UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket Nos. 52-040
Florida Power & Light Co.	)	52-041
Turkey Point Units 6 & 7	)	
	)	
Combined Construction and License	)	
Application	)	August 16, 2010
	)	
	)	

PETITION BY THE VILLAGE OF PINECREST, FLORIDA, FOR LEAVE TO INTERVENE IN A HEARING ON FLORIDA POWER & LIGHT COMPANY'S COMBINED CONSTRUCTION AND OPERATING LICENSE APPLICATION FOR TURKEY POINT UNITS 6 & 7, OR IN THE ALTERNATIVE, PARTICIPATE AS A NON-PARTY LOCAL GOVERNMENT

On June 30, 2009, Florida Power & Light Co. (FPL) filed a COLA under 10 C.F.R. Part 52, for Turkey Point Units 6 and 7 in Miami-Dade County, Florida. The Commission docketed the case on September 4, 2009, and on June 18, 2010 issued its Notice of Hearing and Opportunity to Petition for Leave to Intervene. 75 Fed. Reg. 117 (18 June 2010). The Notice provided a filing deadline by August 17, 2010, therefore a filing on or before August 16, 2010, is timely.

Petitioner the Village of Pinecrest, a Florida municipality, meets the requirements for standing to intervene in the Commission's action on FPL's application and offers at least one admissible contention, and therefore seeks leave to intervene, or in the alternative, to participate as an interested non-party local government pursuant to 10 C.F.R. § 2.315(c).

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I. STANDING

The Village of Pinecrest ("Village" or "Pinecrest") is a Florida municipal corporation, established on March 12, 1996, by vote of the qualified electors of the area adopting the Village Charter. By that vote, the Village became Miami-Dade County's 29th municipality. The entirety of the municipality is situated less than 20 miles from Turkey Point and is located directly within Florida Power & Light Company's ("FPL" or "the company") proposed transmission corridor originating at the company's Davis substation located to the west of the southwestern corner of the municipal limits and terminating at the company's Miami substation approximately 8-10 miles northeast of Pinecrest's northern-most border. As of July 1, 2009, the Census Bureau estimated that the Village was home to 19,354 residents, all of whom live within 20 miles of proposed Turkey Point Units 6 & 7. The Village and its residents 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 construction and operation of the plants. The Village and its residents anticipate that hazards to their health may arise from completion and operation of the proposed reactors, including both routine and accidental releases of radioactive materials to the air and to local surface waters and groundwater. The Village and its residents are also concerned about the impact construction and operation of the proposed units will have on the quality and quantity of water available to them for potable use, and to support natural ecosystems. Additionally, the Village and its residents are particularly concerned about the effect on the "livability" of the community and the public health

hazard created by an associated 230 kV transmission facility proposed to traverse the entire western boundary of the Village where competing intensive land uses and transportation upgrades are planned, and which is anticipated to occupy a right-of-way immediately adjacent to parks enjoyed by residents and visitors, and where children routinely play.

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 modern judicial standing concepts. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 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 1), 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 Village and its residents to the site where the proposed units are to be built and operated is sufficient to establish an injury-in-fact. Under Commission

precedent, the incremental risk of reactor operation can be sufficient to invoke the presumption of injury-in-fact for persons residing within 10 to 20 miles of the facility. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plants, Units 1 and 2), 37 NRC 5 (1993). In such a case, 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 held to fall within this zone. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), 9 NRC 54, 56 (1979); 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).

Because the entire Village is situated within 20 miles of FP&L's proposed Turkey Point Units 6 & 7, injury-in-fact is presumed, and the first prong of the judicial standing test is satisfied.

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 plantiff's 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).

Although NEPA is primarily concerned about the environment, the 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 project's effect on safety. See Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 772, 775 (1983) (holding that the Nuclear Regulatory Commission properly considered the risk and effect of a possible nuclear accident, though it did not need to consider the effect of such risk on the psychological well-being of residents).

As previously discussed, the Village and its residents, all residing within 20 miles of the proposed nuclear units 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 Village 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 power plants, affect public health and safety, and therefore significantly affect the environment.

Based on the foregoing, the Village of Pinecrest has standing to intervene in this proceeding as a matter of right, subject to a finding that the following contention or contentions are admissible.

II. CONTENTIONS

1. ***Contention 1: FPL's Environmental Report (ER) fails to sufficiently describe the impact of construction and operation of the proposed nuclear generating units on local surface waters and groundwater so that the Commission can prepare an adequate Environmental Impact Statement (EIS) and propose adequate mitigation alternatives in its Environmental Protection Plan required under NEPA.***

FPL's ER states numerous impacts the construction and operation of Units 6 & 7 could have on surface water and groundwater. These impacts "could result from: (1) hydrologic alteration of local surface water bodies, including streams and wetlands, and groundwater as a result of operational diversions, (2) ground surface elevation changes as a result of subsidence caused by the withdrawal of groundwater, (3) groundwater elevation changes as a result of groundwater withdrawal operations, and (4) groundwater impacts from the deep injection wells. Impacts could also occur to water quality as a result of erosion and sedimentation and to surface water and groundwater resulting from spills of fuels, lubricants, and other operational-related pollutants." In each case, FPL asserts that the relative impacts would be SMALL. Despite these assertions, relevant state agencies continue in their attempts to ascertain all of the necessary information to complete Florida's Power Plant Siting Act process.

Examples of concerns held by the Florida Department of Environmental Protection, the South Florida Water Management District, Miami-Dade County, the City of Miami, and others, include:

Radial Well and Construction Dewatering Withdrawals at Power Plant Site

- The adequacy of the ground water model submitted by FPL

- The potential for the proposed withdrawals to exacerbate saline water intrusion and ground water contamination due to the existence of preferential flow paths within the Biscayne aquifer

- The potential for the proposed withdrawals to adversely impact the ecology of Biscayne Bay

- The potential for the proposed withdrawals to adversely impact the Comprehensive Everglades Restoration Project (CERP) Biscayne Bay Coastal Wetlands project

- The potential for adverse impacts to regional water resources, including public water supply wellfields, Biscayne National Park, the Biscayne Bay Aquatic Preserve, and the Florida Keys National Marine Sanctuary from induced seepage from the Turkey Point cooling canal system as a result of cumulative impacts, and increased salinity levels to radial well operation.

2. ***Contention 2: FPL's ER fails to adequately address the potential safety impacts certain of its proposed transmission facilities might have on Village emergency operations by failing to specifically address how or to what extent they might interfere with law enforcement and emergency response communications occurring within proposed transmission corridors.***

The Village of Pinecrest Police Department is located on Pinecrest Parkway (U.S. 1) within FPL's proposed preferred East transmission corridor. Although the company's ER addressed its compliance with Florida laws concerning magnetic field exposure, it fails to address the impact a 230kV transmission facility across the street from the Police Department will have on emergency communications. Given the intensity of urban development in the corridor, FPL should be required to make a more meaningful report on impacts on local communication systems.

3. ***Contention 3: FPL's proposed East Corridor for associated 230kV transmission facilities has an economic impact on the Village of Pinecrest which is out of proportion with any benefit the proposed Turkey Point Units 6 & 7 and any associated facilities might have for the Village and its residents.***

Siting of the proposed East transmission corridor will have a critical negative socio-economic impact on the Village of Pinecrest. The proposed transmission line runs along the entire northern border of the Village, which is also the only commercial zone in the Village. This zone currently accounts for 13 percent of the Village's general revenue, an amount that the Village hopes to increase through further development of the zone. The proposed transmission facility may prove inconsistent with those redevelopment efforts.

The proposed transmission line corridor is also the major transit and transportation route for all of south Miami-Dade, including the Village of Pinecrest. Failure to upgrade and improve this transportation corridor will hamper promotion of the economic health of the Village and south Miami-Dade County by impeding proposed upgrades in the busway and extension of rail transit.

III. ALTERNATIVE PLEADING

In the event that its contentions raised herein are found inadmissible, and it is therefore not admitted as a party under 10 C.F.R. § 2.309, the Village requests permission to participate in the proceedings as a non-party local government, as provided for in 10 C.F.R. § 2.315.

10 C.F.R. § 2.315(c) provides that:

> "The presiding officer will afford an interested ... local governmental body (county, municipality or other subdivision) ... which has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing. Each ... local governmental body ... shall, in its request to participate in a hearing, each designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross-examination by the

> parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under § 2.341 with respect to the admitted contentions.

As discussed above in the section on standing, the Village of Pinecrest and its residents are presumed to meet the injury-in-fact requirement for standing due to their proximity to the proposed Turkey Point Units 6 & 7, being situated less than 20 miles from the proposed site. The presumption recognizes that persons within a certain distance of nuclear power plants have an obvious interest in their safe construction and operation because of the potential harmful effects of radioactive material routinely or accidentally released into the air or water. In addition to this obvious interest, the Village and its residents are further interested in agency action due to the associated potential off-site impacts caused by a proposed above-ground transmission corridor which could interfere with planned development in the community and could create health and safety hazards.

In the event that at least one of its contentions is deemed admissible, and the Village is admitted as a party under § 2.309, the Village requests participation on all contentions raised by other parties as if it had been admitted to participate under § 2.315(c). Under § 2.315(c), an interested [local government] may participate in a proceeding even though it is not a party. In this context, the Board must afford representatives of the interested [local government] the opportunity to introduce evidence, interrogate witnesses and advise the Commission. In so doing, the interested [local government] need not take a position on any of the issues. Even though a [local government] has submitted contentions and intervened under § 2.309, it may participate

as an "interested State" [or local government] under § 2.315(c) on issues in the proceeding not raised by its own contentions. USERDA (Clinch River Breeder Reactor Plant), 4 NRC 383 (1976); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), 15 NRC 601, 617 (1982). See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), 16 NRC 1029, 1079 (1982), citing Gulf States Utilities Co. (River Bend Station, Units 1 and 2), 6 NRC 760 (1977).

IV. CONCLUSION

Because the Village of Pinecrest has demonstrated standing as required by 10 C.F.R. § 2.309, and has proposed at least one admissible contention, it should be granted leave to intervene as a full party and be granted a hearing on its contentions. Should the Village of Pinecrest's contentions be found inadmissible, the Village should be afforded participation as an interested non-party local government pursuant to 10 C.F.R. § 2.315(c).

V. NOTICE OF APPEARANCE OF DESIGNATED REPRESENTATIVE

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

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Mr. Stewart, appearing in a representative capacity for the Village of Pinecrest, 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:

/s/
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Executed in Accord with 10 CFR 2.304 (d):

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VI. CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2010, 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.