May 9, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

FLORIDA POWER & LIGHT'S RESPONSE OPPOSING ADMISSION OF CASE'S LATE FILED CONTENTIONS

In accordance with the Atomic Safety and Licensing Board ("Board")'s Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) of March 30, 2011 ("Initial Scheduling Order"), Applicant Florida Power & Light Company ("FPL") hereby responds to and opposes the relief sought in a curious document entitled "Amended Contentions 1,2 and 5" filed by intervenor Citizens Allied for Safe Energy, Inc. ("CASE") on April 18, 2011 (hereinafter "CASE's Filing"). CASE's Filing is in reality a request to the Board for admission of three late-filed contentions. However, it fails to meet or even address the requirements in the regulations for the submittal of late-filed contentions. Moreover, CASE's Filing disregards the explicit directions in the Board's Initial Scheduling Order as to the submittal of new contentions. CASE has also ignored the consultation prerequisite to the filing of motions, required by the regulations and emphasized by the Board.

On the merits, CASE's Filing is ostensibly based on the accident at the Fukushima Daiichi plant following the record March 11, 2011 earthquake that occurred near the east coast of Honshu, Japan, and the ensuing massive tsunami that caused significant damage to at least four of the six units of the Fukushima Daiichi nuclear power station as the result of a sustained loss of both the offsite and on-site power systems. *See* NRC Information Notice 2011-05, Tohoku-Taiheiyou-oki Earthquake Effects on Japanese Nuclear Power Plants (Mar. 18, 2011) at 1 (ADAMS Accession No. ML110760432).[1] However, CASE does not identify any learning from the Fukushima events that would be applicable to Turkey Point 6 and 7 and would lead to admissible contentions herein. The relief CASE seeks is also without legal basis, since CASE repeatedly challenges the Commission's regulations. For these reasons, CASE's Filing must be rejected and the relief it seeks denied.

DISCUSSION

The Board has recently specified the requirements for filing new contentions in this proceeding. The Board wrote:

> A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a *timely* new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a *nontimely* new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the explanation for the proposed new or amended contention showing that it satisfies 10 C.F.R.

[1] A summary of the accident and the actions taken by the Commission, the NRC Staff and the nuclear industry to address the lessons learned from the Fukushima event was presented in FPL's "Response Opposing Petition to Suspend all Pending Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from the Fukushima Daiichi Nuclear Power Station Accident" filed with the Commission and the Board on May 2, 2011, and will not be repeated here. CASE was one of the Petitioners who asked the Commission to suspend all licensing actions, including the instant proceeding, and should be familiar with the matters raised in FPL's response to the suspension petition.

> § 2.309(f)(1). A motion and proposed new or amended contention as specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the motion should cover the three criteria of section 2.309(f)(2) and the eight criteria of section 2.309(c)(1) (as well as the six criteria of section 2.309(f)(1)).

Initial Scheduling Order at 8 (emphasis in original).

CASE's Filing does not comply with the applicable regulations and the provisions in the Initial Scheduling Order. Moreover, CASE filed its motion without prior consultation with FPL. Finally, none of the proposed contentions meets the admissibility requirements in 10 C.F.R. § 2.309(f)(1). For these reasons, CASE's Filing must be rejected.

I. CASE'S FILING DOES NOT SATISFY THE REQUIREMENTS IN THE REGULATIONS AND THE BOARD'S INITIAL SCHEDULING ORDER

A. CASE has Failed to File a Motion, Demonstrate that its Filing is Timely, or Address the Factors for Considering Nontimely Contentions

CASE characterizes its filing as an "amendment" to its previous Contentions 1, 2 and 5, even though these contentions were rejected by the Board as not meeting 10 C.F.R. Part 2 admissibility requirements. Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC __, slip op. at 85-89, 89-93, and 96-99 (Feb. 28, 2011) ("LBP-11-06"). Following the Board's rejection of those contentions, the only remedy that could have been available to CASE would have been to seek interlocutory review of the Board's ruling by the Commission, pursuant to 10 C.F.R. § 2.341(f)(2). Not having sought such a remedy, CASE's former Contentions 1, 2 and 5 are no longer part of this proceeding and cannot be "amended."

CASE's Filing constitutes (if at all) a request for the admission of three new contentions. Such a request must, however, be submitted by motion, which must demonstrate that:

> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
>
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2); Initial Scheduling Order at 8.

No such motion has been filed, and CASE has made no attempt to demonstrate that its proposed new contentions meet the timeliness requirements of 10 C.F.R. § 2.309(f)(2). Indeed, as discussed below, the new contentions proposed by CASE are not timely, and CASE also fails to address the eight criteria of 10 C.F.R. § 2.309(c)(1) for determining whether nontimely filings should be considered.[2]

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[2] 10 C.F.R. § 2.309(c)(1) states:

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

(i) Good cause, if any, for the failure to file on time;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

(Footnote continued on next page)

Consequently, CASE's Filing must be rejected as non-compliant with the regulations and the Board's Initial Scheduling Order.

B. CASE Failed to Meet the Consultation Requirements of 10 CFR § 2.323(b)

Since CASE's Filing is in effect a motion, it is subject to the requirements of 10 C.F.R. § 2.323. One of the prerequisites to filing a motion in a Commission proceeding is that the motion include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties to the proceeding and resolve the issue raised in the motion, and that the movant's efforts to resolve the issue have been unsuccessful. 10 C.F.R. § 2.323(b). Failure to include such a certification *requires* that a motion be summarily denied. *Id.*; *U.S. Department of Energy* (High Level Waste Repository), Unpublished Order (Dec. 22, 2009) (ADAMS Accession No.ML093561409).[3]

Such a denial is particularly appropriate here. Only a few weeks ago, the Board warned all participants, both during a telephone prehearing conference and in its Initial Scheduling Order, that failure to satisfy the consultation requirement of 10 C.F.R. § 2.323(b) would result in the summary rejection of a motion:

> To maximize the early resolution of issues without Board intervention, motions will be summarily rejected if they are not preceded by a sincere attempt to resolve the issues and include the certification specified in 10 C.F.R. § 2.323(b). *See* Tr. at 280-81.

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1); *see also*, Initial Scheduling Order at 8.

[3] 10 C.F.R. § 2.323(b) states in relevant part that "[a] motion *must* be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding to resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful." 10 C.F.R. § 2.323(b) (emphasis added).

Initial Scheduling Order at 9. Despite the requirement in the regulations and the Board's admonition, CASE submitted its Filing without previous notice to, or attempts at consultation with, FPL. On that basis, the Board should summarily reject CASE's Filing.

II. THE NEW CONTENTIONS SUBMITTED BY CASE ARE INADMISSIBLE

On the merits, the three new contentions submitted by CASE fail to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1). Indeed, save for relatively minor additions that attempt to tie them to the events at the Fukushima Daiichi plant, the three "new" contentions are, for the most part, repetition of the "old" contentions that the Board found inadmissible in LBP-11-06. The additions are irrelevant to the Turkey Point 6 and 7 licensing proceeding and do not raise any litigable issues.

A. "Amended" Contention 1 is Inadmissible

1. The Emergency Communications Claim in Contention 1 Lacks any Support

"Amended" Contention 1 differs from the original Contention 1 filed by CASE in three respects. *Compare* CASE's Filing at 3-14[4] *with* CASE's Petition to Intervene and Request for Hearing by Citizens Allied for Safe Energy, Inc. (Revised version filed on August 20, 2010) ("CASE's Petition") at 11-15. FPL will not respond here to the large portions of CASE's Filing that are identical to the original Petition, since those have already been dismissed by the Board.

The first new element in "Amended" Contention 1 is the addition of the following claim:

[4] The pages in CASE's Filing are not numbered. The page citations in this Response reflect the pagination of the document as received by FPL.

> Emergency Communications section of the FPL COL application (Part 2 - F-2) enumerate the methods and equipment for communication during an emergency which would form the basis for implementation of the emergency plan on file -- however the COL fails to clarify which of these emergency communication systems would be functional in the event of a Station Black-Out (loss of power and power back-up) at the proposed reactor site.

CASE's Filing at 3. This new claim is mentioned only twice in "Amended" Contention 1, and in neither instance does CASE provide any elaboration or support for it.[5]

First, CASE apparently propounds the following basis for this claim:

> 5. Station black-out is responsible for 50% of the total risk of a major reactor accident, and *would also likely interfere* with the communications from the reactor site."

CASE's Filing at 4 (emphasis added). CASE offers no explanation, analysis or other support for this alleged basis, which is on its face speculative.

The second reference to this claim is:

> 5. *It is not clear* that critical emergency communications will be viable in the event of a loss of power and back-up power at the site.

CASE's Filing at 10 (emphasis added). Again, CASE offers no explanation, analysis or other support for this speculative assertion.

Therefore, this claim must be rejected pursuant to 10 C.F.R. § 2.309(f)(1)(v), because it is speculative and not grounded on any alleged facts or expert opinions. Mere allegations that an application is inadequate do not give rise to a genuine dispute unless the allegations are supported by facts and a reasoned statement of why the application is

[5] In addition, this alleged deficiency would have been present at the time the Turkey Point 6 and 7 combined license application ("Application") was filed and should have been addressed in CASE's Petition. There is no justification for CASE to raise it at this late time.

unacceptable. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990). The claim also does not identify any portion of the Application that is allegedly inadequate, and thus fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

2. The Claims of Inaccuracies in the Calculation of Possible Radiological Impacts from an Accident are Irrelevant, Inadmissible as a Challenge to the NRC Regulations, and Untimely

The second difference between the "new" and earlier versions of Contention 1 is that in the Amended Filing CASE adds a new basis:

> 6. Calculations of possibility of radiological impact in guidance materials are incorrect and should not be used. (see attachment C1-Risk).

CASE's Filing at 4. CASE makes the same assertion, slightly expanded, later in the filing:

> 6. It is not appropriate to assume (NUREG-0396) that the magnitude of a radiological event and the circumstances of distribution of radioactivity during that event are modified by the probability of an accident occurring in a specific year. Emergency planning is based on the assumption that one is planning for an event. An event has the probability of 1 in 1. See Attachment C-1 Risk.

Id. at 10. "Attachment C-1 Risk" is not identified as such anywhere in CASE's Filing. There is, however, an "Exhibit 7 - Attachment C-1 Risk - 10 Mile EPZ and probability shenanigans" ("Exhibit 7"), which appears to be the document cited by CASE in support of this claim.

Exhibit 7 is an unidentified document of unknown authorship that challenges some of the statistical analyses contained in an NRC guidance document, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," NUREG-0396, EPA 520/1-78-016 (Dec.

1978) ("NUREG-0396"). The thesis of Exhibit 7 is that NUREG-0396, which has been in use by the NRC and the industry for over thirty years, underestimates the risk to the population located within ten miles of a nuclear power plant in the event of an accident resulting in a core melt. Exhibit 7 at (unnumbered) page 2.

CASE does not explain what relevance the anonymous discussion in Exhibit 7 has to the Application, nor does it allege that the alleged shortcoming in NUREG-0396 renders the Application deficient in any respect. Moreover, to the extent that the purpose of this discussion is to demonstrate that the 10-mile plume exposure pathway Emergency Planning Zone ("EPZ") is insufficient to protect public health and safety, such a claim is impermissible as a challenge to the NRC regulations in 10 C.F.R. §§ 50.47(b)(10) and (c)(2) and Appendix E to 10 C.F.R. Part 50, which establish the ten-mile plume exposure pathway EPZ. Finally, even if the claim had merit (which it does not),[6] NUREG-0396 was in use when the Application was filed and CASE could have identified the deficiency in its initial Petition to intervene. Nothing has changed since then that would entitle CASE to file a new contention at this time.

3. The Discussion in "Amended" Contention 1 of Potential Difficulties in the Delivery of Potassium Iodide ("KI") is Irrelevant

CASE's Filing attempts to revive its claim that delivery of KI in the event of an accident at Turkey Point 6 and 7 could not be achieved in a timely manner, a claim that was already rejected by the Board. *See* LBP-11-06 at 88. CASE now alleges that the

[6] The discussion in Exhibit 7 misconstrues the purpose of the cited calculation in NUREG-0396. The calculation is intended to compute the annual risk that doses in excess of the protective action guidelines will be experienced ten miles from a reactor from a core melt accident. Since risk equals probability of occurrence of an event times its consequence, it is appropriate to include in the computation a factor (5 x 10^{-5}) that accounts for the probability of occurrences of a core melt event in a given year. *See* NUREG-0396 at I-36 – I-37.

Japanese Government delayed the distribution of KI for three days following the accident at Fukushima Daiichi (CASE's Filing at 10 and Exhibit 1); that the Fukushima evacuees were denied care due to fears of radioactive contagion (CASE's Filing at 13 and Exhibit 4); and that Japanese shelters were requiring "radiation-free" certificates (CASE's Filing at 13 and Exhibit 5). CASE seeks to link these events in Japan to a potential accident at Turkey Point 6 and 7 by stating:

> The significance of these reports of denial of treatment, the need to send workers on suicide missions into contaminated situations and issuance of radiation free certificates is to point up the impossiblity [sic] of ever being sufficiently prepared for what can evolve in a nuclear accident or catastrophic natural event which impacts a nuclear facility. It is not unlike going into a war; you never can predict how it will evolve and play out. Nothing in the arm chair platitudes of federal, state or local planners as reflected in their regulations and publications speaks to the horrible situations we are hearing about following the Fukushima disaster.

CASE's Filing at 13-14. These anecdotal accounts of the response by the Japanese authorities to the Fukushima accident, even if accurate, are clearly irrelevant to a hypothetical Turkey Point 6 and 7 response to a radiological event at those units. In addition, by arguing that effective emergency planning is impossible, CASE's claim constitutes an impermissible challenge to the NRC regulations governing emergency planning. 10 C.F.R. § 2.309(f)(1)(iii); 10 C.F.R. § 2.335(a); *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station & Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 18 n.15 (2007). Also, as the Board ruled in rejecting essentially the same argument in CASE's original Petition, "[s]uch a generalized contention is inadmissible for

failing to raise a genuine dispute of material fact with a particular portion of the COLA. *See* 10 C.F.R. § 2.309(f)(1)(vi)." LBP-11-06 at 93.[7]

B. "Amended" Contention 2 is Inadmissible

"Amended" Contention 2 is also a copy of CASE's original Contention 2 with modifications to raise new claims invoking the Fukushima accident sequence. *Compare* CASE's Filing at 14-36 *with* CASE's Petition at 15-26.[8] The new claims include: (1) that the NRC may be "violating" the Fourteenth Amendment to the U.S. Constitution by retaining the 10-mile evacuation boundary for the plume exposure pathway EPZ while recommending that U.S. citizens who live within 50 miles of the Fukushima Daiichi plant evacuate the area or take shelter indoors (CASE's Filing at 21-23; *see also id.* at 29); (2) that the Fukushima sequence of events shows that "the loss of engineered safety features is possible and the CASE contentions on emergency planning and evacuation should be heard in full" (*id.* at 23, 50); (3) that no discussion of evacuation of the population beyond ten miles from the Turkey Point site is included in the Application, and that such a discussion, plus a discussion of the "shadow evacuation" area, should be included in the Application (*id.* at 28-36). None of these arguments sets forth an admissible contention.

1. The Advice Given to U.S. Citizens in Japan During the Fukushima Accident is Irrelevant to the Regulatory Requirements for the Turkey Point Units 6 and 7 Application

CASE refers to an advisory issued by the U.S. Department of State on March 18, 2011 to U.S. citizens living in Japan within 50 miles of the Fukushima Daiichi site,

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[7] CASE also repeats its claims that there are no provisions for the pre-accident distribution of KI in Florida, and that the locations of the centers where KI would be distributed are too remote from the Turkey Point plant to allow timely distribution of KI to evacuees. CASE's Filing at 10-11. These claims were raised in CASE's original Petition and were rejected by the Board. LBP-11-06 at 88.

[8] Again, only the new claims contained in CASE's "Amended" Contention 2 will be addressed here.

recommending that they evacuate the area or take shelter indoors, and also recommending that U.S. citizens defer traveling to Japan and, if there, return to the United States. CASE's Filing at 21 and Exhibit 6. CASE argues that, under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, U.S. citizens present in this country should be given the same protection as those located in Japan. *Ergo*, CASE concludes, the NRC regulations must be amended to impose a 50-mile evacuation boundary and "the 50 mile criteria be imposed at Turkey Point in the siting determination for 6 & 7." CASE's Filing at 23, 32.

This argument is unsound. The Department of State's recommendation to evacuate areas in the vicinity of the Fukushima facility, like the recommendation that U.S. nationals refrain from traveling to Japan and that those there depart the country, are just that, recommendations that have no force of law and need not be heeded. They are among numerous travel alerts and travel warnings issued by the Department of State to advise the public of potentially dangerous conditions in various countries.[9] No constitutional violation takes place if those recommendations are different from the laws that apply in the United States, and CASE cites to no judicial or administrative precedent in support of its claim.

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[9] The Department of State issues travel alerts "to disseminate information about short-term conditions, either transnational or within a particular country, that pose significant risks to the security of U.S. citizens. Natural disasters, terrorist attacks, coups, anniversaries of terrorist events, election-related demonstrations or violence, and high-profile events such as international conferences or regional sports events." *See* http://travel.state.gov/travel/cis_pa_tw/pa/pa_1766.html (last visited May 4, 2011). Japan, Tunisia, the United Kingdom, and the "South Pacific Cyclone Season" are currently the subject of Department of State travel alerts. Travel warnings are issued "when long-term, protracted conditions that make a country dangerous or unstable lead the State Department to recommend that Americans avoid or consider the risk of travel to that country." *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html (last visited May 4, 2011). Travel warnings are presently in place against thirty-four countries. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html.*Id.* Thus, the alert issued with respect to the Fukushima event is analogous to those currently in effect against some forty countries.

Moreover, if CASE believes that the NRC should adopt the fifty-mile plume exposure pathway EPZ instead of the existing ten-mile EPZ (*see* CASE's Filing at 22-23), the vehicle for requesting such a change is a rulemaking petition under 10 C.F.R. § 2.802. Requesting in a licensing proceeding that the NRC licensing boards adopt a more stringent standard than that contained in the agency regulations is impermissible because 10 C.F.R. § 2.335(a) precludes the admission of contentions that challenge Commission regulations. This preclusion extends to contentions that advocate additional or stricter requirements than agency rules impose. *See Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 394-95 (1987).

2. The Claim that the Loss of Engineered Safety Features is Possible Does not Raise an Admissible Contention

CASE cites NUREG-0396 for the proposition that "[t]he loss of either some or all engineered safety features are postulated in Class 9 accidents. If the engineered safety features are lost during an accident, then the LPZ has no meaning with regard to the size of the areas around the plant in which emergency response would be appropriate." CASE's Filing at 23, *citing* NUREG-0396, Appendix III at III-7 to III-8.[10] CASE misunderstands the quoted text of NUREG-0396. The cited text refers to the Low Population Zone ("LPZ"), which is established around a nuclear power plant in accordance with the siting criteria in 10 C.F.R. Part 100. The text cited by CASE is making the point that, if one assumes that a severe accident with significant radioactive releases outside the site boundary occurs, the previously-defined LPZ does not dictate how far outside the

[10] CASE repeats the same claim, verbatim, on page 50 of its Filing.

boundary must protective actions be taken. The text has nothing to do with how the plume exposure pathway EPZ should be defined.

CASE goes on to allege: "Clearly the Station Blackout event at the Fukushima Daichi [sic] site in Japan demonstrates the loss of engineered safety features is possible," from which CASE argues that its "contentions on emergency planning and evacuation should be heard in full." CASE's Filing at 23. CASE's *non-sequitur* does not raise a litigable contention. The possibility of a station blackout is contemplated, and protected against, in the design of Turkey Point Units 6 and 7. Section 1.9.4.2.2 of the AP1000 Design Control Document states, with respect to a potential station blackout condition:

> AC electrical power is not needed to establish or maintain a plant safe shutdown condition for the AP1000. The ac power system is discussed in Chapter 8. In addition, two nonsafety-related standby diesel generators are provided as alternate sources of electrical power to nonsafety-related active systems that provide a defense-in-depth function.

DCD Section 1.9.4.2.2 at 1.9-41. Thus, the passive design of the AP1000 reactor does not render the plant vulnerable to station blackout conditions such as arose at Fukushima. The AP1000 design also incorporates various features to protect critical plant components (such as the spent fuel pool) against blackout conditions. *See, e.g.*, DCD Section 9.1.3.4.3.4. CASE ignores these design features of the Turkey Point 6 and 7 units.

CASE claims that the potential occurrence of a station blackout means that its "contentions on emergency planning and evacuation should be heard in full." CASE's Filing at 23. CASE provides no basis for this conclusory claim. The claim is not accompanied by expert or factual support, and does not identify any aspect of the

Application that CASE claims to be deficient. Therefore, it must be rejected as failing to meet the requirements of 10 C.F.R. § 2.309 (f)(1)(ii), (v) and (vi).

3. The Claim that the 10-Mile EPZ is Inadequate Does not Raise an Admissible Contention

In a rambling exposition ranging from pages 28 through 36 of its Filing, CASE appears to argue that the 10-mile plume exposure pathway EPZ has been proven inadequate by the Fukushima accident and must be expanded to 50 miles. CASE argues:

> No discussion or information is presented in the FPL COL for evacuation of the population beyond 10 miles. The so called "Shadow Evacuation" area is not mentioned. The events at Fukushima make this omission very poignant and prescient and present a clear lesson for evacuation planners; it must be factored in.

CASE's Filing at 28. The short answer to this long argument, which repeats many of the allegations made earlier in the Filing, is that the 10-mile plume exposure pathway EPZ is set by the NRC regulations and cannot be challenged in a licensing proceeding. 10 C.F.R. § 2.335(a). Therefore, the Application's failure to discuss evacuation beyond a 10 mile radius of the Turkey Point site is not a deficiency, and CASE's allegations do not give rise to an admissible contention.[11]

[11] CASE is also in error when it claims that "shadow evacuation" is not mentioned in the Turkey Point 6 and 7 Emergency Response Plan. The Evacuation Time Estimate (Supplement 1 to the Emergency Response Plan) contains a thorough discussion of the shadow evacuation that can be anticipated in the event of a radiological emergency at the plant and has an entire section (Section 7.1) devoted to the subject. As the Board has ruled, "[a] contention of omission may be summarily rejected as inadmissible if (1) there is no requirement to address the topic allegedly omitted from the application, or (2) the topic that allegedly is omitted is, in fact, included in the application." LBP-11-06 at 96, *dismissing* CASE proposed Contention 4 and *citing USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 456 (2006). The same result should obtain here.

C. "Amended" Contention 5 Is Inadmissible

CASE's "Amended" Contention 5 greatly expands the length of the original contention. *Compare* CASE's Filing at 37-52 *with* CASE's Petition at 33-36. CASE's "Amended" Contention 5, however, adds nothing of substance to the original contention, which was flatly rejected by the Board because the Application contains an analysis of the potential maximum sea level rise and the units are designed to withstand such a rise, and the analysis was never challenged by CASE. LBP-11-06 at 98-99. The Board wrote: "Because Contention 5 erroneously asserts that FPL's COLA does not address sea level rise, and because it fails directly to controvert FPL's sea level rise analysis, we conclude Contention 5 is inadmissible for failing to raise a genuine dispute of material fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi)." *Id.* at 99.

The same conclusion applies to "Amended" Contention 5. For all its prolixity, the new contention still does not controvert the sea level rise analysis in the Application, nor does it dispute the adequacy of FPL's design. Shorn of its rhetoric, Amended Contention 5 differs from the earlier version only in asserting that unnamed scientists are recommending that coastal installations "prepare for more sea level rise in the next century than FPL has estimated" (CASE's Filing at 48) and questioning whether, even though Turkey Point Units 3 and 4 are built 20 feet above sea level to protect against flooding and extreme storm surges, "is 20 feet high enough to assure that Turkey Point 3 & 4 will not be taken out and create problems for Turkey Point 6 & 7." *Id.* at 49. The Board has ruled that broad, vague, and unsupported claims, offered without factual or expert support and not directed at any specific portion of the Application, do not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi) and do not give rise to an admissible contention. "As the

Commission has admonished, '[a] petitioner's issue will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.' *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc. Jersey Central Power & Light Co. & Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000))." LBP-11-06 at 117.[12]

CONCLUSION

While invoking various aspects of the tragic events at the Fukushima Daiichi plant, CASE's Filing has provided no link between those events and any alleged shortcomings in the Application. Moreover, CASE's Filing is deficient, both procedurally and substantively. For those reasons, the "amended" contentions it propounds must be rejected.

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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[12] Again, CASE fails to explain why these allegations constitute new information. Indeed, in the Comanche Peak 3 and 4 COL proceeding, the intervenors raised the potential interaction between existing Units 1 and 2 and proposed Units 3 and 4 in their petition to intervene. *See Luminant Generation Company, LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), Memorandum and Order (Ruling on Standing and Contentions of Petitioners, and Other Pending Matters), LBP-09-17, 70 NRC 311, 365 (2009). CASE could have done the same when it filed its original Petition.

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May 9, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light's Response Opposing Admission of CASE's Late Filed Contentions" were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 9th day of May, 2011.

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