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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO CONTENTIONS FILED BY
MS. JOETTE LORION AND MR. MARK ONCAVAGE

The staff of the Nuclear Regulatory Commission (Staff) hereby submits its answer to the contentions filed by Ms. Joette Lorion[1] and Mr. Mark Oncavage.[2] For the reasons set forth below, the Staff submits that Ms. Lorion and Mr. Oncavage have failed to file any admissible contentions under the standards for admission of contentions in 10 C.F.R. § 2.714(b). Accordingly, this proceeding should be terminated.

BACKGROUND

Ms. Lorion and Mr. Oncavage filed hearing requests and petitions to intervene, accompanied by contentions, on November 22, 2000 and October 24, 2000, respectively,[3] in connection with Florida Power & Light Company's (FPL or Applicant) application to renew

[1]Petitioner Lorion's Supplemental Filing of Contentions to Her Request for Hearing and Petition for Leave to Intervene (Dec. 21, 2000) (Lorion-2); Objections to NRC License Renewal Process as Not Complying with NEPA; and in Lieu of the NRC Failure to Comply with NEPA, a Request for Hearing Petition for Leave to Intervene (Nov. 22, 2000) (Lorion-1).

[2]Amended Contentions of Mark P. Oncavage (Dec. 22, 2000) (Oncavage-2); Request for Hearing/Petition for Leave to Intervene (Oct. 24, 2000) (Oncavage-1).

[3]*See supra* notes 1-2.

Operating Licenses DPR-31 and DPR-41 for its Turkey Point Nuclear Plant, Units 3 and 4, for an additional 20-year period.[4] Pursuant to the Atomic Safety and Licensing Board's (Board) Memorandum and Order (Dec. 1, 2000), Ms. Lorion and Mr. Oncavage amended or supplemented their initial filings on December 21, 2000, and December 22, 2000, respectively. The Staff's answer here responds to the contentions set forth in the collective filings of both Ms. Lorion and Mr. Oncavage.

DISCUSSION

I. Legal Standards for the Admission of Contentions

To gain admission to a proceeding as a party, a petitioner for intervention, in addition to establishing standing and raising an aspect within the scope of the proceeding, must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.714(b). *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). For a contention to be admitted, it must meet the standards set forth in 10 C.F.R. § 2.714(b)(2), which provides that each contention must consist of "a specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

> (i) A brief explanation of the bases of the contention;
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> (ii) A concise statement of the alleged facts or expert opinion which supports the contention . . . together with references to those specific sources and documents of which the Petitioner is aware and on which the Petitioner intends to rely to establish those facts or expert opinion;
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> (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute.

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[4]The Units 3 and 4 licenses expire on July 19, 2012 and April 10, 2013, respectively.

10 C.F.R. § 2.714(b)(2). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. 10 C.F.R. § 2.714(d)(2)(i); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). A contention must also be dismissed where the "contention, if proven, would be of no consequence . . . because it would not entitle [the] petitioner to relief." 10 C.F.R. § 2.714(d)(2)(ii). Moreover, contentions that are not supported by some alleged fact or facts should not be admitted nor should the full adjudicatory hearing process be triggered by contentions that lack a factual and legal foundation. *Oconee*, CLI-99-11, 49 NRC at 335, *citing* Final Rule, Contentions, 54 Fed. Reg. at 33,170.

Pursuant to section 2.714, a petitioner must provide a "clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention." *Palo Verde*, CLI-91-12, 34 NRC at 155-56. The purpose of the basis requirement of section 2.714(b)(2) is (1) to assure that at the pleading stage the hearing process is not improperly invoked, (2) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend or oppose. *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). Further, the petitioner has the obligation to formulate the contention and provide the information necessary to satisfy the basis requirement of 10 C.F.R. § 2.714(b)(2). *Florida Power & Light* (Turkey Point, Units 3 and 4), CLI-00-23, 52 NRC ___, slip op. at 2-3 (Nov. 27, 2000); *See also Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

Moreover, Licensing Boards are delegates of the Commission and, as such, they may "exercise only those powers which the Commission has given to [them]." *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170

(1976). It is well established under Commission precedent that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the Licensing Board has been delegated jurisdiction as set forth in the Commission's Notice of Opportunity for Hearing. *Marble Hill,* 3 NRC at 170-71; *see also Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426-27 (1980). With respect to the instant license renewal proceeding, the Commission stated that:

> The scope of this proceeding is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses. *See* 10 C.F.R. §§ 54.21(a) and (c), 54.4; *Nuclear Power Plant License Renewal; Revisions, Final Rule*, 60 Fed. Reg. 22,461 (1995). In addition, review of environmental issues is limited in accordance with 10 C.F.R. §§ 51.71 (d) and 51.95(c). *See* NUREG-1437, "Generic Environmental Impact Statement (GEIS) for License Renewal of Plant;" *Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule*, 61 Fed. Reg. 28,467 (1996), amended by 61 Fed. Reg. 66,537 (1996). The Licensing Board shall be guided by these regulations in determining whether proffered contentions meet the standard in 10 C.F.R. § 2.714(b)(2)(iii).

Turkey Point, CLI-00-23 at 2.

II. Ms. Lorion's Contentions[5]

The contentions listed in Ms. Lorion's filing of December 21, 2000 (Lorion-2) appear to adopt and expand upon the contentions contained in her filing of November 22, 2000 (Lorion-1). Therefore, references below are to the contentions enumerated in Ms. Lorion's Lorion-2 filing.[6]

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[5]In the following two sections, the Staff addresses the substantive issues contained in both Ms. Lorion's and Mr. Oncavage's contentions, but hereby asserts that none of the contentions filed demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact as required by 10 C.F.R. § 2.714(b)(2)(iii). In addition, both petitioners have largely failed to provide required references to specific portions of the application. *See id.* For these reasons, in addition to those articulated in each Staff response to each contention, none of the contentions should be admitted.

[6]In Lorion-2 at 1, Ms. Lorion states that she "incorporates by reference . . . her testimony at the NRC scoping meeting held on December 6, 2000." It is unclear what statements, if any, from the scoping meeting Ms. Lorion is attempting to rely upon here. In any event, the Board should

Contention No. 1.

> The bifurcated, simultaneous NRC Relicensing Process does not comply with the National Environmental Policy Act (NEPA). The NRC's failure to prepare a site-specific SEIS and take the requisite "hard look" necessary to evaluate the consequences of this major federal action and alternatives to the proposed action prior to commencing the relicensing process under 10 C.F.R. Part 54 prejudices the process and will not result in the "hard look" that NEPA requires.

Lorion-2 at 2. As a basis for this contention, Ms. Lorion claims that NEPA and 40 C.F.R. § 1502.2 have been violated by the NRC's failure to prepare a full and objective site-specific environmental impact statement (EIS) or supplemental EIS (SEIS) prior to investment of "considerable time and resources in the relicensing process." Lorion-2 at 3. Specifically, Ms. Lorion claims that the "NRC's bifurcated, simultaneous, generic process commits time and resources to the relicensing process and will prejudice the Commission's evaluation of the environmental impact of the relicensing proposal, including the analysis of alternatives." *Id.* Ms. Lorion references NUREG 1437, the Final Environmental Statement on the Turkey Point Plant dated July 1972, and several NEPA cases in support of these assertions.

Staff's Response

Ms. Lorion appears to be challenging the license renewal process on two grounds, both of which constitute a challenge to the Commission's regulations. First, she contends that the staff must prepare a site-specific EIS rather than rely on the Generic Environmental Impact Statement, NUREG-1437 (1996) (Generic EIS or GEIS), and second, she contends that the environmental review and site-specific EIS must be completed prior to commencing relicensing activities. Lorion-2 at 2-3.

Ms. Lorion's first issue in Contention No. 1 that the Staff cannot rely on the GEIS is a direct challenge to 10 C.F.R. Part 51. Section 51.95 of the regulations requires that the Staff

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limit its consideration to only those specific contentions and bases expressly set forth in Lorion-2 and Lorion-1, as the Staff has done. *See Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999).

prepare an EIS which is a supplement to the Commission's "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," which must address all issues required by § 51.71, as well as include the Staff's recommendation regarding the environmental acceptability of the license renewal action based on analysis of Category 1 information found in the GEIS and Category 2 information discussed in the supplement to the GEIS. 10 C.F.R. § 51.95(c). Part 51 specifically states that license renewal applicants are not required to submit information on "Category 1" issues. 10 C.F.R. § 51.53(c)(3)(i). Category 1 issues are those issues concerning which the GEIS has determined that

> (1) the environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;
> (2) a single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for collective off site radiological impacts from the fuel cycle and from high level waste and spent fuel disposal); and
> (3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation.

10 C.F.R. Part 51, Subpart A, Appendix B, n. 2. The regulations require that only Category 2 issues be treated as site-specific issues. 10 C.F.R. § 51.53(c)(3)(ii). Category 2 issues are those issues concerning which the GEIS has determined that "one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required." 10 C.F.R. Part 51, Subpart A, Appendix B, n. 2.

With respect to Ms. Lorion's second issue in Contention No. 1, she confuses the ordinary, ongoing work of the NRC Staff with the concept of a "major federal action significantly affecting the quality of the human environment." She correctly states that renewal itself of an operating license is identified in 10 C.F.R. Part 51 (*see* 10 C.F.R. § 51.20(b)(2)) as a major federal action, but fails to provide any support for the notion that any Staff work on an

application for license renewal would "significantly affect[] the quality of the human environment," and thus constitutes a major federal action under NEPA that must be preceded by an EIS. NRC's role is that of a regulator of a nuclear power plant, not that of an operator of a nuclear power plant. Consequently, the major federal action triggering NEPA compliance is the issuance of a renewed license permitting extended operation, not the review of the application. Neither Part 51 or Part 54, which were promulgated to coexist and be implemented on two simultaneous tracks, prohibit the NRC from conducting a bifurcated review of the safety and environmental issues present in a license renewal review. The Staff agrees that no license will in fact be renewed without NEPA requirements having been satisfied. However, the Staff vigorously disagrees that simply by devoting its time and efforts to reviewing the license renewal application the Staff will somehow be "prejudiced" in its review of environmental issues, as Ms. Lorion suggests. Lorion-2 at 4.

In sum, both of the issues in Contention No. 1 improperly challenge the Commission's regulations.[7] A challenge to NRC regulations is outside the scope of this proceeding, and the time for such a challenge has clearly passed. Ms. Lorion's first contention does not satisfy the requirements of 10 C.F.R. § 2.714(b), and thus should not be admitted.

Contention No. 2.

> Significant 'new circumstances' and "new information" requires that the NRC conduct a site-specific SEIS on Turkey Point before 10 C.F.R. Part 54 activities begin.

Lorion-2 at 4. As a basis for this contention, Ms. Lorion asserts the original EIS on Turkey Point does not address "substantial environmental issues," including, "but not limited to," the Everglades restoration effort, population growth, siting of Turkey Point in a hurricane zone, the

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[7] *See* 10 C.F.R. § 2.758. Ms. Lorion has made no showing of special circumstances and submitted no affidavit that would support the proposition that Parts 51 and 54 are not serving their purposes to review license renewals in a parallel fashion.

proposed siting of a commercial airport near the plant, the siting of a school near the plant, environmental justice, and socio-economic concerns regarding dependency on power generated by Turkey Point. Lorion-2 at 4-5. In support of these assertions, Ms. Lorion references the documents referred to in Contention #1, as well as the cases she relies on in her Lorion-1 filing, WRDA 2000, the Final Environmental Impact Statement on Disposal of Portions of the Homestead Air Force Base, and the Final Environmental Impact Statement on the Central and Southern Florida Project Comprehensive Review Study. Lorion-2 at 6.

Staff's Response

Ms. Lorion's second contention refers to "new circumstances" and "new information" and thus implies that there is a NEPA issue or issues in Appendix B to Subpart A, 10 C.F.R. Part 51, for which the Commission's findings are no longer valid. Ms. Lorion fails to identify which specific issue or issues she may be contemplating, what new information is available and how it is significant to the unidentified issue(s) specifically addressed in the NRC license renewal rule. The NRC has already issued a notice of intent to prepare a site-specific environmental impact statement, which includes conducting a scoping process, to fulfill its NEPA responsibilities following the prescription in 10 C.F.R. Part 51 to consider whether or not to issue a renewed license. In sum, Ms. Lorion's second contention is vague and unsupported by sufficient information, and should not be admitted.[8]

Contention No. 3.

> Under the Endangered Species Act, the NRC must consult with the FWS on how the proposed action could adversely impact threatened and endangered species within at least a fifty mile radius of the Turkey Point plant prior to conducting relicensing activities.

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[8]Ms. Lorion also reiterates her previous request that the NRC waives its rule on generic environmental impact statements in this proceeding, under 10 C.F.R. § 2.758. Lorion-2 at 6. Ms. Lorion has not supported her request with an affidavit as required and has not set forth with particularity the special circumstances that would justify the waiver of the Commission's Generic EIS.

Lorion-2 at 6. As a basis for this contention, Ms. Lorion asserts that the NRC has violated the Endangered Species Act (ESA) by failing to adequately consult with the Fish and Wildlife Service (FWS), and that the NRC cannot limit its review under the ESA to the area directly surrounding the plant. *Id.* In support of this contention, Ms. Lorion references the Licensee's Environmental Report and Correspondence with FWS, the Multi-Species Recovery Plan, WRDA 2000, and the Licensee's Application. *Id.*

Staff's Response

The Staff is only at the initial stages of completing its environmental review and has drawn no conclusions regarding threatened or endangered species in the region around the plant. The staff is currently engaged in the Section 7 consultation process required by the Endangered Species Act for all federal agencies. It is incorrect to assert otherwise. The applicant's interaction with other federal agencies in preparing its environmental report does not supplant the NRC's intergovernmental dialogue with such agencies and the NRC's obligations under the Endangered Species Act.

Ms. Lorion asserts that the NRC is required under the ESA to ask the U.S. Fish and Wildlife Service "to study the impact that offsite consequences, including accidents, could have on a at least fifty mile radius of the plant." *Id.* at 7. The areal scope of the Staff's review of this issue is determined on a site-specific basis, as described in Supplement 1 to NUREG-1555. Environmental Standard Review Plan, Supplement 1: Operating License Renewal, NUREG-1555 (2000). In addition to the area within the site boundary, the scope of the review includes the transmission line system that was constructed for the purpose of connecting the plant to the grid at the time of issuance of the initial plant operating license. 10 C.F.R. §§ 51.53(c)(3)(ii)(E) and (H); NUREG-1555, Sections 2.1.7, 3.8, 4.6. The Staff is not aware of a blanket fifty mile radius Ms. Lorion refers to, and she provides no valid legal basis for her assertion. Lacking a

legal basis, Ms. Lorion's third contention does not satisfy the requirements of 10 C.F.R. § 2.714(b) and should not be admitted.

Contention No. 4.

> The NRC should require that the Licensee perform an analysis based on plant-specific surveillance capsule test data, and plant-specific operating history, for both Turkey Point Units 3 and 4, because the rate at which the beltline weld material deteriorates and/or embrittles is plant specific. Such a plant-specific analysis is necessary to prove that an acceptable margin of safety exists for the reactor vessels in both Turkey Point Units 3 and 4 that will enable them to meet the requirements of 10 CFR 50.61 and 10 CFR (c)(1)(ii) [Sic][9] during the period of extended operation, because the additional twenty years of operation will cause increased neutron radiation damage to the reactor vessel welds that could further decrease the margin of safety, thereby increasing the probability that a pressurized thermal shock event and resultant meltdown could take place at Turkey Point Unit 3 or 4, either as a result of an internal event or an external event, such as a hurricane, if fracture toughness is not maintained. In the event that such an accident occurs in a hurricane in which emergency response capability is curtailed or restricted, the consequences to the public could also be increased.

Lorion-2 at 7. As a basis for this contention, Ms. Lorion contends that "plant-specific testing and an analyses based on plant-specific operating history may show that one or both of these reactor vessels . . . are more embrittled than the Licensee's current analyses indicates," and that consequently, the Licensee should be required to test weld samples to "prove that the Charpy upper shelf energy would provide margins of safety equivalent to those required by Appendix G." Supplement at 7-8. In support of these assertions, Ms. Lorion intends to rely on the following: a letter from Dr. George Sih to Martin Hodder dated October 10, 1985, E.B. Norris, "Reactor Vessel Material Surveillance Program for Turkey Point Unit No. 4: Analysis of Capsule T", Southwest Research Institute Technical Report No. 02-4221, June 1976; Letter from Uhrig, FPL, to Eisenhut, NRC, "Re: Turkey Point Unit No. 4, Docket Nos. 50-251, PTS to Reactor Pressure Vessels", January 21, 1982; the Licensee's Application and Environmental

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[9]Ms. Lorion's citation is clearly erroneous. The Staff assumes that she meant to cite to 10 C.F.R. § 54.21(c)(1)(ii).

Report; Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants dated April 21, 2000; Pallisades Plant-Reactor Vessel Fluence Evaluation dated November 14, 2000; 10 CFR 50.61, "Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events;" and 10 CFR Part 50, Appendix G, " Fracture Toughness Requirements;" 10 CFR Part 50 Appendix H, "Reactor Vessel Material Surveillance Program Requirements."

Staff's Response

In the Turkey Point license renewal application, reactor vessel irradiation embrittlement is discussed in Section 4.2. The application states that the methods for calculating reactor vessel irradiation embrittlement values follow the guidance provided in Regulatory Guide (RG) 1.99, Revision 2 and follow the requirements contained in 10 C.F.R. § 50.61. Appendix H to 10 C.F.R. Part 50 requires the establishment of materials surveillance programs to monitor beltline materials for fracture toughness, and permits use of an integrated surveillance program. *See* 10 C.F.R. Part 50, App. H, Section III.C. Ms. Lorion's Contention No. 4 and the basis for the contention challenge the concept of an integrated surveillance program under 10 C.F.R. Part 50 and the current licensing basis.

The use of an integrated surveillance program was previously contested in conjunction with a license amendment approving certain pressure/temperature limits for Turkey Point. *Florida Power and Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-89-15, 29 NRC 493 (1989); *Florida Power and Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-4, 31 NRC 54 (1990); *aff'd, Florida Power and Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-950, 33 NRC 492 (1991). The Board there upheld the use of an integrated surveillance program on the basis that there was no evidence that the Licensee has done anything other than satisfy the requirements of the integrated surveillance program approved for use at Turkey Point in 1985 pursuant to

Appendix H of 10 C.F.R. Part 50. As the Board then noted, the intervenors' challenge to the Licensee's integrated surveillance program that it was required to follow was an impermissible attack on a regulation, citing 10 C.F.R. § 2.758.[10] In consideration of the foregoing, Contention No. 4 does not meet the requirements of 10 C.F.R. § 2.714(b) and should not be admitted.

Contention No. 5.

> "The age-related degradation of multiple components could increase the chance that several components in the reactor and/or spent fuel pool, could fail simultaneously during a hurricane, thereby reducing the margin of safety of the plant and increasing the probability of an age-related accident and resultant radiological emergency that would have an extremely adverse impact on the human environment. The probability of a hurricane's (including a beyond design basis hurricane's) impact on deteriorated plant structures and components and its contribution to risk should be analyzed and discussed in quantitative terms by the Licensee in their application or environmental report to meet the requirements of 10 C.F.R. 50.4(a)(1) and also in a site-specific SEIS under NEPA.

Lorion-2 at 10. As a basis for this contention, Ms. Lorion asserts that "the potential effects of deterioration of plant components due to physical processes" could increase the possibility of component failure during a hurricane, and that neither the Licensee or the NRC "have analyzed whether the effects of aging will be adequately managed so that the structures and components will be maintained in the event of an external event hurricane, or beyond design basis hurricane, for the period of extended operation." *Id.* at 9-10. Ms. Lorion claims that 10 C.F.R. § 50.4(a)(1) requires the NRC to undertake this analysis before issuance of an operating license. *Id.* Ms. Lorion references the following documents in support of this contention: the Licensee's Application and Environmental Report; NUREG 1437 Volume 1; the Draft Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants dated

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[10]It would also appear that Ms. Lorion, who was involved as an intervenor in the earlier license amendment proceeding, would be collaterally estopped from attempting to raise this issue, notwithstanding that it does not even come within the scope of license renewal. The Commission has long held that the principles of collateral estoppel may be applied in agency proceedings. *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210 (1974).

April 21, 2000; the NRC Report on the Effect of Hurricane Andrew dated 1992; Unusual Event Report for Turkey Point October 24, 1992; NRC Information Notice 93-53 dated July 20, 1993; GAO Report GAO/RCED-97-145 entitled Preventing Problem Plants Requires More Effective NRC Action dated May 1997; Article entitled "Nuclear Plant Aging: A Loaded Gun..." Energy Daily dated August 31, 1988; 10 C.F.R. 50.4(a)(1). Lorion-2 at 12.

Staff's Response

The objective of a license renewal review is to

> determine whether the detrimental effects of aging, which could adversely affect the functionality of systems, structures, and components that the Commission determines require review for the period of extended operation, are adequately managed. The license renewal review is intended to identify any additional actions that will be needed to maintain the functionality of the systems, structures, and components in the period of extended operation.

Nuclear Power Plant License Renewal; Revisions, Final Rule, 60 Fed. Reg. 22,461, 22,464 (1995) (Statement of Considerations or SOC). The Statement of Considerations supporting the promulgation of 10 C.F.R. Part 54 describes two principles of license renewal formulated by the Commission. The first principle is

> with the possible exception of the detrimental effects of aging on the functionality of certain plant systems, structures, and components in the period of extended operation and possibly a few other issues related to safety only during extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provides and maintains an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security.

SOC, 60 Fed. Reg. at 22,464. The Commission, therefore, believed that continuing the regulatory process would ensure that this principle remained valid during extended operation of a plant as long as the process was modified to address "age-related degradation that is of unique relevance to license renewal." *Id.*

The second principle of license renewal is "the plant-specific licensing basis must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term." SOC, 60 Fed. Reg. at 22,464. The Commission believed this principle would be accomplished through application of "age-related degradation management for systems, structures, and components that are important to license renewal." *Id.*

When taken together, these principles provide that, so long as the aging effects are adequately managed through the period of extended operation, the current licensing basis ensures adequate safety for design basis events, and therefore need not be considered in a license renewal review.

Hurricanes are included in the design basis events for the Turkey Point plant, as is described in Sections 2.6.6 and 5A-1.3.1.2 of the Updated Final Safety Analysis Report, and therefore, are beyond the scope of this proceeding. *See* 10 C.F.R. §§ 54.3, 54.30.

Ms. Lorion's contention raises issues beyond the scope of this proceeding, which as stated earlier is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses. Ms. Lorion has not asserted any aging management issue. In addition, her contention raises issues regarding the consideration of hurricanes that were addressed in the original licensing basis of the plant, which is beyond the scope of this proceeding. Safety Evaluation Report (Mar. 15, 1972) at 20, Section 5.1.

Ms. Lorion also refers to extended operation as somehow possibly increasing the risk that a hurricane could cause an age-related accident and complicate emergency response. In the Statement of Considerations, emergency planning issues were addressed and found to be

outside the scope of license renewal.[11] Emergency planning is a dynamic process that requires continued vigilance to ensure that plans are adequate to protect the public and are capable of being implemented. The state of emergency planning is reviewed on a regular schedule. The staff notes that there was a "hard look" into this issue in an earlier major federal action: the development of the Generic EIS and the rule. Ms. Lorion does not appear to provide new and significant information.[12] Consequently, Contention No. 5 does not satisfy the requirements of 10 C.F.R. § 2.714(b) and thus, is not admissible.

Contention No. 6.

> The Licensee's Projections for the rapidly growing South Florida population that will occur during the extended license period increases risk and requires the Licensee to conduct a Probabilistic Risk Assessment that analyzes emergency response capability to determine whether they can meet the requirements of 10 C.F.R. 50.54(a) in the event of an accident and the requirements of 40 C.F.R. Part 190 and the proposed 40 C.F.R. Part 61 to protect the public from potential high and lower level exposures and resultant health risk. Additionally, the environmental impacts, including environmental pathways, that could result from of a severe accident taking place at the Turkey Point plant, a Bay/Ocean plant, must be analyzed in a site-specific SEIS as required by NEPA.

Lorion-2 at 12. As a basis for this contention, Ms. Lorion contends that the NRC must "require the Licensee to demonstrate that the population in the rapidly growing South Florida area that is in the path of the highest frequency wind direction could safely evacuate in the event of a nuclear accident during the extended twenty year operation before relicensing this plant as

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[11] "Regarding systems, structures, and components required to make protective action recommendations, the Commission thoroughly evaluated emergency planning considerations in the previous license renewal rulemaking. These evaluations and conclusions are still valid and can be found in the SOC for the previous license renewal rule (56 FR 64943 at 64966). Therefore, the Commission concludes that systems, structures, and components required for emergency planning, unless they meet the scoping criteria in § 54.4, should not be the focus of a license renewal review." SOC, 60 Fed. Reg. at 22,468.

[12] Ms. Lorion states, at the end of her discussion regarding Contention No. 5, her opinion that the Licensee's dollar estimates of economic risk and estimated dollar value equivalents for severe accidents at Turkey Point "appear to be ridiculously low." Lorion-2 at 12. It is not clear how her stated opinion relates to her contention. In any event, she has provided no basis for her opinion beyond her personal beliefs.

required by 10 C.F.R. 50.4(a)(1)." Lorion-2 at 12-13. Ms. Lorion also contends that the NRC should "analyze whether the dose from an accident at Turkey Point could exceed those in Section 5 of NUREG 1437, Volume 1 in a site-specific SEIS." *Id.* In support of these assertions, Ms. Lorion relies on "CRAC 2; NUREG 1437, Volume 1; 10 CFR Part 20; 10 CFR part 50, Appendix I; NRC Report on the Effect of Hurricane Andrew; Preliminary Notification of Unusual Event at Turkey Point, August 24 and 25, 1992." Lorion-2 at 14.

Staff's Response

Ms. Lorion presents issues effectively challenging the Commission's Generic EIS which was tied to the promulgation of 10 C.F.R. Part 51. The time for such a challenge has clearly passed. In addition, Ms. Lorion presents no significant new information that would not already be considered within the scope of the NRC's environmental review. The Staff is aware of no basis in the Generic EIS that represents an NRC position that area population would always remain static. Further, to the extent Ms. Lorion's contention raises an issue concerning emergency planning, such issue, as mentioned earlier, was determined by the Commission to be outside the scope of license renewal. *See supra* Staff's response to Contention No. 5. Consequently, Contention No. 6 does not satisfy the requirements of 10 C.F.R. § 2.714(b) and thus, is not admissible.

Contention No. 7.

> The proposed action will result in twenty years of additional operation that will increase the amount of high-level and low-level nuclear waste. Presently, FPL does not have storage space for the additional high-level waste and appears to be uncertain as to disposal of their low-level waste. The storage of these wastes on site for the extended period of operation could increase the risk of an accidental release to the environment in that Turkey Point is located in a hurricane zone rather than a geologically stable area. If it becomes necessary to store these wastes on site because no permanent burial site has been implemented, the storage of this spent fuel on site could also increase the risk and consequences of a spent fuel pool accident depending on the storage method. The Licensee should be required to demonstrate that they can permanently and safely dispose of both their high level and low-level nuclear

> waste off-site for the extended operation of the plant. Additionally, the NRC should analyze the potential environmental impact of such a potential accident in a site-specific SEIS.

Lorion-2 at 14. As a basis for this contention, Ms. Lorion states that there may not be enough room to store high-level waste through the extended plant life, and that the current low-level waste repository at Barnwell could be closed to Florida waste in the future. Also, she speculates that high-level waste will remain on site since the government has still not built a repository. She asserts that "the fact that this is an area of high hurricane frequency could increase the risk and probability that nuclear wastes stored on site could contaminate the human environment and the consequences would be increased if it did." *Id.* at 15. Ms. Lorion further goes on to say that "the Turkey Point site presents special circumstances in that the radioactivity in these spent fuel rods being stored on site, and not in the reactor containment building, could be distributed to the environment by a hurricane and age related accident that disrupts emergency response." *Id.* Ms. Lorion states she will rely on "NUREG CR4982, Severe Accidents in Spent Fuel Pools in Support of Generic Issue 82; NRC Report on the Effect of Hurricane Andrew."

Staff's Response

The storage and management of spent fuel is outside the scope of this proceeding because it is part of the current licensing basis (CLB) for Turkey Point. *See* 10 C.F.R. §§ 54.3, 54.30. In addition, pursuant to 10 C.F.R. § 51.53(c)(2), the applicant is not required to provide information regarding the storage and disposal of spent fuel and other radioactive substances. Specifically, section 51.53(c)(3)(i) provides that an applicant need not provide information regarding Category 1 issues set forth in Appendix B to Part 51, Subpart A. Table B-1 in Appendix B to Subpart A provides that impacts associated with spent fuel and high level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and on-site spent fuel are all Category 1 issues. Thus, FPL was not required to address these impacts in

its application. Ms. Lorion has failed to identify any significant new information that would bring this issue within the scope of the Staff's environmental review.

Further, the Commission has already considered the environmental impacts of these activities. See 10 C.F.R. § 51.23. In late 1999, the Commission concluded that "no significant and unexpected events have occurred -- no major shifts in national policy, no major institutional developments, no unexpected technical information -- that would cast doubt on the Commission's Waste Confidence findings" at 10 C.F.R. § 51.23. Waste Confidence Decision Review: Status, 64 Fed. Reg. 68,005, 68,007.

In summary, Ms. Lorion presents issues effectively challenging the Commission's Generic EIS which was tied to the promulgation of 10 C.F.R. Part 51. The time for such a challenge has clearly passed. Although Ms. Lorion believes that "special circumstances[13] surrounding the Turkey Point site are far too important to be dismissed generically and must be addressed on a site-specific basis,"[14] she presents no significant new information that would not already be considered within the scope of the NRC's environmental review. Ms. Lorion has not demonstrated that Contention No. 7 should be admitted.

Contention No. 8.

> Under NEPA, the Licensee must assess any current impact that radiation may be having on the environment surrounding the plant in order to assess the cumulative impact that may result from extending the operating license.

Lorion-2 at 16. In her basis discussion, Ms. Lorion alleges that NEPA requires an analysis of the impact of plant operations on the plant's cooling canals and the aquatic and human environment surrounding the plant "so that any cumulative impact from the extended operations

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[13]As the Staff previously discussed in its response to Contention No. 5, the potential of hurricanes was addressed in the original licensing basis for Turkey Point, which is beyond the scope of this proceeding.

[14]Lorion-2 at 15.

can be assessed." *Id.* She cites as supporting documents "the BEIR V Report entitled, 'Health effects of exposure to Low Levels of Ionizing Radiation;' and Brookhaven National Laboratory Radioactive Materials Released from Nuclear Power Plants, 1993; NEPA; 40 C.F.R. 1508."

Staff's Response

Ms. Lorion's contention again raises a Category 1 issue addressed by the Generic EIS, and presents no significant new information that would not already be considered within the scope of the NRC's environmental review. Ms. Lorion has not demonstrated that Contention No. 8 should be admitted.

Contention No. 9.

> Under NEPA, the NRC must assess whether the proposed action conflicts with the federal investment in the Everglades Restoration plan.

Lorion-2 at 17. In her basis discussion, Ms. Lorion states that the NRC and the licensee have not "addressed the important environmental issue of Everglades Restoration," and whether license renewal is "consistent with this other very important major federal action." *Id.* She then cites a reported statement of former Commissioner Rogers that "degradation would decrease the safety margins . . . ." *Id.* at 18. Documents Ms. Lorion lists for reliance are "WRDA 2000; the Central and Southern Florida Comprehensive Review Study dated April 1998; NEPA."

Staff's Response

Ms. Lorion fails to adequately explain how the existence of an Everglades restoration effort is significant new information that would require further assessment in the SEIS. In addition, her reliance on a selected quote of former Commissioner Rogers provides no real meaningful information in this specific context. Since Ms. Lorion has not met the requirements of 10 C.F.R. § 2.714(b) with respect to this contention, it should not be admitted.

III. Mr. Oncavage's Contentions

The following are the Staff's responses to Mr. Oncavage's contentions contained in Oncavage-2.[15] The Staff notes that Mr. Oncavage did not specify exactly what parts of his filing he deemed contentions, and what parts constituted his bases. Accordingly, the Staff has made its best attempt to restate what the Staff believes are Mr. Oncavage's contentions and his supporting bases.

Contention No. 1.

> The aquatic resources of Biscayne National Park will become contaminated with radioactive material, chemical wastes, and herbicides during the license renewal term which will endanger the health and safety of the members of the public who consume aquatic food products that originate in the waters of Biscayne National Park and Card Sound.[16]

Oncavage-2 at 1. Mr. Oncavage's bases for this contention appear to be as follows: Cooling water from the plant is recirculated through a system of cooling canals to dissipate heat; liquid radioactive wastes will also be routed into this channel system. *Id.* There is "massive" seepage of groundwater between the site's cooling canal's and Biscayne Bay and Card Sound. *Id.* Radioactive materials could be spilled on land and will migrate into the bay. *Id.* at 1-2. A groundwater conflict, category 2, exists. *Id.* at 2. Resins, solvents, and wash

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[15]Mr. Oncavage informed Staff counsel during a telephone conversation on January 9, 2001, that he intended his December 22, 2000 filing of contentions (Oncavage-2) to exclusively contain all of his proffered contentions. Accordingly, the Staff has omitted its responses to any contentions previously set forth in Mr. Oncavage's October 24, 2000 filing (Oncavage-1).

[16]In this contention and Contentions Nos. 2 through 2C, Mr. Oncavage also states that the SEIS, the Generic EIS, the Staff's Safety Evaluation Report (SER), and the Licensee's renewal application "are defective since there is no study of the problem ["hurricane damage to spent fuel facilities" in Contention No. 2A], no risk assessment, no mitigation strategy, and no unacceptable finding." To the extent these contentions are based on documents that currently do not exist, but will be drafted in the future, the contentions are speculative and premature, cannot satisfy the requirements of 10 C.F.R. § 2.714(b), and thus are inadmissible. Mr. Oncavage may attempt to file contentions later based on such documents once they have been completed or the information therein is available, under *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), but must then still meet the requirements of 10 C.F.R. § 2.714.

water containing radioactivity at much higher levels than in the past are likely during the license renewal term. *Id.*

Staff's Response

Offsite radiological releases is a Category 1 issue regarding which Mr. Oncavage has not provided any significant new information. He alleges the existence of a Category 2 issue, a groundwater conflict, but provides no specificity. The Staff believes Mr. Oncavage is confused concerning the notion of a groundwater conflict, which in all Category 2 cases deal with the issue of the withdrawal of groundwater for use, which is not an issue presented by Mr. Oncavage. Mr. Oncavage's first contention raises no issue that is within the scope of license renewal, and should not be admitted.

Contention No. 2.

> The location of Turkey point incurs severe and unusual challenges to the safe storage of high level radioactive spent fuel whether in spent fuel pools or in dry cask storage.

Oncavage-2 at 2. Mr. Oncavage's bases for this contention are as follows:

"There may be up to 60 years of spent fuel, per unit, stored at the Turkey Point site. NUREG/CR-6451, "A Safety and Regulatory Assessment of Generic BWR and PWR Permanently Shutdown Nuclear Power Plants" describes the risk of a catastrophic accident and fire at a spent fuel pool of a shut down nuclear reactor. Variations of the configurations of a spent fuel pool accident in this study can produce a generic risk of permanent contamination of land up to 2,000 square miles. The study appears to be based on a single unit after 40 years and having the hot core recently off loaded. The licensee is seeking license renewal for 2 units which could possibly bring the spent fuel inventory in storage at Turkey Point to almost 60 years per unit. A catastrophic radiological accident at a spent fuel facility would be a severe accident which is a category 2 issue (GEIS Table 9.1, P. 9-13.) and would produce public exposures in excess of 10 CFR Part 100 guidelines." Oncavage-2 at 2-3.

Staff's Response

Onsite spent fuel storage is a Category 1 issue that is outside the scope of license renewal, and Mr. Oncavage has not presented any significant new information such that the findings in the Generic EIS would no longer be applicable. His reliance on NUREG/CR-6451 is misplaced, in that the subject document deals with safety issues for non-operating reactors, which have fundamentally different systems, staffing, programs, and capabilities. In addition, Mr. Oncavage has failed to identify what severe accident he is referring to as being a Category 2 issue. With the promulgation of the environmental protection requirements for license renewal, the Commission specifically addressed its analysis of the impacts of severe accidents and reversed its previous position of a generic conclusion on severe accidents only insofar as site-specific consideration of severe accident mitigation alternatives (SAMAs) may be required. In the preamble to the "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 28,467, the Commission concluded that ". . . the GEIS analysis of severe accident consequences and risk is adequate, and additional plant-specific analysis of these impacts is not required. . . . Based on the fact that a generic consideration of mitigation is not performed in the GEIS, a Category 1 designation for severe accidents cannot be made. Therefore, the Commission has reclassified severe accidents as a Category 2 issue, requiring only that alternatives to mitigate severe accidents be considered for those plants that have not included such a consideration in a previous EIS or supplemental EIS." 61 Fed. Reg. at 28,481. The Staff will be addressing alternatives to mitigate severe accidents in the SEIS. To the extent Mr. Oncavage's contention attempts to raise an issue as to whether the Staff will address such alternatives, the contention is inadmissible as having asserted no dispute. Mr. Oncavage otherwise has not presented any significant new information such that the findings in the Generic EIS related to the impacts of severe accidents would no longer be applicable.

Mr. Oncavage's second contention, in light of the above, should not be admitted.

Contention 2A.

> The spent fuel facilities, wet or dry, would be particularly vulnerable to a category 5 hurricane due to inadequate construction practices and having no "defense in depth."

Oncavage-2 at 3. Mr. Oncavage's bases appear to be as follows:

Hurricanes as accident initiators were excluded from the GEIS. If a category 5 hurricane were to hit Turkey Point, it would produce catastrophic damage with winds over 155 mph, a storm surge over 18 feet, and complete roof destruction on many residence and commercial buildings. *Id.*

Staff's Response

Mr. Oncavage's contention has no applicability to Turkey Point to the extent Mr. Oncavage attempts to raise an issue regarding dry cask storage, which Turkey Point does not have. In addition, the contention deals with issues addressed by the current licensing basis[17] and is outside the scope of this proceeding.[18] Accordingly, Contention 2A should not be admitted.

Contention 2B.

> The Safety Evaluation Report for the Turkey Point license renewal is fatally flawed since it relies on the NRC Staff's Safety Assessment of June 19, 2000 as it relates to the development of the former Homestead Air Force Base into an international, commercial airport.

Oncavage-2 at 3. Mr. Oncavage's bases appear to be as follows:

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[17]Safety Evaluation Report (Mar. 15, 1972) at 20, section 5.1.

[18]To the extent Mr. Oncavage also is attempting indirectly to raise here an issue concerning the consideration of alternatives to mitigate severe accidents, the Staff, as noted in its immediately preceding response to Contention 2, will be considering such alternatives. Therefore, Mr. Oncavage has raised no issue in dispute in this regard.

"The NRC Staff abandoned their own aircrash probability model, Standard Review Plan NUREG-0800 (SRP), in favor of a weaker probability model used by the Department of Energy (DOE).

• The SRP uses a value of C_j for distance between the plant and the end of the runway.

• The DOE formula relies on a crash rate per mile without apparently accounting for the fact that most air crashes occur during takeoffs and landings.

• The DSEIS for the Homestead base disposal states:

'The ROI (region of influence) for flight safety includes the terminal airspace within about 5 minutes flying time of the Homestead ARS airfield. This is when the aircraft are at the lowest altitude and most vulnerable to mishaps. Statistics show that the vast majority of aircraft mishaps occur relatively close to airports, generally during takeoff and landing. The ROI for ground safety includes former Homestead AFB, safety zones extending from each end of the runway, and the Turkey Point Nuclear Power Plant.'

"The NRC Staff understated the crash factor for bird aircraft strike hazard (BASH). The NRC Staff utilized an average of a national BASH rate and a State of Florida BASH rate. Both national and state rates ignore the site specific parameters.

• The air base lies between Biscayne National Park and Everglades National Park. Both provide protection, roosting, and nesting areas.

• Biscayne National Park hosts 81 species of wintering water birds and raptors.

• Everglades National Park hosts 121 species of wintering water birds and raptors.

• The nearby South Miami-Dade Landfill provides unlimited food for the profuse bird population.

• Removing roosting or nesting flora from the airport area would be illegal and politically impossible.

• Killing or traumatizing birds through mechanical or chemical means would be

illegal and politically impossible.

"The DOE formula requires a height of target as a value in computing aircrash probability. The data on the twin 400 foot chimneys located at the Turkey Point Fossil Units were intentionally removed from the formula apparently in an attempt to have the result appear acceptable." *Id.* at 3-4.

Staff's Response

The Staff notes at the outset that there is no Safety Evaluation Report yet drafted for the renewal of the Turkey Point licenses. Thus, there can be no genuine dispute as to something which is not in existence. To this extent, Mr. Oncavage's contention is speculative and premature, and should not be admitted.[19] Furthermore, the ability of the plant to withstand damage caused by aircraft is not an issue identified by the regulations as within the scope of license renewal.[20] Mr. Oncavage has made no showing that this contention is within the scope of license renewal. Accordingly, Contention 2B should not be admitted.

Contention 2C.

> There appears to be great animosity towards the U.S. Government by Fidel Castro. In the waning days of Castro's regime or during an unstable regime attempting to replace Castro, an armed attack on Turkey Point needs to be taken as a serious threat. The attack could come as an air strike or as a demolition strike. The spent fuel storage facilities would be inviting and vulnerable targets.

Oncavage-2 at 4-5. Mr. Oncavage's bases are as follows:

"The Turkey Point plant is the closest commercial reactor to the Republic of Cuba. It has been long rumored in the Cuban exile community that the Cuban Air Force will target Turkey Point for war or terrorist attack. The United States has placed an embargo on Cuba for forty years that

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[19] *See supra* note 16.

[20] *See supra* Staff's response to Ms. Lorion's Contention No. 5 and discussion therein regarding the scope of license renewal issues.

has contributed to the ruination of the Cuban economy. The Cuban exile community is vehemently anti-Castro. On February 24, 1996, Cuban Air Force MiGS executed a missile attack on 2 unarmed planes from Opa Locka Airport in Miami killing the 4 pilots on board." *Id.*

Staff's Response

This contention relates to attacks and destructive acts by an enemy of the United States. Under 10 C.F.R. § 50.13, an applicant for a license is not required to provide for design features or other measures for the specific purpose of protection against the effects of attacks against the facility by an enemy of the United States. *See also Siegel v. AEC*, 400 F.2d 778 (D.C. Cir. 1968), which dealt specifically with the licensing of Turkey Point. Mr. Oncavage has failed to show why this longstanding rule should not be applicable to license renewal, and otherwise how this contention comes within the scope of license renewal. Further, to the extent Mr. Oncavage is challenging section 50.13, he has not submitted an affidavit, and has not set forth with particularity special circumstances, as required by 10 C.F.R. § 2.758(b). In consideration of all of the above, this contention should not be admitted.

CONCLUSION

For the aforementioned reasons, the contentions proffered by Ms. Lorion and Mr. Oncavage should not be admitted, and this proceeding should, therefore, be dismissed.

Respectfully submitted,

Kathryn M. Barber**/RA/**
Counsel for NRC Staff

Dated at Rockville, Maryland
this 9th day of January 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER AND LIGHT COMPANY	)	Docket Nos. 50-250-LR
	)	50-251-LR
	)	
(Turkey Point Nuclear Plant, Units 3 and 4)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO CONTENTIONS FILED BY MS. JOETTE LORION AND MR. MARK ONCAVAGE" in the above-captioned proceeding have been served on the following with email addresses noted by email, and on all of the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 9th day of January, 2001.

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