

**RAS 3225**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

**SERVED 07/19/01**

Richard A. Meserve, Chairman  
Greta Joy Dicus  
Edward McGaffigan, Jr.  
Jeffrey S. Merrifield

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

CLI-01-17

**MEMORANDUM AND ORDER**

**I. Introduction**

This case arises out of an application by the Florida Power & Light Company (“FPL” or “the applicant”) to renew for an additional 20-year period the operating licenses for its two Turkey Point nuclear plant units. Today we review an Atomic Safety and Licensing Board Memorandum and Order, LBP-01-06, 53 NRC 138 (2001), that denied two petitions for leave to intervene and requests for hearing in the Turkey Point license renewal proceeding. The Licensing Board found that both petitioners had standing to intervene but that neither had submitted an admissible contention. The Board therefore denied their requests for hearing. Pursuant to 10 C.F.R. § 2.714a, one of the petitioners, Mr. Mark P. Oncavage, has appealed the Board’s decision. FPL and the NRC Staff support the Board’s decision. We affirm.

## II. Background

On September 11, 2000, FPL filed a license renewal application for the Turkey Point Nuclear Plant, Units 3 and 4, located in Miami-Dade County, Florida. The current operating licenses for these units expire on July 19, 2012, and April 10, 2013, respectively. License renewal would authorize an additional 20 years of operation.

The NRC staff published a notice of an opportunity for hearing in the *Federal Register* on October 12, 2000. 65 Fed. Reg. 60,693 (2000). In a letter dated October 24, 2000, Mr. Oncavage stated that he resides approximately 15 miles from the Turkey Point facility and wished to intervene in the renewal proceeding. Along with his letter, Mr. Oncavage submitted 7 contentions challenging the license renewal. The Commission referred Mr. Oncavage's petition to the Licensing Board, and expressly outlined the scope of license renewal proceedings. See CLI-00-23, 52 NRC 327 (2000); see also 10 C.F.R. § 54.4 (outlining scope of safety review); 10 C.F.R. § 51.95(c)(outlining scope of environmental review).

The Licensing Board subsequently issued its own order, directing the petitioners to "take care to ensure" that each of their proffered contentions was adequately supported and fell "within the limited scope of this [license renewal] proceeding." See Memorandum and Order at 3 (Dec. 1, 2000)(unpublished). The Board advised Mr. Oncavage that he still had the opportunity to amend his contentions, and that directly following each separately numbered contention, he needed to "set forth the basis or bases for that contention." Id.

Mr. Oncavage filed a revised set of contentions on December 22, 2000. His new submission contained only two contentions. The first alleged that aquatic resources of Biscayne National Park will become contaminated with radioactive material, chemical wastes, and herbicides during the license renewal term, and consequently will endanger those who consume aquatic food from the area. The second alleged that at the Turkey Point plant there

are “severe and unusual challenges to the safe storage of high level radioactive spent fuel whether in spent fuel pools or in dry cask storage.” See Amended Contentions of Mark P. Oncavage (Dec. 22, 2000)(“Amended Petition”) at 2. Mr. Oncavage pointed to the possibility of a catastrophic radiological accident involving spent fuel. His contention referred in particular to risks posed by aircraft crashes, hurricanes, and a possible terrorist attack by the Cuban Air Force. Id. at 3.<sup>1</sup>

In LBP-01-06, the Licensing Board rejected Mr. Oncavage’s request for intervention, and found both of his contentions inadmissible. Both contentions, the Board ruled, raised issues that fall beyond the scope of license renewal reviews and renewal proceedings. See generally 53 NRC at 163-66. The Board viewed Mr. Oncavage’s contentions as impermissible challenges to established NRC regulations on license renewal. Id.

In a short brief filed on March 19, 2001, Mr. Oncavage appealed the Board’s decision. He claims the Board erroneously found his contentions inadmissible. See generally Petitioner Mark P. Oncavage’s Notice of Appeal (“Appeal Brief”)(Mar. 21, 2001). He also claims that the decision violates the National Environmental Policy Act (“NEPA”). See id. at 2. Both the NRC staff and FPL support the Board’s decision. We affirm the Board’s decision, for the reasons given by the Board itself and the reasons we give below.

### **III. Overview of NRC License Renewal Rules**

Before we address Mr. Oncavage’s specific arguments on appeal, we begin with a general overview of the NRC’s license renewal rules. At the heart of the Licensing Board’s decision is its reasoning that Mr. Oncavage’s contentions fall beyond the scope of license renewal proceedings. We take this opportunity to outline, in some detail, what safety and

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<sup>1</sup> Later in the proceeding, Mr. Oncavage dropped the Cuban Air Force attack claim. See Transcript of Proceedings (Jan. 18, 2001)(“Transcript”) at 43.

environmental issues fall inside (and outside) our license renewal rules, and why. Our goal is not only to provide useful background for today's decision, but also to give helpful guidance for future license renewal adjudications.

Two sets of regulatory requirements govern the agency's review of license renewal applications. Pursuant to 10 C.F.R. Part 54, the NRC conducts a technical review of the license renewal application to assure that public health and safety requirements are satisfied. Pursuant to 10 C.F.R. Part 51, the NRC completes an environmental review for license renewal, focusing upon the potential impacts of an additional 20 years of nuclear power plant operation. Both sets of agency regulations derive from years of extensive technical study, review, inter-agency input, and public comment. Below, we discuss Parts 54 and 51 separately.

A. Public Health and Safety Review Under Part 54

Initial NRC reactor operating licenses last 40 years, and may be renewed for terms of up to 20 years. See 42 U.S.C. 2133; 10 C.F.R. §§ 50.51; 54.31. In anticipation of potential license renewal applications, the NRC began in the 1980s a program to develop license renewal regulations and associated guidance. We sought to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC staff to focus its resources on the most significant safety concerns at issue during the renewal term. The issues and concerns involved in an extended 20 years of operation are not identical to the issues reviewed when a reactor facility is first built and licensed. For example, many safety questions related to plant aging will become important only during the extended renewal term.

In contrast, other safety issues were thoroughly reviewed when the facility was first licensed, and now are routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs. To require a full reassessment of these issues at the

license renewal stage, the Commission found, would be both unnecessary and wasteful. Accordingly, the NRC's license renewal review focuses upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs. License renewal reviews are not intended to "duplicate the Commission's ongoing review of operating reactors." See "Final Rule, Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991).

1. The Detrimental Effects of Aging and Related Time-limited Issues

Part 54 centers the license renewal reviews on the most significant overall safety concern posed by extended reactor operation -- the detrimental effects of aging. By its very nature, the aging of materials "becomes important principally during the period of extended operation beyond the initial 40-year license term," particularly since the design of some components may have been based explicitly upon an assumed service life of 40 years. See id.; see also "Final Rule, Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,479 (May 8, 1995). Adverse aging effects can result from metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage. Such age-related degradation can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool. Indeed, a host of individual components and structures are at issue. See 10 C.F.R. § 54.21(a)(1)(i). Left unmitigated, the effects of aging can overstress equipment, unacceptably reduce safety margins, and lead to the loss of required plant functions, including the capability to shut down the reactor and maintain it in a shutdown condition, and to otherwise prevent or mitigate the consequences of accidents with a potential for offsite exposures.

Accordingly, Part 54 requires renewal applicants to demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation. See generally 10 C.F.R. § 54.21(a). This is a detailed assessment, conducted at “a component and structure level,” rather than at a more generalized “system level.” 60 Fed. Reg. at 22,462. License renewal applicants must demonstrate that all “important systems, structures, and components will continue to perform their intended function in the period of extended operation.” Id. at 22,463. Applicants must identify any additional actions, i.e. maintenance, replacement of parts, etc., that will need to be taken to manage adequately the detrimental effects of aging. Id. Adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing. Id. at 22,475.

In addition, some safety reviews or analyses made during the original term of the license may have been based upon a particular time period, such as, perhaps, an assumed service life of a specific number of years or some period of operation defined by the original license term, i.e., 40 years. Before the NRC will grant any license renewal application, an applicant must reassess these “time-limited aging analyses,” and (1) show that the earlier analysis will remain valid for the extended operation period; or (2) modify and extend the analysis to apply to a longer term, such as 60 years; or (3) otherwise demonstrate that the effects of aging will be adequately managed in the renewal term. See 60 Fed. Reg. at 22,480; 10 C.F.R. §§ 54.21(c) 54.29(a)(2).

## 2. The NRC Regulatory Process and the Current Licensing Basis

The Commission has the ongoing responsibility to oversee the safety and security of operating nuclear reactors. Thus, the NRC maintains an aggressive and ongoing program to oversee plant operation. For license renewal, the Commission found that it would be

unnecessary to include in our review all those issues already monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight.

When the Commission issues an initial license, it makes a “comprehensive determination that the design, construction, and proposed operation of the facility satisfied the Commission’s requirements and provided reasonable assurance of adequate protection to the public health and safety and common defense and security.” 56 Fed. Reg. at 64,947. Each nuclear power plant also has a “current licensing basis,” a term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application. The current licensing basis consists of the license requirements, including license conditions and technical specifications. It also includes the plant-specific design basis information documented in the plant’s most recent Final Safety Analysis Report, and any orders, exemptions, and licensee commitments that are part of the docket for the plant’s license, *i.e.*, responses to NRC bulletins, generic letters and enforcement actions, and other licensee commitments documented in NRC safety evaluations or licensee event reports. See 10 C.F.R. § 54.3. The current licensing basis additionally includes all of the regulatory requirements found in Parts 2, 19, 20, 21, 30, 40, 50, 55, 72, 73, and 100 with which the particular applicant must comply. Id.

In establishing its license renewal process, the Commission did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant’s current licensing basis to re-analysis during the license renewal review. The current licensing basis represents an “evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.” 60 Fed. Reg. at 22,473. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement.

Just as these oversight programs help assure compliance with the current licensing basis during the original license term, they likewise can reasonably be expected to fulfill this function during the renewal term. In short, the regulatory process commonly is “the means by which the Commission continually assesses the adequacy of and compliance with” the current licensing basis. 60 Fed. Reg. at 22,473.

For an example of how the ongoing regulatory process works to maintain safety, we can look at the issue of emergency planning. The Commission has various regulations establishing standards for emergency plans. See 10 C.F.R. §§ 50.47, 50.54(s)-(u); Appendix E to Part 50. These requirements are independent of license renewal and will continue to apply during the renewal term. They include provisions to assure that the licensee’s emergency plan remains adequate and continues to meet 16 performance objectives. Through mandated periodic reviews and emergency drills, “the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics, and other site-related factors.... [D]rills, performance criteria, and independent evaluations provide a process to ensure continued adequacy of emergency preparedness.” 56 Fed. Reg. at 64,966. Emergency planning, therefore, is one of the safety issues that need not be re-examined within the context of license renewal.

Issues like emergency planning -- which already are the focus of ongoing regulatory processes -- do not come within the NRC’s safety review at the license renewal stage:

The Commission cannot conclude that its regulation of operating reactors is “perfect” and cannot be improved, that all safety issues applicable to all plants have been resolved, or that all plants have been and at all times in the future will operate in perfect compliance with all NRC requirements. However, based upon its review of the regulatory programs in this rulemaking, the Commission does conclude that (a) its program of oversight is sufficiently broad and rigorous to establish that the added discipline of a formal license renewal review against the full range of current safety requirements would not add significantly to

safety, and (b) such a review is not needed to ensure that continued operation during the period of extended operation is not inimical to the public health and safety.

Id. at 64,945.

In sum, our license renewal safety review seeks to mitigate the “detrimental effects of aging resulting from operation beyond the initial license term.” 60 Fed. Reg. at 22,463. To that effect, our rules “focus[] the renewal review on plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation.” Id. at 22,469 (emphasis added).<sup>2</sup> Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC staff review, for our hearing process (like our staff’s review) necessarily examines only the questions our safety rules make pertinent.

Our rules nonetheless recognize and provide for the possibility of exceptional situations. On a case-by-case basis, if warranted by “special circumstances,” the Commission may waive application of one or more of our license renewal rules or otherwise make an exception for the proceeding at issue. See 10 C.F.R. § 2.758;<sup>3</sup> 56 Fed. Reg. at 64,961. Absent such a Commission ruling under § 2.758, however, “the scope of Commission review determines the scope of admissible contentions in a renewal hearing.” 60 Fed. Reg. at 22,482 n.2. It bears noting, additionally, that any change to a plant’s licensing basis which requires a license

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<sup>2</sup> Some aging-related issues are adequately dealt with by regulatory processes and need not be subject to further review during the license renewal proceeding. An example might be those structures and components that already must be replaced at mandated, specified time periods.

<sup>3</sup> The key passage in § 2.758 provides: “The sole ground for petition or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted.” 10 C.F.R. § 2.758(b).

amendment -- i.e., a change in the technical specifications -- will itself offer an opportunity for hearing in accordance with Section 189 of the Atomic Energy Act.

B. Environmental Review under Part 51

The Commission in 1996 amended its environmental protection requirements in Part 51 to establish environmental review requirements for license renewal applicants. As with our Part 54 health and safety review, the Commission sought to develop license renewal requirements in Part 51 that were both efficient and more effectively focused. Part 51 divides the environmental requirements for license renewal into generic and plant-specific components. Underlying Part 51 is an extensive, systematic study of the potential environmental consequences of operating a nuclear power plant for an additional 20 years. See NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Final Report, Vol. 1 ("GEIS")(May 1996).

As part of its study, the Commission evaluated environmental and safety data on the operating experience of all the light-water nuclear power reactors licensed to operate in 1991. See GEIS at 1-4; see also "Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 28,467, 28,468 (June 5, 1996). Numerous interest groups participated in the Commission's study through public workshops and by written public comments. See GEIS at 1-4. The resulting GEIS identified a number of possible environmental impacts, generic and plant-specific, that could result from an additional 20 years of nuclear power plant operation.

On many issues, the NRC found that it could draw generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants. Part 51 refers to these generic issues as "Category 1" issues. See 10 C.F.R. Part 51, Subpart A, App. B. Because Category 1 issues involve environmental effects that are essentially similar for all plants, they

need not be assessed repeatedly on a site-specific basis, plant-by-plant. Accordingly, under Part 51 license renewal applicants need not submit in their site-specific Environmental Reports an analysis of Category 1 issues. See 10 C.F.R. § 51.53(c)(3)(i). For those issues, the applicant instead may reference and adopt the generic environmental impact findings codified in Table B-1, Appendix B to Part 51.

Applicants must, however, provide a plant-specific review of all environmental issues for which the Commission was not able to make environmental findings on a generic basis. Our rules refer to these as “Category 2” issues. See 10 C.F.R. Part 51, Subpart A, App. B. In other words, if the severity of an environmental impact might differ significantly from one plant to another, or, if additional plant-specific measures to mitigate the impact should be considered, then the applicant must provide a plant-specific analysis of the environmental impact. In addition, even where the GEIS has found that a particular impact applies generically (Category 1), the applicant must still provide additional analysis in its Environmental Report if new and significant information may bear on the applicability of the Category 1 finding at its particular plant.

An example of an issue Part 51 declares “generic” (Category 1), and not subject to plant-specific analysis, is the noise impact from operation expected during the license renewal term. The principal noise sources (cooling towers and transformers) will not change appreciably during extended operation. Noise impacts generally have been small at all plants, and thus no site-specific analyses are necessary for license renewal. Part 51 declares various other environmental issues “plant specific” (Category 2). For example, the impact of extended operation on endangered or threatened species varies from one location to another and this fits within Category 2. It requires a plant-specific analysis.

There are several aspects to the NRC Staff's environmental review. Initially, the Staff will independently assess the adequacy of the applicant's Environmental Report. The Staff sets out its conclusions in a draft Supplemental Environmental Impact Statement ("SEIS"), which is a site-specific supplement to the GEIS; the Staff then seeks public comment. See 10 C.F.R. §§ 51.70; 51.73-74. The final SEIS will adopt any applicable Category 1 environmental impact findings from the GEIS. See 10 C.F.R. §§ 51.71(d); 51.95(c). The final SEIS also takes account of public comments, including plant-specific claims and new information on generic findings. See 61 Fed. Reg. at 28,470. Part 51 requires the final SEIS to weigh all of the expected environmental impacts of license renewal, both those for which there are generic findings and those described in plant-specific analyses.<sup>4</sup>

The Commission recognizes that even generic findings sometimes need revisiting in particular contexts. Our rules thus provide a number of opportunities for individuals to alert the Commission to new and significant information that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule. See 10 C.F.R. § 2.758; see also note 3, supra, and accompanying text. Petitioners with evidence that a generic finding is incorrect for all plants may petition the Commission to initiate a fresh rulemaking. See 10 C.F.R. § 2.802. Such petitioners may also use the SEIS notice-and-comment process to ask the NRC to forgo use of the suspect generic finding and to suspend license renewal proceedings, pending a rulemaking or updating of the GEIS. See 61 Fed. Reg. at 28,470; GEIS at 1-10 to 1-11.

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<sup>4</sup> See 10 C.F.R. § 51.95; GEIS at 1-9 to 1-10; 61 Fed. Reg. at 28,485; 61 Fed. Reg. at 66,541.

Finally, quite apart from individual license renewal proceedings, the Commission itself will review (and revise as needed) the license renewal rules and GEIS environmental analyses every 10 years, beginning approximately 7 years after completion of the last review. See 61 Fed. Reg. at 28,468. The Commission again will provide opportunity for public comment. If Part 51 or any of its underlying generic findings need modification, the Commission will institute a new rulemaking. There are, in short, a number of avenues through which generic environmental findings may be waived or changed.

#### IV. Analysis

##### A. Mr. Oncavage's Attack on the License Renewal Rules

We begin with Mr. Oncavage's arguments on appeal. Mr. Oncavage devotes most of his appeal brief to challenging the Commission's license renewal rules. He suggests that our renewal rules violate NEPA by centering the agency's Part 54 safety inquiry on aging issues and by allowing the incorporation of generic findings under our Part 51 environmental inquiry:

Are 10 C.F.R. Part 51, 10 C.F.R. Part 54 and the National Environmental Policy Act mutually exclusive? If Petitioner Mark P. Oncavage were to precisely follow all the rules set forth in Part 51 and 54, would he find his rights under NEPA unduly abridged? If he were to request that all provisions of NEPA be utilized in license renewal procedures, would he incur a violation of Commission rules?

See Petitioner Mark P. Oncavage's Notice of Appeal (Mar. 19, 2001)("Appeal Brief") at 2.

Mr. Oncavage apparently believes that both our Part 54 safety review and our Part 51 environmental review are incompatible with NEPA. We do not find his arguments persuasive.

The Commission's AEA review under Part 54 does not compromise or limit NEPA. The AEA and NEPA contemplate separate NRC reviews of proposed licensing actions. See Limerick Ecology Action v. NRC, 869 F.2d 719, 729-31 (3d Cir. 1989). The AEA "endows the NRC with significant discretion to determine the information that is necessary to support the

factual findings of the agency during the licensing process.” Kelley v. Selin, 42 F.3d 1501, 1516 (6<sup>th</sup> Cir.), cert. denied, 515 U.S. 1159 (1995). The Commission reasonably chose to focus its AEA-based Part 54 safety review on the potential detrimental effects of aging, instead of treating license renewal as the occasion for a broad-based reassessment of all operational safety issues. While the aging issues the NRC considers in its Part 54 safety review may overlap some environmental issues it considers in its Part 51 review, the two inquiries are analytically separate: one (Part 54) examines radiological health and safety, while the other (Part 51) examines environmental effects of all kinds. Our aging-based safety review does not in any sense “restrict NEPA” or “drastically narrow[] the scope of NEPA,” as Mr. Oncavage maintains. See Appeal Brief at 2-3.

Our reliance on generic environmental findings in Part 51 also comports with NEPA. NEPA requires federal agencies to (1) “consider every significant aspect of the environmental impact of [the] proposed action” and (2) “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97 (1983) (citations and internal quotations omitted). Agencies need not “elevate environmental concerns” over other considerations, but they must show that they have taken a “hard look” at environmental consequences. Id. Our Part 51 establishes a mechanism for taking the required “hard look.” Its use of generic findings that address impacts common to all nuclear power plants, supplemented by a narrower review of plant-specific issues, reflects a commonplace NEPA approach. See, e.g., 40 C.F.R. § 1508.28 (Council on Environmental Quality Regulations addressing “tiering” of NEPA documents). By longstanding practice, repeatedly upheld on judicial review, the Commission has considered and addressed generically through rulemaking specific environmental (or safety) issues that otherwise would have been addressed in an individual licensing proceeding.

See generally, Baltimore Gas & Electric, 462 U.S. 87; Kelley v. Selin, 42 NRC at 1512; Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979).

In Baltimore Gas & Electric, the Supreme Court expressly upheld the Commission's adoption of a series of generic NEPA rules evaluating the environmental effects of a nuclear power plant's fuel cycle. 462 U.S. at 91. The Court stressed the NRC's broad discretion to structure its NEPA inquiries:

NEPA does not require agencies to adopt any particular internal decisionmaking structure. Here, the agency has chosen to evaluate generically the environmental impact of the fuel cycle and inform individual licensing boards, through the Table S-3 rule, of its evaluation. The generic method chosen by the agency is clearly an appropriate method of conducting the hard look required by NEPA....[T]he Commission has discretion to evaluate generically the environmental effects of the fuel cycle and require that these values be 'plugged into' individual licensing decisions.

Id. at 100-01. When there are environmental effects that would be essentially similar for all or a commonly identifiable sub-category of nuclear plants, "[a]dministrative efficiency and consistency of decision are both furthered by a generic determination of these effects without needless repetition of the litigation in individual proceedings, which are subject to review by the Commission in any event." Id. at 101 (citations omitted).

Similarly, in Kelley v. Selin, the court of appeals endorsed the NRC's generic resolution of NEPA questions. "Although NEPA requires the NRC to undertake 'careful consideration' of environmental consequences," the court said, "the NRC may issue a rulemaking to address and evaluate environmental impacts that are 'generic;' namely, neither plant-specific nor site-specific." 42 F.3d at 1512 (citations and brackets omitted). "[E]ven where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration ... A contrary holding would require the agency continually to relitigate issues that may be established fairly

and efficiently in a single rulemaking proceeding.” Id. at 1511 (internal quotations and brackets omitted).

Resolving an environmental issue generically does not reduce its importance. In making a final decision on license renewal, the NRC will still weigh all of the different environmental impacts from extended operation, whether those impacts occur generically at all plants or on a plant-specific basis.<sup>5</sup> The NRC ultimately determines whether all adverse environmental impacts, taken together, “are so great” that the renewal option would be unreasonable. See 10 C.F.R. § 51.103(a)(5). And while it is true that “Category 1” generic issues normally are beyond the scope of a license renewal hearing, the Commission provides mechanisms for a petitioner to alert the Commission to generic findings that are incorrect or do not pertain to a particular site. See supra at 12-13.

The thrust of Mr. Oncavage’s appeal, in short, is ill-conceived. Neither the NRC’s aging-driven safety inquiry nor its use of generic environmental findings violates NEPA.

B. Mr. Oncavage’s Contentions

We turn now to Mr. Oncavage’s two specific contentions. Interwoven among his various claims challenging our license renewal rules, Mr. Oncavage’s appellate brief makes just a few statements directly bearing on his actual contentions in this case. As we have said before, “the Commission should not be expected to sift unaided... through earlier briefs filed before the Presiding Officer in order to piece together and discern the Intervenors’ particular concerns or the grounds for their claims.” Hydro Resources, Inc., CLI-01-04, 53 NRC 31, 46 (2001). Mr. Oncavage, therefore, “bear[s] responsibility for any misunderstanding of [his] claims.” Id. Given that Mr. Oncavage is a pro se intervenor, however, the Commission has made a special effort

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<sup>5</sup> See 10 C.F.R. § 51.95; GEIS at 1-9 to 1-10; 61 Fed. Reg. at 28,485; 61 Fed. Reg. at 66,541.

to review the contentions he made in his Amended Petition before the Board. We find them inadequate to justify a hearing.

1. Contention 1

Mr. Oncavage's first contention alleges that "[t]he 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." Amended Petition at 1. Essentially, this is a water contamination claim, focused on public health.

The Licensing Board found that Contention 1 fell beyond the scope of license renewal hearings, and impermissibly challenged the Commission's license renewal regulations. See 53 NRC at 164. We agree with this conclusion. "[A] petitioner in an individual adjudication cannot challenge generic decisions made by the Commission in rulemakings." North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n.8 (1999)(collecting cases). But our review of Mr. Oncavage's arguments leads us also to find his contention inadmissible for lack of sufficient foundation. See 10 C.F.R. § 2.714(b)(2). Below, we discuss both of Contention 1's defects.

a) Contention 1 Falls Beyond Scope of Parts 54 and 51

The Licensing Board correctly concluded that Contention 1 falls outside of the scope of license renewal reviews and proceedings. As the Board found, the contention "does not raise any aspect of the Applicant's aging management review or evaluation of the plant's systems, structures, and components subject to time-aging analysis." See 53 NRC 138, 164. It does not, then, identify any issue encompassed by the NRC safety review for license renewal, conducted under 10 C.F.R. Part 54, which focuses on aging.

Insofar as Contention 1 raises NEPA, or Part 51, claims, it fails as (in effect) a collateral attack on Part 51 and its underlying GEIS. Contention 1 only involves topics discussed in the GEIS and codified in Part 51 as generic "Category 1" issues. As we indicated earlier, these issues are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings.

Contention 1 maintains that renewing Turkey Point's license will result in aquatic contamination affecting public health. But the GEIS provides an extensive analysis of radiological impacts, including a discussion of radiation exposures from aquatic pathways, *i.e.*, eating fish caught near the point of discharge of liquid effluent. Its evaluation extends to all nuclear power reactors in operation in 1996 when the GEIS was issued, including Turkey Point. See GEIS at 4-84. Indeed, the GEIS's conclusions rest on site-specific data on effluents obtained from all the reactor facilities. See generally id. at Appendix E; see also id. at 4-84 to 4-95.

As part of its discussion, the GEIS assesses how well nuclear power plants have met applicable NRC radiological dose limits, design objectives, or guidelines (found under Appendix I to 10 C.F.R. Part 50, 10 C.F.R. Part 20, and 10 C.F.R. § 50.36a). As the GEIS describes, data collected on all nuclear power plants "demonstrate[d] that the ALARA ["As Low As Reasonably Achievable"] process has been effective at controlling and reducing radiation doses to the public."<sup>6</sup> See id. at 4-95 (citations omitted); see also id. at 4-92 to 4-95; Appendix E. The GEIS study found that renewing reactor operating licenses would not increase radioactive effluents in nearby waters:

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<sup>6</sup> ALARA criteria appear in Appendix I to 10 C.F.R. Part 50. In addition, 10 C.F.R. § 50.36a imposes license conditions in the form of technical specifications on effluents from nuclear power reactors. These specifications are intended to maintain all releases of radioactive materials to unrestricted areas during operations to ALARA levels.

Radiation doses to the members of the public from current operation of nuclear power plants have been examined from a variety of perspectives and the impacts were found to be well within design objectives and regulations in each instance. No effect of aging that would significantly affect the radioactive effluents has been identified. Both maximum individual and average doses are expected to remain well within design objectives and regulations. In about 5 percent of the plants, maximum individual doses are approximately 20 percent of the Appendix I design objective. All other plants [including Turkey Point] are operating far below this level. Because no reason was identified to expect effluents to increase in the period after license renewal, continued operation well within regulatory limits is anticipated....No mitigation measures beyond those implemented during the current term license would be warranted because current mitigation practices have resulted in declining public radiation doses and are expected to continue to do so.

Id. at 4-95.

The GEIS thus declared radiological exposure from power reactor operation a “Category 1 issue.” Id. This classification covers all public exposure pathways -- gaseous and liquid effluents, including the buildup and concentration of radioactive materials in soils and sediment, which could in turn impact radionuclide levels in bottom-feeder fish. See GEIS at 4-85 to 4-86. The GEIS contains detailed support for its conclusions on the radiological impacts of license renewal. See, e.g., id. at 4-84 to 4-95; 4-126; 3-26 to 3-42; Appendix E.

Contention 1 also vaguely refers to “chemical wastes” and “herbicides.” Again, these topics fall within the GEIS study. For instance, the GEIS discusses the discharge of chlorine and other biocides, the discharge of metals in waste water, and the discharge of sanitary wastes and minor chemical spills; the GEIS finds these discharges of small significance for all plants. See id. at 4-53 to 4-56; 4-58. The GEIS specifically considered additional mitigation measures to curtail these discharges, but found mitigation unwarranted. See id. at 4-55 to 4-56. Part 51, therefore, characterizes these as Category 1 issues. See 10 C.F.R. Part 51, Appendix B (Table B-1). They are not subject to litigation in a license renewal hearing.

Mr. Oncavage seeks to salvage Contention 1 by characterizing it as a non-generic “groundwater conflict” issue. See, e.g., Appeal Brief at 3. A “groundwater conflict” concerns competing uses of the same water -- for example, a reactor’s use of water needed for irrigation. Our rules discuss several types of “groundwater conflicts,” some of which are Category 2 issues which must be addressed on a site-specific basis. See Table B-1, 10 C.F.R. Part 51, Appendix B.

The Licensing Board rejected Mr. Oncavage’s depiction of his first contention as a “groundwater conflict” claim, noting that “all the Category 2 groundwater conflict issues deal with the issue of withdrawal of groundwater by an Applicant when there are competing groundwater uses -- a situation far different from Mr. Oncavage’s allegation.” 53 NRC at 14. We agree with the Board. The expression “groundwater use conflicts” refers to “conflicts” or “competing water uses” arising among “neighboring groundwater users” because of reduced quantities of available water. See GEIS at 4-115 to 4-116; see also id. at 4-53 (discussing “water use conflicts”). For instance, if a facility is located by a small river and withdraws large amounts of water from the river for its cooling towers, this “could impact an alluvial aquifer during periods of low flow.” Id. at 4-117; see id. GEIS at 4-52 to 4-53. Similarly, “[n]uclear power plants that withdraw makeup water for cooling ponds from small bodies of water may need to curtail operations during drought periods or may experience future conflicts with other water users.” Id. at 4-53.

In addition, the GEIS and our rules refer to three different types of Category 2 groundwater use conflicts that could arise, but each applies only to certain types of facilities: (a) those using cooling towers that withdraw makeup water from small rivers, (b) those using more than an annual average of 100 gallons of groundwater per minute, or (c) those using so-

called “Ranney Wells” for cooling tower make-up water.<sup>7</sup> See id. at 4-115 to 4-118. If a particular environmental issue does not apply to a facility, the Applicant need only describe why it does not.<sup>8</sup>

Here, FPL’s Environmental Report addresses each potential groundwater use conflict, and states why each is inapplicable to the Turkey Point facility. FPL notes that the Turkey Point plant does not withdraw makeup water from a river or offsite surface waterbodies, use cooling towers or Ranney wells, or pump more than 100 gallons of groundwater per minute. See Applicant’s Environmental Report at 4.1-1; 4.5-1; 4.6-1; 4.7-1. Turkey Point instead obtains potable and service water from municipal suppliers. Mr. Oncavage does not rebut any of these statements. We therefore find the “groundwater use conflict” issue inapplicable to Turkey Point, and reject Mr. Oncavage’s attempt to characterize Contention 1 as a “groundwater use conflict” claim.<sup>9</sup>

In sum, Contention 1 lies in its entirety outside Part 54, and raises only topics that are codified in Part 51 as generic Category 1 issues. The contention therefore advances no dispute material to the NRC’s license renewal decision at Turkey Point. Hence, Contention 1 is not litigable.

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<sup>7</sup> A Ranney Well collects water from sedimentary aquifers. It is constructed of a central caisson sunk to a depth below the water table. Several “screens,” i.e., slotted collection pipes, extend radially from the bottom of the caisson. The bottom of the caisson serves as a collection point for groundwater. A pump located at the top of the caisson structure above the surface draws water from the bottom and forces it through overland pipe runs to the point of service.

<sup>8</sup> See Supplement 1 to Regulatory Guide 4.2, “Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Licenses” (Sept. 2000) at Chap. 4 “General Guidance.”

<sup>9</sup> There is a Category 2 “groundwater quality degradation” issue involving cooling ponds that must be addressed on a site-specific basis. It does not apply, however, to plants located adjacent to or in salt marshes. See GEIS at 4-121 to 4-122; Table B-1 to Appendix B to 10 C.F.R. Part 51. Turkey Point’s cooling canals are located in a salt marsh. See GEIS at 4-122. The GEIS explicitly finds that for Turkey Point “this is a Category 1 issue.” Id.

b) Contention 1's Lack of Foundation

To trigger a full adjudicatory hearing, petitioners must be able to “proffer at least some minimal factual and legal foundation in support of their contentions.” Duke Energy Corp. (Oconee Nuclear Station, Units 1,2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); see also 10 C.F.R. § 2.714(b)(2)(ii). As the Commission described at length in Oconee, the NRC toughened its contention-pleading rule in 1989, to avoid the admission of contentions based on “little more than speculation.” Id. Prior to the amended rule, it was possible for intervenors to be admitted to hearing after merely “copying contentions from another proceeding involving another reactor.” Id. Hearings should serve the purpose for which they are intended: “to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors.” Id. (citing H.R. Rep. No. 97-177, at 151 (1981)). While intervenors need not be technical experts, they must knowledgeably provide some threshold-level factual basis for their contention.

A contention must show a “genuine dispute ... with the applicant on a material issue of law or fact.” See 10 C.F.R. § 2.714(b)(2)(iii). To do so, the contention should refer to those portions of the license application (including the environmental report and safety report) that the petitioner disputes and indicate supporting reasons for each dispute. Id. If a petitioner believes that the license application simply fails to consider some information required by law, he or she then may indicate that failure and supporting grounds. Id. Contentions arising under NEPA should be based upon the Applicant’s Environmental Report.

Even if Mr. Oncavage’s environmental claims were not barred as a collateral attack on Part 51, his Contention 1 does not come close to meeting the specificity requirements of our contention-pleading rule. While he raises several environmental issues, Mr. Oncavage makes only broad-brushed references to the Applicant’s Environmental Report, which was publicly

available. He provides not a single reference to any particular portion of the Environmental Report. Indeed, the Environmental Report often explicitly contradicts Mr. Oncavage's arguments, such as, for example, his "groundwater use conflicts" claim. See supra at p. 21.

Mr. Oncavage does mention the GEIS and the original 1972 Final Environmental Statement (FES) for Turkey Point. But he does nothing more than quote select passages which in themselves indicate no deficiency in FPL's license renewal application or Environmental Report. Mr. Oncavage's "alleged facts" in support of his contention amount to no more than his own predictions and speculation. In claiming unhealthy water contamination, for instance, Mr. Oncavage raises what he calls "massive seepage, up to 89,000 gallons per minute, into Biscayne Bay and Card Sound." Amended Petition at 1. This claim does not come from Turkey Point's license renewal documents, but from a page in the 1972 FES discussing estimated groundwater "seepage losses" to the east, ranging from "50 to as high as 200 cfs [cubic feet per second]." See 1972 FES at V-3. The 1972 discussion, however, refers to controlling the impacts of groundwater flow on water salinity and temperature, not to the radiological and chemical contamination concerns that Mr. Oncavage raises in Contention 1.

As another basis for Contention 1, Mr. Oncavage cites a passage from the GEIS on the subject of "radionuclide deposition." See Amended Petition at 1. "Radionuclide deposition" refers to the potential for marine organisms to receive relatively higher radiation doses than terrestrial organisms. Fish that are bottom feeders might "ingest worms and other biota that may remobilize radioactive materials accumulated in the sediment." GEIS at 4-86. Mr. Oncavage views this discussion in the GEIS as a "warning of a health problem that may require reexamination." See Amended Contentions at 1. But he raises no specific indication that the Turkey Point facility has had any significant problems with radionuclide deposition. Nor does he allege that radiological doses to the public -- through aquatic food pathways or any other --

have exceeded NRC requirements. Mr. Oncavage's Amended Petition does nothing more than cite to a general passage in the GEIS outlining how radionuclide deposition is monitored. He offers no evidence that a problem may exist at Turkey Point.

The short of the matter is that Contention 1, even if we were somehow to find it within the scope of our license renewal inquiry (which it is not, see pp. 18-22, supra), is so thinly supported and rationalized that it could not possibly justify a full hearing under our contention-pleading rule.

2. Contention 2

Mr. Oncavage's second contention concerns the storage of radioactive spent fuel. He claims that at Turkey Point there are "severe and unusual challenges to the safe storage of high level radioactive spent fuel whether in spent fuel pools or in dry cask storage." Amended Petition at 2. Mr. Oncavage's apparent concern is the risk of a catastrophic accident -- due to hurricanes or an aircraft crash -- involving the additional spent fuel stored in the pool (from more years of reactor operation). See Amended Petition at 2-3. The Licensing Board found the contention inadmissible, noting that Part 51 characterizes onsite spent fuel storage impacts as a generic Category 1 issue, not subject to litigation in a license renewal proceeding. See 53 NRC at 165. The Licensing Board also found that Mr. Oncavage's spent fuel contention raises none of the aging-related issues which are the focus of NRC's safety review. We agree with both conclusions.

a) Onsite Storage of Spent Fuel is a Category 1 Issue

Our rules explicitly conclude that "[t]he expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated on site with small environmental effects through dry or pool storage at all plants if a permanent repository or monitored retrievable storage is not available." Table B-1, Subpt. A, App. B to Part 51. See

Oconee, CLI-99-11, 49 NRC at 343-44. The GEIS provides the background analyses and justification for this generically applicable finding. See GEIS at 6-70 to 6-86. It finds “ample basis to conclude that continued storage of existing spent fuel and storage of spent fuel generated during the license renewal period can be accomplished safely and without significant environmental impacts.” Id. at 6-85. The GEIS takes full account of “the total accumulated volumes of spent fuel after an additional 20 years of operation.” Id. at 6-79; see also id. at 6-80 to 6-81.

The GEIS’s finding encompasses spent fuel accident risks and their mitigation. See GEIS, at xlvi, 6-72 to 6-76; 6-86, 6-92. The NRC has spent years studying in great detail the risks and consequences of potential spent fuel pool accidents, and the GEIS analysis is rooted in these earlier studies. NRC studies and the agency’s operational experience support the conclusion that onsite reactor spent fuel storage, which has continued for decades, presents no undue risk to public health and safety. Because the GEIS analysis of onsite spent fuel storage encompasses the risk of accidents, Contention 2 falls beyond the scope of individual license renewal proceedings.

Mr. Oncavage argues, however, that a “catastrophic radiological accident at a spent fuel facility would be a severe accident which is a category 2 issue.” Amended Petition at 2. Part 51 does provide that “alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives.” See Appendix B to Subpt. A of Part 51; see also GEIS at 5-106 to 5-116. But Mr. Oncavage’s Contention 2 says nothing about mitigation alternatives. And, in any event, Part 51’s reference to “severe accident mitigation alternatives” applies to nuclear reactor accidents, not spent fuel storage accidents. Not only Mr. Oncavage, but also the NRC Staff and FPL, apparently were confused on this point, for no one raised the important distinction between reactor accidents and spent fuel accidents. As we have seen, the

GEIS deals with spent fuel storage risks (including accidents) generically, and concludes that “regulatory requirements already in place provide adequate mitigation.” GEIS at 6-86; 6-92; xviii; see also id. at 6-72 to 6-76.

On the issue of onsite fuel storage, then, the GEIS rejects the need for further consideration of mitigation alternatives at the license renewal stage. Id. Indeed, for all issues designated as Category 1, the Commission has concluded that additional site-specific mitigation alternatives are unlikely to be beneficial and need not be considered for license renewal. See 61 Fed. Reg. at 28,484; GEIS at 1-5; 1-9.

The NRC customarily has studied reactor accidents and spent fuel accidents separately. For instance, our “Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants,” discusses only reactor accidents and defines “[s]evere nuclear accidents [as] those in which substantial damage is done to the reactor core whether or not there are serious offsite consequences.” 50 Fed. Reg. 32,138 (Aug. 1985)(emphasis added). Similarly, the various NRC studies on severe accidents typically focus upon potential damage to the reactor core of nuclear power plants.<sup>10</sup> A different set of studies altogether are devoted to spent fuel pool accidents, and has concluded that the risk of accidents is acceptably small.<sup>11</sup>

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<sup>10</sup> See, e.g., NUREG-1150, “Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants (Dec. 1990)(examining core meltdown risks); NUREG/CR-5042, “Evaluation of External Hazards to Nuclear Power Plants in United States” (Dec. 1987)(examining the risk of core damage from external events).

<sup>11</sup> See, e.g., NUREG-1353, “Regulatory Analysis for the Resolution of Generic Issue 82, ‘Beyond Design Basis Accidents in Spent Fuel Pools’ (April 1989); NUREG/CR-4982, “Severe Accidents in Spent Fuel Pools in Support of Generic Safety Issue 82” (July 1987); NUREG/CR-5281 Value/Impact Analyses of Accident Preventive and Mitigative Options for Spent Fuel Pools (Mar. 1989); NUREG/CR-5176, “Seismic Failure and Cask Drop Analysis of the Spent Fuel Pools at Two Representative Nuclear Power Plants (Jan. 1989). A recent study of spent fuel storage risks at decommissioning reactors finds the risk of accident somewhat greater than originally believed, but still very low. See NUREG-1738, “Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants (Feb. 2001).

Hence, Part 51 and the GEIS treat the matter generically. Indeed, the events that could lead to a severe reactor accident vary significantly from plant to plant, thereby requiring plant-specific consideration, whereas accidents involving spent fuel pools or dry casks are more amenable to generic consideration.

Part 51 notwithstanding, Mr. Oncavage maintained before the Licensing Board that the possibility of catastrophic hurricanes at Turkey Point justified his plant-specific contention on spent fuel accidents. See 53 NRC at 165. Again, however, as the Board held, Part 51 treats all spent fuel pool accidents, whatever their cause, as generic, Category 1 events not suitable for case-by-case adjudication. Id. In the past, the NRC has considered the effect of hurricanes on reactors generally.<sup>12</sup> And the staff quite recently examined their effect on spent fuel pools in particular; it found the risks “very low” or “negligible.”<sup>13</sup> Mr. Oncavage did not seek a waiver of the Category 1 determination for spent fuel issues; nor did his hurricane discussions raise any information that might render the GEIS’s Category 1 finding inapplicable to the Turkey Point facility. Nothing in Mr. Oncavage’s “hurricane” claim renders it litigable under our license renewal rules.

In short, Part 51's license renewal provisions cover environmental issues relating to onsite spent fuel storage generically.<sup>14</sup> All such issues, including accident risk, fall outside the scope of license renewal proceedings.

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<sup>12</sup> See, e.g., NUREG/CR-5042, “Evaluation of External Hazards to Nuclear Power Plants in the United States (Dec. 1987)(hurricane risk assessed in section on “high winds/tornadoes”).

<sup>13</sup> See NUREG-1738, at 3-25 (cited in note 10, supra).

<sup>14</sup> The Board, as well as the NRC Staff and FPL, apparently view our “Waste Confidence Rule,” 10 C.F.R. § 51.23(a), as an additional generic environmental finding precluding Mr. Oncavage’s spent fuel pool contention. See 53 NRC at 165. But that rule, by its own terms, applies only to the storage of spent fuel after a reactor ceases operation. It does not speak to the NEPA question at issue here: whether Mr. Oncavage may obtain a hearing on spent fuel pool risks arising during a reactor’s operating life. As we hold in the text, it is Part 51, with its underlying GEIS, that precludes litigation of that issue.

b) Onsite Storage of Spent Fuel Raises No Safety Question for License Renewal

Mr. Oncavage's spent fuel storage concerns (Contention 2) do not raise any admissible safety issues under the NRC's Part 54 safety review.<sup>15</sup> His concerns do not relate to managing the aging of systems, structures and components or to any time-limited aging analyses, the safety inquiries contemplated by Part 54. There are in fact a number of spent fuel pool structural components and related systems subject to the Part 54 aging management review for license renewal. FPL's license renewal application provides extensive information on these spent fuel storage materials and components, and on the spent fuel cooling system. At no point does Mr. Oncavage identify any deficiency in the renewal application's discussion of spent fuel storage and handling. He never even refers to any part of the license renewal application.

Mr. Oncavage does refer to "inadequate construction practices" and lack of "defense in depth" at the Turkey Point facility,<sup>16</sup> but these claims go to the adequacy of the plant's current licensing basis, which is not within the scope of the license renewal review. Hurricane and tornado winds as well as hurricane-induced flooding are among the design basis events for the Turkey Point facility. If Mr. Oncavage genuinely knows of a serious current safety problem resulting from the design of the Turkey Point facility, he should petition under 10 C.F.R. § 2.206 for NRC action on the Turkey Point license.

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<sup>15</sup> It should be noted that during the licensing of the spent fuel pools under the current Turkey Point license, the operation of the pools was previously evaluated and found safe for operation up to the approved capacity. If in the future, Turkey Point were to seek to expand the capacity of the pools or to construct dry cask storage, its action would be subject to separate environmental and safety evaluation by the NRC, with associated license amendments and hearing opportunities. If additional capacity is not required, it is possible that the spent fuel pools will never operate differently as a result of license renewal. This highlights that the concerns raised by Mr. Oncavage with respect to the spent fuel pools are not inherent in license renewal itself and are not within the scope of this renewal proceeding.

<sup>16</sup> See Amended Petition at 3.

Mr. Oncavage raises an additional point. He claims that the Safety Evaluation Report for the renewal of the Turkey Point license is “fatally flawed” because it relies upon an incorrect NRC staff safety assessment of a planned international, commercial airport to be located 4.9 miles away from the Turkey Point site. Amended Petition at 2; see also Oncavage Appeal Brief at 4. But, as the Board stated, Mr. Oncavage’s claim is “obviously flaw[ed]” because the Safety Evaluation Report has yet even to be issued.<sup>17</sup> See 53 NRC at 166. Moreover, the Commission notes that this international airport appears no longer planned for the area. The Air Force has issued a Record of Decision in which it states that, given environmental considerations, a commercial airport will not be allowed at the site. See 66 Fed. Reg. 12,930 (Mar. 2001). This Record of Decision was discussed at the prehearing conference, and a copy of the decision was made available to the Licensing Board and the parties. See Transcript at 35-36; 57-58. Thus, the latest information about the airport in the record before us pertains to this final Air Force decision explicitly disallowing the use of its surplus property as an airport. The Commission therefore believes that any assumption that a commercial airport will be built on the planned site is speculative.<sup>18</sup>

In any event, none of Mr. Oncavage’s claims in Contention 2 -- not his airport claim, not his hurricane claim, not his spent fuel accident claim -- raises any aging issue under our Part 54 safety review. Thus, the Board correctly refused to admit Contention 2 for a safety hearing.

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<sup>17</sup> Mr. Oncavage apparently assumed that the Safety Evaluation Report had been issued and that it had relied upon the staff’s safety assessment of aircraft crash risk, prepared in connection with the proposed airport.

<sup>18</sup> If a tangible plan for a nearby commercial airport again emerges, see Reuters English News Service (June 4, 2001) (Defense Department reportedly reviewing Air Force’s decision to assure the decision is consistent with established policy), the potential safety impacts the airport may have on the Turkey Point facility must be considered, and any needed measures to maintain the safety of the facility will be undertaken. If Mr. Oncavage finds that the airport poses an unaddressed safety concern, he may bring his concerns to the NRC’s attention, or if timely and appropriate, he may submit a late-filed contention. See 10 C.F.R. §§ 2.206; 2.714(a).

### C. Final Observations

We conclude by addressing a few additional comments made by Mr. Oncavage in his appeal brief. He claims unwarranted “difficulty” because the NRC staff has not yet issued its SER and SEIS. Appeal Brief at 4. He believes his rights “have been unduly abridged” because the Licensing Board dismissed his contentions “many months before the SEIS and SER” were due for publication. Id. He asks, “[i]f the SER contains information that goes beyond the scope of Parts 51 and 54, how can a petitioner question or litigate those issues?” Id. at 5. Mr. Oncavage seems to believe that the Licensing Board dismissed his contentions simply because the SEIS and SER were unavailable to him. See id. at 4.

None of this is persuasive. Contentions must be based upon the applicant’s (here FPL’s) license application and Environmental Report. Petitioners have an “ironclad obligation” to examine the application and publicly available documents to uncover any information that could serve as a foundation for a contention. Oconee, 49 NRC at 338 (citing “Final Rule, Rules of Practice for Domestic Licensing Procedures -- Procedural Changes in the Hearing Process,” 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989). “[I]t is the license application, not the NRC staff review, that is at issue in our adjudications.”<sup>19</sup>

Intervenors may amend contentions later if data or conclusions in the SER or SEIS differ significantly from the license application or Environmental Report. See 10 C.F.R. § 2.714(a). “[M]uch of what those reports will bring to light [however] will ... not be new *issues*, but [merely] new *evidence* on issues that were apparent at the time of application.” Union of Concerned Scientists v. NRC, 920 F.2d 50, 55 (D.C. Cir. 1990)(emphasis in original). In the event that

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<sup>19</sup> Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998), aff’d sub nom National Whistleblower Center v. NRC, 208 F.3d 256 (D.C. Cir.), cert. denied, 121 S.Ct. 758 (2001).

either the SER or SEIS indeed does contain new and significant information, NRC rules permit a petitioner to submit a late-filed contention. See 10 C.F.R. § 2.714(b)(2)(iii).

The Licensing Board dismissed Mr. Oncavage's contentions because they raised issues beyond the scope of a license renewal proceeding, not because the Board "viewed the absence of [the SEIS and SER] as a flaw in the Petitioner's contentions," as Mr. Oncavage claims. See Appeal Brief at 4. His contentions also lacked foundation, as we explained earlier in this opinion. Mr. Oncavage states that he is "challenging the environmental documents" and "challenging the safety documents." See Transcript at 21. Although he had available to him the Turkey Point license application and Environmental Report, he provides not a single reference to any specific portion of either, and indeed indicates no familiarity with either.

Our contention-pleading rule bars "anticipatory" contentions, where a petitioner seeks to have NRC "Staff studies as a sort of pre-complaint discovery tool." Oconee, 49 NRC at 338 (citing Union of Concerned Scientists, 920 F.2d at 56). The courts repeatedly have upheld NRC contention procedures on judicial review. See, e.g., Union of Concerned Scientists v. NRC, 920 F.2d 50 (D.C. Cir. 1990); see also National Whistleblower Center, 208 F.3d 256. Mr. Oncavage, however, appears unwilling to "commit to this type of procedure." See Transcript at 20. He seems not to understand that it was his obligation to formulate contentions based upon FPL's license renewal application and Environmental Report, and that, if he submitted admissible contentions, he then could amend them if necessary once the NRC staff issued its SER and SEIS. Having failed to submit a single admissible issue, Mr. Oncavage complains that the dismissal of his petition "abrogates any legitimate opportunity for [him] to amend the contentions upon the issuance of the SEIS and SER." Appeal Brief at 4-5. There is, though, no right to later "amend" arguments that were inadmissible to begin with. If the SEIS and SER bring to light new and significant data or conclusions, which differ materially from what was

available in the license renewal application and Environmental Report, Mr. Oncavage will still have an opportunity to submit late-filed contentions. See 10 C.F.R. § 2.714(a)(1).

The Commission recognizes that under our rules individuals concerned about a licensing action must work within a limited time frame to examine the license application and related documents, and that this may be especially difficult for pro se petitioners. “But it has long been a basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation.” Oconee, 49 NRC at 338-39.

Mr. Oncavage seems to believe that simply because the Licensing Board found he had standing, he automatically should also be allowed to intervene as a party in the proceeding.<sup>20</sup> See Appeal Brief at 4 (“[t]he Licensing Board has, in effect said, yes you have an interest to defend, but we won’t let you defend your interest”). To gain admission as a party, however, a petitioner must proffer at least one valid contention for litigation. 10 C.F.R. § 2.714(b). This Mr. Oncavage has not done.

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<sup>20</sup> FPL and the NRC Staff contest Mr. Oncavage’s standing to intervene. See 10 C.F.R. § 2.714(a)(2)(intervenors must demonstrate how their own “interest may be affected by the results of the proceeding”). The Licensing Board determined that Mr. Oncavage had failed to show the “traditional elements of standing,” but nonetheless the Board concluded that Mr. Oncavage’s residence 15 miles from the Turkey Point facility was sufficient to accord him standing. See 53 NRC at 146-50. The Board applied a “proximity presumption” -- a presumption of standing for those residing within 50 miles of the reactor that sometimes has been applied in NRC reactor licensing cases. Because the Commission has found Mr. Oncavage’s contentions inadmissible, we do not decide whether the Board’s application of a proximity presumption was correct. See Oconee, CLI-99-11, 49 NRC at 333 n.2.

**V. Conclusion**

For the reasons given in this decision, the Commission hereby affirms LBP-01-06.

IT IS SO ORDERED.

For the Commission

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 19<sup>th</sup> day of July, 2001.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-01-17) have been served upon the following persons by Electronic mail. Each party will also receive a paper copy of this document.

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Docket Nos. 50-250/251-LR  
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(CLI-01-17)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 19<sup>th</sup> day of July 2001