November 10, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 50-250
(Turkey Point Units 3 and 4)	)	50-251
	)	

FPL'S ANSWER TO CITIZENS ALLIED FOR SAFE ENERGY, INC.'S PETITION TO INTERVENE AND REQUEST FOR A HEARING

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i), Florida Power & Light Company ("FPL") hereby answers "Citizens Allied For Safe Energy, Inc.'s ("CASE") Petition to Intervene and Request for a Hearing" ("Petition") filed in this proceeding on October 14, 2014. The Petition should be denied because CASE: (1) has not demonstrated the required standing in this matter; and (2) has failed to propose an admissible contention.

This proceeding pertains to FPL's License Amendment Request ("LAR") to amend certain Technical Specifications ("TS") for Turkey Point Nuclear Generating Units Nos. 3 and 4 ("Turkey Point") to increase the ultimate heat sink ("UHS") water temperature limit specified in TS 3.7.4 from 100 °F to 104 °F, add a surveillance requirement to monitor the UHS water temperature once per hour whenever the temperature exceeds 100 °F, and increase the frequency of a component cooling water ("CCW") heat exchanger performance test.[1] However, contrary to

[1] Letter from M. Kiley, FPL to NRC Document Control Desk "License Amendment Request No. 231, Application to Revise Technical Specifications to Revise Ultimate Heat Sink Temperature Limit," dated July 10, 2014 (ADAMS Accession No. ML14196A006).

Nuclear Regulatory Commission ("NRC" or "Commission") regulations, CASE's Petition attempts to challenge a previous license amendment for an extended power uprate and a pre-existing program to assess salinity in Turkey Point's cooling canals rather than any impact causally related to the LAR.

The Commission's regulations and established case law clearly set forth the requirements that a petitioner must satisfy in order to establish standing to challenge a Commission action and to propose an admissible contention. Because the only injuries CASE alleges are not traceable to the challenged NRC action and are not redressable by any potential action in this proceeding, CASE has failed to demonstrate the required standing. Moreover, the Commission's pleading standards have an intentionally high threshold for the admission of contentions to ensure that hearings, if required, would focus on concrete issues that are both relevant to the proceeding and supported by sufficient factual and legal foundation. CASE's contentions, which seek to raise issues unrelated to the LAR, fail to reach this required threshold, falling woefully short of most, if not all, of the Commission's pleading standards. Both of these failures independently require the denial of CASE's Petition.

II. BACKGROUND

Turkey Point Units 3 and 4 are Westinghouse pressurized water reactors located in Miami-Dade County, Florida, approximately 25 miles south of Miami and bordering Biscayne National Park. The nuclear units are co-located with three fossil-fueled units (Units 1, 2, and 5). The two nuclear units and fossil Unit 1 are cooled by a 6,100 acre closed loop Cooling Canal

System ("CCS").[2] For the two nuclear units, the CCS serves as coolant for the circulating water system, which provides cooling to the secondary side main condensers, and acts as the UHS for the safety-related intake cooling water ("ICW") system. Heated water discharges into the CCS at one end, flows through the canal system, and is withdrawn from the other end for reuse as cooling water. Rainfall, stormwater runoff, and groundwater exchange replenish evaporative losses.[3]

In 2010, FPL applied for an extended power uprate ("EPU") for Units 3 and 4.[4] The NRC prepared an environmental assessment of the proposed uprate which concluded that the action would not have any significant environmental impacts.[5] CASE neither commented on the environmental assessment for the EPU[6] nor sought to intervene in the EPU licensing proceeding.

Observing that the CCS water is hyper-saline (approximately twice the salinity of Biscayne Bay), the EPU EA specifically discussed the Florida Department of Environmental Protection's ("FDEP") regulation of saltwater intrusion.[7] The NRC explained that the FDEP approved the EPU under Florida's power plant site certification law, and imposed numerous Conditions of Certification ("CoC"), which require FPL to have a program to monitor and assess the potential direct and indirect impacts to ground and surface water from the proposed EPU,

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[2] Unit 2 was also cooled by the CCS but has recently retired. Unit 5, a combined cycle natural gas fired plant, uses mechanical draft cooling towers for cooling, draws makeup water from the Upper Floridan Aquifer, and discharges its cooling tower blowdown to the CCS.

[3] *See* Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4, Environmental Assessment and Finding of No Significant Impact; Issuance, 79 Fed. Reg. 44,464 (July 31, 2014) ("LAR EA").

[4] *See* License Amendment To Increase the Maximum Reactor Power Level, Florida Power & Light Company, Turkey Point, Units 3 and 4; Final Environmental Assessment and Finding of No Significant Impact, 77 Fed. Reg. 20,059 (Apr. 03, 2012) ("EPU EA").

[5] *Id.* at 20,070.

[6] *Id.* at 20,060.

[7] *Id.* at 20,062.

including saltwater intrusion. *Id*. This required "ongoing program" includes measuring water temperature and salinity in the CCS, and monitoring of the ground and surface water surrounding the Turkey Point site. *Id*. The CoC allow FDEP to impose additional measures if the data indicates degradation to aquatic resources, which may include methods to reduce and mitigate salinity levels in groundwater, operational changes to the CCS, and other actions mandated by FDEP in consultation with South Florida Water Management District ("SFWMD") and Miami-Dade County to reduce any potential environmental impacts. *Id*.

As reflected in CASE's Petition itself, FPL has continued to work with these agencies to assess CCS salinity and anticipates FDEP issuance of an Administrative Order ("AO") that would require a strategy to dilute the CCS salinity, which may utilize a 14 MGD withdrawal from the brackish Floridian aquifer.[8] *See, e.g.,* Pet. at 10-11.

In the summer of 2014, environmental conditions, including extraordinary algae growth in the CCS and unseasonably dry weather, among other factors, resulted in UHS temperatures approaching the 100 °F TS limit. Consequently, on July 10, 2014, FPL submitted the LAR requesting the NRC to increase the UHS temperature limit in TS 3.7.4 based on an analysis demonstrating that the CCW system would continue to be able to provide sufficient heat removal to the ICW system following a postulated accident at the higher UHS temperature. FPL also took other steps outside the jurisdiction of the Commission to mitigate the rising CCS temperature, including obtaining permission from the FDEP for temporary use of chemical treatments to reduce the algae concentrations, obtaining permission from the SFWMD to withdraw a portion (approximately 5 MGD) of the Unit 5 withdrawal allowance from the

[8]CASE does not provide the slides that it is quoting but they may be found at www.sfrestore.org/rrct/bbay/meetings/2014_meetings/070614/CCS_Assessment.pdf. *See also* LAR EA, 79 Fed. Reg. at 44,468.

Floridan Aquifer for use in the CCS, and obtaining temporary approval to withdraw 30 MGD from the shallower, saltwater Biscayne aquifer.[9] Each of these additional algae or salinity mitigation measures were properly pursued and approved as part of the respective agencies' processes and none of them were part of the LAR CASE now opposes.

FPL initially sought routine agency review of the LAR, but by July 17, as water temperatures approached the 100 °F limit, FPL amended its request to ask that NRC review the proposed amendment on an emergency basis pursuant to 10 C.F.R. § 50.91(a)(5).[10] Several days later, FPL also requested enforcement discretion from the NRC to allow continued operation in the event the UHS temperature exceeded 100 °F prior to the issuance of the amendment,[11] which the NRC granted.[12]

Determining that the circumstances did not allow for a full 30-day comment period, the NRC processed the proposed amendment on an exigent basis, publishing notice in the *Federal Register* (together with notice of an opportunity for hearing) on July 30, 2014, with a shortened period for public comment on the no significant hazards considerations determination.[13] On July

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[9] *See* LAR EA, 79 Fed. Reg. at 44,468.

[10] Letter from M. Kiley, FPL to NRC Document Control Desk "License Amendment Request No. 231, Application to Revise Ultimate Heat Sink Temperature Limit - Request for Emergency Approval" dated July 17, 2014 (ADAMS Accession No. ML14202A392). FPL further amended its application by letters dated July 22, 2014 (ADAMS Accession Nos. ML14204A367 and ML14204A368), July 24, 2014 (ADAMS Accession No. ML14206A853), July 29, 2014 (ADAMS Accession No. ML14211A508), and August 4, 2014 (ADAMS Accession No. ML14217A341).

[11] Letter from M. Kiley, FPL, to NRC Document Control Desk, "Request for Enforcement Discretion Regarding Technical Specification 3/4.7.4, Ultimate Heat Sink, (July 21, 2014) (ADAMS Accession No. ML14204A083) ("NOED Request").

[12] Letter from V. McCree, NRC to M. Kiley, FPL, Notice Of Enforcement Discretion (NOED) For Florida Power And Light Company Regarding Turkey Point Nuclear Generating Station Units 3 And 4 [NOED No. 14-2-001] (July 23, 2014) (ADAMS Accession No. ML14204A652). The NOED temporarily allowed Turkey Point to operate with a UHS temperature up to 103 °F under certain proscribed conditions. The NOED, by its own terms, expired 10 days after issuance.

[13] Florida Power & Light Company; Turkey Point, Units 3 and 4; License Amendment Application; Opportunity to Comment, Request a Hearing, and Petition for Leave to Intervene, 79 Fed. Reg. 44,214 (July 30, 2014).

31, 2014, the NRC Staff published in the *Federal Register* an EA concluding that the LAR involved no significant environmental impact.[14] As the LAR EA explained:

> Under the proposed action, the CCS could experience temperatures between 100 °F and 104 °F at the TS monitoring location near the north end of the system for short durations during periods of peak summer air temperatures and low rainfall. Such conditions may not be experienced at all depending on site and weather conditions. Temperature increases would also increase CCS water evaporation rates and result in higher salinity levels. This effect would also be temporary and short in duration because salinity would again decrease upon natural freshwater recharge of the system (i.e., through rainfall, stormwater runoff, and groundwater exchange). No other onsite or offsite waters would be affected by the proposed UHS temperature limit increase.[15]

With the concurrence of the U.S. Fish and Wildlife Service, the LAR EA also concluded that the proposed action is not likely to adversely affect the American Crocodile population inhabiting the area near the CCS and would have no effect on their designated critical habitat.[16] In addition, the LAR EA also discussed the temporary chemical treatments and aquifer withdrawals to determine whether the proposed action would have potentially detrimental cumulative effects. The LAR EA concluded that the separately-permitted aquifer withdrawals would have the beneficial impact of reducing the salinity of the CCS and the potential to help moderate CCS temperatures over the long term.[17]

On July 29, 2014, following a minor change to the LAR (increasing the frequency of CCW heat exchanger performance testing and eliminating a previously proposed provision on

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[14] LAR EA, 79 Fed. Reg. at 44,464.

[15] *Id.* at 44,466-67 (emphasis added).

[16] *Id.* at 44,467. *See also* Biological Assessment on the American Crocodile (Crocodylus acutus) Turkey Point Nuclear Generating Unit Nos. 3 and 4, Proposed License Amendment to Increase the Ultimate Heat Sink Temperature Limit, July 2014 (ADAMS Accession No. ML14206A806); Letter from C. Aubrey, FWS, to D. Wrona, NRC (July 29, 2014) (ADAMS Accession No. ML14210A170) ("FWS Concurrence").

[17] LAR EA, 79 Fed. Reg. at 44,468.

instrument uncertainty),[18] the NRC staff issued an additional public notice through local media on the proposed no significant hazards considerations determination.[19] 10 C.F.R. § 50.91(a)(6)(i)(B). The NRC issued the UHS amendment, accompanied by a Safety Evaluation ("SE"), on August 8, 2014.[20] The SE concluded that the CCW system will continue to be able to provide sufficient heat removal from the engineered safety features to the ICW system; the containment peak pressure and temperature limits and heat removal requirements are not materially affected; the increase in the UHS temperature limit does not have any adverse effect on ICW system piping, components, supports, or net positive suction head; and the time required for reaching cold shutdown will not be affected SE at 13, 14, 16, and 17. On August 14, the NRC published a notice of issuance of the license amendment in the *Federal Register*, and due to FPL's July 29 change to the LAR, a supplemental notice of opportunity for hearing.[21] CASE's Petition was filed in response to this supplemental Hearing Notice.

III. CASE HAS FAILED TO ESTABLISH THE REQUIRED STANDING

At the outset, CASE's hearing request must be denied because it fails to establish standing. CASE's attempt to demonstrate standing appears to be based exclusively on the residence of several of its members within 10-15 miles of the Turkey Point site. *See* CASE Exs.

[18] Letter from M. Kiley, FPL to NRC Document Control Desk "License Amendment Request No. 231, Application to Revise Ultimate Heat Sink Temperature Limit – Supplement 2, and Response to Request for Additional Information" dated July 29, 2014 (ADAMS Accession No. ML14211A508).

[19] Public Notice: NRC Staff Proposes To Amend Renewed Facility Operating Licenses at the Turkey Point Nuclear Generating Unit Nos. 3 And 4 (ADAMS Accession No. ML14211A266). Published in the Miami Herald on August 3, 2014 and the Key West Citizen on August 4, 2014.

[20] Letter from A. Klett, NRC to M. Nazar, FPL, Turkey Point Nuclear Generating Units Nos. 3 and 4 – Issuance of Amendments under Exigent Circumstances Regarding Ultimate Heat Sink and Component Cooling Water Technical Specifications (TAC Nos. MF4392 and MF4393) dated August 8, 2014 (ADAMS Accession No. ML14199A107)..

[21] Florida Power & Light Company; Turkey Point, Units 3 and 4; License Amendment, Issuance, Opportunity to Request a Hearing, and Petition for Leave to Intervene, 79 Fed. Reg. 17,689 (Aug. 14, 2014) ("Hearing Notice").

6-13. However, CASE made no effort to meet its burden of showing that the NRC's "proximity presumption" applies in this proceeding. Moreover, CASE's discussion of standing demonstrates its fundamental misunderstanding of the traceability and redressability components required to show standing. Because the alleged injury CASE protests was not caused by NRC's granting of this amendment and cannot be remedied by NRC action in this proceeding, CASE does not have standing to intervene.

A. NRC Standing Requirements

In order to obtain a hearing before the NRC, a petitioner must demonstrate standing and file at least one admissible contention. *See* AEA § 189a, 42 U.S.C. § 2239(a). To establish standing, a petitioner must plead "the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding[,] . . . the nature and extent of [the petitioner's] property, financial or other interest in the proceeding; and [t]he possible effect of any decision or order that may be issued in the proceeding on the [petitioner's] interest." 10 C.F.R. § 2.309(d)(1).

CASE, as the petitioner, bears the burden of providing facts sufficient to establish standing. *U.S. Enrichment Corp*. (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001). In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co*. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). The petitioner must establish; (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC

185, 195 (1998) (*citing Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 101 (1998)); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988).

The Commission often employs an analytical shortcut known as the "proximity presumption" for determining standing. This presumption rests on an NRC finding that persons living close to a facility "face a realistic threat of harm" if a release of radioactive material from the facility were to occur. *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (Oct. 13, 2009). But as the Commission has explained, this presumption is generally applied only in construction permit and operating license cases which involve a new risk of accidental releases from a wholly new reactor. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). However, in other licensing cases without an "obvious potential for offsite consequences," like the LAR at issue in this proceeding, the Commission has placed a significant limitation on the use and applicability of this analytical shortcut, requiring a petitioner to allege some specific injury in fact. *Id. See also Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188, 191-92 (1999) (For license amendment requests without an obvious potential for offsite consequences, petitioners must assert an injury tied to the effects of the proposed LAR, not simply a general objection to the facility). Specifically, a petitioner in these types of LAR challenges must show a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm to the petitioner. *Zion*, CLI-99-4, 49 NRC at 192.

B. CASE Has Not Met Its Burden to Establish Standing

In its petition, CASE relies on the proximity presumption but makes no effort to show that it is applicable. Pet. at 4. The Commission in *Zion* explained that a "petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences." *Zion*, CLI-99-4, 49 NRC at 192. CASE does not even go that far. Instead, CASE simply asserts that the proximity presumption should apply based upon actions that "endanger the water source for all of the petitioners as well as all of the Florida Keys and most of south Miami-Dade County." Pet. at 4. CASE's concern about water resources (and lack of expressed concern regarding any incremental increase in radiological risk), is also evident in the declarations of CASE's members, each of which assert concern about "remedial measures" to address the cooling canals, "including the withdrawal of hundreds of millions of gallons of water from the south Floridan aquifer," but make no mention of offsite radiological risk, obvious or not. *See e.g.,* Declaration of Pamela Gray, Pet. Ex. 6. CASE nowhere claims that the amendments to the Turkey Point TSs result in any appreciable increased risk of radiological injury. In fact, CASE even states that "*operational safety per se is not of primary concern here.*" Pet. at 9 (emphasis in original). Because CASE did not provide any evidence in the record to support a finding of increased offsite risk associated with the challenged LAR, nor even addressed the issue, it has not met its burden of establishing standing though the application of the proximity presumption.

If the proximity presumption does not apply, CASE must revert to the traditional standing demonstration of injury-in-fact, traceability, and redressability. *Yankee*, 48 NRC at 195. Here CASE fails absolutely. CASE alleges only one injury, FPL's drawing allegedly excessive water

from the aquifer, but fails to show that the alleged injury is caused by the challenged NRC licensing action, or that it would be remedied by the denial of FPL's license amendment request. *See* Pet. at 4. CASE argues, incorrectly, that the NRC has "authorized" these measures (*id.*), when it did not and cannot. The NRC's challenged action only authorized operation of the plants with a higher UHS temperature. It did not authorize aquifer withdrawals, which are subject to and approved by state and local environmental regulators. Thus, the mitigation measures to which CASE objects are not traceable to the NRC's issuance of the license amendment. CASE also argues, irrelevantly, that the NRC is "the sole agency with the power to approve, to deny, or to modify" a nuclear plant operating license. *Id*. While this is unquestionably true, the NRC is not the agency with the power to approve or deny the environmental mitigation measures that aggrieve CASE. CASE's alleged injury is simply not redressable in this proceeding because the denial of this license amendment would not alter FPL's separately-permitted CCS salinity management plan, which includes a managed withdrawal of water resources, or its recent temperature mitigation measures. Indeed, if the challenged amendment were revoked or rescinded, FPL would continue to operate the Turkey Point units—and the CCS—exactly as it is now, except in the event UHS temperatures exceed 100 °F. For this reason, the CCS mitigation measures CASE challenges are not redressable here regardless of the result of this proceeding.

Further, even if the aquifer withdrawals were authorized by the NRC or redressable in this proceeding (neither of which is the case), CASE does not show that such withdrawals in fact have any impact whatsoever on its members. In the vicinity of the plant, the Biscayne Aquifer (from which FPL received a temporary withdrawal authorization it has not used) is saltwater and the Floridan aquifer (from which FPL obtained permission to use part of the existing Unit 5 allocation, and from which additional withdrawals *might* be authorized in the future) is brackish,

so FPL is not withdrawing from any potable water source. Further, CASE does not provide any information indicating that these withdrawals have any adverse influence on any water supply. Since the use of these withdrawals *reduces the CCS salinity*, no such impact is apparent.

Because CASE has not identified—or even alleged—any increased risk of offsite consequences associated with the amendment sufficient to justify application of the proximity presumption and instead alleged only an ephemeral environmental injury that is not traceable to the challenged NRC licensing action or redressable by this Board, it has failed to established standing. 10 C.F.R. § 2.309(d). For this reason, CASE's Petition must be denied.

IV. CASE HAS NOT SUBMITTED ANY ADMISSIBLE CONTENTIONS

In addition to demonstrating standing, a petitioner must plead at least one admissible contention to be admitted as a party in this proceeding. 10 C.F.R. § 2.309(a). As set forth below, CASE has not proffered any admissible contentions and therefore its Petition should be wholly denied.

A. Legal Standards for Contention Admissibility

The Commission's contention admissibility rules are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Duke Energy Corp*. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)). While "federal courts permit considerably less-detailed 'notice pleading', the Commission requires far more to plead a contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 505 (2001); *see also Fansteel, Inc.* (Muskogee, Oklahoma Site) CLI-03-13, 58 NRC 195, 203 (2003). 10 C.F.R.

§ 2.714 (now § 2.309) was amended in 1989 "to raise the threshold for the admission of contentions." Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (Aug. 11, 1989) ("Final Rule"). These rules were "toughened . . . because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" *Millstone,* CLI-01-24, 54 NRC at 358. Under the NRC's Rules of Practice, "a protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that such a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." 54 Fed. Reg. at 33,171 (quoting *Conn. Bankers Ass'n v. Bd. Of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980)). Accordingly, a petition "must set forth with particularity the contentions sought to be raised." 10 C.F.R. § 2.309(f)(1). Petitioners must provide "a clear statement as to the basis for the contentions and [submit] supporting information and references to specific documents and sources that establish the validity of the contention." *USEC, Inc*. (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006) (citing *Arizona Public Service Co*. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)).

Specifically, "for each contention," the petition must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on

> which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
>
> and
>
> (vi) …[P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1). Contentions that do not satisfy each of these six requirements must be rejected. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324 (2009).

The petitioner bears the burden of proffering contentions that meet the NRC's pleading requirements. *See Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998). Licensing boards are not to overlook deficiencies in contentions or to assume the existence of missing information. *Palo Verde*, CLI-91-12, 34 NRC at 155. In other words, "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions." Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998) ("1998 Policy Statement"). The requirements are discussed in detail below.

1. Petitioner Must Specifically State the Issue of Law or Fact to Be Raised

Each contention must provide "a specific statement of the issue of law or fact to be raised or controverted." 10 C.F.R. § 2.309(f)(1)(i). To be admissible, a "contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." *Millstone*, CLI-01-24, 54 NRC at 359-60. Moreover, the Commission has explained that Petitioners "must articulate at the outset the specific issues they wish to litigate as a prerequisite to gaining formal admission as parties." *Oconee*, CLI-99-11, 49 NRC at 338.

2. Petitioner Must Explain the Basis for the Contention

In addition, petitioners must provide "a brief explanation of the basis for the contention." 10 C.F.R. § 2.309(f)(1)(ii). A petitioner must provide the licensing board with "sufficient foundation" to "warrant further exploration." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB-942, 32 NRC 395, 428 (1990) (footnote omitted). In other words, a petitioner must "provide some sort of minimal basis indicating the potential validity of the contention." 54 Fed. Reg. at 33,170. While licensing boards generally admit "contentions" for litigation rather than "bases," the Commission has recognized that "[t]he reach of a contention necessarily hinges upon its terms *coupled with* its stated bases." *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 & n.103 (2010) (emphasis in original) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom. Mass. v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991)). Therefore, the lack of an adequate basis is sufficient grounds for rejecting a proposed contention.

3. Contentions Must Be Within the Scope of the Proceeding

Petitioners must also demonstrate "that the issue raised in the contention is within the scope of the proceeding." 10 C.F.R. § 2.309(f)(1)(iii). The scope of this proceeding for which this licensing board has been delegated jurisdiction was set forth in the Commission's Hearing Notice. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). Licensing boards "are delegates of the Commission" and so may "exercise only those powers which the Commission has given [them]." *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976) (footnote omitted); *accord Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9

NRC 287, 289-90 n.6 (1979). Any contention that falls outside the specified scope of this proceeding is inadmissible.

4. Contentions Must Raise a Material Issue

Petitioners must further demonstrate "that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding." 10 C.F.R. § 2.309(f)(1)(iv). Admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." *Millstone*, CLI-01-24, 54 NRC at 359-60. The Commission has defined a "material" issue as one where "resolution of the dispute would make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. at 33,172.

5. Contentions Must Be Supported by Adequate Factual Information or Expert Opinion

Each contention must also "[p]rovide a concise statement of the alleged facts or expert opinions which support [the petitioner's] position on the issue and on which [the petitioner] intends to rely at hearing, together with references to the specific sources and documents on which [the petitioner] intends to rely to support its position in the issue." 10 C.F.R. § 2.309 (f)(1)(v). The petitioner bears the burden of coming forward with a sufficient factual basis "indicating that a further inquiry is appropriate." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 249 (1996) (citing Final Rule, 54 Fed. Reg. at 33,171 (requiring "some factual basis" for the contention)).

Under this standard, a petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC

281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf." *Id*. (citing *Palo Verde*, CLI-91-12, 34 NRC at 149). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998) (a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion" to support a contention's "proffered bases") (citations omitted). A mere reference to documents does not provide an adequate basis for a contention. *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348 (1998). A petitioner's failure to present the factual information or expert opinions necessary to support its contention adequately requires that the contention be rejected. *Yankee*, CLI-96-7, 43 NRC at 262; *Palo Verde*, CLI-91-12, 34 NRC at 155.

This requirement must be met at the outset. A contention is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171. The Commission's rules bar contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003).

6. Contentions Must Raise a Genuine Dispute of Material Law or Fact

Finally, each contention must "provide sufficient information to show that a genuine dispute exists with the applicant . . . on a material issue of law or fact." 10 C.F.R. § 2.309

(f)(1)(vi). A petitioner must read the pertinent portions of the application and supporting documents, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,171; *Millstone*, CLI-01-24, 54 NRC at 358. Contentions must be based on documents or other information available at the time the petition is filed.[22] 10 C.F.R. § 2.309(f)(2). Indeed, a petitioner:

> has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention. Neither Section 189a of the Atomic Energy Act nor [the corresponding Commission regulation] permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff.

54 Fed. Reg. at 33,170 (quoting *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983)).

As set forth below, the Petitioner's contentions fail to comply with the Commission's standards.

B. Petitioner's Contentions are Inadmissible

CASE's four contentions are not proper contentions in either form or content, and should be rejected for their failure to even address, let alone satisfy, the contention admissibility requirements established in 10 C.F.R. § 2.309(f)(1). They do not provide a particularized statement of the issues to be raised. *Id.* at § 2.309(f)(1)(i). They do not provide any basis for the issues they seek to raise, whatever that may be. *Id.* at § 2.309(f)(1)(ii). The contentions raise

[22] Where, as in this case, the NRC's review documents are published prior to the Hearing Notice, it is incumbent on a petitioner to base any contention of these NRC documents. *See* 10 C.F.R. § 2.309(f)(2).

issues that are not within the scope of the proceeding and raise issues that are not material to the findings that the NRC must make. *Id.* at 2.309(f)(1)(iii), (iv). While several of the contentions are accompanied by allegations of fact or references to statements of regulatory agencies or alleged experts, they are not accompanied by factual statements or expert opinions that support the bases of the contention. *Id.* at § 2.309(f)(1)(v). Finally, CASE nowhere shows the existence of a genuine dispute with the NRC's license amendment, because it does not specifically address either the NRC's Safety Evaluation or its EA. *Id.* at § 2.309(f)(1)(vi).

These are not mere deficiencies in form that might, to a limited extent, be attributable to the fact that CASE is a *pro se* intervenor.[23] As is further discussed below, CASE's contentions are so flawed that it is difficult to ascertain what is being claimed and what requires a response. Neither the Applicant nor the Licensing Board should be forced to guess the claim being asserted.

Although CASE never directly alleges a National Environmental Policy Act ("NEPA") deficiency, many of its claims are environmental in nature and so may be read to implicate the NRC's compliance with NEPA. However, these claims are related either to the NRC's prior approval of the operation of Units 3 and 4 or to its more recent approval of the EPU license amendments. But in reviewing a license amendment under NEPA, the NRC need only consider "the extent to which the action under the proposed amendment will lead to environmental impacts beyond those previously evaluated." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-81-14, 13 NRC 677, 684-685 (1981) (citing *Northern States*

[23] The Commission "generally extend[s] some latitude to *pro se* litigants, but they still are expected to comply with [its] procedural rules, including contention pleading requirements." *South Carolina Electric and Gas Co*. (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 NRC ___, slip op. at 5 (Jan. 7, 2010) (citing *USEC, Inc.* (America Centrifuge Plant), CLI-06-10, 63 NRC 451, 456-57 (2006); *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 (1999)).

Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB–455, 7 NRC 41, 46 n.4 (1978)). In other words, the NRC's EA need not consider the environmental impact of the previous operation of the plants, but instead need only consider the incremental impact caused by the potential increase in the ultimate heat sink temperature limit:

> Nothing in NEPA or in those judicial decisions to which our attention has been directed dictates that the same ground be wholly replowed in connection with a proposed [license] amendment. . . . Rather, it seems, manifest to us that all that need be undertaken is a consideration of whether the amendment itself would bring about significant environmental consequences beyond those previously assessed and, if so, whether those consequences (to the extent unavoidable) would be sufficient on balance to require a denial of the amendment application.

Prairie Island, ALAB–455, 7 NRC at 46 fn. 4. Thus, the LAR EA need not focus on the effects of previous Turkey Point operation or the EPU, but instead should focus on the more limited potential effects of allowing operation with UHS temperatures up to 104 °F.[24] When in its Petition CASE appears to demand the NRC re-perform its EIS for the facility or its EA for the EPU amendments, CASE violates this central tenant.

1. Contention 1 is Inadmissible

Contention 1 alleges:

> The uprate of Turkey Point reactors 3 & 4 has been concurrent with alarming increases in salinity, temperature, tritium and chloride in the CCS area.

Pet. at 5.

[24] In fact, the LAR EA references previous NRC environmental reviews involving Turkey Point, including the EA for the EPU, and explains that they "continue to accurately depict the Turkey Point site and environs." 79 Fed. Reg. at 44,465.

Contention 1 is inadmissible because CASE fails to: (1) demonstrate that the issue is within the scope of this proceeding or material to the NRC's decision making; (2) provide facts or expert opinion to support the contention; and (3) demonstrate the existence of a genuine dispute with the NRC on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1) (iii), (v), and (vi).

Contention 1 directly and unapologetically challenges the NRC's approval of the Turkey Point EPU license amendments in a separate proceeding over two years ago. As the EPU amendments are beyond the scope of this proceeding, Contention 1 is inadmissible. 10 C.F.R. § 2.309(f)(1)(iii).

The NRC granted FPL's request for license amendments to authorize EPUs for the two reactors in 2012.[25] This action was preceded by a safety evaluation and an environmental assessment of the amendment to satisfy the NRC's AEA and NEPA responsibilities.[26] The NRC provided an opportunity for hearing on that amendment.[27] No one requested a hearing. As the NRC's Hearing Notice in this proceeding makes clear, the scope of this proceeding is limited to the recent amendments related to the UHS water temperature limit. 79 Fed. Reg. at 47,689-90. But Contention 1 is a transparent attempt to litigate the EPU amendments two years after the fact. The EPU licensing actions are simply not at issue here and so this contention is not admissible. 10 C.F.R. § 2.309(f)(1)(iii).

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[25] 77 Fed. Reg. at 20,059.

[26] Florida Power & Light Company, Turkey Point, Units 3 and 4; Draft Environmental Assessment and Draft Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level, 76 Fed. Reg. 71,379 (Nov. 17, 2011).

[27] Florida Power & Light Company; Turkey Point, Units 3 and 4; Notice of Consideration of Issuance of Amendment to Facility Operating License, and Opportunity for a Hearing and Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information, 76 Fed. Reg. 26,771 (May 09, 2011).

In Contention 1, CASE makes the only reference anywhere in its Petition to the NRC's LAR EA. *See* Pet. at 6 (referring to it as "the document (Docket ID NRC-2014-0181)"). Specifically, CASE alleges that the LAR EA makes no mention of the salinity of the CCS or saltwater intrusion into the Floridan Aquifer, but instead focuses on "only the concern with temperature." *Id*. However, CASE's reading of the LAR EA is simply incorrect. The LAR EA specifically recognizes that the higher temperature limit could result in higher salinity levels but concludes that this effect would be only temporary and of short duration during periods of peak summer air temperatures and low rainfall (if it occurs at all). 79 Fed. Reg. at 44,467. CASE does not challenge or present any genuine dispute with this conclusion. Indeed, CASE elsewhere asserts that complained-of salinity levels are the result of uprated operations (Pet. at 10), and therefore fails to present any genuine dispute with the NRC's review of this license amendment. 10 C.F.R. § 2.309(f)(1)(vi). Further, with respect to potentially higher salinity levels, the LAR EA discusses the anticipated FDEP Administrative Order, which would require FPL to institute a salinity management plan, which may involve the installation of up to six new wells to pump up to 14 MGD of water from the Floridan Aquifer into the CCS in order to reduce CCS salinity, and is completely unrelated to the LAR. These withdrawals would "reduce the salinity of the CCS to about 34 [parts per thousand] and could also help moderate CCS temperatures over the long term." LAR EA, 79 Fed. Reg. at 44,468. Other than a bald and unsupported allegation that such withdrawals are dangerous, CASE provides no information suggesting that the abatement being considered by the state agencies is inadequate, even if there were some salinity concern related to the LAR (which there is not). To the extent Contention 1 can be read to argue that the LAR EA's discussion of these issues is insufficient, it must fail due to CASE's failure to address the relevant portions of the LAR EA. 10 C.F.R. § 2.309(f)(1)(vi).

Contention 1 also challenges FPL's conclusion that the lack of rainfall is part of the reason for the CCS temperature increase, citing rainfall records from nearby Homestead. Pet. at 8-9. But, as FPL explained in its Request for Enforcement Discretion, rainfall data that is "taken from a monitoring station in the middle of the Turkey Point cooling canal system . . . shows that rain fall for 2014 has been very low, and that the canal water level is very low." Request for Enf. Disc. at 5. FPL provided compelling data to support its argument that the lack of rainfall and concurrent lowering of the canal water level play an important role in the temperature issue in the CCS:

Year	Rain Fall (inches)	Canal Level Relative to NAVD88 (feet)
2011	52	Not available.
2012	74.2	-0.47
2013	19.6	-0.65
2014	4	-0.88

Id. This data is also included in the NRC's Biological Assessment ("BA"). BA at 2-3. CASE nowhere cites or explicitly challenges FPL's site-specific rainfall data. CASE's failure to challenge this information demonstrates its failure to show a genuine dispute with the NRC's analysis. 10 C.F.R. § 2.309(f)(1)(vi). Nor does CASE explain why its accusations are relevant. Whatever the cause of the temperature spike, the NRC's LAR EA clearly discusses the environmental impacts of the potential temperature increases associated with the license amendment. Without a showing that this issue is material to the NRC licensing action, this claim is inadmissible. 10 C.F.R. § 2.309(f)(1)(iv).

In any event, CASE then backs away from this accusation and states that "[w]ether [*sic*] or not those [rainfall] declines were enough to cause the situation in the CCS would be for scientists to determine. But as with the DERM data, it is all empirical information in need of

analysis . . . something happened when Units 3&4 came back on line. We should find out." Pet. at 9. These statements demonstrate precisely why Contention 1 is inadmissible. CASE offers no crystallized dispute on the issue, but hopes to identify a position through a hearing. This is exactly the type of notice pleading the NRC's strict contention pleading rules were designed to prevent. Even if the EPU were within the scope of this proceeding, material to any NRC decision in the proceeding, or redressable in this proceeding, CASE does not provide a genuine dispute, but instead hopes this Board will allow it to go on a fishing expedition in search of one. 10 C.F.R. § 2.309(f)(1)(vi). For these reasons, Contention 1 must be rejected.

2. Contention 2 is Inadmissible

Contention 2 alleges:

> The exigent CCS problems started years before July, 2014 and were being addressed in 2013 and earlier.

Pet. at 10.

Contention 2 is inadmissible because CASE fails to: (1) provide a specific statement of the issue to be raised; (2) demonstrate that the issue is within the scope of this proceeding or material to the NRC's decision making; (3) provide facts or expert opinion to support the contention; and (4) demonstrate the existence of a genuine dispute with the NRC on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(i), (iii), (v), and (vi).

Contention 2 appears to challenge the NRC's procedural decision to issue FPL's license amendment on an exigent basis.[28] But it does not provide a specific statement of law or fact that

[28] The NRC may issue amendments prior to holding any requested hearing if it makes a "no significant hazards consideration" determination. 10 C.F.R. § 50.58(b)(5). Normally, the NRC affords 30 days for members of the public to comment on the no significant hazards consideration determination. 10 C.F.R. § 50.91. However, in situations where a 30-day comment period is not feasible, the NRC's procedural rules allow for amendments to be

Footnote continued on next page

it wishes to raise. 10 C.F.R. § 2.309(f)(1)(i). The only impact of the NRC's processing of an amendment on an exigent basis is to shorten the time for public comment on the no significant hazards consideration determination, which itself cannot be challenged in this hearing. 10 C.F.R. § 50.58(b)(6). CASE does not state what injury it suffered by the exigent treatment of the amendment request, what standard the NRC violated by invoking its exigency authority, or what relief it seeks now that the amendment has already been issued. Its claim is not justiciable.

In any event, the NRC's decision to process the amendment on an exigent basis is not within the scope of this proceeding, as defined by the Hearing Notice, and so cannot support an admissible contention. 10 C.F.R. § 2.309(f)(1)(iii). The scope of this proceeding is limited to the license amendment itself, not the timing by which the amendment was issued. For similar reasons, Contention 2 is not "material to the findings the NRC must make to support the action that is involved in the proceeding." 10 C.F.R. § 2.309(f)(1)(iv). "Material" issues are those where "resolution of the dispute would make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. at 33,172. Whether the NRC processes the amendment on an exigent basis makes no difference in the ultimate outcome of the licensing proceeding because CASE still has this opportunity to request a hearing and show that the license amendment should be overturned. Moreover, even if the NRC's exigency determination were litigable, CASE has not offered any indication that, had it been afforded a longer opportunity to comment on the NRC's no significant hazards considerations determination, it would have had any basis to do so.

Footnote continued from previous page

processed on an emergency basis, with no public comment period, or on an exigent basis, with a shortened public comment period. 10 C.F.R. § 50.91(a)(5), (6).

Contention 2 also confuses environmental salinity concerns with the rise in CCS temperature necessitating the change in the TS safety limit requested by the LAR. CASE discusses several interactions with state and local environmental regulators over the past several years regarding the salinity of the CCS to argue that FPL had long had knowledge of the eventual need for this license amendment. Pet. at 10-13. But there is no TS or NRC regulation that governs the salinity of the CCS and FPL did not request a license amendment related to salinity. There was no reason to request an amendment from the NRC, exigent or otherwise, until it became clear that the UHS was in danger of approaching the 100° F TS limit. CASE can certainly show that local regulators have had salinity concerns for a while, but it has not even attempted to show that FPL had reason to request an amendment earlier than it did. For this reason, CASE's historical discussion is not relevant to the NRC's exigency determination, which is, in any case, not litigable in this proceeding. Contention 2 must be denied.

3. Contention 3 is Inadmissible

Contention 3 alleges:

> The measures being used to control the CCS conditions are extraordinarily invasive, environmentally usurious and some untested.

Pet. at 14.

Contention 3 is inadmissible because CASE fails to: (1) provide a specific statement of the issue to be raised; (2) demonstrate that the issue is within the scope of this proceeding or material to the NRC's decision making; (3) provide facts or expert opinion to support the contention; and (4) demonstrate the existence of a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(i), (iii), (v), and (vi).

In Contention 3, CASE raises several environmental issues, including algae, aquifer withdrawals, impacts on crocodiles, and saltwater intrusion. Each of these issues is addressed individually below. As none of these environmental issues is relevant to slight increase to the TS limit on UHS temperature, FPL can only guess that these arguments may represent challenges to the NRC's compliance with NEPA or with the Endangered Species Act ("ESA"). But since CASE never expressly, or even impliedly, challenges the NRC's compliance with either law, Contention 3 cannot meet the foundational requirement that contentions provide a specific statement of the issue of law or fact to be raised. 10 C.F.R. § 2.309(f)(1)(i).

a. Algae

According to CASE, Dr. Phillip Stoddard has asked whether microsystins will leak into the aquifer. Pet. at 14. CASE presumes to answer Dr. Stoddard's query by asserting that they will. *Id*. at 14-15. CASE also cites Dr. Stoddard's concern with FPL's use of copper sulfate to control the algae bloom and asserts, erroneously, that there was no mention of this chemical in "the NRC notice." *Id*. at 15. Finally, Dr. Stoddard asks what precautions or modeling FPL employed to assure that the cooling canals will not contaminate the aquifer. *Id*. But neither CASE nor Dr. Stoddard offer anything more than speculation regarding these impacts. But speculation, even by an expert, is insufficient to support a contention. *Southern Nuclear Operating Company* (Vogtle Electric Generating Plant Units 3 and 4), LBP-09-03, 69 NRC 139, 153 (2009) (citing *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203).

Further, the algae blooms occurred prior to, and thus are not caused by, the increase in the TS limit. Likewise, the chemical treatment to control algae is not caused by or undertaken to mitigate the increase in the TS limit. CASE provides no information remotely suggesting that the increase in the TS limit will result in any significant increase in algae concentrations.

Contrary to CASE's accusations, the NRC considered the algae concentrations and the mitigation measures to address those concentrations in its EA in the section titled "CCS Chemical Treatments," even though neither issue was the subject of the NRC's proposed action. 79 Fed. Reg. at 44,468. The EA acknowledges the FDEP's role in approving "the use of copper sulfate, hydrogen peroxide, and a biostimulant to treat the algae," that "monitoring required by the FDEP will ensure adequate water quality throughout and following treatment," and that monitoring will ensure "that any unanticipated effects on the aquatic organisms that inhabit the CCS are appropriately addressed." *Id*. The EA also references the NRC's July 25, 2014, Biological Assessment, which notes that FPL has not observed any behavioral or distributional changes or any other noticeable differences that would indicate effects to crocodiles resulting from either the presence of higher algae concentrations or the recent chemical treatments."[29] *Id*. CASE fails to acknowledge any of this discussion, which fatally undermines any claim regarding NEPA compliance.[30] By failing to even reference the EA, CASE fails to identify a genuine dispute with the NRC's EA. 10 C.F.R. § 2.309(f)(1)(vi).

b. Aquifer Withdrawals

CASE also questions FPL's use of Floridan aquifer water in the CCS. CASE argues:

> In 2013 FPL was authorized to draw 14 mgd of water from the Floridan aquifer; now they are asking for another 14 mgd for mitigation of the temperature in the CCS and, incidentally, to decrease salinity but that is not mentioned in the Amendments. In addition 100 mgd has been authorized as part of this exigent situation fix, and that is supposed to stop on October 15, 2014. Some are concerned is [*sic*] that might not happen.

[29] *See* Biological Assessment at 7.

[30] Nor does CASE identify the mechanism by which microcystins in a hypersaline cooling canal may impact drinking water. In any event, the EA clearly explains that monitoring and assuring water quality is the FDEP's responsibility. 79 Fed. Reg. at 44,468.

Pet. at 16. Once again, CASE does not state the specific issue of law or fact that it wishes to raise, but the authorized and potential aquifer withdrawals (which are not accurately described by CASE)[31] are beyond the NRC's regulatory purview, as they were not authorized by the challenged license amendment or undertaken to mitigate any environmental impact resulting from the increase in the TS limit. Thus, any substantive challenge to these withdrawals is inadmissible as beyond the scope of and immaterial to the proceeding. 10 C.F.R. § 2.309(f)(1)(iii), (iv). Nonetheless, the NRC's EA addresses permitted and potential aquifer withdrawals in the section titled "Aquifer Withdrawals." 79 Fed. Reg. at 44,468. And once again, CASE fails to reference this discussion, so interpreting this claim as a challenge to the EA fails to demonstrate the existence of a genuine dispute with the EA. 10 C.F.R. § 2.309(f)(1)(iv).

As previously discussed, the EA discusses the use of 5 MGD of the Turkey Point Unit 5 withdrawal allowance of brackish water from the Floridan Aquifer; the temporary approval to withdraw 30 MGD from the Biscayne Aquifer, though FPL has never used this allowance; and the potential authorization to install up to six new wells that would pump approximately 14 MGD of water from the Floridan Aquifer into the CCS as a long-term salinity mitigation measure. LAR EA, 79 Fed. Reg. at 44,468. The EA states that the pumping would be expected to reduce the salinity of the CCS to the equivalent of Biscayne Bay and that such withdrawals could also help moderate water temperatures. *Id*. To the extent that Contention 3 can be read to

[31] Contrary to CASE's characterization, there was no 14 MGD authorization in 2013 and has been none in 2014. As discussed above, FPL obtained permission from the SFWMD in the summer of 2014 to withdraw a portion (approximately 5 MGD) of the preexisting 14 MGD Unit 5 Floridan Aquifer withdrawal allowance for use in the CCS. The original Unit 5 14 MGD authorization was issued in 2005. The anticipated FDEP AO, which is expected to require a salinity management plan, may ultimately involve another 14 MGD from the Floridan Aquifer. FPL also obtained temporary authorization to withdraw 30 MGD from the shallower, saltwater Biscayne Aquifer, which it has not used, and a now-expired approval to withdraw excess outflow from the L-31 canal up to 100 MGD to the extent it is not required for the protection of fish and wildlife, discussed below.

argue that the EA omits this information, it is simply wrong. To the extent CASE seeks to substantively challenge these withdrawals, its claim is beyond the scope of this proceeding and immaterial, as none of these withdrawals is authorized by the NRC as part of the proposed action or undertaken in response to the small increase in the TS limit. 10 C.F.R. § 2.309(f)(1)(iii), (iv). And to the extent CASE challenges the NRC's NEPA compliance, its failure to reference and challenge the discussion of this issue in the EA fatally undermines its claim. 10 C.F.R. § 2.309(f)(1)(vi).

Even if the aquifer withdrawals were part of the proposed action, which they are not, there is no basis for CASE's claim that such measures are extraordinarily invasive or environmentally usurious. The aquifer withdrawals are brackish or salt water, and therefore not from any potable resource. Further, they reduce salinity in the CCS and help mitigate temperature; and CASE provides no information whatsoever suggesting that they have any significant adverse impact. For this reason too, the Contention fails to meet 10 C.F.R. § 2.309(f)(1)(ii) and fails to demonstrate any genuine material dispute, as required by 10 C.F.R. § 2.309(f)(1)(iv).

CASE's reference to a 100 MGD withdrawal (Pet. at 16), and CASE's quotation from a letter from Biscayne National Park ostensibly criticizing these withdrawals, *id.*, do not relate to any withdrawal from an aquifer. Contrary to CASE's characterization, the Park's letter actually concerns the SFWMD's approval of FPL's withdrawals of excess water from a local canal. *See* CASE Ex. 4. FPL requested emergency authorization for these temporary canal withdrawals on August 27, 2104, and the withdrawals were authorized by the SFWMD on August 28, 2014. *See* FPL Exhibit 1, SFWMD "Emergency Final Order Issued To Florida Power and Light for the Purpose of Authorizing Temporary Pump Installation and Water Withdrawal Along and From

the L-31 E Canal System; Miami-Dade County, Florida," August 28, 2014. The withdrawals were only permitted to the extent that water is available that would otherwise be discharged to the ocean and is in excess of the flows reserved for protection of fish and wildlife, with a daily maximum of 100 MGD. Further, this temporary authorization expired on October 15, 2014, and therefore has no continuing relevance. The SFWMD emergency authorization was granted nearly a month after the NRC published its EA and three weeks after the NRC granted the license amendment. CASE provides no reason why the NRC should or could have addressed the excess canal withdrawals in its EA.[32]

c. Crocodiles

Contention 3 also mentions the impacts of chemicals on crocodiles and references an October 2, 2014, letter from FWS, which expressed concern about the impacts on crocodiles. Pet. at 15, 17 (citing CASE Ex. 5). Once again, this issue was fully addressed in the NRC's EA in the section titled "Federally Protected Species and Habitats." 79 Fed. Reg. at 44,467. Citing its BA, the NRC's EA concludes that "the proposed action would have no significant impact on Federally-protected species or habitats." *Id*.

The NRC's BA considered the potential for the proposed action to reduce hatchling survival, alter crocodile growth rates, and reduce habitat availability and concluded that the proposed action is not likely to adversely affect the American crocodile and would have no effect on the species' designated critical habitat. *Id*. The FWS concurred with the NRC's BA in July 2014. FWS Concurrence at 5. The FWS concurrence notes that, "[i]f not treated, the

[32] CASE's reliance on the Park letter fails to acknowledge that the Park ultimately supported the withdrawals, subject to certain conditions that were incorporated into the SFWMD's authorization. *Compare* CASE Ex. 4 at 2 *with* FPL Ex. 1 at 15-16, 21.

cyanobacteria bloom within the CCS could threaten the longterm viability of the crocodile population within and near the CCS." FWS Concurrence at 3. It concludes by addressing the impact of chemical treatments and concludes that the "efforts to treat cyanobacteria, reduce salinity and water temperature, and improve water quality in the CCS will improve and maintain habitat for the crocodile."[33] *Id*. at 4-5. Again, CASE fails to cite any of the analysis performed by the NRC and so fails to demonstrate the existence of a genuine dispute with the EA. 10 C.F.R. § 2.309(f)(1)(vi). To the extent CASE seeks to substantively challenge FPL's use of chemical treatments, its claim is beyond the scope of this proceeding and immaterial. 10 C.F.R. § 2.309(f)(1)(iii), (iv). And to the extent CASE challenges the NRC's NEPA or ESA compliance, its failure to reference and challenge the discussion of this issue in the EA and BA fatally undermines its claim. 10 C.F.R. § 2.309(f)(1)(vi).

d. Saltwater Intrusion

Contention 3 also addresses saltwater intrusion and states that "using large amounts of water from the Floridan Aquifer for power generation puts the water supply at risk." Pet. at 18-19. CASE argues that FPL should not be allowed to use groundwater for this purpose while saltwater intrusion threatens homeowners who are forced to conserve water. *Id*. Once again, CASE focuses on an environmental action that is unrelated to the NRC's licensing action. The

[33] Specifically addressing the safety of copper sulfate, the FWS stated:

> The Service notes that the copper and other constituents used to treat the cyanobacteria will be applied in low concentrations over a short time period. In addition, the hyper-saline environment in the CCS will likely reduce the toxicity of the copper because, in general, an increase in salinity has been found to reduce the toxicity of copper to fish and invertebrates. Furthermore, despite a lack of toxicological data assessing the impacts of aqueous copper on crocodilians, the concentration of copper resulting from the treatment is not anticipated to exceed drinking water standards and therefore, the addition of copper to the CCS is not expected to harm the crocodile.

FWS Concurrence at 4.

NRC has not authorized any water withdrawals. The FDEP Administrative Order, discussed in the EA, would require FPL to institute a salinity management plan, which may involve drilling wells into the Florida Aquifer to obtain brackish water to help address salinity in the cooling canals, and would be expressly intended to mitigate or stop saltwater intrusion. And, as discussed above in response to Contention 1, the aquifer withdrawals intended to both address the unusually low CCS recharge from low rainfall and stormwater runoff, as well as the anticipated AO intended to mitigate alleged salinity migration were discussed in the NRC's EA. *See* 79 Fed. Reg. at 44,468. Again, CASE ignores the EA. CASE also fails to show how either the NRC's action or any of FPL's efforts to provide cooler or less saline water to the CCS could exacerbate saltwater intrusion and contribute to cumulative impacts. Since this potential program of withdrawal from the Floridan aquifer would be ordered by the state environmental regulator as a means to address saltwater intrusion, CASE would be hard pressed to demonstrate how it would exacerbate the existing situation. It makes no effort to do so. Here CASE again fails to demonstrate the existence of a genuine dispute with the NRC's EA. 10 C.F.R. § 2.309(f)(1)(vi).

CASE also criticizes FPL for using the Floridan water, when its members cannot, but fails to identify any use its members might have for this brackish, undrinkable water. Pet. at 19. FPL's use of brackish and saltwater has no bearing on restrictions on watering lawns (*see id.*).

e. Radiological Concerns

Finally, in Contention 3, CASE argues that there were "probably" some radiological concerns associated with the uprate. Pet. at 19-20. This unfounded accusation makes no specific assertion of law or fact and is patently insufficient to support a contention. 10 C.F.R. § 2.309(f)(1)(i). And, once again, it seeks to relitigate the EPU amendment, which is beyond the

scope of this license amendment proceeding. 10 C.F.R. § 2.309(f)(1)(iv). For these reasons, this contention is not admissible.

In passing, CASE references a San Onofre Safety website and the "ChemWiki" website to make vague claims regarding the radiological safety of the EPU. The Commission consistently rejects this contention-by-reference approach. CASE does not clearly identify the evidence on which it relies with reference to a specific point, and instead impermissibly seeks to require the Board and parties to search "for a needle that may be in a haystack." Seabrook, CLI-89-03, 29 NRC at 241. "Merely citing to pages in diverse reports without any additional explanation or other obvious link to the [relevant analysis] is insufficient to raise a genuine material dispute for hearing." *Pilgrim*, CLI-10-11, 71 NRC at __ n.121 (slip op. at 31). Thus, this aspect of Contention 3 also fails to demonstrate the existence of a genuine dispute with the NRC's EA. 10 C.F.R. § 2.309(f)(1)(vi).

The EA considers radiological impacts and concludes that the proposed action would result in no changes to radiation levels of the types or quantities of radioactive effluents. 79 Fed. Reg. at 44,467. CASE does not address or present any basis for disputing this assessment. CASE provides no explanation how the small increase in the TS limit on UHS temperature would have any appreciable impact on tritium levels. CASE asserts that "there are some concerns related to increasing reactor operating temperatures in relation to waste" but is not sure what they are. Pet. at 20. In addition to being fatally vague and unsupported, this assertion is irrelevant because the LAR involves no increase in "reactor operating temperatures."

4. Contention 4 is Inadmissible

Contention 4 alleges:

> The CCS is aging, old technology and FPL has no redundancy for Units 3 & 4 limiting corrective actions.

Pet. at 22.

Contention 4 is inadmissible because CASE fails to: (1) provide a specific statement of the issue to be raised; (2) demonstrate that the issue is within the scope of this proceeding or material to the NRC's decision making; (3) provide facts or expert opinion to support the contention; and (4) demonstrate the existence of a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(i), (iii), (v), and (vi).

In Contention 4, CASE argues that the cooling canals are old and makes vague assertions about grid operation. Pet. at 22. But these claims do not amount to a litigable dispute. FPL's business decisions and grid reliability efforts are beyond the purview of the NRC, far beyond the scope of this proceeding, and immaterial to the NRC's review of the amendment. 10 C.F.R. § 2.309(f)(1)(iii), (iv). CASE also does not state what remedy it seeks for its assertions about the age of the CCS. Because CASE does not offer a specific statement of a contention (§2.309(f)(1)(i)) or a genuine dispute with the NRC's licensing action (§2.309 (f)(1)(vi)), Contention 4 must be denied.

V. SELECTION OF HEARING PROCEDURES

Commission rules require the Atomic Safety and Licensing Board designated to rule on a petition to intervene to "determine and identify the specific procedures to be used for the proceeding" pursuant to 10 C.F.R. §§ 2.310 (a)-(h). 10 C.F.R. § 2.310. The regulations are explicit that "proceedings for the . . . licensee-initiated amendment . . . of licenses subject to [10

C.F.R. Part 50] may be conducted under the procedures of subpart L." 10 C.F.R. § 2.310(a). The regulations permit the presiding officer to use the procedures in 10 C.F.R. Part 2, Subpart G ("Subpart G") in certain circumstances. 10 C.F.R. § 2.310(d). It is the proponent of the contentions, however, who has the burden of demonstrating "by reference to the contention and bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures." 10 C.F.R. § 2.309(g). CASE did not address the selection of hearing procedures in its Petition and, therefore, did not satisfy its burden to demonstrate why Subpart G procedures should be used in this proceeding. Accordingly, any hearing arising from the Petition should be governed by the procedures of Subpart L.

VI. CONCLUSION

For the foregoing reasons, CASE's hearing request should be denied because it failed to demonstrate standing or to proffer a single admissible contention.

Respectfully Submitted,

Signed (electronically) by,

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Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated: November 10, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 50-250
(Turkey Point Units 3 and 4)	)	50-251
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "FPL's Answer To Citizens Allied For Safe Energy, Inc.'s Petition To Intervene And Request For A Hearing," dated November 10, 2014, have been served upon the following persons by the Electronic Information Exchange and via e-mail to those marked with an asterisk.

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Signed (electronically) by,

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Dated at Washington, DC
this 10th day of November, 2014