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 Co.	)	ASLBP No. 15-936-02-LA-BD01
Turkey Point Nuclear Generating,	)	
Units 3 & 4	)	May 9, 2016
_____	)	

THE CITY OF MIAMI'S REPLY TO THE NUCLEAR REGULATORY COMMISSION STAFF AND FLORIDA POWER & LIGHT COMPANY'S ANSWERS TO THE PETITION BY THE CITY OF MIAMI, FLORIDA, FOR LEAVE TO INTERVENE IN A HEARING ON FLORIDA POWER & LIGHT COMPANY'S LICENSE AMENDMENT APPLICATION FOR TURKEY POINT UNITS 3 & 4 BASED ON NEW INFORMATION, OR, IN THE ALTERNATIVE, TO PARTICIPATE AS A NON-PARTY INTERESTED LOCAL GOVERNMENT IN ANY REOPENED PROCEEDINGS & MOTION TO REOPEN THE RECORD

I. INTRODUCTION

On March 11, 2016, the Board issued an Order in the above-referenced license amendment proceedings, which addressed a recent report published by Miami-Dade County asserting that the Turkey Point cooling canal system ("CCS") may be contributing to an increase in tritium levels in Biscayne Bay ("the Order). In the Order, the Board invited "any party seeking to admit a new contention" based on the Biscayne Bay Report, to do so by April 6, 2016. The City of Miami ("the City"), in response to the Order, filed its petition for leave to intervene in the matter and motion to reopen the record in these proceedings, basing its contentions on another report recently published by Miami-Dade County, authored by Dr. David A. Chin, which provided newly available information on the effect of the CCS on ground and surface waters. The City asserts that both the Biscayne Bay Report and the Chin Study demonstrates that the license amendment request by Florida Power & Light ("FPL") in these proceedings poses a threat to its residents, thus warranting the City's intervention in these proceedings at this time.

II. THE CITY OF MIAMI HAS ESTABLISHED STANDING TO INTERVENE

The City has sufficiently established that it has standing to intervene in this license amendment proceeding under the proximity presumption as well as under modern judicial standing concepts.

1. The City has Established Standing under the Proximity Presumption

NRC Staff contends that in order to establish standing under the proximity presumption in license amendment proceedings, "there must be an obvious potential for offsite consequences." The City has clearly established that there is an obvious potential for offsite consequences. The City and its residents are concerned about the impact that increasing the maximum allowable temperature in the UHS will have on the quality and quantity of water available to them for

potable use, and to support natural ecosystems. The Chin Study established and the City properly asserted that the increased operational temperatures of the CCS has increased the salinity of the water and resulted in the degradation of groundwater resources within the Biscayne Aquifer, a source of drinking water for City residents. Increasing the maximum allowable temperature in ultimate heat sink ("UHS") would increase the salinity in the UHS and therefore further degrade the Biscayne Aquifer. Additionally, the Biscayne Bay Report states that water from the CCS is migrating outside of the boundaries of the CCS with impacts in both ground and surface waters. As such, there is clearly an obvious potential for offsite consequences and the City has standing to intervene under the proximity presumption.

2. The City has Established Standing under Modern Judicial Concepts of Standing

Alternatively, 10 C.F.R. § 2.309 requires that, in addition to proposing at least one admissible contention, a petitioner wishing to intervene in a licensing proceeding must have standing. In determining whether a petitioner has standing to intervene as of right, Commission precedent states that the Boards should look to modem judicial standing concepts. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units I and 2), 4 NRC 610 (1976). The judicial principles referred to are those set forth in Sierra Club v. Morton, 405 U.S. 727 (1972); Barlow v. Collins, 397 U.S. 159 (1970); and Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970). Such standards require a showing that (1) the action being challenged could cause injury-in-fact to the person seeking to establish standing, and (2) such injury is arguably within the zone of interests protected by the statute governing the proceeding. Wisconsin Electric Power Co. (Point Beach, Unit I), 12 NRC 547 (1980); Crowe Butte Resources, Inc. (North Trend Expansion Project), 67 NRC 241 (2008); Dominion Nuclear

Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), 67 NRC 421 (2008); Entergy Nuclear Operations, Inc. (Indian Point, Units 2 and 3), 68 NRC 43 (2008).

Injury-in-Fact

The proximity of the City and its residents to the site where the proposed units are to be built and operated is sufficient to establish an injury-in-fact. See Power Auth. Of the State of New York (James A. FitzPatrick Nuclear Power Plant and Indian Point Nuclear Generating No. 3), CLI-00-22, 52 NRC 266, 295 (2000); See Private Fuel Storage, L.C.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33-34 (1998). The petitioner does not have to show that his concerns are well-founded in fact, as such concerns are addressed when the merits of the case are reached. Distances of as much as 50 miles have been sufficient. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units I and 2), 9 NRC 54, 56 (1979) (noting in the license amendment proceeding that "we have never required a petitioner in such geographical proximity to the facility in question to establish, as a precondition to intervention, that his concerns are well-founded in fact . . . . Rather, close proximity has always been deemed to be enough, standing alone, to establish the requisite interest."); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), 9 NRC 393,410, 429 (1984); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), 5 NRC 1418, 1421 n.4 (1977); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), 9 NRC 728, 730 (1979); Entergy Nuclear Operations, Inc. (Indian Point, Units 2 and 3), 68 NRC 43, 60 (2008) ("[A] a petitioner is presumed to have standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor."). Because the City is situated 25 miles from FPL's Turkey Point Units 3 & 4, which are the subject of this license amendment proceedings, injury-in-fact is presumed.

Zone of Interests

"In order to assess whether an interest is within the 'zone of interests' of a statute, it is necessary to 'first discern the interests "arguably ... to be protected" by the statutory provision at issue,' and 'then inquire whether the plaintiffs interests affected by the agency action are among them." U.S. Enrichment Corp. (Paducah, Kentucky), 54 NRC 267, 272-273 (2001), (citing National Credit Union Administration v. First National Bank, 522 U.S. 479, 492 (1998). The Atomic Energy Act authorizes the Commission to accord protection from radiological injury to both health and property interests. See AEA, §§ 103b, 161b, 42 U.S.C. §§ 2133(b), 2201 (b). Gulf States Utilities Co. (River Bend Station, Unit 1), 40 NRC 43, 48 (1994). NEPA regulations state that, in determining whether a federal action would "significantly" affect the environment, the agency should consider "[t]he degree to which the proposed action affects public health and safety." 40 C.F.R. § 1508.27. The agency is therefore responsible for taking a "hard look" at the effect on safety of the proposed action. See Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 772, 77S (1983).

As previously discussed, the City and its residents, located 25 miles from Turkey Point Unites 3 & 4, are presumed to suffer an injury-in-fact should there be an accidental release of radioactive materials. This potential injury clearly is within the class of injuries that the AEA is designed to protect against, i.e., radiological injury to both health and property interests.

Likewise, the City and its residents are among those protected by NEPA in its requirement that federal agencies consider the degree to which their actions, in this case licensing the construction and operation of nuclear reactors and associated facilities, affect public health and safety, and therefore significantly affect the environment. Based on the foregoing, the City has standing to intervene in this proceeding as a matter of right.

The City, its residents, and its taxpayers have a strong interest in protecting South Florida's environment, including ensuring that nuclear power plants do not contaminate the environment and their community, and avoiding damage to water quality and reductions in water availability due to environmental impacts and water use impacts caused by the operation of the reactors. The City anticipates that hazards to the health of its residents may arise from the approval of the license amendment, including both routine and accidental releases of radioactive materials into the air and into local surface waters and groundwater. The City and its residents are also concerned about the impact that increasing the maximum allowable temperature in the UHS will have on the quality and quantity of water available to them for potable use, and to support natural ecosystems.

III. CONTENTIONS

Section 2.309(c) provides that contentions filed after the deadline will not be entertained absent a determination by the presiding officer that the proponent of the contentions has demonstrated good cause by showing that:

> (i) The information upon which the filing is based was not previously available;
>
> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.[1]

[1] 10 C.F.R. § 2.309(c)(1)(i)-(iii).

1. The information upon which the City's Petition is based on was not previously available until March 7, 2016

The information found in the Biscayne Bay Report, as is noted in the March 11, 2016 Order, was first made available on March 7, 2016. Despite the City basing its contentions on the Chin Study, the Chin Study served as the expert opinion supporting the City's Petition for the information that was made available in the Biscayne Bay Report on March 7, 2016. Additionally, the Chin Study is only nineteen (19) days older than the Biscayne Bay Report and any untimeliness is negligible.

2. The information upon which the City's petition is based is materially different from information previously available

The Licensing Board invited parties to file contentions based on new information, specifically, the Biscayne Bay Report. According to the Biscayne Bay Report, DERM staff conducted the special sampling in late December 2015 and early January 2016, to further evaluate and confirm its findings that water from the CCS is seeping into water and surface waters. The Biscayne Bay Report asserts that the tritium provides the most compelling evidence of the CCS impacting water quality. Based on this new analysis of water samples the increased tritium confirmed DERM's findings that the CCS was affecting the quality of ground water as well as surface waters. This information is materially different as it discusses surface waters as well and provides new and elevated evidence of tritium levels that was not previously provided in the Chin Study or prior to March 7, 2016.

3. The City of Miami's Petition was Timely

The March 11, 2016 Order stated that any new filings based on the Biscayne Bay Report will be deemed timely under 10 C.F.R. § 2.309(c)(1) (iii) and 10 C.F.R. § 2.326(a)(1) if it is filed on or before April 6, 2016. The City filed its Petition on April 6, 2016 and therefore it is timely.

Contention 1 – Impact on Operational Flexibility

The City reasserts and incorporates herein Contention 1 as filed on April 6, 2016.

Contention 2 – Impact on Groundwater Resources

The City reasserts and incorporates herein Contention 2 as filed on April 6, 2016.

Contention 3 – Impact of Reducing Algae Concentrations

The City reasserts and incorporates herein Contention 3 as filed on April 6, 2016.

IV. CONCLUSION AND PRAYER FOR RELIEF

Based on the foregoing, the City has demonstrated standing as required by 10 C.F.R. § 2.309 and has proposed at least one admissible contention. As such, the City respectfully requests that it should be granted leave to intervene as a full party, that its motion to reopen the record should be granted, and that it should be granted a hearing on its contentions. In the event that the City is admitted as a party under § 2.309, the City also requests participation as a full party on all contentions raised by other parties. Should the City's contentions be found inadmissible, but should the proceedings be reopened on the motion of another party, the City requests that it should be afforded participation as an interested non-party local government pursuant to 10 C.F.R. § 2.315(c).

VI. NOTICE OF APPEARANCE OF DESIGNATED REPRESENTATIVE

For the purposes of compliance with 10 C.F.R. §§ 2.314(b) and 2.315(c), the City designates as its representative at hearing:

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Ms. McNulty, appearing in a representative capacity for the City, when necessary, shall be the person designated to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission with respect to issues raised in the proceeding, file proposed findings of fact if any be permitted, and petition for review by the Commission under § 2.341 with respect to admitted contentions.

Signed electronically by: *<u>/s/ Kerri L. McNulty</u>*
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IX. CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2016, I electronically filed the foregoing petition with the electronic filing system of the U.S. Nuclear Regulatory Commission and that persons and parties of record were electronically served..

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