

August 3, 2012

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 and 52-041-COL  
 )  
(Turkey Point Units 6 and 7) )

NRC STAFF ANSWER TO CASE MOTION  
FOR LEAVE TO FILE A NEW CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the Staff of the Nuclear Regulatory Commission (Staff) herein responds to the “Citizens Allied for Safe Energy, Inc. [CASE] Motion For Leave To File A New Contention Concerning Temporary Storage And Ultimate Disposal Of Nuclear Waste At Turkey Point Nuclear Power Plant” (Motion) dated July 9, 2012.<sup>1</sup> The Motion raises a new contention based on the D.C. Circuit Court of Appeal’s June 8, 2012 opinion in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012). As explained below, although CASE has demonstrated its standing, it has failed to address the requirements of 10 C.F.R. § 2.309(c) for nontimely filings. However, in light of other assertions in CASE’s Motion and CASE’s status as a *pro se* petitioner, the Staff does not object to providing CASE an opportunity to address whether it has met these factors. If the § 2.309(c) factors were met, the new contention would be admissible if the Atomic Safety and Licensing Board (Board) presiding over this proceeding rules on it after the D.C. Circuit issues the mandate for that decision. But, if the Board rules before the issuance of the mandate, then the Commission’s existing regulations bar admission

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<sup>1</sup> Although the Motion is dated July 9, 2012, the NRC Staff did not receive the Motion by service through the Electronic Information Exchange (EIE) until July 10, 2012.

of the contention, and the Board should dismiss it without prejudice to timely refile upon issuance of the court's mandate.

## BACKGROUND

### I. Procedural History

This proceeding concerns the Florida Power & Light Company (FPL or Applicant) application for combined licenses (COLs) for Units 6 and 7 at the Turkey Point facility in Miami-Dade County, Florida. Notice of Receipt and Availability of Application for a Combined License, 74 Fed. Reg. 38,477 (Aug. 3, 2009). CASE filed a petition to intervene in August 2010. Petition for Intervention (Aug. 17, 2010) (ADAMS Accession No. ML102300287) (Petition). The Board granted the Petition upon finding that CASE had shown standing and had proffered at least one admissible contention. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-06, 73 NRC 149, 226, 237-246 (2011). On May 2, 2012, the Board dismissed CASE from this proceeding. *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-12-09, 75 NRC \_\_, \_\_ (May 2, 2012) (slip op. at 22).<sup>2</sup>

On June 8, 2012, the United States Court of Appeals for the D.C. Circuit vacated the NRC's Waste Confidence Decision Update and Temporary Storage Rule and remanded those rulemakings back to the agency. *New York v. NRC*, 681 F.3d at 483. Shortly thereafter, CASE, together with various other organizations including the Joint Intervenors, submitted a petition requesting that the NRC "suspend its final licensing decisions in all pending NRC licensing proceedings pending completion of the remanded proceedings on the WCD Update and TSR." See *Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings*, at 3 (June 18, 2012) (ADAMS

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<sup>2</sup> The Board also granted a hearing request filed by the Southern Alliance for Clean Energy, the National Parks Conservation Association, Dan Kipnis, and Mark Oncavage (collectively, Joint Intervenors). *Turkey Point*, LBP-11-06, 73 NRC at 171-72. On July 19, 2012, FPL requested summary disposition of the Joint Intervenors' currently pending contention (NEPA Contention 2.1). [FPL's] Motion for Summary Disposition of Joint Intervenors' Amended Contention 2.1 (July 19, 2012). Answers to FPL's motion for summary disposition are due on August 8, 2012, and that motion remains pending. See 10 C.F.R. § 2.1205(b) (allowing 20 days for an answer to a motion for summary disposition).

Accession No. ML12171A170) (Suspension Petition).<sup>3</sup> In the Suspension Petition, CASE also requested that the Commission establish a 60-day timetable for submitting new site-specific contentions based on the D.C. Circuit's ruling. *Id.* at 12.

In its response to the Suspension Petition, the Staff stated that the Commission's normal adjudicatory procedures in 10 C.F.R. Part 2 provide "well-understood and appropriate means for raising contentions based on new information[.]" See NRC Staff's Answer to Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings, at 4-5 (June 25, 2012). CASE then filed the instant Motion, which the Staff now answers.

## II. The NRC's Waste Confidence Decision

In the National Environmental Policy Act of 1969 (NEPA), Congress announced a national policy "to create and maintain conditions under which man and nature can exist in productive harmony." 42 U.S.C. § 4331(a). NEPA requires the NRC to prepare an environmental impact statement (EIS) to support a major Federal action, such as issuing a license for a power reactor. 42 U.S.C. § 4332. The NRC regulations in 10 C.F.R. Part 51 govern this process. Among other things, these regulations require applicants to submit an environmental report (ER) as part of a license application to aid the NRC in conducting its environmental analysis. 10 C.F.R. § 51.41.

Before acting on a power reactor license application, NEPA requires the NRC to address the environmental impacts of operation, including on-site storage and disposal of the reactor's spent fuel after the licensed period of operation ends. *Minnesota v. NRC*, 602 F.2d 412, 414-15, 419 (D.C. Cir. 1979). In the past, "the Commission sensibly has chosen to address high-level waste disposal generically." *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3)*, CLI-99-11, 49 NRC 328, 345 (1999). The agency has most recently addressed issues

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<sup>3</sup> Although dated June 18, 2012, the NRC Staff did not receive this document through the Electronic Information Exchange until June 19, 2012.

pertaining to spent fuel storage and disposal in its “Waste Confidence Decision Update,” 75 Fed. Reg. 81,037 (Dec. 23, 2010) (Waste Confidence Decision) and a temporary storage rulemaking, “Consideration of Environmental Impacts of Temporary Storage of Spent Fuel after Cessation of Reactor Operation,” Final Rule, 75 Fed. Reg. 81,032 (Dec. 23, 2010) (Temporary Storage Rule).

The Waste Confidence Decision Update and the Temporary Storage Rule support generic findings in 10 C.F.R. § 51.23(a) regarding the impacts of spent fuel storage after the licensed period of operation. See 10 C.F.R. § 51.23(a); Motion at 4. The Commission rendered several findings in § 51.23(a). Two of those findings are (1) that spent fuel “can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation” and (2) that “there is reasonable assurance that sufficient mined geologic repository capacity will be available . . . when necessary.” 10 C.F.R. § 51.23(a). 10 C.F.R. § 51.23(b) relies on § 51.23(a) to exclude “discussion of any environmental impact of spent fuel storage [during] the period following the term of the reactor operating license” from any EIS, Environmental Assessment, or ER. 10-C.F.R. § 51.23(b).

## DISCUSSION

### I. LEGAL STANDARDS FOR STANDING AND CONTENTION ADMISSIBILITY

For a petitioner to be admitted as an intervenor in a licensing proceeding, NRC regulations require the petitioner to demonstrate standing and to submit at least one admissible contention. 10 C.F.R. § 2.309(a), (d), & (f)(1). With respect to standing, if a petitioner is seeking to rely on a prior demonstration of its standing (either in a different proceeding or earlier in a proceeding from which it has been dismissed), the petitioner must show that the prior demonstrations correctly reflect the current status of the petitioner’s standing. Cf. *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant) 71 NRC 133, 138 (2010); *Texas Utils. Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993); accord,

*Texas Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 608 n.4 (1988) (Commission summarily agreed that a petitioner seeking to re-enter a proceeding had established standing).

Furthermore, petitioners who seek to intervene after the initial deadline for filing petitions are also subject to the requirements of 10 C.F.R. § 2.309(c). See *U.S. Army Installation Command* (Schofield Barracks, Oahu, Haw. & Pohakuloa Training Area, Island of Haw., Haw.), CLI-10-20, 72 NRC 185, 195 & n.56 (2010). Section 2.309(c) requires a non-timely petitioner to demonstrate that its request should be granted based upon a balancing of eight factors:

- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of the petitioner's right under the [AEA] to be made a party to the proceeding;
- (iii) The nature and extent of the 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 petitioner's interest;
- (v) The availability of other means whereby the petitioner's interest will be protected;
- (vi) The extent to which the petitioner's interests will be represented by existing parties;
- (vii) The extent to which the petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. §§ 2.309(c)(1)(i)-(viii). The petitioner bears the burden of showing that a balancing of these eight factors weighs in favor of admittance of its late petition. *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 (1998).

With respect to standing, because the Board dismissed CASE from this proceeding (*Turkey Point*, LBP-12-06, 75 NRC \_\_\_, slip op. at 22), CASE is required to demonstrate standing. See *Comanche Peak*, CLI-88-12, 28 NRC at 608 n.4; cf. *Bell Bend*, CLI-10-07, 71 NRC at 138; *Comanche Peak*, CLI-93-4, 37 NRC at 162-63. To establish representational standing, an organization must: (1) show that at least one of its members might be affected by

the proceeding, which can be accomplished by showing that a member satisfies either the 50-mile “proximity” presumption or traditional standing elements; (2) identify that member by name and address; and (3) show that the member has authorized the organization represent him or her and to request a hearing on his or her behalf. See *Consumers Energy Co. (Palisades Nuclear Plant)*, CLI-07-18, 65 NRC 399, 409 (2007); *GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station)*, CLI-00-6, 51 NRC 193, 202 (2000). In addition, the interests the organization seeks to protect must be germane to its own purpose, and “neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action.” *Palisades*, CLI-07-18, 65 NRC at 409.

CASE does not address standing in the Motion, but attaches several individual declarations in support of the Motion, all of which purport to demonstrate CASE’s standing. See “Declaration in Support of [CASE] Petition to Intervene in the [COL] Application to the US [NRC] by [FPL] Docket 52-40 and 52-41” (Individual declarations dated July 9, 2012, and signed by Charles H. Rathburn, Barry J. White, Jane H. Walker, Linda Reiss, Timothy S. Gray, David Garcia, Boo Stead, Pamela A. Gray, and Brandon Foster). Each of these declarations avers that the signer is a member of CASE and lives within 19 or fewer miles of the proposed facility, states the address of each of the above-named individuals, and states that each such individual authorizes CASE to represent him or her in this proceeding. This satisfies the three criteria set forth in *Palisades*. Further, it appears to the Staff from each declaration and the proposed contention that the interests sought to be protected are germane to CASE’s organization purpose and the asserted claim and requested relief will not call for the participation of the individual CASE members who signed the declarations. Accordingly, the Staff does not oppose CASE’s standing in this proceeding.

With respect to the requirement that CASE satisfy a balancing of the standards in 10 C.F.R. 2.309(c), that provision requires a balancing of eight factors, the most important of which is “good cause, if any, for the failure to file on time.” 10 C.F.R. § 2.309(c)(1)(i)-(viii);

*Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-08, 74 NRC \_\_, \_\_ (slip op. at 17) (Sept. 27, 2011) (citing *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 NRC 319, 322-23 (2010)). A petitioner's failure to address the § 2.309(c) factors in its filing is sufficient grounds for rejecting the petition. *Calvert Cliffs*, CLI-98-25, 48 NRC at 347-48; *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-11, 37 NRC 251, 255 (1993).

Regardless of whether a petitioner is appearing *pro se*, the Board "cannot wholly disregard the substantive requirements for standing and contention admissibility." *Schofield Barracks*, CLI-10-20, 72 NRC at 192; see also *U.S. Army Installation Command* (Schofield Barracks, Oahu, Haw. & Pohakuloa Training Area, Island of Haw., Haw.), LBP-10-04, 71 NRC 216, 235 n.22 (2010) (declining to consider late filing by *pro se* petitioner where no effort was made to address § 2.309(c) factors and the underlying information had been previously available). Nevertheless, the Staff recognizes that *pro se* petitioners such as CASE "are held to less rigid pleading standards[.]" *Schofield Barracks*, CLI-10-20, 72 NRC at 192; accord *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 396-97 (2009) ("The benefit of the doubt should be given to the potential intervenor in order to prevent the dismissal of a petition due to inarticulate draftsmanship or procedural or pleading defects." (citation omitted)).

Because it is CASE's burden to show that a balancing of the § 2.309(c) factors weighs in its favor, and it has simply not addressed them, the record does not support granting the Motion. *Calvert Cliffs*, CLI-98-25, 48 NRC at 347. However, although CASE fails to address § 2.309(c), it asserts that it meets the standards for new or amended contentions under § 2.309(f)(2), stating that the contention is based on a legal ruling that was not previously available. Petition at 7-8. Considering the holding in *New York v. NRC*, the Staff agrees that CASE's arguments (thought directed to § 2.309(f)(2)) might constitute good cause for its untimely filing, which is the

most important factor in the § 2.309(c) balancing.<sup>4</sup> In light of the bases articulated in the Motion and CASE's demonstration of standing, and consistent with the leeway Boards have provided to *pro se* petitioners for curing certain procedural defects, the Staff does not object to providing CASE with an opportunity to address whether it has met the § 2.309(c) factors, *Cf. Bell Bend*, LBP-09-18, 70 NRC at 396-97.<sup>5</sup>

## II. CONTENTION ADMISSIBILITY

CASE bases the proposed contention on the D.C. Circuit Court of Appeals' recent decision in *State of New York v. NRC*, 681 F.3d 471, 473 (D.C. Cir. 2012). The D.C. Circuit's decision vacated the NRC's updated Waste Confidence Decision and its Temporary Storage Rule and remanded those rulemakings to the NRC. *Id.* at 483. The proposed contention states as follows:

The Environmental Report for Turkey Point 6 & 7 Nuclear Power Plant does not satisfy NEPA because it does not include a discussion of the environmental impacts of spent fuel storage after cessation of operation, including the impacts of spent fuel pool leakage, spent fuel pool fires, and failing to establish a spent fuel repository, as required by the U.S. Court of Appeals in *State of New York v. NRC*, No. 11-1045 (June 8, 2012). Therefore, unless and until the NRC conducts such an analysis, no license may be issued.

Motion at 4-5. At root, the Motion asserts that because the generic findings in the Commission's rulemaking have been vacated, "the NRC no longer has any legal basis for Section 51.23(b),

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<sup>4</sup> Although the Motion is dated July 9, 2012, which is within 30 days of the ruling of the D.C. Circuit in *New York v. NRC*, the Staff did not receive service of the Motion through the EIE until July 10, 2012. Therefore, to the extent the asserted basis for the Motion is the June 8 decision, the Motion would be considered late under the provisions of the Board Order in this proceeding dated March 30, 2011. *Florida Power & Light Co. (Turkey Point Units 6 and 7), Initial Scheduling Order and Administrative Directives (March 30, 2011) (ADAMS Accession No. ML110890768) (unpublished Order at 8, Item IV.B)*. However, were the Board to consider it untimely solely on this grounds, the Board could deny it without prejudice to refiling upon issuance of the D.C. Circuit's mandate in *State of New York* because, as discussed below, the admissibility of the underlying contention depends on whether the D.C. Circuit's mandate has issued when this Board rules on the Motion,

<sup>5</sup> In this respect, however, the Staff notes that certain § 2.309(c) factors would indeed appear to weigh against CASE. For example, an existing party to the proceeding (Joint Intervenors) has filed an identical contention and at least in that respect could be expected to represent CASE's interest on this issue (factor (vi)). Likewise, with respect to factor (viii), because CASE's contention simply asserts an omission in the environmental review, and appears to acknowledge that the NRC would be required to resolve the issues raised by the court's decision regardless of CASE's participation in this proceeding, the Petition provides little insight as to why admitting CASE to this proceeding would assist in the development of a sound record.

which relies on those findings to exempt both the agency staff and license applicants from addressing long-term spent fuel storage impacts in individual licensing proceedings.” *Id.* at 5.

The Board has previously discussed the Commission’s standards for contention admissibility, which prohibit challenges to existing Commission regulations. *See Turkey Point*, LBP-11-06, 73 NRC at 170 n.16; 10 C.F.R. § 2.335.<sup>6</sup> CASE recognizes that “because the mandate has not yet issued in State of New York, this contention may be premature.” Motion at 2. Indeed, the Commission has observed, “A court acts only through its mandate. When a mandate is stayed, a decision has no binding effect . . . .” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-76-17, 4 NRC 451, 466 (1976) (*citing Bailey v. Henslee*, 309 F.2d 840, 844 (8th Cir. 1962)). Thus, when a board suspended a construction permit because an appellate decision invalidated a relevant NRC regulation, the Commission overturned the board, in part, because that mandate had not yet issued. *Id.* at 467. Moreover, licensing boards have typically found contentions premature, and therefore inadmissible, when those contentions relied on court decisions for which a mandate had not issued. *E.g.*, *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-53, 16 NRC 196, 205 (1982).<sup>7</sup> As the licensing board in *Perry* stated, “Until that mandate is issued, the rules of the Commission remain in effect and this Board continues to be bound by them. As a result, the Court of Appeals’ decision does not as yet provide a ground for” an admissible contention.<sup>8</sup> *Id.*

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<sup>6</sup> See 10 C.F.R. § 2.335(a) (noting that unless a party seeks a waiver of Commission regulations, “no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding”).

<sup>7</sup> *But see Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 NRC 1550, 1556-57 (1982) (noting that because “the mandate of that case has not been issued . . . we have deferred our rulings on these requests”).

<sup>8</sup> The Commission recognizes its responsibility to “act promptly and constructively in effectuating the decisions of the courts.” *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-76-14, 4 NRC 163, 166 (1976). Further, the Commission understands that “all that the mandate does is to effectuate the court of appeal’s judgment by formally returning the proceeding to the NRC[;] the eventual – legally required – issuance of the mandate is hardly an ‘unanticipated event.’”

Under the Federal Rules of Appellate Procedure, a “court’s mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc or motion for stay of mandate, whichever is later.” Fed. R. App. P. 41(b). On July 6, 2012, at the Commission’s request, the D.C. Circuit extended the period of time to file a petition for rehearing of *New York v. NRC* to August 22, 2012. *New York v. NRC*, No. 11-1045 (D.C. Cir. July 6, 2012) (order granting unopposed motion to extend time period to seek rehearing). As a result, under Rule 41(b), the mandate is not likely to issue until at least August 29, 2012. Accordingly, because 10 C.F.R. § 51.23(b) remains in effect until the mandate issues, NRC regulations will continue to require the Board to exclude the CASE contention until the court issues the mandate. *Seabrook Station*, CLI-76-17, 4 NRC at 466. Consequently, aside from the timeliness issue discussed above, the admissibility of the underlying contention depends on whether the mandate has issued when this Board rules on the Motion.

If the D.C. Circuit’s mandate issues before the Board rules on the contention’s admissibility, upon the mandate’s issuance, the contention as pled would satisfy each of the § 2.309(f)(1) criteria and would be admissible as a contention of omission. See Motion at 5-7. This determination, however, would remain subject to direction or action taken by the Commission in response to the D.C. Circuit’s ruling, including any generic rulemaking action and issuance of any Commission instruction with respect to how contentions based on the court’s ruling are to be addressed in individual NRC proceedings. For example, in the event that the Commission solely undertakes a generic rulemaking approach to address these issues, the contention may need to be dismissed. See, e.g., *Oconee*, CLI-99-11, 49 NRC at 345

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*Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 401 (2006). Thus, the Commission, of course, could decide to act prior to issuance of the court’s mandate. *Vermont Yankee*, CLI-76-14, 4 NRC at 166. However, in the instant case, the Board cannot admit a contention that challenges an NRC regulation before a court of appeals issues its mandate striking down that regulation.

("Licensing Boards 'should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.'").

If the D.C. Circuit's mandate has not issued by the time the Board rules on the contention, then 10 C.F.R. § 51.23 will remain in place. That regulation excludes from NRC NEPA documents any need to consider the environmental impacts of onsite spent fuel storage after the licensed term of operation. Because the contention demands such consideration (Motion at 5), the contention at present would constitute an impermissible attack on existing Commission regulations. 10 C.F.R. § 2.335(a). Accordingly, pending the issuance of the court's mandate, the Board should reject the contention, subject to refiling without prejudice when, and if, the mandate issues. If CASE refiles the contention after the court issues the mandate, it would be timely if filed within 30 days of the mandate's issuance and would be admissible provided the claims it raises do not become the subject of a generic rulemaking. *Calvert Cliffs*, CLI-98-25, 48 NRC at 347; *Oconee*, CLI-99-11, 49 NRC at 345.

#### CONCLUSION

For the foregoing reasons, although CASE has demonstrated its standing, it has failed to address the requirements of 10 C.F.R. § 2.309(c) for nontimely filings, and the Motion as pled cannot be granted. However, under the circumstances, the Staff does not object to providing CASE an opportunity to address whether it has met these factors. Were the Section 2.309(c) factors met, the Staff agrees with CASE that the contention would be admissible upon issuance of the D.C. Circuit's mandate in *New York v. NRC*. However, if the Board rules before that time,

the contention in any event must be rejected as an impermissible challenge to NRC regulations. Moreover, the admission of this contention would be subject to any further action by the Commission, including commencement of a generic rulemaking to address these matters and the issuance of instructions as to how the contention should be addressed.<sup>9</sup>

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 3<sup>rd</sup> day of August, 2012

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<sup>9</sup> CASE indicates that, "as of this writing," it had received no response to its request for consultation to the NRC Staff. Motion at 9. The undersigned counsel, however, did respond to CASE's request by e-mail on July 9, 2012. Staff counsel stated "The NRC Staff does not object to the filing of a motion, but reserves the right to respond to any new contention proposed in accordance with 10 C.F.R. § 2.309."

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
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FLORIDA POWER & LIGHT COMPANY ) Docket Nos. 52-040 & 52-041  
)  
(Turkey Point Units 6 and 7) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO CASE MOTION FOR LEAVE TO FILE A NEW CONTENTION" has been served upon the following persons by Electronic Information Exchange this 3<sup>rd</sup> day of August, 2012:

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Dated at Rockville, Maryland  
this 3<sup>rd</sup> day of August, 2012