November 7, 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 COMPANY'S RESPONSE OPPOSING SACE'S MOTION TO AMEND LATE FILED CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), Applicant Florida Power & Light Company ("FPL") hereby responds to and opposes the motion by intervenors Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association ("Joint Intervenors")[1] to supplement the basis for their late filed contention on the alleged safety and environmental implications of the NRC Task Force Report on the Fukushima-Daiichi accident.[2]

The SACE Contention reads:

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[1] Motion for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Oct. 28, 2011) ("Motion").

[2] Attachment to Motion to Admit Contention to Address the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug.11, 2011) ("SACE Contention"). Although the SACE Contention is not identified in the Motion, it is apparent from the Motion's context that SACE is seeking to bolster the arguments it presented in support of the SACE Contention.

> The ER for Turkey Point Units 6 & 7 fails to satisfy the requirements of NEPA because it does not address the new and significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report. As required by NEPA and the NRC regulations, these implications must be addressed in the ER.

SACE Contention at 5.

As discussed in FPL's response to the SACE Contention, the contention should not be admitted because the motion seeking its admission was filed late and failed to meet the requirements for admission of late-filed contentions. In addition, the SACE Contention is inadmissible as a matter of law because it does not satisfy the admissibility requirements of 10 C.F.R. § 2.309(f)(1), and repeatedly challenges the Commission's regulations. *See* Florida Power & Light Company's Response Opposing Admission of SACE's and CASE's Late Filed Contentions (Sep. 6, 2011). Those arguments are incorporated by reference and will not be repeated here.[3]

In their Motion, Joint Intervenors seek to supplement the SACE Contention by asking the Atomic Safety and Licensing Board ("Board") herein to "consider the recent issuance of a directive by the Commissioners of the U.S. Nuclear Regulatory Commission ('NRC') to the NRC Staff, which requires the Staff to 'strive to complete and implement the lessons learned from the Fukushima accident within five years – by 2016.'" Motion at 1-2. According to the Joint Intervenors, "SRM/SECY-11-0124 provides further support, in addition to the language of the Task Force Report itself and the Declaration of Dr. Arjun

[3] The NRC Staff has also opposed admission of the SACE Contention. NRC Staff "Answer to 'Motion to Admit New Contention Regarding the Safety And Environmental Implications of the NRC Task Force Report on the Fukushima Dai-Ichi Accident' Filed by Citizens Allied for Safe Energy Inc. ('CASE') and NRC Staff Answer to 'Motion to Admit New Contention to Address the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident' Filed by Joint Intervenors" (Sep. 6, 2011).

Makhijani, for Intervenors' contention that the information set forth in the Task Force Report must be considered before a Combined License is issued for Turkey Point Units 6 and 7." *Id*. at 2.

FPL opposes the Motion on two grounds. *First*, SRM/SECY-11-0124 is not relevant to the SACE Contention; and *second*, the Motion is inconsistent with the findings of the Commission in its recent decision denying a motion by SACE and other intervenors in some twenty proceedings to suspend adjudicatory, licensing, and rulemaking activities, and requesting additional related relief, in those proceedings. *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC __ (Sep. 9, 2011) ("CLI-11-05").

DISCUSSION

A. SRM/SECY-11-0124 IS IRRELEVANT TO THE SACE MOTION

The Joint Intervenors argue that "[b]y ordering the Staff to adopt and implement numerous Task Force recommendations, including redefining what level of protection of public health and safety should be regarded as adequate, the Commission makes clear that it believes the lessons learned from the Fukushima accident have safety and environmental significance. See SRM/SECY-11-0124 at 2." Motion at 2.

The Motion mischaracterizes what the Commission ordered the Staff to do in SRM/SECY-11-0124. The Commission did not direct the Staff to redefine what level of protection of public health and safety should be regarded as adequate, nor expressed a belief that the lessons learned from the Fukushima accident "have safety or environmental significance." The Commission stated: "Concerning the *potential* to redefine what level

of protection of public health and safety should be regarded as adequate, the Commission reaffirms its guidance to the staff in the SRM on SECY-11-0093 with respect to Recommendation 1." Staff Requirements – SECY-11-0124 – Recommended Actions to be Taken Without Delay From the Near-Term Task Force Report (Oct. 18, 2011) at 2, emphasis added. The SRM on SECY-11-0093, in turn, ordered that "Recommendation 1 should be pursued independent of any activities associated with the review of the other Task Force recommendations. Therefore, the staff should provide the Commission with a separate notation vote paper within 18 months of the issuance of this SRM. This notation vote paper should provide options and a staff recommendation to disposition this Task Force recommendation." Staff Requirements – SECY-11-0093 – Near-Term Report and Recommendations for Agency Actions Following the Events in Japan (Aug. 19, 2011) at 2.[4] Thus, neither the SRM on SECY-11-0124 nor the SRM on SECY-11-0093 "redefin[ed] what level of protection of public health and safety should be regarded as adequate," as Joint Intervenors would have the Board believe, but merely directed the Staff to provide a separate recommendation on what to do about the "adequate level of protection" standard to the Commission eighteen months hence.[5] There is not even a hint in either SRM that the Commission concluded that the existing levels of protection of

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[4] Fukushima Task Force Recommendation 1 states: "The Task Force recommends establishing a logical, systematic, and coherent regulatory framework for adequate protection that appropriately balances defense-in-depth and risk considerations." Recommendations for Enhancing Reactor Safety in the 21st Century, The Near Term Task Force Review of Insights from the Fukushima Daiichi Accident (July 12, 2011) (ADAMS Accession No. ML111861807) ("Task Force Report") at 22. The Task Force observed that the framework it proposes would not create new requirements nor eliminate any current requirements, *id.* at 21, and that "a comprehensive reevaluation and restructuring of the regulatory framework would be no small feat," *id.* at 22.

[5] The words "environmental significance" are nowhere used in either SRM or in the Task Force Report.

public health and safety are inadequate or need to be redefined.[6] Therefore, the Commission's latest SRM is irrelevant to the Joint Intervenors' attempts to transmute the ongoing evaluations of the safety implications of the Fukushima Daiichi events into an admissible contention in this proceeding.[7]

B. JOINT INTERVENORS' INTERPRETATION OF SRM-11-0124 IS INCONSISTENT WITH THE RECENT COMMISSION DECISION IN CLI-11-05

The Joint Intervenors apparently interpret the Commission's directives to the Staff in SRM-11-0124 as somehow validating the claims in the SACE Contention that the Task Force Report's recommendations constitute "new and significant information" that must be analyzed under NEPA. That precise claim was rejected by the Commission in CLI-11-05, in response to the argument by SACE and other intervenors that a generic NEPA review must be conducted because the NRC had "'admitted' that it 'has new information that

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[6] The Task Force itself recognized that there is no urgency to refocusing the regulatory framework in the manner it described in Recommendation 1 because "continued operation and continuing licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security." *Id.* at vii,18.

[7] It is unclear whether, by referring to the Commission allegedly "ordering the Staff to adopt and implement numerous Task Force recommendations," the Motion is arguing that the Commission's other directives to the Staff in SRM/SECY-11-01124 (besides the above discussed statement related to Recommendation 1) also signify that the Commission "believes the lessons learned from the Fukushima accident have safety and environmental significance." If Joint Intervenors intend to make that argument, they again mischaracterize what the Commission did and the meaning of its actions. *First*, the Commission did not order the Staff to "adopt and implement" without further consideration the Task Force recommendations in areas like seismic and flooding vulnerabilities and station blackout. Rather, the Staff was directed to "provide the Commission with notation vote papers for Commission approval of the orders once the staff has engaged stakeholders and established the requisite technical bases and acceptance criteria" or, in the case of station blackout, to initiate a rulemaking proceeding through "advance notice of proposed rulemaking (ANPR) rather than a proposed rule." SRM/SECY-11-01124 at 2. The issuance of new or amended rules in these areas, if it occurs, is months or years away and is subject to the Commission's review and approval. The form of such rules, if and when they are issued, remains to be defined. *Second*, the Commission made no factual findings or other determinations in the SRM that could be construed as an acknowledgment that the lessons learned from Fukushima in these areas have "safety and environmental significance."

concededly could have a significant effect on its regulatory program and the outcome of its licensing decisions for individual reactors'." In CLI-11-05, the Commission wrote:

> This request is premature. Although the Task Force completed its review and provided its recommendations to us, the agency continues to evaluate the accident and its implications for U.S. facilities and the full picture of what happened at Fukushima is still far from clear. In short, we do not know today the full implications of the Japan events for U.S. facilities. Therefore, any generic NEPA duty—if one were appropriate at all—does not accrue now.
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> If, however, new and significant information comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, the agency will assess the significance of that information, as appropriate.
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> * * *
>
> To merit this additional review, information must be both "new" and "significant," and it must bear on the proposed action or its impacts. As we have explained, "[t]he new information must present 'a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.'" That is not the case here, given the current state of information available to us. For these reasons, we decline petitioners' request to commence a generic NEPA review today.

CLI-11-05, 74 NRC at __, slip op. at 30-31, footnote omitted. As the Commission ruled in CLI-11-05, no "new and significant" information has "come to light" that lends support to the SACE Contention, and the Motion points to none. Under the ruling in CLI-11-05, the SACE Contention must be rejected as premature and the Motion must be denied.

CONCLUSION

As other Boards have recently held, there has been no event that would trigger the potential need to perform further NEPA reviews in connection with reactor licensing proceedings. PPL Bell Bend, L.L.C. (*Bell Bend Nuclear Power Plant*), Memorandum and Order (Denying Motions to Reopen Closed Proceedings and Intervention Petition/Hearing Request as Premature), LBP-11-27, 74 NRC __ (Oct. 18, 2011), slip op. at 13-14; *NextEra*

Energy Seabrook, LLC (Seabrook Station, Unit 1), LBP-11-28, 74 NRC __ (Oct. 18, 2011), slip op. at 7-8. The Joint Intervenors have also failed to identify any events, specific to the Turkey Point Units 6 and 7 COLA, that would warrant consideration of the SACE Contention. Therefore, the Motion should be denied and the SACE Contention rejected. *See* Memorandum and Order (Denying CASE's Motion to Admit Newly Proffered Contentions), LBP-11-15, 73 NRC ___ (June 29, 2011), slip op. at 2.

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light Company's Response Opposing SACE's Motion to Amend Late Filed Contention" were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 7th day of November, 2011.

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