKGROUND

This proceeding concerns the application submitted by Florida Power & Light Company ("FPL" or "Applicant") on January 30, 2018, as later supplemented and revised, for subsequent license renewal of Renewed Facility Operating License Nos. DPR-31 and DPR-41, to permit an

¹ Monroe County, Florida's Request to Participate as Interested Governmental Participant (Sept. 20, 2018) (ML18263A205) ("Request").

additional 20 years of operation for Turkey Point Nuclear Generating Unit Nos. 3 and 4.² Turkey Point Units 3 and 4 are located on a 3,300-acre site adjacent to Biscayne Bay in Miami-Dade County, approximately two miles east of Homestead, Florida (the closest community to the site), and approximately 20 miles south of Miami, Florida (the largest population center in the region).³ Turkey Point Units 3 and 4 consist of two Westinghouse pressurized water reactors, each of which is licensed to operate at a power level of 2,644 megawatts-thermal (MWt), with a net maximum output of approximately 811 megawatts electric (MWe) and 821 MWe, respectively;⁴ the plants utilize a closed-cycle circulating water system (the cooling canal system or “CCS”), with a circulating water flow of 1,872 million gallons per day (MGD).⁵ The current renewed operating licenses for Units 3 and 4 expire at midnight on July 19, 2032, and April 10, 2033, respectively; FPL’s subsequent license renewal application (“SLRA”) seeks to extend these licenses for an additional 20 years, until July 19, 2052, and April 10, 2053, respectively.⁶

The NRC published a notice of receipt of the Turkey Point SLRA on April 18, 2018.⁷

On May 2, 2018, the NRC issued a determination of acceptability and sufficiency for docketing

² See (1) Letter from Mano K. Nazar (FPL) to NRC Document Control Desk (Jan. 30, 2018) (ML18037A812); (2) Letter from William D. Maher (FPL) to NRC Document Control Desk (Feb. 9, 2018) (ML18044A653); (3) Letter from William D. Maher (FPL) to NRC Document Control Desk (Feb. 16, 2018) (ML18053A123); (4) Letter from William D. Maher (FPL) to NRC Document Control Desk (Mar. 1, 2018) (ML18072A224); and (5) Letter from William D. Maher (FPL) to NRC Document Control Desk (Apr. 10, 2018) (ML18102A521 and ML18113A132) (enclosing a revised subsequent license renewal application).

³ SLRA, Appendix E, Applicant’s Environmental Report, Subsequent Operating License Renewal Stage, at 3-1 (ML18113A145) (“ER”).

⁴ *Id.* at 2-2.

⁵ *Id.* at 2-5. The CCS is licensed by the State of Florida as an industrial wastewater (IWW) facility. *Id.* at 2-4, 3-82, 3-87 – 3-88.

⁶ *Id.* at 1-1 and 2-1. The construction permits for Turkey Point Units 3 and 4 were issued on April 27, 1967; the initial operating licenses for Units 3 and 4 were issued on July 19, 1972 and April 10, 1973, respectively; and the licenses for both Units were renewed for an additional 20 years on June 6, 2002. *Id.*

⁷ Florida Power & Light Co.; Turkey Point Nuclear Generating Unit Nos. 3 and 4; License renewal application; receipt, 83 Fed. Reg. 17,196 (Apr. 18, 2018).

of the SLRA, along with a notice of opportunity for hearing on the application.⁸ The Notice required that petitions for leave to intervene and requests for hearing be filed within 60 days of publication of the Notice (*i.e.*, by July 2, 2018).⁹ The Commission subsequently extended the deadline for filing petitions to intervene until August 1, 2018.¹⁰

On August 1, 2018, timely petitions to intervene were filed by (1) Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (collectively, “Joint Petitioners”), and (2) Southern Alliance for Clean Energy (“SACE”).¹¹ On August 2, 2018, Mr. Albert Gomez submitted a petition to intervene.¹² The Applicant and Staff filed responses (a) to the Joint Petitioners’ and SACE’s petitions on August 27, 2018,¹³ and (b) to Mr. Gomez’s petition on September 4, 2018;¹⁴ the Joint Petitioners and SACE filed replies to those responses on

⁸ Florida Power & Light Co.; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; License renewal application; opportunity to request a hearing and to petition to intervene, 83 Fed. Reg. 19,304 (May 2, 2018) (“Notice”).

⁹ *Id.* at 19,305.

¹⁰ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), Order of the Secretary (Granting a Partial Extension) (June 29, 2018) (ML18180A185). An Atomic Safety and Licensing Board (“Board”) was established on August 8, 2018, to preside over any adjudicatory proceeding that may be held. Establishment of Atomic Safety and Licensing Board; Florida Power & Light Co., 83 Fed. Reg. 40,360 (Aug. 14, 2018).

¹¹ See (1) Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 1, 2018) (ML18213A417) (“Joint Petition”), and (2) Southern Alliance for Clean Energy’s Request for Hearing and Petition to Intervene (Aug. 1, 2018) (ML18213A528) (“SACE Petition”).

¹² Proposed Petition to Intervene and for Hearing under 10 C.F.R. § 2.206, for Docket ID # NRC-2018-0074 (undated) (ML18219A900) (“Gomez Petition”).

¹³ NRC Staff’s Corrected Response to Petitions to Intervene and Requests for Hearing Filed by (1) Friends of the Earth, Natural Resources Defense Council and Miami Waterkeeper, and (2) Southern Alliance for Clean Energy (Aug. 27, 2018) (ML18239A458); Applicant’s Answer Opposing Southern Alliance for Clean Energy’s Request for Hearing and Petition to Intervene (Aug. 27, 2018) (ML18239A449); and Applicant’s Answer Opposing Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 27, 2018) (ML18239A445).

¹⁴ NRC Staff’s Response to Petition to Intervene and Request for Hearing Filed by Albert Gomez (Sept. 4, 2018) (ML18247A518); Applicant’s Opposition to Albert Gomez’s Petition to Intervene (Sept. 4, 2018) (ML18247A569).

September 10, 2018.¹⁵ The Applicant subsequently filed motions seeking to strike portions of the Joint Petitioners' and SACE's replies, or in the alternative, to file a surreply to those filings.¹⁶ These matters are presently pending before the Board. The Board has scheduled a telephone conference call to be held on October 4, 2018,¹⁷ and has sought information regarding the participants' availability for oral argument in November and December 2018.¹⁸

DISCUSSION

In its Request, Monroe County states, in part, that the Turkey Point facility is located in southeast Miami-Dade County, adjacent to Biscayne Bay; and that Monroe County's borders include the Florida Keys, a number of state and national parks, and other natural refuges and preserves.¹⁹ Further, Monroe County states that it is concerned about "FPL's operation of the cooling canal system (CCS) to cool . . . Units 3 and 4, and the hypersaline plume that has developed in the Biscayne Aquifer and is migrating westward"; that it "depends on the Biscayne Aquifer as the source of its drinking water"; that contaminants in the plume and the groundwater generated by Turkey Point have contaminated a portion of the Biscayne Aquifer, and it is

¹⁵ Reply in Support of Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Sept. 10, 2018) (ML18253A280); Southern Alliance for Clean Energy's Reply to Oppositions by Florida Power & Light and NRC Staff to SACE's Hearing Request (Sept. 10, 2018) (ML18253A282).

¹⁶ Applicant's Motion to Strike Portions of the September 10, 2018 Reply Filed by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper or, in the Alternative, for Leave to File a Surreply (Sept. 20, 2018) (ML18263A284); Applicant's Motion to Strike a Portion of the September 10, 2018 Reply Filed by Southern Alliance for Clean Energy or, in the Alternative, for Leave to File a Surreply (Sept. 20, 2018) (ML18263A285); Applicant's Surreply to New Arguments Raised in Reply Pleadings (Sept. 20, 2018) (ML18263A286).

¹⁷ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), Order (Scheduling Prehearing Conference Call) (Sept. 20, 2018).

¹⁸ E-mail message from Sarah Ladin, Law Clerk, Atomic Safety and Licensing Board Panel, to Anita Ghosh, *et al.*, "Subject: Prehearing Conference and Oral Arguments Availability For Turkey Point 3 & 4 SLR Proceeding" (Sept. 12, 2018).

¹⁹ Request at 1.

concerned the plume could cause “the primary drinking water supply to Monroe County [to be] lost”; that it is also concerned about the impacts of Turkey Point on the Biscayne Bay, “a portion of which falls within the jurisdictional limits of the County”; and that impacts to Biscayne Bay could adversely impact the “waters and resources of the Florida Keys, [and] threaten the tourism and fishing industries on which Monroe County’s identity and economy are based.”²⁰

In accordance with 10 C.F.R. § 2.315(c), Monroe County designates “the Monroe County Board of County Commissioners” as its “single representative” in this proceeding,²¹ and it identifies two specific contentions on which it seeks to participate, as follows:

Monroe County seeks to participate on the two contentions raised by [SACE] in its Request for Hearing and Petition to Intervene, which include (1) that the FPL Environmental Report fails to adequately discuss the environmental impacts of using the CCS in violation of the National Environmental Policy Act (NEPA) and NRC implementing regulation 10 C.F.R. § 51.53(c); and, (2) that FPL has failed to consider the reasonable alternative of cooling the Turkey Point Units 3 and 4 reactors with mechanical draft cooling towers in violation of NEPA and 10 C.F.R. § 51.53(c)(2).^[22]

The NRC Staff is satisfied that Monroe County’s Request meets the requirements of 10 C.F.R. § 2.315(c).²³ As required by that regulation, the County has identified the two specific contentions on which it seeks to participate, and has designated a single representative to

²⁰ *Id.* at 1-2.

²¹ Monroe County’s Request was submitted on its behalf by Derek V. Howard, Assistant Monroe County Attorney in the Monroe County Attorney’s Office. *Id.* at 2-3. Mr. Howard has filed a Notice of Appearance in this proceeding, “as duly authorized counsel for Monroe County, Florida.” Notice of Appearance by Derek Howard (Sept. 20, 2018) (ML18263A204).

²² Request at 3.

²³ Inasmuch as Monroe County has not filed a petition for leave to intervene or hearing request, under 10 C.F.R. § 2.315(c), it is not required to demonstrate its standing to intervene or to submit its own contentions; rather, it is permitted to participate in the proceeding, limited to the specific contentions identified in its request. The Staff notes that the Turkey Point facility and the CCS appear to be located approximately 8 miles and 4 miles, respectively, from the nearest boundary of Monroe County. Those distances would have sufficed to establish the County’s standing to intervene, based on the proximity presumption.

represent its interests in any hearing that may be held.²⁴ Moreover, under 10 C.F.R. § 2.315(c), the Commission has instructed that “[t]he presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and Federally-recognized Indian Tribe that has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing.”²⁵ Accordingly, given the County’s proximity to the Turkey Point facility and its expressed interest in participating in this proceeding, the Staff does not oppose its participation herein under 10 C.F.R. § 2.315(c).

Finally, the Staff notes that if Monroe County is permitted to participate in this proceeding under 10 C.F.R. § 2.315(c), it must comply with the requirements of the Commission’s Rules of Practice in 10 C.F.R. Part 2 and all Orders that may be issued by the Board and the Commission in this proceeding. Thus, while interested governmental entities are to be afforded a “reasonable opportunity” to participate in NRC adjudicatory proceedings, the provision of such a “reasonable opportunity” to participate does not include authorization to disregard any adjudicatory requirements in the proceeding. Similarly, the County’s participation would be limited to the scope of the contentions listed in its Request, to the extent they may be admitted by the Board;²⁶ the County may not expand the scope of any admitted contentions, participate on other contentions, or introduce issues which were not admitted by the Board, as it did not raise such issues in an admissible petition to intervene of its own.

²⁴ Monroe County’s Request also appears to have been timely filed, in that no deadline has yet been established for the filing of petitions to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.315(c). See, e.g., *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), 68 NRC 43, 217 (2008) (30 days after issuance of ruling on contentions); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 209 (20 days after ruling on contentions).

²⁵ See also Section 274(l) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2021(l).

²⁶ See, e.g., *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 454-57 (2002) (issues raised by an interested governmental entity are limited to the issues raised in admitted contentions).

CONCLUSION

For the reasons set forth above, the Staff does not oppose Monroe County's request for leave to participate in this proceeding as an interested governmental entity under 10 C.F.R. § 2.315(c), limited to the scope of the two contentions identified in its Request, to the extent those contentions may be admitted by the Board, and subject to its compliance with the Commission's Rules of Practice in 10 C.F.R. Part 2 and the rulings of the Board and the Commission in this proceeding.

Respectfully submitted,

/Signed (electronically) by/

Sherwin E. Turk
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9194
E-mail: Sherwin.Turk@nrc.gov

Executed in Accord with 10 C.F.R. § 2.304(d):

Jeremy L. Wachutka
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9188
E-mail: Jeremy.Wachutka@nrc.gov

Esther Houseman
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9197
E-mail: Esther.Houseman@nrc.gov

Dated at Rockville, Maryland
this 1st day of October 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket Nos. 50-250-SLR
) 50-251-SLR
(Turkey Point Nuclear Generating,)
Unit Nos. 3 and 4)

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO MONROE COUNTY, FLORIDA'S REQUEST TO PARTICIPATE AS AN INTERESTED GOVERNMENTAL ENTITY," dated October 1, 2018, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 1st day of October, 2018.

Copies of the foregoing have also been sent by E-mail to Mr. Albert Gomez at albert@icassemblies.com, and to Richard E. Ayres, Esq. (for Friends of the Earth) at ayresr@ayreslawgroup.com, this 1st day of October, 2018.

/Signed (electronically) by/

Sherwin E. Turk
Special Counsel for Litigation
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9194
E-mail: Sherwin.Turk@nrc.gov