

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

Before Administrative Judges:

E. Roy Hawken, Chairman  
Dr. Michael F. Kennedy  
Dr. Sue H. Abreu

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Nuclear Generating Units 3 and 4)

Docket Nos. 50-250-SLR & 50-251-SLR

ASLBP No. 18-957-01-SLR-BD01

August 9, 2019

ORDER

(Scheduling Oral Argument)

In LBP-19-03, this Licensing Board granted a hearing request from Friends of the Earth, Inc., Natural Resources Defense Council, Inc., and Miami Waterkeeper, Inc. (collectively, Joint Intervenors) and admitted two environmental contentions of omission they proffered challenging Florida Power & Light Company's (FPL's) subsequent license renewal application for Turkey Point Nuclear Generating Units 3 and 4. The NRC Staff issued the Draft Supplemental Environmental Impact Statement (DSEIS) for Turkey Point in March 2019. Pursuant to the migration tenet,<sup>1</sup> Joint Intervenors' two contentions, which originally challenged FPL's Environmental Report (ER), became challenges to the DSEIS. FPL moved this Board to dismiss as moot Joint Intervenors' two admitted contentions, arguing that new information in the DSEIS cured the omissions. This Board granted FPL's motions. See LBP-19-06, 89 NRC \_\_\_, \_\_\_ (slip op. at 1, 10) (2019).

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<sup>1</sup> "[A] contention 'migrates' when a licensing board construes a contention challenging [an Environmental Report] as a challenge to a subsequently issued Staff [National Environmental Policy Act (NEPA)] document without the petitioner amending the contention." Crow Butte Res., Inc. (In Situ Leach Facility, Crawford, Neb.), CLI-15-17, 82 NRC 33, 42 n.58 (2015).

On June 24, 2019, Joint Intervenors proffered six new contentions based on the DSEIS. See [Joint Intervenors'] Motion to Migrate Contentions & Admit New Contentions in Response to NRC Staff's [DSEIS] at 8–17, 21–25 (June 24, 2019).<sup>2</sup> Joint Intervenors also submitted a petition for waiver of 10 C.F.R. §§ 51.53(c)(3), 51.71(d), and 10 C.F.R. Part 51, Subpart A, Appendix B. See [Joint Intervenors'] Petition for Waiver of 10 C.F.R. §§ 51.53(c)(3), 51.71(d), and 10 C.F.R. Part 51, Subpart A, Appendix B (June 24, 2019).

After reviewing Joint Intervenors' pleadings and the NRC Staff's and FPL's responses,<sup>3</sup> the Board has determined that oral argument will assist it in resolving the issues presented. The Board will therefore hold oral argument on Monday, September 9, 2019 in the ASLBP hearing room located at NRC Headquarters, 11555 Rockville Pike, Rockville, Maryland 20852. We will convene at 9:00 a.m. (Eastern Time) and adjourn no later than 4:30 p.m. (Eastern Time).

The format for counsel to present argument will be as follows: Joint Intervenors will first have fifteen minutes to advance their waiver argument, and the NRC Staff and FPL will then have a total of fifteen minutes to respond (they may divide the allotted time as they wish). Next, Joint Intervenors will have fifteen minutes to advance their arguments relating to the admissibility of Contention 1-E(b), and the NRC Staff and FPL will have a total of fifteen minutes to respond (they may divide the allotted time as they wish). We will follow the same format for Contentions 5-E(b), 6-E, 7-E, 8-E, and 9-E, hearing arguments on each contention seriatim.

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<sup>2</sup> Joint Intervenors later filed an amended motion. See [Joint Intervenors'] Amended Motion to Migrate Contentions & Admit New Contentions in Response to NRC Staff's [DSEIS] (June 28, 2019).

<sup>3</sup> See NRC Staff's Answer to Joint Intervenors' (1) Amended Motion to Migrate or Amend Contentions 1-E and 5-E and to Admit Four New Contentions, and (2) Petition for Waiver (July 19, 2019); [FPL's] Answer Opposing Intervenors' Motion to Migrate or Amend Contentions 1-E and 5-E and to admit New Contentions 6-E, 7-E, 8-E, and 9-E (July 19, 2019); [FPL's] Answer to Intervenors' Petition for Waiver of Certain 10 C.F.R. Part 51 Regulations (July 19, 2019).

When addressing the six contentions, the parties need not revisit the waiver issue unless the Board raises additional questions.

The issues that counsel should be prepared to address at oral argument include, but are not limited to, the following topics:

#### WAIVER

- Joint Intervenor appear to argue that a waiver must be granted anytime the DSEIS considers new and significant information relating to a Category 1 issue. Can such an argument be reconciled with Commission case law?
- In this type of case, how does an intervenor show that it satisfies the first Millstone factor? See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559–60 (2005).
- What constitutes a significant environmental issue under the fourth Millstone factor?

#### CONTENTION 1-E(b)

- In the NRC Staff's Answer (pp. 20–23), the Staff summarizes cooling tower benefits that are discussed in the DSEIS. Please address whether that discussion is adequate.

#### CONTENTION 5-E(b)

- In their Amended Motion (p. 23), Joint Intervenor state that the NRC's Biological Assessment for the subsequent relicensing of Turkey Point states that "a specific evaluation of ammonia's impacts must consider . . . a species' specific physiobiology." (emphasis added). Is such an evaluation mandated by the Biological Assessment, or by any statute or regulation?
- Why is it necessary to perform a species-specific analysis of the impacts of ammonia for species that are not in areas with significantly elevated ammonia?
- In their Reply (p. 9), Joint Intervenor state that "the source of ammonia is the cooling canal system [CCS], and, unlike the manatees, the American crocodile's critical habitat is the [CCS] itself." How is this statement reconciled with the fact that the ammonia levels in the CCS are below the Miami-Dade County standards?

#### CONTENTION 6-E

- Does the discussion in section 4.5.1.1 of the DSEIS significantly differ from the discussion of that issue in the ER?
- Can previously available information be used to challenge a new discussion in the DSEIS? Please cite any relevant case law.

- In determining that the impacts on adjacent surface bodies via the groundwater pathway from the CCS would be small during the subsequent license renewal term, did the NRC Staff rely solely on the remedial and mitigative requirements imposed by Florida and Miami-Dade County, coupled with their continuing oversight? See DSEIS at 4-23. If yes, does such reliance satisfy NEPA's "hard look" requirement? If no, what additional information did the NRC Staff consider, and where is that consideration reflected in the DSEIS?
- In determining that the CCS salinity level should reach the required level of 34 practical salinity units (PSU) within or close to the designated period, the NRC Staff relied on "continued actions by FPL [i.e., presumably freshening of the CCS] and regulatory oversight by [Florida]." DSEIS at 3-49. How is that determination reconciled with FPL's freshening experience in 2017, which only reduced the PSU level to 64.9 rather than to the expected 35? See id. In making that determination, what weight did the Staff give to the fact that the "modelers anticipate that under more favorable climatic conditions (e.g., less severe dry seasons), the addition of Upper Floridan aquifer water should help to reduce CCS water salinities to 34 PSU." Id. What climatic assumptions were used in the freshening model, and what steps did the NRC Staff take to ensure those assumptions (and other underlying assumptions) were reasonable? Where does the DSEIS indicate that the Staff confirmed the reasonableness of the underlying assumptions?
- The DSEIS mentions that the average annual temperature in South Florida is projected to increase by up to 3.5 degrees by 2050 (p. 4-117). Was this assumption used in the modeling that is often referred to in the DSEIS?

#### CONTENTION 7-E

- In determining that impacts on groundwater quality during the subsequent renewal period would be small, the NRC Staff relied on "ongoing remediation measures and State and county oversight, now in place at Turkey Point." DSEIS at 4-27. What other factors, if any, were considered, and where is such consideration reflected in the DSEIS?
- In determining that FPL will achieve its remediation objectives of retracting the westward hypersaline plume to the edge of the CCS within about five years of operating the recovery well system (which started in May 2018), and complete retraction within ten years, see DSEIS at 4-26, 4-27, what review did the NRC Staff perform to ensure the

reasonableness of the modeling and its underlying assumptions? Where does the DSEIS reflect any such review?

- The DSEIS states that “the operation of the CCS, in which the salinity exceeds 35 [PSU], is the single largest contributor to changes (movement) in the [hypersaline plume].” DSEIS at 4-26. In reviewing the reasonableness of the modeling for retraction of the hypersaline plume, did the NRC consider CCS salinity? Is any such consideration reflected in the DSEIS?
- In their Amended Motion (p.45–46), Joint Intervenors state their belief that the impact on groundwater quality will be moderate to large during the subsequent renewal period because remediation is not working. Please identify the statement of alleged facts or expert opinion in the motion that supports such a belief.

#### CONTENTION 8-E

- Does this contention, which involves a challenge to the adequacy of the DSEIS analysis regarding cumulative impacts on water resources, raise a Category 1 issue?
- Does this contention present a timeliness issue?

#### CONTENTION 9-E

- Did the models addressing freshening of the CCS and retraction of the hypersaline plume assume that FPL’s current groundwater withdrawal rates will not exceed their current level, and if yes, did the NRC Staff consider whether such an assumption was reasonable?
- Does the DSEIS consider the impact to groundwater use conflicts if the groundwater withdrawal rates exceed their current level? If no, does that failure render the DSEIS analysis inadequate?

Presentation of oral argument will be limited to duly designated counsel. No witnesses, other representatives of the parties, or members of the public will be heard during the argument. Members of the public may attend the oral argument; moreover, listen-only telephone lines will be provided so individuals who cannot attend will be able to hear arguments on a real-time basis.<sup>4</sup> The oral argument will be transcribed, and the transcript will promptly be placed in the

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<sup>4</sup> Individuals who wish to hear oral argument live on the listen-only telephone lines should contact the Licensing Board Law Clerk, Ms. Taylor Mayhall, at Taylor.Mayhall@nrc.gov or (301) 415-3027 for the dial-in number and passcode.

NRC's electronic hearing docket, where it may be accessed by the public.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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E. Roy Hawkens, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 9, 2019

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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|----------------------------------|---|------------------------|
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|                                  | ) | 50-251-SLR             |
| (Turkey Point Nuclear Generating | ) |                        |
| Units 3 & 4)                     |   |                        |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Oral Argument)** have been served upon the following persons by Electronic Information.

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Turkey Point, Units 3 & 4, Docket Nos. 50-250 and 50-251-SLR  
**ORDER (Scheduling Oral Argument)**

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[Original signed by Herald M. Speiser \_\_\_\_]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 9<sup>th</sup> of August, 2019