

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman  
Dr. Michael F. Kennedy  
Dr. William W. Sager

In the Matter of	)	Docket Nos. 50-250-LA
	)	and 50-251-LA
FLORIDA POWER & LIGHT COMPANY	)	
	)	ASLBP No. 15-935-02-
	)	LA-BD01
(Turkey Point Nuclear Generating	)	
Units 3 and 4)	)	

August 25, 2015

CITIZENS ALLED FOR SAFE ENERGY MOTION TO INVALIDATE  
NUCLEAR REGULATORY COMMISSION  
ENVIRONMENTAL ASSESSMENT OF JULY, 31, 2014

BACKGROUND

On July 31, 2014 the Nuclear Regulatory Commission (NRC) placed an *Environmental Assessment And Final Finding Of No Significant Impact* (79 FR 44464 Page: 44464 -44470) (2014 EA) into the Federal Register (FR) in the subject matter. NUREG-1748, at 1-4/5, states that an EA must be prepared by the Project Manager (PM) and must be placed into the FR by the PM. 1

However, the 2014 EA was prepared by and entered into the FR by the Acting Chief, Plant Licensing Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation. Citizens Allied for Safe Energy, Inc (CASE), as a party to the subject matter, is submitting this apparent procedural violation for judicial review.

## STANDING

CASE, a non-profit Florida corporation, was granted standing in the subject matter in the *MEMORANDUM AND ORDER (Granting CASE's Petition to Intervene)* issued on March 23, 2015. [pbadupws.nrc.gov/docs/ML1508/ML15082A197.pdf](http://pbadupws.nrc.gov/docs/ML1508/ML15082A197.pdf) ASLBP No. 15-935-02-LA-BD01. March 23, 2015)

## CONSULTATION

On August 23, 2015 CASE sent an email to the required parties for consultation in this matter. On August 24, 2015 the NRC and FPL responded saying that they would not support the motion.

## CONTENTION

The 2014 EA in this matter was not prepared by nor was it placed into the FR by the the proper office holder as stated in NUREG-1748, and therefore, should be invalidated.

This contention is separate from and not related to any other motion or order in these proceedings; it is entirely a technical matter unrelated to the substance of the contention admitted by the ASLB on March 23, 2015.

## DISCUSSION

NUREG-1748, at 1-3/4, the 2014 EA states that an EA must be signed by the Project Manager (PM) and the Project Manager must place it into the Federal Register. The regulation states, at 1-4/5):

*"...it is the responsibility of the licensing Project Manager to prepare the EA and is also the licensing Project Managers responsibility to prepare the Federal Register notice of the EA finding and the basis for those findings. ...*

*Preparation of an EA for a licensing action for which a CATX does not apply is the responsibility of the licensing PM either at NRC Headquarters or in a Regional Office....*

*If the EA results in a FONSI, it is also the licensing PM's responsibility to prepare the Federal Register notice of the EA finding and the basis for those findings."*

The NRC's March 2012 environmental assessment and final FONSI for the Turkey Point extended power uprate (EPU) (ADAMS Accession No. ML12074A251).at 39, (2012 EA ) was signed by and placed into the FR by the Project Manager; the 2014 EA was not. The NUREG statement is specific, unequivocal and purposeful, possibly, because that person would be closer to the specific project with deeper knowledge and insight. Given the serious decisions to be made in preparing an EA, designating the PM is understandable.. The drafters of this policy seem to have had good reasons for their clear and emphatic directions.

And the Introduction to NUREG-1748, while giving some latitude to other regulations, still holds that they must adhere to the standards set forth in NUREG-1748. NUREG-1748, Introduction, at 1-1, does state:

*" the document is not a requirement: "this guidance is not a substitute for legislation and regulations and compliance with this document is not required."*

However, this statement must be considered in context. In the same section, NUREG-1748 states:

***“To ensure consistent treatment of environmental requirements throughout the NRC Office of Nuclear Material Safety and Safeguards (NMSS), the Environmental and Performance Assessment Branch (EPAB) has produced this document...***

***“ Divisions within NMSS and theirRegional counterparts may have, or choose to develop, supplemental environmental review guidance that is specific to facilities they regulate. Any such guidance should be consistent with this document To ensure consistent treatment of environmental requirements throughout (emphasis added) ...***

***Methods different from those set out in this document will be acceptable if they provide a basis for concluding that the NRC’s regulations have been met.”***

Clearly, the framers of NUREG-1748 expected the Regulation to be observed and binding; the regulations are not suggestions. If so, why bother to write them if they could be observed or not as anyone wished? They had reasons, probably well thought out and analyzed, for what they proscribed and stated so in the Introduction where these words occur. They were seeking uniformity and consistency throughout the entire agency. And they required that deviations be explained and justified.

## CONCLUSION.

CASE has shown that the substitution of another office holder for the Project Manager in the preparation and filing in the FR of the 2014 EA was at variance with the spirit and the letter of NUREG-1748, a material breach of the

regulation. CASE hereby requests that the 2014 EA be invalidated, that any authorization it provided be rescinded and that related required operational limitations be imposed.

Executed in Accord with 10 CFR § 2.304(d).

Respectfully submitted,

/S/ (Electronically) Barry J. White

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Dated at Miami, Florida  
this 25th day of August, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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August 25, 2015

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing CITIZENS ALLED FOR SAFE ENERGY MOTION TO INVALIDATE NUCLEAR REGULATORY COMMISSION ENVIRONMENTAL ASSESSMENT OF JULY, 31, 2014 have been served upon the following persons by electronic mail:.

Turkey Point, Units 3 & 4, Docket Nos. 50-250 and 50-251-LA  
CITIZENS ALLED FOR SAFE ENERGY MOTION TO INVALIDATE NUCLEAR  
REGULATORY COMMISSION ENVIRONMENTAL ASSESSMENT OF JULY, 31, 2014

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Respectfully submitted,

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Dated at Miami, Florida  
this 25th day of August, 2015