UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of FLORIDA POWER & LIGHT COMPANY (Turkey Point Units 6 and 7)	Docket Nos. 52-040-COL and 52-041-COL ASLBP No. 10-903-02-COL-BD01 September 21, 2011

MEMORANDUM AND ORDER
(Denying CASE's Motion to Reconsider Rejection of Amended Contentions and to Admit Two Newly Proffered Contentions, and Denying FPL's Request to Impose Remedial Measures on CASE)

Intervenor Citizens Allied for Safe Energy, Inc. (CASE) filed a motion dated August 11, 2011,[1] asking this Board (1) to reconsider its decision of June 29, 2011[2] denying CASE's request to admit three amended contentions that were based, in part, on the recent events at Fukushima, Japan, and (2) to admit two newly proffered contentions based on recommendations made by the NRC's Near-Term Task Force on the events at Fukushima. In its response opposing CASE's motion,[3] Florida Power & Light Company (FPL) asks this Board to impose remedial measures on CASE to promote a higher degree of compliance with

[1] [CASE] Motion for Reconsideration of Amended Contentions 1, 2 and 5 And New Contentions Following Fukushima Near-Term Task Force Recommendations (filed Aug. 12, 2011, dated Aug. 11, 2011) [hereinafter CASE Motion].

[2] LBP-11-15, 73 NRC __ (slip op.) (June 29, 2011).

[3] [FPL's] Response Opposing CASE's Motion for Reconsideration and CASE's Proffered New Contentions (Aug. 20, 2011) [hereinafter FPL Response].

Commission regulations governing this adjudicative proceeding. For the reasons discussed below, we deny CASE's motion,[4] and we deny FPL's request.

ANALYSIS

I. CASE'S REQUEST TO RECONSIDER AMENDED CONTENTIONS 1, 2, AND 5 LACKS MERIT

A. CASE's Reconsideration Motion is Untimely, and It Fails To Demonstrate that It Satisfies the Stringent Reconsideration Standards in 10 C.F.R. § 2.323(e)

On June 29, 2011, this Board issued a decision (supra note 2) denying CASE's request to admit newly proffered Contentions 1, 2, and 5, which CASE had amended based on the recent events at the Fukushima Daiichi Nuclear Power Plant in Japan. In its current filing, CASE "mo[ves] for reconsideration of amended Contentions 1, 2 and 5." CASE Motion at 1.

[4] On August 11, 2011, because it purportedly had technical difficulty connecting to the NRC's e-filing system, CASE filed an unopposed motion requesting a one-day extension of time ─ from August 11, 2011 to August 12, 2011 ─ to file the motion under review. See [CASE] Motion Requesting a One Day Filing Delay for a Filing Related to the Fukushima Task Force Report (Aug. 11, 2011). This Board granted the extension. See Licensing Board Order (Granting Time Extension) (Aug. 12, 2011) (unpublished).

Four days later, on August 16 ─ without seeking leave from this Board and without prior consultation with the other parties ─ CASE filed a document dated August 11 bearing the same title as the original August 11 motion. In a separate e-mail forwarding the document to the Board and the parties, CASE made the following representation: "Except for the addition of page numbers, no information has been added or deleted. Words, sentences, and paragraphs have been correctly arranged with some spelling corrections." We have examined the August 16 filing, and we conclude that the differences between it and the original filing are far too extensive and significant to permit CASE's unauthorized attempt to substitute the revised version for the original. See FPL Response at 1 n.1 (describing CASE's August 16 filing as "late, unauthorized, and constitut[ing] an improper attempt to covertly modify the text of a submitted pleading"). We therefore decline to consider CASE's revised pleading. In the future, if CASE wishes belatedly to submit corrections or changes to a pleading, it must, consistent with our procedural rules, file a motion seeking permission from this Board, and the motion must include a certification that CASE "has made a sincere effort to contact other parties . . . and resolve the issue(s) raised in the motion." 10 C.F.R. § 2.323(b).

We summarily deny CASE's reconsideration motion for several reasons.[5] First, CASE exceeded, by more than thirty days and without explanation or permission, the regulatory deadline for filing a motion for reconsideration. See 10 C.F.R. § 2.323(e) (motions for reconsideration "must be filed within ten (10) days of the action for which reconsideration is requested").[6] Second, CASE failed to address the stringent standards for granting reconsideration, much less attempt to demonstrate that those standards are satisfied here. See id. (a motion for reconsideration "may not be filed except . . . upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision . . . that renders

[5] FPL construes CASE's August 12 filing as a motion to reconsider this Board's June 29 rejection of CASE's amended Contentions 1, 2, and 5, and it opposes the motion on that basis. See FPL Response at 2-13. Given that CASE itself characterizes its filing, in part, as a "Motion for Reconsideration of Amended Contentions 1, 2 and 5" (CASE Motion at 1), we, like FPL, also construe CASE's August 12 filing as a motion for reconsideration. CASE cannot fairly be heard to claim it did not understand the consequence of characterizing its filing as a reconsideration motion, because in this Board's June 29 decision rejecting CASE's amended contentions, we explicitly identified 10 C.F.R. § 2.323(e) as the regulation that governs reconsideration motions, and we discussed its time limit and its stringent standards. See LBP-11-15, 73 NRC at __ (slip op. at 7 n.16). Accordingly, although we hold CASE to less rigid pleading standards than we would ordinarily apply to litigants who are represented by counsel (see, e.g., Pub. Serv. Elec. & Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973)), in the present circumstances, that principle provides no basis for us to ignore the plain language of CASE's motion. See Brazil v. U.S. Dep't of Navy, 66 F.3d 193, 199 (9th Cir. 1995) ("Although a pro se litigant . . . may be entitled to great leeway when [a tribunal] construes his pleadings, those pleadings nonetheless must meet with some minimum threshold in providing a defendant with notice [of the issue to be litigated].").

We nevertheless note that the NRC Staff treated CASE's motion as a request for admission of newly proffered Contentions 1, 2, and 5 as amended by recommendations made by the Near-Term Task Force. See NRC Staff Answer to "[CASE] Motion for Reconsideration of Amended Contention 1, 2 and 5 and New Contentions Following Fukushima Near-Term Task Force Recommendations" (Sept. 6, 2011) at 3 n.5, 4 [hereinafter NRC Staff Answer]. We will therefore also analyze the admissibility of Contentions 1, 2, and 5 pursuant to 10 C.F.R. § 2.309 as if they were newly proffered, amended contentions. See infra Part I.B.

[6] As stated supra note 4, based on CASE's representation that it had experienced technical difficulties connecting to the NRC's e-filing system, this Board granted CASE's request for a one-day extension of time, to August 12, 2011, to file the instant motion. Contrary to CASE's apparent understanding (CASE Motion at 2), the granting of its extension request did not inoculate the August 12 filing from timeliness challenges that are unrelated to the e-filing difficulties upon which the extension was based.

the decision invalid"). Third, we conclude that the standards in section 2.323(e) for granting reconsideration are not satisfied. Specifically, it appears to us that the recommendations in the Task Force Report are either unrelated to, or inconsistent with, the claims advanced in Contentions 1, 2, and 5 and, accordingly, we do not discern "a clear and material error [in LBP-11-15] . . . that renders [our] decision invalid . . . ." Id.; see FPL Response at 6.

We therefore deny CASE's request to reconsider our rejection of amended Contentions 1, 2, and 5.[7]

B. Amended Contentions 1, 2, and 5 are Not Rendered Admissible by Recommendations in the Near-Term Task Force Report In Any Event

Even if we were to treat CASE's motion as one that seeks to admit Contentions 1, 2, and 5 as amended in light of the Near-Term Task Force recommendations (but see supra note 5), we would still deny it, because the contentions fail to satisfy the admissibility standards in 10 C.F.R. § 2.309.[8]

[7] On August 29, 2011, CASE, without leave of this Board, filed a reply to FPL's opposition to its motion for reconsideration. See [CASE] Response to [FPL's] Response Opposing CASE's Motion for Reconsideration and CASE's Proffered New Contentions at 4-9 (Aug. 29, 2011). CASE's filing was in derogation of this agency's governing regulation, which forbids a moving party to reply to a litigant's response "except as permitted by the . . . [Licensing Board]. . . . [and] only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply." 10 C.F.R. § 2.323(c). On September 2, 2011, CASE — having been informed that FPL was considering filing a motion to strike CASE's reply as an impermissible filing — moved, without apparent opposition, to withdraw that portion of its reply that addresses Contentions 1, 2, and 5. See [CASE] Motion Withdrawing a Portion of CASE Response to [FPL's] Response Opposing CASE's Motion for Reconsideration and CASE's Proffered New Contentions (Sept. 2, 2011) at 2. We grant CASE's motion.

[8] For a discussion of the standards governing the admissibility of newly proffered contentions, see LBP-11-15, 73 NRC at __-__ (slip op. at 3-6). See also LBP-11-06, 73 NRC at __-__ (slip op. at 8-10) (discussing multi-factor contention-admissibility test in section 2.309(f)(1)).

1. Contention 1 alleges that the "FPL [combined license (COL) application] for the proposed Turkey Point nuclear reactors 6 & 7 [fails] to provide for an adequate public safety plan." CASE Motion at 4. In support of this contention, CASE advances two principal arguments: (1) FPL's application contains inadequate evacuation plans, and (2) FPL's application contains an inadequate mechanism for distribution of potassium iodide (KI). See id. at 5.

Regarding its argument underlying Contention 1 that challenges FPL's evacuation plans, CASE appears to rely on the Task Force's recommendation that station blackout regulations in 10 C.F.R. § 50.63 be strengthened. See CASE Motion at 8-9. CASE's reliance on that recommendation is misplaced. As FPL correctly states, "[t]he Task Force's discussion of station blackout makes no reference to evacuation issues, nor does it in any way suggest that in the event of a station blackout a potential evacuation of Turkey Point Units 6 & 7 . . . would be impeded." FPL Response at 7. We therefore conclude that the aspect of Contention 1 challenging FPL's evacuation plans continues to be inadmissible, because it fails to "provide sufficient information to show that a genuine dispute exists with [FPL's COL application] on a material issue of law or fact." 10 C.F.R. § 2.309(f)(1)(vi).

Regarding CASE's argument in support of Contention 1 that challenges FPL's plans for the distribution of KI, CASE relies on the Task Force's recommendation that the NRC Staff "[c]onduct training, in coordination with the appropriate Federal partners, on radiation, radiation safety, and the appropriate use of KI in the local community." CASE Motion at 7 (quoting U.S. Nuclear Regulatory Commission, Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident at 62 (July 12, 2011), available at http://pbadupws.nrc.gov/docs/ML1118/ML111861807.pdf [hereinafter Task Force Report]). CASE's discussion of the Task Force's recommendation is limited to the following (id.):

> What are we missing? Apparently, on one hand, the [Task Force Report] says that the NRC must get more involved with matters beyond the plants and on the other it passes off the details of evacuation and [KI] distribution to others. A review of the many statements and points of information provided by CASE in these submittals will highlight the failures and shortcomings at every turn in these concerns.

Contrary to CASE's claim, the "statements and points of information . . . in [its] submittals" (id.) fall far short of demonstrating that Contention 1 is admissible. In particular, CASE fails to explain how the Task Force's training recommendation supports an assertion that the mechanism for distributing KI following a radiological release at Turkey Point is inadequate. This failure is not rectified by CASE's attachment to its motion (Attachment 1), which allegedly is a summary of a local meeting that occurred on August 4, 2011 to discuss the Miami-Dade County Radiological Emergency Plan. Neither Attachment 1, nor CASE's discussion of it (see CASE Motion at 6), identifies any regulatory requirement that FPL's COL application fails to satisfy with respect to the distribution of KI, contrary to 10 C.F.R. § 2.309(f)(1)(vi). Nor does CASE raise specific challenges to those portions of FPL's COL application pertaining to the distribution of KI, contrary to 10 C.F.R. § 2.309(f)(1)(vi). Finally, CASE fails to "provide sufficient information to show that a genuine dispute exists with [FPL's COL application] on a material issue of law or fact" pertaining to the distribution of KI. 10 C.F.R. § 2.309(f)(1)(vi). See FPL Response at 8-9 & n.9; NRC Staff Answer at 8-9.

In short, nothing identified by CASE in the Task Force Report renders Contention 1 admissible.

2. Contention 2 alleges that the "FPL COL [application] for the proposed Turkey Point nuclear reactors 6 & 7 [fails] to provide for the safe and orderly evacuation of the population during or following a nuclear event (unusual nuclear occurance [sic])." CASE Motion at 4. Although CASE asserts that recommendations in the Task Force Report render Contention 2 admissible (id. at 2), CASE fails to identify anything in the Task Force Report

"show[ing] that a genuine dispute exists with [FPL's COL application] on a material issue of law or fact" pertaining to safe evacuation of the population during or following a nuclear event. 10 C.F.R. § 2.309(f)(1)(vi).[9]

First, contrary to CASE (CASE Motion at 11) (quoting Task Force Report at 60), the following statement in the Task Force Report does not render Contention 2 admissible: "[Evacuation time estimates (ETEs)] are currently recalculated when the population around a nuclear plant either increases or decreases significantly." To the extent CASE relies on this statement to complain that FPL's COL application fails to take into account population growth, this is an argument that is substantially identical to an argument CASE previously advanced, which this Board previously rejected. See LBP-11-06, 73 NRC at __-__ (slip op. at 90-91). CASE is precluded from resurrecting an argument that is materially identical to its earlier argument. See 10 C.F.R. § 2.309(c), (f)(2); Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-08, 67 NRC 193, 200-01 (2008) (rejecting new contention duplicating arguments in previously rejected contention due to failure to make adequate showing under NRC's new contention rules).

Nor, contrary to CASE, does the following statement in the Task Force Report render Contention 2 admissible: "The Task Force acknowledges that every situation will differ, so detailed preplanning in this area [i.e., emergency planning] is not plausible." CASE Motion at 16 (quoting Task Force Report at 61) (emphasis omitted). Relying on this statement, CASE states:

[9] Curiously, CASE begins its argument in support of Contention 2 with the following quote from the Task Force Report: "The current regulatory approach for the evaluation of offsite EP [emergency preparedness] following a natural disaster is robust and has proven its effectiveness following recent hurricanes, including Hurricane Katrina." CASE Motion at 10 (quoting Task Force Report at 60). CASE then attacks the Report, stating that "this writer can testify that preparing for a hurricane has no comparison to preparing for a nuclear event. . . . Any planning order that adopts that premise will not be worth the paper on which it is written." Id. (emphasis omitted). CASE's criticism of views expressed in the Task Force Report is, of course, quite irrelevant to the issue of whether Contention 2, as amended by new information in that Report, satisfies the admissibility requirements in section 2.309(f)(1).

"Exactly! Which is why not only should Turkey Point 6 & 7 not be built at Turkey Point, 3 & 4 should not be there either." Id. But that statement does not "show that a genuine dispute exists with [FPL] on a material issue of law or fact" (10 C.F.R. § 2.309(f)(1)(vi)), nor does it reference "specific portions of [FPL's] application . . . that [CASE] disputes and the supporting reasons for each dispute . . . ." Id. Accordingly, that statement fails to render Contention 2 admissible.[10]

In short, with regard to Contention 2, CASE points to nothing in the Near-Term Task Force Report that is new and materially different from information previously advanced by, or available to, CASE, nor does CASE provide sufficient information to show a genuine dispute with FPL's application on a material issue of law or fact. See FPL Response at 9-11; NRC Answer at 10-15.

We thus conclude that Contention 2, as amended, is inadmissible.

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[10] CASE relies on the above statement by quoting it out of context. Read in context, the statement provides as follows (Task Force Report at 61):

> While the U.S. EP framework has always noted that the plume exposure pathway [Emergency Planning Zone (EPZ)] provides a basis for expansion, insights from real-world implementation at Fukushima, including the realities of multiunit events, might further enhance U.S. preparedness for such an event. The Task Force acknowledges that every situation will differ, so detailed preplanning in this area is not plausible. As information and insights emerge about the challenges faced by Japanese officials while implementing protective actions around Fukushima, the NRC and its partners should evaluate those insights to identify enhancements to the decisionmaking framework in the United States.

As the NRC Staff correctly observes, "[r]ather than indicating that EP is impossible as CASE asserts, the Task Force Report indicates only that EP decisionmaking might be enhanced." NRC Staff Answer at 14. We take this opportunity to caution CASE against relying on quoted passages it has taken out of context in a manner that alters a passage's meaning. See infra note 11 (discussing a party's obligation of candor under 10 C.F.R. § 2.323(d)).

3. Contention 5 alleges that the "FPL COL [application] for the proposed Turkey Point nuclear reactors 6 & 7 . . . [fails] to consider or incorporate any scientifically valid projection for sea level rise and climate change through the end of this century and beyond." CASE Motion at 4.

On its face, Contention 5 is premised on the alleged absence in the COL application of considerations of sea level rise and climate change. Although CASE asserts that recommendations in the Task Force Report render Contention 5 admissible (CASE Motion at 2), this assertion is fatally undercut by CASE's concession that "sea level rise and climate change are not mentioned once [in the Task Force Report]." Id. at 16. Under these circumstances, we agree with FPL (FPL Response at 12) that "[i]t defies comprehension how CASE could invoke the Task Force Report in support of its motion for reconsideration of Amended Contention 5, when the topic of the contention was not even discussed in the Report." Accord NRC Staff Answer at 15-16.

We summarily reject Contention 5.[11]

II. CASE'S REQUEST TO ADMIT NEWLY PROFFERED CONTENTIONS 9 AND 10 BASED ON THE NEAR-TERM TASK FORCE RECOMMENDATIONS LACKS MERIT

CASE also seeks admission of newly proffered Contentions 9 and 10, which relate to the Near-Term Task Force recommendations. We address each contention's admissibility in turn.

A. Newly Proffered Contention 9 Is Not Admissible

In Contention 9, CASE seeks suspension of "*all*" new reactor licensing "until the NRC Board of Commissioners accepts the Task Force Report and all near-term and longer term

[11] FPL characterizes as "frivolous" CASE's renewed effort to admit Contention 5 based on a Task Force Report that fails to mention sea level rise or climate change. See FPL Response at 13. We agree, and we refer CASE to section 2.323(d) of Commission regulations, which requires parties ─ regardless of whether they are pro se ─ to ensure their filings have a sound basis in fact and law. Failure to comply with this regulation "may result in appropriate sanctions, including striking a matter from the record or, in extreme circumstances, dismissal of the party." 10 C.F.R. § 2.323(d); see also infra Part III.

recommendations are fully defined and impelmented [sic]." CASE Motion at 4-5 (emphasis added). In support of this contention, CASE relies on certain Task Force statements to surmise that "[a] new reactor licensing process based on the existing regulations is, in the Task Force's view, inadequate and . . . all new licenses should be subjected to the new procedures and regulations once they are established." Id. at 21.

FPL and the NRC Staff argue that Contention 9 is inadmissible. See FPL Response at 14-15; NRC Staff Answer at 16-17. We agree that Contention 9 is inadmissible.

This Board's adjudicative authority is limited solely to *this* proceeding. CASE's request in Contention 9 that we suspend "all pending licensure procedures for all unlicensed nuclear reactors" (CASE Motion at 18) is beyond the scope of our authority and, moreover, falls outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

Even if CASE had limited its suspension request solely to this proceeding, we would still deny Contention 9. The Commission repeatedly has instructed that it considers "suspension of licensing proceedings a drastic action that is not warranted absent immediate threats to public health and safety or other compelling reason."[12] Here, CASE grounds its suspension request on a patchwork of Task Force statements that, according to CASE, "speak directly to this [c]ontention." CASE Motion at 18. We have reviewed the Task Force statements cited by CASE, and we conclude that none of them shows the existence of a "genuine dispute" (10 C.F.R. § 2.309(f)(1)(vi)) as to whether the Staff's continuing review of FPL's COL application will present an "immediate threat[] to public health and safety." Callaway, CLI-11-05, 74 NRC at __ (slip op. at 19). Rather, in our view, the following Task Force statement ─ which CASE imprudently failed to include in its discussion of Contention 9 ─ compels the rejection of

[12] Union Elec. Co. d/b/a/ Ameren Missouri (Callaway Plant, Unit 2) et al., CLI-11-05, 74 NRC __, __ (slip op. at 19) (Sept. 9, 2011) (internal quotation omitted) (quoting AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station) et al., CLI-08-23, 68 NRC 461, 484 (2008)).

Contention 9: "continued operation and continued licensing activities do not pose an imminent risk to public health and safety." See Task Force Report at vii; accord id. at 18, 73.

Our rejection of Contention 9 also finds strong support in Callaway, where the Commission recently considered petitions seeking, inter alia, to suspend all COL licensing activities, including those for Turkey Point Units 6 and 7. See CLI-11-05, 74 NRC at __ & n.1 (slip op. at 3 & n.1). The petitioners there sought "relief in light of the recent events at the Fukushima Daiichi Nuclear Power Station, following the March 11, 2011, earthquake and tsunami, to ensure the consideration in these matters of the safety and environmental implications of the Fukushima events." Id. at __ (slip op. at 3). The Commission denied the petitions, concluding that: (1) "nothing learned to date requires immediate cessation of our review of license applications or proposed reactor designs" (id. at __ (slip op. at 22)); (2) the petitions "fail[] to identify specific problems with any captioned COL application . . . . This lack of a specific link between the relief requested and the particulars of the individual application[] makes it difficult to conclude that moving forward with any individual licensing decision or proceeding will have a negative impact on public health and safety" (id.); (3) "[p]etitioners have not shown that any of the license applications would pose an immediate threat to public health and safety, if licensing activities are continued. . . . [L]icensing decisions for pending COL applications are months away and, in many cases, years away and fuel loading into completed reactors is still further away; continuation of these reviews poses no immediate threat to public health and safety" (id. at __ (slip op. at 23)); (4) "[o]ur regulatory processes provide sufficient time and avenues to ensure that design certifications and COLs satisfy any Commission-directed changes before any new power plant commences operations" (id. at __ (slip op. at 24)); and (5) "it is in the public interest that adjudicatory proceedings (as applicable) and licensing reviews continue. . . . [W]e have 'a responsibility to go forward with other regulatory and enforcement activities even while' the agency conducts its review. To the extent that our

comprehensive review leads to new rules applicable to any pending application, we have sufficient authority and time to apply them to any new license that may be issued." (id. at __-__ (slip op. at 25-26) (footnote omitted)). These conclusions apply with equal force to CASE's Contention 9.[13]

For the foregoing reasons, Contention 9 is not admissible.

B. Newly Proffered Contention 10 Is Not Admissible

Contention 10 asks the Commission to devise and implement new restrictions to bar "nuclear industry firms and representatives from participation in staff deliberations, decisions and actions." CASE Motion at 5. CASE alleges "that there is a close relationshiep [sic] between [FPL] and the NRC Staff. Responses to petitions from the two entities arrive simultaneously and are frequently almost verbatim copies of each other." Id. at 22. CASE cites an article attributing the Fukushima event to collusion between the nuclear industry and the Japanese government, and it also says the NRC ought to be more accountable and aligned with the U.S. Department of Energy to determine "the best balance of energy sources for any given situation." Id. at 23.

FPL and the NRC Staff argue that Contention 10 is inadmissible. See FPL Response at 15-16; NRC Staff Answer at 18-20. We agree that Contention 10 is inadmissible.

The NRC and the Energy Research and Development Administration (ERDA) were established as the successor agencies to the Atomic Energy Commission (AEC) under the Energy Reorganization Act of 1974, and ERDA was later absorbed into the Department of Energy under the Department of Energy Organization Act in 1977. This structure gave ERDA

[13] In CLI-11-05, the Commission recognized that, "[t]o the extent that the Fukushima events provide the basis for contentions appropriate for litigation in individual proceedings, our procedural rules contain ample provisions through which litigants may seek admission of new or amended contentions . . . ." CLI-11-05, 74 NRC at __ (slip op. at 35). As shown above in text, however, CASE simply fails to demonstrate that Contention 9 satisfies the admissibility requirements in section 2.309(f)(1).

(and later the Department of Energy) the AEC's former responsibility of promoting nuclear energy, while entrusting the AEC's other function, ensuring nuclear energy's safe use, to the NRC. See U.S. Dep't of Energy (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 607 (2009). CASE's preference that the NRC reunite with the Department of Energy is a concern only addressable by Congress and is thus inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) as outside the scope of this proceeding. Moreover, such a concern with the statutory structure of this agency does not raise a dispute of law or fact with FPL's COL application that is material to the agency's licensing decision and is thus inadmissible under subsections 2.309(f)(1)(iv) and (vi).

Similarly, the remedy for CASE's request that the Commission erect stronger barriers than those that currently exist between the NRC Staff and those the Staff regulates lies not with this Board but rather with a rulemaking petition before the Commission. See 10 C.F.R. § 2.335(a) (prohibiting admission of contentions challenging NRC rules and regulations); id. § 2.802 (outlining the procedures for rulemaking petitions). This aspect of Contention 10 is outside the scope of this proceeding, is immaterial to the NRC's licensing decision in the proceeding, and fails to raise a genuine dispute of material fact or law with FPL's COL application. Accordingly, it is inadmissible under subsections 2.309(f)(1)(iii), (iv), and (vi).

III. FPL'S REQUEST TO IMPOSE REMEDIAL MEASURES ON CASE TO BRING FUTURE FILINGS INTO COMPLIANCE WITH COMMISSION REQUIREMENTS IS DENIED

After identifying "numerous occasions since the institution of this proceeding [that] CASE has acted in a manner inconsistent with the Commission regulations and this Board's directives" (FPL Response at 16),[14] FPL urges this Board to exercise its authority "to bring CASE into

[14] The improprieties cited by FPL include the following (see FPL Response at 16-17): (1) CASE sought to replace its initial Petition to Intervene with a revised petition, ostensibly to correct errors in the original petition, but the revised petition included an unacknowledged new contention; (2) CASE filed a frivolous motion for reconsideration of the repeated dismissal of

compliance with the rules by which all parties to NRC proceedings . . . must abide." Id. at 18. For example, states FPL, this Board could (1) require CASE to submit all future "proposed filings to a licensed attorney for review prior to filing," or (2) require CASE's representative to accompany all future filings with a sworn statement "that CASE has reviewed, understood, and complied with all NRC procedural requirements." See id.

We decline *at this juncture* to impose such remedial measures upon CASE. Although FPL is correct in observing that CASE's repeated failures to comply with Commission requirements are "imposing . . . [a] burden on the Board and the other parties" (FPL Response at 17), we have seen no evidence that CASE's failures evince a lack of good faith. Rather, CASE's improprieties appear to be caused by a lack of familiarity with Commission rules, and a failure conscientiously to conduct a meticulous review of pleadings before they are filed. For now, we do not believe that the burdens imposed on this Board and the parties as a result of CASE's pro se status are so onerous as to require the corrective measures suggested by FPL.

We nevertheless admonish CASE to subject its future pleadings to more thorough and painstaking review prior to filing them, so that when they are docketed in the first instance, they appear more in the nature of a finished product rather than an unreviewed draft. We also emphasize that, although we hold pro se litigants to less stringent standards when we construe their pleadings (see supra note 5), that principle does not give such litigants license to disregard procedural rules that are applicable to all parties and designed to promote efficient adjudication. See American Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir.

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three of its contentions, despite language in a Board decision that precluded such a motion; (3) CASE raised two proposed new contentions without seeking leave of the Board and without addressing the timeliness directives with respect to the late-filed contentions; (4) CASE has filed a pleading that was "rife with typographical errors and garbled sentences and paragraphs"; (5) CASE filed a late and unauthorized version of its original motion that included substantial modifications to the original text; and (6) CASE continues to fail to comply with Commission regulations governing motion practice.

2000) ("a pro se litigant is not excused from knowing the most basic pleading requirements"); Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997) (recognizing the rule that "pro se litigants are not excused from following court rules").

CONCLUSION

For the foregoing reasons, we: (1) deny CASE's motion for reconsideration of amended Contentions 1, 2, and 5 (supra Part I); (2) deny CASE's motion for admission of newly proffered Contentions 9 and 10 (supra Part II); (3) decline to consider CASE's pleading dated August 11, 2011 and filed on August 16, 2011 (supra note 4); (4) grant CASE's motion to withdraw that portion of its August 29, 2011 pleading that addresses Contentions 1, 2, and 5 (supra note 7); and (5) deny FPL's request to impose remedial measures on CASE (supra Part III).

This Memorandum and Order is subject to interlocutory review in accordance with the provisions of 10 C.F.R. § 2.341(f)(2). A petition for review that meets the requirements of section 2.341(f)(2) must be filed within fifteen (15) days of service of this Memorandum and Order. See 10 C.F.R. § 2.341(b)(1).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

Dr. William C. Burnett
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 21, 2011[15]

[15] Copies of this Memorandum and Order were sent this date by the agency's e-filing system to: (1) counsel for Joint Intervenors; (2) counsel for Pinecrest; (3) the representative for CASE; (4) counsel for FPL; and (5) counsel for the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040 and 52-041-COL
(Juno Beach, Florida)	)	
	)	
(Turkey Point, Units 6 & 7)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Denying CASE's Motion to Reconsider Rejection of Amended Contentions and to Admit Two Newly Proffered Contentions, and Denying FPL's Request to Impose Remedial Measures on CASE) have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

E. Roy Hawkens
Administrative Judge, Chair
E-mail: roy.hawkens@nrc.gov

Dr. Michael F. Kennedy
Administrative Judge
E-mail: michael.kennedy@nrc.gov

Dr. William C. Burnett
Administrative Judge
E-mail: william.burnett2@nrc.gov

Joshua Kirstein, Law Clerk, ASLBP
E-mail: josh.kirstein@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4M
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Marian Zobler, Esq.
Sara Kirkwood, Esq.
Patrick Moulding, Esq.
Sara Price, Esq.
Joseph Gillman, Paralegal
Karin Francis, Paralegal
E-mail: marian.zobler@nrc.gov;
robert.weisman@nrc.gov;
sara.kirkwood@nrc.gov;
Patrick.moulding@nrc.gov
sara.price@nrc.gov ;
joseph.gilman@nrc.gov;
karin.francis@nrc.gov

OGC Mail Center: Members of this office have received a copy of this filing by EIE service.

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

DOCKET NO. 52-040 and 52-041-COL
MEMORANDUM AND ORDER (Denying CASE's Motion to Reconsider Rejection of Amended Contentions and to Admit Two Newly Proffered Contentions, and Denying FPL's Request to Impose Remedial Measures on CASE)

Counsel for the Applicant
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Alison M. Crane, Esq.
John H. O'Neill, Esq.
Matias F. Travieso-Diaz, Esq.
Maria Webb, Paralegal
E-mail: alison.crane@pillsburylaw.com
John.ONeill@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com
maria.webb@pillsburylaw.com

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Rd. SE
Atlanta, GA 30322
Lawrence D. Sanders, Esq.
Mindy Goldstein, Esq.
E-mail: lsande3@emory.edu
E-mail: magolds@emory.edu

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Everglades Law Center, Inc.
3305 College Avenue
Ft. Lauderdale, Florida 33314
Richard Grosso, Esq.
E-Mail: richard@evergladeslaw.org

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Mitchell S. Ross
Vice President & General Counsel – Nuclear
E-mail: mitch.ross@fpl.com
James Petro, Esq.
Senior Attorney
E-mail: james.petro@fpl.com

Florida Power & Light Company
801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
Mitchell S. Ross
E-mail: steven.hamrick@fpl.com;
Mitchell.ross@fpl.com

Counsel for the Village of Pinecrest
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
William C. Garner, Esq.
Gregory T. Stewart, Esq.
E-mail: bgarner@ngnlaw.com
E-mail: gstewart@ngnlaw.com

(CASE) Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, FL 33176
Barry J. White
E-mail: bwtamia@bellsouth.net

[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of September 2011