UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael M. Gibson, Chairman
Dr. Michael F. Kennedy
Dr. William W. Sager

In the Matter of	Docket Nos. 50-250-LA and 50-251-LA
FLORIDA POWER & LIGHT COMPANY	ASLBP No. 15-935-02-LA-BD01
(Turkey Point Nuclear Generating, Units 3 and 4)	March 23, 2015

MEMORANDUM AND ORDER
(Granting CASE's Petition to Intervene)

Before this Licensing Board is the October 14, 2014 petition of Citizens Allied for Safe Energy, Inc. (CASE) requesting a hearing on license amendments issued to Florida Power & Light Company's (FPL) Turkey Point Nuclear Generating Units 3 and 4.[1] Those amendments increased the ultimate heat sink (UHS) water temperature limit for the plant's cooling canal system (CCS). On January 14, 2015, in Homestead, Florida, the Board held oral argument on CASE's petition, during which the Board questioned the parties on CASE's standing to intervene and the admissibility of CASE's four proposed contentions. Also before the Board is FPL's motion to strike portions of CASE's reply.[2]

[1] Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing (Oct. 14, 2014) [hereinafter Petition].

[2] Florida Power & Light Company's Motion to Strike New Arguments and References in CASE's Reply (Nov. 28, 2014) [hereinafter Motion to Strike].

Initially, the Board partially grants FPL's motion to strike. Thereafter, viewing CASE's arguments in light of that ruling, the Board concludes that CASE satisfies the requirements for standing to intervene in this proceeding and has submitted one admissible contention.[3] As such, the Board grants CASE's petition to intervene.

I. Background

In 2002, the NRC granted FPL renewed licenses for Turkey Point Units 3 and 4, which are located in Miami-Dade County, Florida.[4] These reactors employ cooling canals as their UHS.[5] As designed, heated water is discharged into the canals where it is cooled by flowing over a 13-mile loop before returning to Units 3 and 4 for recirculation back into the plant for cooling purposes.[6] Technical specifications (TS) in FPL's renewed licenses provided for a UHS water temperature limit of 100 degrees Fahrenheit (°F) in the CCS,[7] as measured at the point of intake back into the system.[8] Should FPL exceed the UHS temperature limit, Units 3 and 4 would be required to undergo a dual unit shutdown.[9]

---

[3] See infra Part IV(B)(1)(b).

[4] Environmental Assessment and Final Finding of No Significant Impact, Issuance, 79 Fed. Reg. 44,464, 44,466 (July 31, 2014) [hereinafter 2014 EA].

[5] Id. Plants must employ a UHS to transfer heat from structures, systems, and components that are important to safety. See 10 C.F.R. Part 50, App. A, Criterion 44.

[6] 2014 EA, 79 Fed. Reg. at 44,466; Tr. at 87-88.

[7] License Amendment; Issuance, Opportunity to Request a Hearing, and Petition for Leave to Intervene, 79 Fed. Reg. 47,689, 47,690 (Aug. 14, 2014) [hereinafter Amendment Notice].

[8] See Tr. at 85-87 ("But it's just the temperature at the intake, it's not an average temperature for the component, the Cooling Canal System. It's not . . . indicative of the temperature at the outlet, because that's a function of the heat load . . . that's actually being expended . . . .").

[9] See Amendment Notice, 79 Fed. Reg. at 47,690; Tr. at 147.

In 2010, FPL applied for license amendments authorizing an extended power uprate (EPU) for both units.[10] The NRC Staff's environmental assessment (EA) for the EPU concluded that there would be no significant environmental impact associated with uprating both units.[11]

In the summer of 2014, temperatures in the CCS "approached and exceeded the 100 °F TS limit on several occasions."[12] As a result, on July 10, 2014, FPL sought another license amendment to increase the TS limit from 100 to 104°F.[13] On July 17, 2014, FPL asked that the NRC Staff respond to its amendment request on an emergency basis "to avoid a dual unit shutdown that could affect grid reliability."[14] On July 30, 2014, the NRC Staff published its findings that (1) exigent circumstances existed such that the Commission could not allow 30 days for public comment prior to acting on FPL's application; and (2) the amendment involved no significant hazards considerations.[15] On August 8, 2014, the NRC Staff approved the proposed license amendments increasing the TS limit to 104°F at the intake and adding a surveillance requirement to verify the water temperature once per hour when it exceeds

---

[10] Final Environmental Assessment and Final Finding of No Significant Impact, 77 Fed. Reg. 20,059, 20,060 (Apr. 3, 2012) [hereinafter 2012 EA]. The 2012 power uprate allowed FPL to operate Turkey Point Units 3 and 4 at "approximately 15-percent over the current licensed thermal power." Id.

[11] Id.

[12] 2014 EA, 79 Fed. Reg. at 44,466 ("On July 20, 2014, the NRC approved a notice of enforcement discretion (NOED), which allows the UHS temperature to exceed 100 °F up to 103 °F for a period of no more than 10 days . . . .").

[13] Letter from Michael Kiley, Vice President, FPL, to NRC, License Amendment Request No. 231, Application to Revise Technical Specifications to Revise Ultimate Heat Sink Temperature Limit (July 10, 2014) (ADAMS Accession No. ML14196A006).

[14] Amendment Notice, 79 Fed. Reg. at 47,690.

[15] Id.

100°F.[16] Approval of the license amendments was published in the Federal Register on August 14, 2014, along with an opportunity to request a hearing.[17]

On October 14, 2014, CASE submitted its petition to intervene and request for a hearing, including four proposed contentions.[18] On November 10, 2014, the NRC Staff and FPL filed answers arguing that CASE lacks standing and that its contentions fail to meet the NRC's contention admissibility requirements.[19] On November 17, 2014, CASE submitted a consolidated reply to the NRC Staff and FPL answers.[20] On November 28, 2014, FPL moved to strike certain portions of CASE's reply that FPL argues represent new arguments and references not included in CASE's initial petition.[21] On January 14, 2015, this Board heard oral argument from representatives of CASE, the NRC Staff, and FPL on standing and contention admissibility regarding CASE's petition.[22]

II. FPL's Motion to Strike

FPL's motion to strike argues that CASE's reply made new arguments and supplied new references that were not included in its initial petition and, therefore, should not be considered

---

[16] 2014 EA, 79 Fed. Reg. at 44,465.

[17] Amendment Notice, 79 Fed. Reg. at 47,689.

[18] Petition at 5.

[19] NRC Staff's Answer to Citizens Allied for Safe Energy, Inc.'s Petition for Leave to Intervene and Request for Hearing (Nov. 10, 2014) [hereinafter NRC Staff Answer]; FPL's Answer to Citizens Allied for Safe Energy, Inc.'s Petition to Intervene and Request for a Hearing (Nov. 10, 2014) [hereinafter FPL Answer].

[20] Citizens Allied for Safe Energy, Inc.'s Reply to FPL and to NRC Staff Answers to Its Petition to Intervene and Request for a Hearing (Nov. 17, 2014) [hereinafter Reply].

[21] Motion to Strike at 1.

[22] See Licensing Board Notice and Order (Scheduling Oral Argument) (Dec. 1, 2014) (unpublished); Tr. at 4.

by the Board.[23] Though a petitioner has the right to file a reply,[24] that reply cannot raise for the first time new arguments in support of its contentions.[25] Rather, the right to reply is intended to provide an opportunity to "legitimately amplif[y]" arguments made in the petition in response to applicant and NRC Staff answers.[26]

With respect to standing, FPL's motion seeks to strike portions of CASE's reply that (1) argue that FPL plans to withdraw water from a freshwater portion of the Biscayne aquifer; (2) rely on two U.S. Geological Survey documents to show that the aquifers contain fresh water; (3) rely on an Environmental Protection Agency website to make a claim regarding the use of certain chemicals in the CCS; and (4) argue that CASE was conferred standing in the Turkey Point, Units 6 and 7 combined license proceeding.[27] At oral argument, FPL acknowledged that "[t]o the extent that there are attempts to address standing [in CASE's reply], . . . that may be exempted" from the motion to strike.[28]

With respect to CASE's proposed contentions, FPL's motion seeks to strike portions of CASE's reply that (1) rely on the Everglades Restoration Plan; (2) challenge FPL's amendments based on the presence of hydrazine and low level radiation in the CCS; (3) rely on the 2007 Turkey Point Wastewater Permit; (4) rely on a Miami Herald article about eliminating monitoring requirements in the CCS; (5) argue that the NRC should hold a hearing to make up for lax state

---

[23] Motion to Strike at 1.

[24] See 10 C.F.R. § 2.309(i)(2).

[25] La. Energy Servs., L.P. (Nat'l Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004). The Commission has, by contrast, allowed a petitioner to use its reply as an opportunity to cure potential defects in standing. See PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139-40 (2010); Santee Cooper (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010).

[26] Id. at 224.

[27] Motion to Strike at 4-5.

[28] Tr. at 43.

and local regulation; and (6) rely on a 1971 Final Judgment that led to construction of the CCS, including arguments that this Judgment (a) prohibited use of biocides and chemical treatments in the CCS; and (b) brings FPL's power dispatch priorities within the scope of the NRC license amendment proceedings.[29]

The Board disagrees with FPL's claim that "CASE never originally argued that FPL planned to withdraw water from a fresh portion of the Biscayne aquifer."[30] Throughout its petition, CASE refers explicitly to its concerns about the impact that FPL's actions will have on fresh water, including the withdrawal of fresh water from Florida's aquifers.[31] As such, the Board views CASE's arguments made in reply related to the use of fresh water to be a legitimate amplification of its original petition. To the extent that FPL's motion seeks to strike CASE's claims regarding impacts on fresh water, the motion is denied.

However, the balance of FPL's motion, related to CASE's contentions, appropriately identifies areas where CASE's reply went beyond the scope of the issues raised in its initial petition. As such, the remainder of FPL's motion to strike is granted.

With this ruling in mind, we now turn to the questions of CASE's standing and the admissibility of its proffered contentions.

III. Standing

A. Standing Requirements

To participate in an NRC licensing proceeding, a petitioner must establish standing to intervene.[32] While a petitioner bears the burden of establishing standing, licensing boards

---

[29] Motion to Strike at 5-7.

[30] Id. at 5.

[31] See Petition at 6, 16, 17, 18-19.

[32] See 10 C.F.R. § 2.309(a).

should "evaluate a petitioner's standing . . . constru[ing] the petition in favor of the petitioner."[33] A petition to intervene must state (1) the nature of the petitioner's right under either the Atomic Energy Act or the National Environmental Policy Act (NEPA) to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest.[34] To determine whether a petitioner satisfies these requirements, the Commission has traditionally applied contemporaneous judicial concepts of standing, requiring a showing of "concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision."[35] In certain "situations involving . . . obvious potential for offsite consequences"[36] – including reactor licensing, license renewal, and at least some license amendment proceedings – the Commission has routinely granted standing to petitioners who live within a certain distance of the facility at issue under the "proximity presumption," effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability.

When an organization, such as CASE, seeks to intervene on behalf of its members, it may establish standing by showing that (1) one or more of its members would individually meet the above articulated standing requirements; (2) the member has authorized the organization to

---

[33] Ga. Inst. of Tech. (Ga. Tech Research Reactor, Atlanta, Ga.), CLI-95-12, 42 NRC 111, 115 (1995).

[34] 10 C.F.R. § 2.309(d)(1).

[35] Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992)); see, e.g., Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998); Ga. Tech Research Reactor, CLI-95-12, 42 NRC at 115.

[36] Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

represents its interest; and (3) the interest represented is germane to the organization's purpose.[37]

B. Ruling on CASE's Standing

CASE, on behalf of the nine members who submitted affidavits in support of its petition,[38] claims representational standing under the proximity presumption.[39] Alternatively, CASE claims that its members have been injured in a variety of ways by the NRC's grant of license amendments to FPL.[40] The NRC Staff and FPL do not dispute that CASE's members have authorized CASE to represent them on an issue germane to CASE's purpose.[41] The NRC Staff and FPL do, however, dispute CASE's standing claims by stating that (1) the proximity presumption does not properly apply to this proceeding;[42] and (2) CASE and its members do not satisfy the traditional judicial standing requirements of injury, causation, and redressability.[43]

---

[37] See Private Fuel Storage, LLC (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

[38] Petition, Ex. 6-13, Aff. of Pamela Gray (Oct. 13, 2014), Aff. of Philip Stoddard (Oct. 13, 2014), Aff. of Catherine Gilbert (Oct. 13, 2014), Aff. of Alice Read (Oct. 13, 2014), Aff. of Barry White (Oct. 14, 2014), Aff. of Ronnie White (Oct. 14, 2014), Aff. of Anna Bystrick (Oct. 14, 2014), Aff. of Murray Yanks (Oct. 13, 2014); Petition, Ex. 14, Aff. of Bernard Ginsberg (Jan. 12, 2015) [hereinafter Ginsberg Aff.]. These nine members live between 13 and 40 miles from the Turkey Point facility. CASE attached eight affidavits to its initial petition to intervene, supplementing it with an additional affidavit two days prior to oral argument. See Ginsberg Aff. At oral argument, FPL, while stating its view that "the affidavit is cumulative to the already filed petition[,] . . . adds nothing to the petition . . . . [and] that it's late filed," did not move to strike this affidavit. Tr. at 14. Neither did the NRC Staff. Id. at 15. As such, the Board will consider the Ginsberg Affidavit as a proper exhibit supporting CASE's petition.

[39] Petition at 2-3.

[40] Id. at 4; see e.g., Tr. at 25.

[41] See e.g., NRC Staff Answer at 6.

[42] See NRC Staff Answer at 7; FPL Answer at 10.

[43] See NRC Staff Answer at 7-9; FPL Answer at 10-12.

1. Proximity Presumption

The NRC Staff disputes CASE's standing presumption based on proximity claiming that, "[i]n license amendment proceedings, petitioners must satisfy the judicial concept of standing."[44] FPL also argues that the proximity presumption should not apply in this case, though it acknowledges that the presumption may be used in license amendment cases where the petitioner shows "a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm to the petitioner."[45] As detailed below, the Board grants CASE standing in this proceeding based on traditional judicial standing requirements. As a result, the Board need not address CASE's standing based on the proximity presumption.[46]

2. Judicial Standing

CASE claims that the "NRC issued amendments . . . ha[ve] and will impact and endanger the water source for all of the petitioners."[47] Specifically, CASE states in its petition that

> (1) drawing excessive water from the aquifer presents tangible and particular harm to the health and wellbeing of [CASE's] members living within 50 miles of the site and who are ratepayers of the company; (2) the Commission has authorized measures the granting of which would directly affect [CASE and its] members; and (3) the Commission is the sole agency with the power to approve, to deny or to modify a license to construct and operate a commercial nuclear power plant.[48]

---

[44] NRC Staff Answer at 7. At oral argument, the NRC Staff acknowledged that certain license amendment proceedings allow standing via the proximity presumption. Tr. at 16-17.

[45] FPL Answer at 9-10.

[46] The Board, therefore, will not address whether the proximity presumption properly applies only to license amendment proceedings involving the potential for offsite "radiological" consequences, or applies also to amendments involving offsite "environmental" consequences.

[47] Petition at 4.

[48] Id.

FPL disputes CASE's claim of injury related to excessive withdrawal of aquifer water, arguing that "CASE does not show that such withdrawals in fact have any impact whatsoever on its members" since "FPL is not withdrawing from any potable water source."[49] Additionally, the NRC Staff and FPL both argue that CASE's claimed injury is not traceable to the NRC-issued amendments, as those withdrawals were approved by state authorities, and so cannot be redressed in this proceeding.[50]

CASE argues that the NRC Staff and FPL understate the injury to its members by characterizing the Biscayne and Floridan Aquifers as salt water and non-potable.[51] CASE has consistently claimed that water drawn from these aquifers is fresh.,[52] arguing that excessive aquifer withdrawal leads to insufficient fresh water and exacerbates saltwater intrusion in the region, threatening the interests of CASE's members who use fresh water for drinking, agriculture, rock mining operations, and fishing.[53] The parties dispute the appropriate characterization of the water at issue here. Resolution of that factual dispute is not necessary or appropriate at this stage. Viewing disputed facts in a light favorable to CASE, the Board concludes that CASE has alleged a sufficient injury related to the use of freshwater aquifer resources and any resulting potential for increased saltwater intrusion.

CASE argues that its members' injuries have been caused by the NRC's issuance of license amendments to FPL, because those amendments allow continued operation of FPL's "Turkey Point cooling canal system (CCS) at its current extreme levels of temperatures and

---

[49] FPL Answer at 11-12. The NRC Staff also asserts that the water withdrawn by FPL is salt water and not fresh. See Tr. at 56-57.

[50] NRC Staff Answer at 8; FPL Answer at 10-11.

[51] Reply at 8; Tr. at 31-32.

[52] See e.g., Petition at 6, 16, 17, 18-19; Tr. at 21-22, 28-30

[53] Tr. at 28-29.

salinity and increased use of freshwater resources [that] is a threat to the financial and ecological viability of the area."[54] Additionally, CASE alleges "that the corrective actions taken to mitigate the situation were caustic and not exhaustively evaluated experimentally."[55] While the NRC did not authorize any aquifer withdrawals per se, the NRC's approval of the present license amendments enables Turkey Point Units 3 and 4 to continue operating at the same power level and with elevated CCS temperatures, which could effectively require additional aquifer withdrawals and lead to additional saltwater intrusion in the future. After all, absent NRC action, FPL would have been forced to shut down or at least reduce power at Turkey Point Units 3 and 4, a result that could have potentially obviated any need for more extensive aquifer withdrawals, at least during periods when CCS intake temperatures exceed 100°F.

As to whether this proceeding could afford CASE's members a potential remedy, CASE alleges "that the NRC by its own regulations does have the authority to temporarily and permanently correct this situation in these proceedings."[56] We agree, and are not convinced by the assertion from the NRC Staff and FPL that this proceeding presents no opportunity to redress CASE's members' claimed injury. Standing law does not require that a possible remedy make a claimant whole by completely resolving an alleged injury. Rather, the United States Supreme Court has made clear that a remedy that makes even a small contribution to resolving a larger, more complex injury can still support a standing claim.[57] As CASE states in its reply, the claimed injury could have been prevented through a variety of means, including "shutting

---

[54] Id. at 25.

[55] Id.

[56] Id.

[57] Mass. v. EPA, 549 U.S. 497, 526 (2007) ("The risk of catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek.")

down or reducing the operation of one or both reactors."[58] The issue before this Board is not whether it may order the shutdown of Turkey Point Units 3 and 4, but rather, whether the NRC Staff is obligated to evaluate more fully the environmental impacts associated with issuance of the challenged license amendments, including the impact of aquifer withdrawals that are the immediate or reasonably foreseeable result of the NRC's granting of the subject amendments.

As such, the Board rules that CASE has made a sufficient showing that its members meet the requirements for standing by establishing the potential for injury caused by the NRC's issuance of license amendments to FPL that can be remedied by the Board in this proceeding.

IV. Contention Admissibility

A. Contention Admissibility Standards

For a hearing to be granted, a petitioner must not only establish its standing to intervene, but must also submit at least one admissible contention.[59] An admissible contention must be timely[60] and satisfy the requirements of 10 C.F.R. § 2.309(f)(1), which states, in relevant part, that a petition must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (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;
>
> (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

---

[58] Reply at 13.

[59] See 10 C.F.R. § 2.309(a).

[60] See 10 C.F.R. § 2.309(b)(3)(i) (requiring filing of a petition to intervene within the "time specified in any . . . notice of proposed action").

> 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. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.[61]

Failure to comply with any of the § 2.309(f)(1) requirements renders a contention inadmissible.[62]

B. CASE's Proposed Contentions

CASE's petition to intervene and request for a hearing was timely filed on October 14, 2014.[63] CASE's petition includes four proposed contentions.[64] Though CASE's "petition may not be a model of clarity or organization," this Board will heed "the rule of interpretation that pleadings submitted by pro se petitioners are afforded greater leniency than petitions drafted with the assistance of counsel."[65] Thus, this Board will scrutinize CASE's pleadings and

---

[61] 10 C.F.R. § 2.309(f)(1). In this case, CASE has challenged the NRC's EA, which is the applicable environmental document at this stage of the proceeding.

[62] See PFS, CLI-99-10, 49 NRC at 325.

[63] See Amendment Notice, 79 Fed. Reg. at 47689. Neither the NRC Staff nor FPL objected to CASE's petition on timeliness grounds. CASE filed its petition by email on October 14, 2014 but did not file electronically through the NRC's E-Filing system until October 17, 2014. Having been previously authorized to file by email in the Turkey Point Units 6 and 7 combined license proceeding, the NRC Staff recognizes that CASE "reasonably relied on the representations of Staff's counsel in the Unit 6 and 7 proceeding prior to filing." NRC Staff Answer at 1 n.1.

[64] Petition at 5.

[65] DTE Elec. Co. (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 81 NRC __, __ (slip op. at 43-44) (Feb. 6, 2015); see also Pub. Serv. Elec. & Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973) (stating that "[w]hile a totally deficient pleading may not be justified on th[e] basis" that it was prepared without the assistance of counsel, "we do not think that a pro se petitioner should be held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere").

statements at oral argument to determine whether CASE has made a sufficient case to support an admissible contention.

After considering all the information before it, the Board admits a narrowed version of Contention 1,[66] denies admission of Contention 3 as duplicative, and denies admission of Contentions 2 and 4 as beyond the scope of this proceeding and immaterial to the findings required to be made by the NRC in the pending action.

1. Contention 1

As proffered by CASE, Contention 1 alleges that "[t]he uprate of Turkey Point reactors 3 & 4 has been concurrent with alarming increases in salinity, temperature, tritium and chloride in the CCS area."[67] Specifically, CASE challenges (1) FPL's claim that the rise in CCS temperature and salinity has been caused by increased ambient temperatures and lack of rainfall;[68] and (2) the adequacy of the NRC Staff's review of environmental impacts related to the granting of FPL's license amendments.[69] CASE alleges that FPL has failed to prevent high salinity water and toxic algae from escaping the CCS, and has withdrawn excessive volumes of water from Florida's aquifers.[70]

---

[66] "[B]oards may reformulate contentions to 'eliminate extraneous issues or to consolidate issues for a more efficient proceeding.'" Crow Butte Res., Inc. (N. Trend Expansion Project), CLI-09-12, 69 NRC 535, 552 (2009) (quoting Shaw Areva MOX Servs. (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 482 (2008)).

[67] Petition at 5.

[68] See e.g., Tr. at 50. CASE argues instead that increased temperatures and salinity in the CCS can be traced to increased power levels at Turkey Point due to the NRC-approved uprate in 2012. See Petition at 9.

[69] See Petition at 6 ("[T]here does not seem to be any mention of the impact [of] the matter of salinity in the CCS or regarding saltwater intrusion into the Florida Aquifer"); see also id. at 17 ("CASE contends, there was not a thorough and exhaustive examination of the implications [of] the measures taken by FPL" to correct the problems in the CCS.) The Board views CASE's arguments made in support of Contentions 1 and 3 to be largely duplicative. As such, the Board will consider arguments made in relation to Contention 3 as supportive of Contention 1 as well.

[70] Id. at 15-17.

To support its contention, CASE provides data from the Miami-Dade County Department of Environmental Resources Management (DERM) claiming to show (1) dramatic increases in temperature and salinity in the CCS that coincided with uprates at Units 3 and 4; and (2) increased migration of materials from the CCS into surrounding waters.[71] Additionally, CASE utilizes available weather data to support its claim that increases in ambient temperature and decreases in rainfall in Homestead, Florida have not been sufficient to produce the higher CCS temperatures.[72] Finally, CASE cites statements from the Superintendent of Biscayne National Park and a U.S. Geological Survey report to support its claim that reduction in fresh water due to aquifer withdrawal exacerbates saltwater intrusion.[73]

In opposition, the NRC Staff and FPL first argue that Contention 1 is untimely as a challenge to the 2012 license amendments authorizing the EPUs and, therefore, is outside the scope of the proceeding, is immaterial to the findings the NRC must make, and fails to present a genuine dispute.[74] Second, the NRC Staff opposes CASE's claims related to aquifer withdrawals and saltwater intrusion, arguing that they are outside the scope of the proceeding as "not traceable to the license amendment at issue and cannot be redressed by a proceeding before the Board."[75] Likewise, FPL argues that "none of these environmental issues is relevant to [a] slight increase to the TS limit on UHS temperature."[76]

---

[71] See id. at 6-9, 18, Ex. 1; Tr. 110. At oral argument, FPL discounted the data provided by CASE, including Exhibit 1, claiming that it preceded the time of the uprate. See Tr. at 52-54. In the Board's view, while some of the data in Exhibit 1 does precede the uprate, much of it directly relates to the claim that changes occurred in CCS temperature and salinity between the pre- and post-uprate timeframes.

[72] See Petition at 8-9, 12.

[73] See id. at 16-17, 18-19.

[74] See NRC Staff Answer at 13-14; FPL Answer at 21-24.

[75] NRC Staff Answer at 18.

[76] FPL Answer at 27.

Ultimately, however, both the NRC Staff and FPL acknowledge that the crux of CASE's concern is that the NRC failed to comply with NEPA in its evaluation of FPL's license amendment request.[77] In this respect, the NRC Staff objects to CASE's claim that the EA failed to consider FPL's water withdrawals in its efforts to mitigate increased temperatures and salinity in the CCS,[78] by countering that CASE does not identify any specific flaws in the EA's analysis.[79] The NRC Staff suggests that all of CASE's criticisms of its environmental review relate not to the present amendments, but to the environmental assessments that were conducted in relation to initial licensing, license renewal, and the issuance of the EPU amendments.[80] Similarly, FPL argues that CASE's challenge must fail because the aquifer withdrawals, along with FPL's other mitigation measures, predate the license amendment application and were mentioned and evaluated by the NRC in its 2014 EA.[81]

(a) Board Analysis of Contention 1

The Board disagrees with the NRC Staff's and FPL's characterization of Contention 1 as a direct challenge to the 2012 EPU license amendments. It is the Board's view that CASE refers to the uprate in order to highlight the alleged failure, by NRC Staff, to question FPL's claim that increased CCS temperatures have been caused by "unseasonably dry weather and . . . reduced cooling efficiency caused by an algae bloom."[82] CASE maintains that the NRC

---

[77] NRC Staff Answer at 19; FPL Answer at 27.

[78] NRC Staff Answer at 19.

[79] Id. at 20.

[80] See id. at 19-20.

[81] See FPL Answer at 27-31.

[82] Amendment Notice, 79 Fed. Reg. at 47,690. In this regard, the 2014 EA restates FPL's claim that "[t]he proposed action is needed to provide FPL with additional operational flexibility during periods when high air temperatures, low rainfall, and other factors contribute to conditions resulting in a UHS temperature in excess of 100 °F that would otherwise necessitate FPL to place Turkey Point in cold shutdown." 2014 EA, 79 Fed. Reg. at 44,466.

Staff should have considered the uprate of Turkey Point Units 3 and 4 as a potential cause of the temperature increase necessitating the subject amendments.[83] As CASE stated, "we're not challenging the up-rate. What we're saying is, you must look at the consequences and what it's causing, what's happening."[84]

The Board also disagrees with the NRC Staff and FPL that Contention 1 challenges actions not traceable to NRC-issued license amendments. In the Board's view, the contention alleges shortcomings in the NRC Staff's consideration of environmental impacts related to FPL's 2014 amendment request. Specifically, CASE alleges that the NRC Staff did not adequately consider the current and reasonably foreseeable environmental impacts of FPL's planned actions in the CCS for mitigating rising temperature and salinity levels.[85]

In 2012, the NRC Staff considered environmental impacts related to the EPUs[86] and, as stated at oral argument, "use[d] the best information available at the time."[87] Whether the NRC Staff's erred in its 2012 EA analysis is not at issue before this Board. What is at issue is whether the 2014 EA, and associated finding of no significant impact, contains a sufficient discussion of environmental impacts and the "reasons why the proposed action will not have a significant effect on the quality of the human environment."[88] In order to make this finding of no significant impact, the 2014 EA's discussion must address actual environmental impacts that

---

[83] See Petition at 9 ("Despite FPL's position that lack of rainfall and atmospheric conditions have created the temperature problems in the CCS the DERM data (Exhibit 1) indicates that the problems started much earlier and were temporally related to the uprates of Turkey Point 3 & 4. . . . In view of the DERM data, FPL or independent scientists should look carefully at what is actually causing the readings observed.")

[84] Tr. at 120-21.

[85] See e.g., Petition at 6, 15, 19.

[86] 2014 EA, 79 Fed. Reg. at 44,466.

[87] Tr. at 158.

[88] 10 C.F.R. § 51.32(a)(3); see also 10 C.F.R. §§ 51.30(a)(1), 51.31(a).

have been observed since the 2012 EA or that are now reasonably foreseeable. When drafting an EA, the NRC cannot simply import the analysis from a previously completed EA while disregarding intervening events.[89] "It would be incongruous with [NEPA's] approach to environmental protection, and with the Act's manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval."[90]

At oral argument, FPL reiterated its argument that CASE's petition fails to tie its contentions to any NEPA requirements or specific citations to the EA, while acknowledging that, "[h]ad they said the EA is inadequate because it fails to comply with NEPA by failing to address or failing to adequately address these certain issues, that might be an admissible contention."[91] As previously stated,[92] the Board will not require such procedural formalism from a pro se petitioner in order to reject an otherwise valid contention. CASE refers to the 2014 EA on multiple occasions in its petition, alleging a variety of inadequacies and omissions.[93] For instance, CASE (1) refers to "the NRC document" making no "mention of the impact [of] the matter of salinity in the CCS or regarding saltwater intrusion" into the aquifer;[94] (2) states that

---

[89] To hold otherwise would render meaningless NEPA's requirement to supplement an EIS or EA. See 40 C.F.R. § 1502.9(c)(1)(ii) ("Agencies . . . [s]hall prepare supplements to either draft or final environmental impact statements if . . . [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."); 10 C.F.R. § 51.92(a)(2). "The standard for preparing a supplemental EA is the same as for preparing an SEIS." S. Utah Wilderness Alliance v. Norton, 301 F.3d 1217, 1238 n.19 (10th Cir. 2002), rev'd on other grounds, 542 U.S. 55 (2004).

[90] Marsh v. Or. Natural Res. Council, 490 U.S. 360, 371 (1989).

[91] Tr. at 52.

[92] See supra Part IV(B).

[93] See e.g., Petition at 6, 15, 17, 19.

[94] Id. at 6.

there is "no mention of the use of [copper sulfate] in the NRC notice";[95] (3) states that there is "not a thorough and exhaustive examination of the implications [of] the measures taken by FPL to correct in FPL's opinion, the exigent situation in the CCS";[96] and (4) asks "[w]here are the studies related to the issuance of the Amendments which addressed this [salt water intrusion] concern."[97] Despite not using the phrase "environmental assessment," CASE's intention to refer to the EA is made clear by reference to an "NRC notice," followed by a lengthy quote from the EA's discussion of radiological impacts.[98] As such, CASE's repeated allegations of inadequacies and omissions in the NRC Staff's EA satisfies the requirement of 10 C.F.R. § 2.309(f)(1)(i) to provide a specific statement of the issue of law or fact to be raised.

CASE has raised a legitimate issue related to the NRC Staff's compliance with its NEPA obligation to undertake a full evaluation of the environmental impacts associated with a proposed federal action. Accordingly, the Board views this issue to be within the scope of this proceeding and material to the findings that the NRC must make, as required by 10 C.F.R. § 2.309(f)(1)(iii) and (iv). Additionally, the Board views the alleged facts and expert opinions contained in CASE's petition and associated exhibits, as detailed above,[99] as sufficient to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v).

Finally, the Board concludes, for reasons set forth more fully below, that CASE has provided a sufficient basis, pursuant to 10 C.F.R. § 2.309(f)(1)(ii), and a sufficient showing of genuine dispute, pursuant to 10 C.F.R. § 2.309(f)(1)(vi), to support admission of a contention alleging that the EA has not adequately addressed environmental impacts associated with

---

[95] Id. at 15.

[96] Id. at 17 (emphasis omitted).

[97] Id. at 19.

[98] Id. at 19-20.

[99] See supra Part IV(B)(1).

saltwater intrusion arising from (1) saline water migration from the CCS into surrounding waters; and (2) FPL's use of aquifer withdrawals to lower salinity and temperature in the CCS.[100]

(i) Saltwater Intrusion Due to Migration

The 2014 EA relies primarily on the environmental analyses previously conducted for FPL's initial licenses, license renewals, and 2012 EPU license amendments, in order to conclude that "the proposed action would result in no significant impact on . . . groundwater resources," and that "[t]herefore, this environmental assessment does not pre[s]ent any further evaluation of the operational impacts on these environmental resources."[101] The 2014 EA also refers to the CCS as a "closed cycle cooling system," claiming that activities within the CCS are unlikely to impact surface waters outside the CCS.[102] The NRC Staff and FPL both acknowledge, however, that the CCS is not truly "closed" in the sense that (1) it experiences "natural freshwater recharge of the system (i.e., through . . . groundwater exchange);"[103] and (2) materials from the canals flow outward into the ground water.[104] Given CASE's claim, which appears to be undisputed, that "the canals are unlined . . . . and there's nothing to prevent the flow of water, materials, in-and-out,"[105] it is reasonable to assume that CCS migration could significantly impact surrounding ground and surface water. Yet, the NRC, in its 2014 EA, does

---

[100] See e.g., 114-16.

[101] 2014 EA, 79 Fed. Reg. at 44,466. When asked whether the 2014 EA discusses saltwater intrusion, the NRC Staff and FPL responded that the EA incorporates the 2012 EA's discussion of aquifers and references an expected administrative order of the FDEP, which is "intended to address saltwater intrusion." Tr. at 167-68.

[102] 2014 EA, 79 Fed. Reg. at 44,467, 44,468.

[103] Id. at 44,467.

[104] Tr. at 118, 162-63.

[105] Tr. at 115-16.

not appear even to have considered whether continued operation of the CCS, at an elevated temperature and salinity level, would impact ground and surface waters outside of the canals.

(ii) Saltwater Intrusion Due to Aquifer Withdrawal

The NRC Staff and FPL claim that the EA discusses potential environmental impacts related to various aquifer withdrawals that FPL has undertaken, and will undertake, to help mitigate temperature and salinity increases in the CCS.[106] While the NRC Staff and FPL are correct that the EA mentions certain aquifer withdrawals, the discussion focuses solely on "beneficial impacts to CCS aquatic resources and the crocodiles inhabiting the Turkey Point site" and does not address the degree to which those withdrawals contribute to saltwater intrusion.[107] The EA nowhere discusses the degree to which removing fresh water from the aquifers will exacerbate saltwater intrusion, even though counsel for the NRC Staff stated "I don't think that there is any dispute that freshwater . . . helps to keep saltwater from intruding farther inland."[108] Furthermore, the EA addresses only the limited withdrawals that were known or expected at the time of publication.[109] For instance, the EA does not discuss FPL's temporary authorization to withdraw up to 100 million gallons per day from the L31 canal.[110] CASE's petition expresses concern that this authorization would not be temporary, but could "set a precedent for future freshwater requests."[111] In fact, on February 18, 2015, FPL

---

[106] NRC Answer at 19, 20; FPL Answer at 29-30. None of the aquifer withdrawals discussed date back to the time of the EPU since the 2012 EA noted that "[t]he licensee is not requesting an increase in water supply under the proposed EPU." 2012 EA, 77 Fed. Reg. at 20,063.

[107] See 2014 EA, 79 Fed. Reg. at 44,468. The EA states instead that "[b]ecause the CCS is a manmade closed cycle cooling system, aquifer withdrawals are not likely to have a significant cumulative effect on surface water resources." Id.

[108] Tr. at 68-69.

[109] 2014 EA, 79 Fed. Reg. at 44,468.

[110] These temporary withdrawals were not approved until August 28, 2014. See Tr. at 166.

[111] See Petition at 16-17 (quoting Brian Carlstrom, Superintendent of Biscayne National Park).

requested permanent authorization from the South Florida Water Management District to draw 100 million gallons per day from the L31 canal in order to resolve temperature and salinity problems in CCS.[112] As discussed earlier, the NRC Staff's obligation to consider environmental impacts under NEPA does not end with its publication of an environmental review document, but rather continues until final agency action.[113] The legitimacy of the NRC's hearing process requires that the grant of a license amendment not be considered final agency action until the process has run its course.[114]

(iii) Conclusion Related to Consideration of Saltwater Intrusion

To CASE, the NRC's failure to address matters related to saltwater intrusion appears to be an abdication of responsibility for environmental impacts associated with FPL's operation of the CCS.[115] CASE's critique in this regard seems to be borne out by the NRC Staff's efforts to limit its responsibilities to radiological safety. Thus, at oral argument, counsel for the NRC Staff stated that "in terms of the staff being able to tell FPL that salinity is too high in the canal . . . that would be something that the State of Florida would have authority over, as long

---

[112] See Jenny Staletovich, Florida Power & Light Spars with National Park Over Water Needs for Nuclear Plant, Miami Herald, (Feb. 19, 2015, 11:48 AM) http://www.miamiherald.com/news/local /environment/article10655732.html.

[113] See supra text accompanying note 90.

[114] In fact, NRC regulations specifically provide that, when an adjudicatory proceeding has been initiated with respect to a license amendment issued with a no significant hazards determination, "[o]nce the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision." 10 C.F.R. § 2.340(a)(2)(ii).

[115] See Tr. at 77-78. According to CASE's representative, "a bifurcated system has evolved where FDEP has responsibility without authority, and the NRC has authority without responsibility. . . . But if it turns out that the problem is being caused by something in the reactors like the up-rate, [the FDEP] do[es]n't have the authority . . . . And the reverse, the NRC controls the reactor and they have delegated their authority to the DEP to look after how it affects the land and the people."

as that salinity was not impacting the operation of the reactor."[116] As if to emphasize this narrow view of its NEPA obligations, the state officer with whom the NRC Staff consulted was Cindy Becker, Chief of the Bureau of Radiation Control at the Florida Department of Health, who had no comments on environmental impacts associated with the proposed action.[117] The Florida Department of Health's Bureau of Radiation Control is responsible for monitoring the radiological environment at Florida's nuclear power plants – not the increasing salinity or temperature of the CCS. Apparently, the NRC Staff made no attempt to consult with the Florida Department of Environmental Protection, which is the state agency that would be in the position to best comment upon environmental conditions in the CCS because it – and not the Department of Health's Bureau of Radiation Control – has primary responsibility for this issue.[118] To this Board, it appears reasonable to ask whether the NRC Staff has fulfilled its NEPA obligation to take a hard look at environmental impacts associated with issuance of license amendments increasing the allowable temperature in the CCS.

The Board thus rules that CASE has shown a genuine dispute as to whether the 2014 EA adequately addresses environmental impacts related to saltwater intrusion both from the CCS into surrounding groundwater and surface water, and as a result of reasonably foreseeable aquifer withdrawals that will be undertaken by FPL to mitigate temperature and salinity increases in the CCS.

(b) Admission of Contention 1

CASE identifies the concern that precipitated its filing of a petition by stating that "[w]e saw the solutions to mitigate the problem which we considered evasive and problematic. And

---

[116] Tr. at 155.

[117] See Tr. at 204-06; 2014 EA, 79 Fed. Reg. at 44,469.

[118] See 2014 EA, 79 Fed. Reg. at 44,466, 44,468.

their failure to consider other options as causes."[119] The Board views this statement as a basic summation of CASE's contention, but has narrowed the contention to eliminate those areas where CASE alleges the omission of information that is, in fact, discussed in the NRC Staff's EA.[120] As such, the Board admits Contention 1, narrowed and reformulated to read as follows:

> The NRC's environmental assessment, in support of its finding of no significant impact related to the 2014 Turkey Point Units 3 and 4 license amendments, does not adequately address the impact of increased temperature and salinity in the CCS on saltwater intrusion arising from (1) migration out of the CCS; and (2) the withdrawal of fresh water from surrounding aquifers to mitigate conditions within the CCS.

Of course, the question whether the EA is, in fact, sufficient to satisfy the NRC Staff's NEPA requirements is not the focus of our inquiry here but must await consideration at a full evidentiary hearing.[121]

2. Contention 2

As proffered by CASE, Contention 2 alleges that "[t]he exigent CCS problems started years before July, 2014 and were being addressed in 2013 and earlier."[122] CASE challenges the need to issue the license amendments in an "exigent" manner, arguing that circumstances requiring NRC action "had been building and growing since 2012 when Turkey Point Units 3 & 4 were uprated."[123] In support, CASE points to a variety of remedial measures that FPL has

---

[119] Tr. at 125.

[120] See infra Part IV(B)(3) for a discussion of these alleged omissions in the context of Contention 3.

[121] See Va. Elec. & Power Co. (N. Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 n.5 (1973).

[122] Petition at 5.

[123] Id. at 10.

undertaken in the past year to show that the problems leading to increased temperatures have existed for some time.[124]

The NRC Staff opposes Contention 2, asserting that it appropriately determined, pursuant to 10 C.F.R. § 50.91(a)(6), that exigent circumstances existed such that there was insufficient time for a full 30-day public comment period.[125] The NRC Staff further states that its "treatment of the amendment as exigent did not change or alter CASE's rights in this proceeding[,] . . . only affects whether a hearing opportunity is provided prior to issuance of the amendment[, and] the Atomic Energy Act does not require pre-amendment hearing."[126]

Similarly, FPL opposes Contention 2, stating that "[t]he scope of this proceeding is limited to the license amendment itself, not the timing by which the amendment was issued."[127] FPL also disputes CASE's suggestion that its request should not qualify for exigent consideration because the problems leading to the CCS temperature increase have been known for some time, stating that while it has taken remedial action to address salinity issues in the CCS "[t]here 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."[128]

The Board denies admission of Contention 2 as beyond the scope of this proceeding. Under 10 C.F.R. § 50.91(a)(5),

> [w]here the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, . . . it may issue a license amendment involving no significant hazards

---

[124] Id. at 10-12.

[125] NRC Staff Answer at 16.

[126] Id.

[127] FPL Answer at 25.

[128] Id. at 26. During oral argument, FPL asserted that "temperature did not become a concern with respect to crossing the limit until the summer of 2014." Tr. at 136.

> consideration without prior notice and opportunity for a hearing or for public comment.

The NRC Staff, in reviewing the present license amendments, did indeed find that (1) "exigent circumstances exist"; and (2) "the amendment involves no significant hazards considerations."[129] In light of 10 C.F.R. § 50.91(a)(5), the "exigent circumstances" determination seems compelled by the fact that violation of the TS limit for the CCS, whatever the cause of the temperature increase, requires a dual unit shutdown. And, the second finding – the "no significant hazards determination" – may not be challenged before the Commission or a licensing board.[130] Furthermore, the NRC Staff's determinations did not actually deprive CASE of its opportunity to request a hearing, but simply delayed that hearing until after the license amendment had been issued. The Board therefore declines to admit Contention 2.

3. Contention 3

As proffered by CASE, Contention 3 alleges that "[t]he measures being used to control the CCS conditions are extraordinarily invasive, environmentally usurious and some untested."[131] Like Contention 1, Contention 3 also alleges inadequate consideration of the current and reasonably foreseeable environmental impacts of FPL's ongoing actions in the CCS to mitigate rising temperature and salinity levels. The Board declines to admit Contention 3 as a separate contention, since its concerns are largely duplicative of those raised in Contention 1.

Contention 3 does raise some issues not directly addressed in the Board's discussion of Contention 1. For instance, CASE faults FPL for using copper sulfate to control algae blooms in the CCS[132]; and raises "concerns related to increasing reactor operating temperatures in

---

[129] Amendment Notice, 79 Fed. Reg. at 47,690.

[130] See 10 C.F.R. § 50.58(b)(6).

[131] Petition at 5.

[132] See id. at 15 ("There was no mention of the use of [copper sulfate] in the NRC notice.").

relation to waste."[133] The NRC Staff and FPL rightly argue[134] that, contrary to CASE's claim, the EA associated with the present license amendments does address potential environmental impacts associated with the use of copper sulfate, and other chemicals, in the CCS.[135] Therefore, on this point, CASE fails to show that a genuine dispute exists, as required by 10 C.F.R. § 2.309(f)(1)(vi), since the EA does in fact discuss those impacts. The Board also agrees with the NRC Staff and FPL argument[136] that CASE's radiological claims represent a direct challenge to the 2012 license amendments authorizing the EPUs and are, therefore, outside the scope of this proceeding and inadmissible pursuant to 10 C.F.R. § 2.309(f)(iv).[137]

4. Contention 4

As proffered by CASE, Contention 4 alleges that "[t]he CCS is aging, old technology and FPL has no redundancy for Units 3 & 4 limiting corrective actions."[138] CASE suggests that "the CCS has outlived its usefulness and functionality"[139] and claims FPL has failed to provide enough back-up power generation to Turkey Point Units 3 and 4, thereby creating an exigent situation in need of immediate NRC action.[140]

---

[133] Id. at 20.

[134] See NRC Staff Answer at 19; FPL Answer at 28.

[135] See 2014 EA, 79 Fed. Reg. at 44,468 (referencing the NRC's July 25, 2014 biological assessment on the American crocodile, which includes an analysis of impacts related to copper sulfate).

[136] See NRC Staff Answer at 20; FPL Answer at 33-34.

[137] CASE abandoned its arguments related to radiological concerns at oral argument. See Tr. at 183-84.

[138] Petition at 5.

[139] Id. at 22.

[140] See id. at 22-23; Tr. at 197.

The NRC Staff opposes Contention 4, arguing that (1) it fails to identify a genuine dispute with the NRC Staff's Safety Evaluation Report conducted in conjunction with the present license amendments;[141] (2) it is beyond the scope of this proceeding as a challenge to the design and function of the CCS;[142] and (3) it fails to identify factual support for its claims.[143] The NRC Staff argues that CASE's concerns with the current design and operation of the CCS would be more properly addressed through a petition under 10 C.F.R. § 2.206, noting that "there is an ongoing section 2.206 safety proceeding regarding Turkey Point and the CCS."[144]

FPL opposes Contention 4, claiming that CASE's vague assertions about the CCS's age and operation "do not amount to a litigable dispute."[145] Further, FPL argues, its "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."[146]

The Board agrees that CASE's Contention 4 fails to state an admissible contention. First, CASE fails to state any issue of law or fact that disputes the NRC's findings related to safety at Turkey Point Units 3 and 4. Second, Contention 4 amounts to a challenge to the current design and function of the CCS and so is outside the scope of this proceeding. Finally, questions as to whether the CCS has "outlived its usefulness and functionality"[147] or whether

---

[141] NRC Staff Answer at 22.

[142] Id. at 22-23.

[143] Id. at 23-24.

[144] Id. at 22-23 & n.82.

[145] FPL Answer at 35.

[146] Id.

[147] Petition at 22.

"FPL has limited its options by shutting down, or re-purposing [units] one and two"[148] are immaterial to the issues before this Board. As such, the Board declines to admit Contention 4.

V. Conclusion

For the foregoing reasons, the Board grants FPL's motion to strike with respect to the identified portions of CASE's reply that include arguments in support of contention admissibility that were not contained in its initial petition to intervene.

The Board grants CASE's petition to intervene and request for a hearing. The Board admits a narrowed version of Contention 1, but denies admission of Contentions 2, 3, and 4.

An appeal of this Memorandum and Order may be filed within twenty-five (25) days of service of this decision by filing a notice of appeal and an accompanying supporting brief under 10 C.F.R. § 2.311(b). Any party opposing an appeal may file a brief in opposition to the appeal. All briefs must conform to the requirements of 10 C.F.R. § 2.341(c)(3).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

_____
Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. William W. Sager
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 23, 2015

[148] Tr. at 197.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 and 50-251-LA
	)	
	)	
(Turkey Point Nuclear Generating Units 3 & 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **LICENSING BOARD MEMORANDUM AND ORDER LBP-15-13 (Granting CASE's Petition to Intervene)** have been served upon the following persons by Electronic Information Exchange or via electronic mail as indicated by an asterisk.

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

Michael M. Gibson, Chair
Administrative Judge
E-mail: michael.gibson@nrc.gov

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

Dr. William W. Sager
Administrative Judge
E-mail: william.sager@nrc.gov

Matthew Zogby, Law Clerk
E-mail: matthew.zogby@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
Brian Harris, Esq.
David Roth, Esq.
Edward Williamson, Esq.
Christina England, Esq.
John Tibbetts, Paralegal
E-mail: brian.harris@nrc.gov
david.roth@nrc.gov
edward.williamson@nrc.gov
christina.england@nrc.gov
john.tibbetts@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
ocaamail@nrc.gov

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Nextera Energy Resources
William Blair, Esq.
E-mail: william.blair@fpl.com

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

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

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of March, 2015