PMTurkeyCOLPEm Resource

From: Weisman, Robert
Sent: Tuesday, March 03, 2015 2:54 PM
To: Barry White; Williamson, Alicia
Cc: Craig Grossenbacher; Lisa Kasenow; Hamrick, Steven (Steven.Hamrick@fpl.com); Mindy Goldstein (magolds@emory.edu)
Subject: RE: Posting Date of Draft Turkey Point 6 & 7 in Federal Register
Attachments: 2011-03-30 INITIAL SCHEDULING ORDER and ADMIN DIRECTIVES.pdf; 22 Aug 2012 Notice of 2012 changes to Part 2.pdf; ASLB Order of 12 Sept 2012 modifying Initial Scheduling Order.pdf; 10 Sept 2014 Order re Continued Storage and dismissing CASE.pdf; 2012-3-29 LBP-12-07 Denying Mx for Cont 9-10 dismissing CASE fr proc.pdf

Dear Mr. White,
You requested confirmation of the timing of a motion to admit new contentions based on the NRC Staff DEIS on the Turkey Point Units 6&7 COL application. In this instance, the important date is the date of the *Federal Register* notice announcing the availability of the DEIS, which we anticipate will be published later this week. I believe the Atomic Safety and Licensing Board's Initial Scheduling Order of 30 March 2011, which is attached for your information, sets a deadline of 30 days from the date new information becomes available (in this case, the date of the FRN) for the filing new contentions, and not 60 days, as you suggest. Also, since the Board dismissed CASE from the proceeding (Order dated 10 September 2014, attached), you may need to re-establish standing if you decide to submit new contentions for consideration in the proceeding.

You may wish to consult an attorney for advice on these matters. I have attached additional Board Orders and decisions that may be of interest to you in regard to your question. As I'm sure you're aware, the provisions of 10 CFR sec. 2.309 govern the admission of contentions. I hope this answers your question.

Sincerely,
Bob Weisman

Robert M. Weisman
Special Counsel for New Reactor Licensing, New Reactor Programs
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Tel: (301) 415-1696
FAX: (301) 415-3725

From: Barry White [mailto:bwtamia@bellsouth.net]
Sent: Tuesday, March 03, 2015 11:14 AM
To: Williamson, Alicia
Cc: Craig Grossenbacher; Lisa Kasenow; TurkeyCOL Resource; Weisman, Robert
Subject: Re: Posting Date of Draft Turkey Point 6 & 7 in Federal Register

Alicia, perfect.

Thanks,

Kind regards,

Barry

On Tuesday, March 3, 2015 10:38 AM, "Williamson, Alicia" <Alicia.Williamson@nrc.gov> wrote:

Mr. White
The NRC's Notice of Availability will be published in the Federal Register on Thursday, March 5. The EPA's Notice of Availability of the draft EIS will be published on Friday, March 6. The EPA notices starts the 75-day comment period on the draft EIS. The deadline to submit comments on the draft EIS is May 22, 2015.

Regarding the deadline to submit a motion or petition to intervene on the draft EIS, I am going to defer to NRC counsel for the project, Mr. Robert Weisman.
I have cc'd him on this email. In addition, you can reach him at the information below.
Thanx
Alicia

Robert Weisman, NRC
Robert.Weisman@nrc.gov
Or
301-415-1696

Alicia Williamson
Environmental Project Manager
US NRC MS:T6C32
11555 Rockville Pike
Rockville, MD 20852
301-415-1878 (o)
Alicia.Williamson@nrc.gov

From: Barry White [mailto:bwtamia@bellsouth.net]
Sent: Tuesday, March 03, 2015 10:23 AM
To: Williamson, Alicia
Cc: Craig Grossenbacher; Lisa Kasenow
Subject: Posting Date of Draft Turkey Point 6 & 7 in Federal Register

NRC/ Combined License Application Documents for Turkey Point, Units 6 and 7 Application

Ms. Williamson, when was the Draft EIS posted in the Federal Register? We have 60 days from that date
to submit a motion or petition, right?

Thanks,

Barry J. White
CASE
Miami

Hearing Identifier: TurkeyPoint_COL_Public
Email Number: 980

Mail Envelope Properties (2C5246E2C48F77418DF2EE22F3C7DE9738DB530E28)

Subject: RE: Posting Date of Draft Turkey Point 6 & 7 in Federal Register
Sent Date: 3/3/2015 2:54:06 PM
Received Date: 3/3/2015 2:54:09 PM
From: Weisman, Robert

Created By: Robert.Weisman@nrc.gov

Recipients:
"Craig Grossenbacher" <grossc@miamidade.gov>
Tracking Status: None
"Lisa Kasenow" <satellitejam@yahoo.com>
Tracking Status: None
"Hamrick, Steven (Steven.Hamrick@fpl.com)" <Steven.Hamrick@fpl.com>
Tracking Status: None
"Mindy Goldstein (magolds@emory.edu)" <magolds@emory.edu>
Tracking Status: None
"Barry White" <bwtamia@bellsouth.net>
Tracking Status: None
"Williamson, Alicia" <Alicia.Williamson@nrc.gov>
Tracking Status: None

Post Office: HQCLSTR02.nrc.gov

Files	**Size**	**Date & Time**
MESSAGE	3502	3/3/2015 2:54:09 PM
2011-03-30 INITIAL SCHEDULING ORDER and ADMIN DIRECTIVES.pdf	100572	
22 Aug 2012 Notice of 2012 changes to Part 2.pdf	88857	
ASLB Order of 12 Sept 2012 modifying Initial Scheduling Order.pdf	100698	
10 Sept 2014 Order re Continued Storage and dismissing CASE.pdf	154204	
2012-3-29 LBP-12-07 Denying Mx for Cont 9-10 dismissing CASE fr proc.pdf	139947	

Options
Priority: Standard
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:
Recipients Received:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of FLORIDA POWER & LIGHT COMPANY (Turkey Point Units 6 and 7)	Docket Nos. 52-040-COL and 52-041-COL ASLBP No. 10-903-02-COL-BD01 March 30, 2011

INITIAL SCHEDULING ORDER AND ADMINISTRATIVE DIRECTIVES
(Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives)

On February 28, 2011, this Licensing Board granted hearing requests by two intervenors – (1) Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (hereinafter referred to collectively as Joint Intervenors) and (2) Citizens Allied for Safe Energy, Inc. (CASE) – to challenge a Combined License Application (COLA) by Florida Power & Light Company (FPL) to construct and to operate two new Westinghouse AP1000 nuclear reactors, Turkey Point Units 6 and 7, at FPL's Turkey Point site in Homestead, Florida. See LBP-11-06, 73 NRC __, __ (slip op. at 1-2, 119-20) (Feb. 28, 2011). We also granted interested governmental entity status to the Village of Pinecrest, Florida (Pinecrest) pursuant to 10 C.F.R. § 2.315(c). See id. at __ (slip op. at 1-2, 119).

On March 7, 2011, the parties submitted a Joint Motion seeking to modify their obligations for mandatory disclosures under NRC regulations. See Joint Motion Regarding Mandatory Disclosures (Mar. 7, 2011) [hereinafter Joint Motion].

On March 16, 2011, we convened a pre-hearing teleconference to discuss case management and scheduling, as well as aspects of the Joint Motion. This Order summarizes

significant aspects of that call, grants the Joint Motion as modified by the parties' during the call, establishes an initial scheduling order pursuant to 10 C.F.R. § 2.332(a), and provides administrative directives that shall apply to the conduct of this proceeding.

I. SUMMARY OF CONFERENCE CALL

During the March 16 conference call (which was transcribed), counsel for the parties (Joint Intervenors, CASE, FPL, and the NRC Staff) and Pinecrest addressed questions asked by the Board relating to their Joint Motion and case scheduling and management generally. The following discussion summarizes significant aspects of that conference call.

A. Mandatory Disclosures

The Board observed that it had received a Joint Motion from the parties regarding their obligations surrounding mandatory disclosures. See Tr. at 271. We address those obligations and that motion infra.

B. Safety And Environmental Evaluations

Counsel for the NRC Staff confirmed that the projected time frames for issuance of the Final Environmental Impact Statement (FEIS) and Final Safety Evaluation Report (FSER) in this proceeding continued to be October 2012 and December 2012, respectively, but stated that those dates are subject to change. Tr. at 276-77. Counsel for the NRC Staff agreed to submit monthly status reports estimating its schedule for issuing these documents to the Board and the other parties. Id. at 277-78.

C. Settlement

The Board advised the parties that it stood ready to provide assistance if they wished to employ "alternate dispute resolution to address the issues without the need for litigation." 10 C.F.R. § 2.338; see Tr. at 281.

D. Motions

As of the teleconference, none of the parties evinced an intent to file motions in the next few months, but Joint Intervenors and FPL held out the option to do so. See Tr. at 278-79.

E. Disclosure Obligations

Each party at the teleconference agreed to submit their respective initial mandatory disclosures (see 10 C.F.R. § 2.336(a)-(b)) by April 8, 2011, and the NRC Staff agreed to endeavor to create its Hearing File by that date. See Tr. at 291; see also 10 C.F.R. § 2.1203(a)(1). All parties agreed that subsequent mandatory disclosures will be due on the second Friday of each month. Tr. at 289-92; see infra Part II.J. FPL stated, with the assent of the other parties and the Board, that it would submit a monthly certification to the Board that its disclosures have been complete, in lieu of producing those documents monthly to the Board. See Tr. at 282-87; see also 10 C.F.R. § 2.336(c).

II. THE PARTIES' JOINT MOTION

As mentioned supra at p. 1, the parties submitted a Joint Motion that requests to modify their mandatory disclosure obligations under NRC regulations. See Joint Motion at 2-5. The Board grants the Joint Motion, as modified by the parties during the conference call, as follows:

A. The Parties need not identify draft versions of any document, data compilation, correspondence, or other tangible thing that must be disclosed.

B. If the same relevant e-mail exists in multiple locations, each party may produce only one copy of that e-mail. If the e-mail exists in both sender and recipient e-mail folders, the party will produce the sender's copy of the e-mail.

C. The Parties need not identify or produce any document that has been served on the Parties to this proceeding.

D. The Parties need not identify or produce press clippings.

E. In connection with the Staff's submittal of the Hearing File, the Staff will identify all relevant documents available via the NRC's website or ADAMS, as required by 10 C.F.R. §§ 2.336(b), 2.1203. The Parties shall not otherwise be required to identify or produce docketed correspondence or other documents available via the NRC's website or ADAMS.

F. The Parties need not produce documents that are publicly available, but the Parties shall produce a log of such documents and where they can be obtained.

G. The Parties agree to waive the obligation to provide a privilege log required by 10 C.F.R. § 2.336(a)(3), (b)(5). For example, the Parties agree not to produce a log identifying attorney-client privileged material, attorney work product, or information subject to the deliberative process privilege. However, the Parties shall produce a log of the documents withheld as containing proprietary information. The Parties agree to preserve and maintain all discoverable privileged documents during the pendency of this proceeding.

H. The Parties shall have fourteen (14) days from the date that the first proprietary document is requested to negotiate a protective order and nondisclosure agreement and submit those documents to the Board for approval. Any deadlines for filing motions to compel disclosure of proprietary information set forth in such a protective order or in 10 C.F.R. Part 2 shall be tolled until the earlier of (a) an approval by the Board of a protective order and nondisclosure agreement, or (b) expiration of the fourteen-day period set forth in this paragraph.[1]

I. Until the Staff issues the FSER or FEIS, as applicable to the admitted contentions, the continuing obligation of the Parties under 10 C.F.R. § 2.336(d) to update their respective disclosures is modified so that information or documents subsequently developed or obtained

[1] During the teleconference, FPL predicted there would be no safeguards information or sensitive unclassified nonsafeguards information (SUNSI) it would claim as exempt from disclosure. See Tr. at 276.

must be disclosed within thirty (30) days.[2] Following issuance of the FSER or FEIS, as applicable, the continuing obligation of the Parties to disclose information or documents will revert to the fourteen-day update period required by 10 C.F.R. § 2.336(d).

J. The Parties other than the Staff will provide initial disclosures, and the Staff will produce its initial Hearing File and mandatory disclosures, on or before April 8, 2011. The Parties shall update their disclosures and the Hearing File on the second Friday of every month beginning with the month following that in which the initial disclosures are made. Each subsequent disclosure update will cover all documents in the possession, custody, or control of each party as of the last day of the month preceding the disclosure.

K. Each of the Parties subject to the provisions of 10 C.F.R. § 2.336(a)(1) shall identify any person on which it may rely upon as a witness as soon as the identity of that person becomes known. Depending on the testimony eventually filed by the Parties, the Parties reserve the right to present rebuttal witnesses not previously identified in these mandatory disclosures.

L. A party requesting documents from another party will pay the related expenses. To the extent reasonably practicable, each party will provide electronic copies of the requested documents. If the requested documents cannot be provided electronically, other arrangements will be made, including if appropriate in-person inspection.

M. If a party seeks to obtain full disclosure of another party's disclosures, in the absence of an agreement establishing another mutually acceptable request submission date approved by the Board, a party must submit the request to the party from whom full disclosure is sought

---

[2] This extends the disclosure intervals established in NRC regulations. See 10 C.F.R. § 2.336(d) ("The duty of disclosure under this section is continuing, and any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days."). NRC regulations, however, authorize the Board, in regulating the conduct of proceedings, to modify the intervals for such disclosure. See id. § 2.332(a)(1), (b)(3).

within ten (10) days of the initial or subsequent disclosure. Thereafter, in the absence of the party's agreement to make the disclosure, the party seeking full disclosure must file a motion to compel disclosure with the Board in accordance with 10 C.F.R. § 2.323. The provisions in this paragraph apply only to proprietary documents. There will be no time deadline for requesting to see non-proprietary documents. Nothing in this paragraph, however, shall affect the timeliness requirements for the submittal of new contentions set forth in 10 C.F.R. § 2.309.

N. All the Parties may, at their option, update their disclosures under 10 C.F.R. § 2.336(d) through the use of e-mail alone. The Staff, however, will make the Hearing File available via the Electronic Hearing Docket. See Tr. at 282-86.

III. SCHEDULE

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, we establish the following scheduling requirements for this initial stage of the proceeding:

A. The parties shall comply with the mandatory disclosure and hearing file provisions of 10 C.F.R. §§ 2.336 and 2.1203, as modified supra Part II.

B. In its monthly report advising about the existence vel non of additional mandatory disclosures, counsel for the NRC Staff shall advise as to whether the predicted dates for issuance of the DEIS (currently predicted for October 2011), the Advance Final SER without Open Items (predicted for May 2012), the FSER (predicted for December 2012), and the FEIS (predicted for October 2012) have changed. The Staff's report shall update this estimate on a monthly basis, even if only to reflect no change. See supra Part I.B.

C. Consistent with 10 C.F.R. § 2.332(b) and (d), it is presumed that the scheduling of significant events in this proceeding will be keyed to the issuance of the FSER or FEIS (whichever is issued later), as provided in the model milestones for 10 C.F.R. Part 2, Subpart L

hearings. See 10 C.F.R. Part 2, app. B, § II. However, as recognized in subsections 2.332(b) and (d), the schedule may be modified based, for example, on the existence of new or additional contentions, the complexity of issues presented, or the ability to expedite the proceeding without adversely affecting the development of the record or impeding the fair resolution of the issues. Pursuant to subsection 2.332(d), at this juncture we do not envision conducting a hearing before issuance of the Staff's final documents, but we might adjust that schedule if doing so could inject significant efficiencies in the hearing process.

D. At this juncture, no party has requested that any aspect of the contested evidentiary hearing in this proceeding be conducted pursuant to Subpart G. Accordingly, absent contrary direction from this Board, and as we ordered in our February 28 Memorandum and Order (LBP-11-06, 73 NRC at __ (slip op. at 120 & n.117)), the contested evidentiary hearing in this proceeding shall be conducted pursuant to 10 C.F.R. Part 2, Subpart L. See, e.g., 10 C.F.R. § 2.310(a); Tr. at 279-80.

E. The convening of future prehearing conferences will be addressed in subsequent orders. See 10 C.F.R. § 2.332(a)(2).

F. A final scheduling order, keyed to the model milestones in Appendix B of 10 C.F.R. Part 2, will be issued before, but more proximate to, issuance of the FEIS and FSER. See 10 C.F.R. § 2.332(a)-(d).

IV. ADMINISTRATIVE DIRECTIVES

Pursuant to 10 C.F.R. §§ 2.319 and 2.332(a), the following standard administrative directives shall apply to this proceeding as supplemental to the NRC's Rules of Practice in 10 C.F.R. Part 2.

A. Notice of Appearance

If they have not already done so, within seven (7) days after receipt of this Order, each counsel or representative for each participant shall file (or ensure she or he already has filed) a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b).

B. Additional Contentions

A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a nontimely new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the explanation for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). A motion and proposed new or amended contention as specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the motion should cover the three criteria of section 2.309(f)(2) and the eight criteria of section 2.309(c)(1) (as well as the six criteria of section 2.309(f)(1)).

Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.[3]

[3] This procedure resolves difficulties that have arisen in prior proceedings concerning the interplay of the sequence and timing for motions under 10 C.F.R. § 2.323 (motion, answer), and the sequence and timing for contentions under 10 C.F.R. § 2.309(h) (contention, answer, reply). Further, this procedure expedites the process by collapsing an apparent two-step process into a single step.

C. Good Faith Consultation

To maximize the early resolution of issues without Board intervention, motions will be summarily rejected if they are not preceded by a sincere attempt to resolve the issues and include the certification specified in 10 C.F.R. § 2.323(b). See Tr. at 280-81. Each party shall endeavor to make itself available for consultation and shall cooperate in attempting to resolve the issues. Without revealing the substance of any settlement discussions, the required certification shall state if the other potential party was not available or refused to discuss the matter.

D. Service on the Licensing Board and on Other Participants

For each pleading or other submission filed before the Licensing Board or the Commission in this proceeding, parties shall submit these pleadings pursuant to the requirements of 10 C.F.R. §§ 2.304 and 2.305 through the agency's e-filing system.

E. Limitations on Pleading Length and Reply Pleadings

1. Page Limitations

Any motion filed after the date of this Order, and any related responsive pleadings to such a motion, shall not exceed twenty-five (25) pages in length (including signature page) absent preapproval by the Licensing Board. A request for Board preapproval to exceed this page limitation shall be sought in writing no less than three (3) business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must: (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

Pursuant to the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Licensing Board approval to file a reply shall include the reply itself and be sought in writing no later than five (5) business days after receipt of the response to which it is directed. A request to file a reply must: (1) indicate whether the request is opposed or supported by the other participants to this proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

F. Motions for Extension of Time

A motion for extension of time filed with the Licensing Board shall ordinarily be submitted in writing at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must: (1) indicate whether the request is opposed or supported by the other participants to this proceeding; and (2) demonstrate good cause for permitting the extension. See 10 C.F.R. § 2.307(a).

G. Opposing a Request to Exceed Page Limitations, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served no later than one (1) business day after the request at issue.

H. Attachments to Filings

If a participant files a pleading or other submission with the Licensing Board that has documents appended to it as attachments, a separate alpha or numeric designation (e.g., Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth supra Part IV.E.1.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD[4]
/RA/

_____
E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 30, 2011

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INITIAL SCHEDULING ORDER AND ADMINISTRATIVE DIRECTIVES (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) have been served upon the following persons by Electronic Information Exchange.

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

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

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

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

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

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

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

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

DOCKET NO. 52-040 and 52-041-COL
INITIAL SCHEDULING ORDER AND ADMINISTRATIVE DIRECTIVES (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives)

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

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

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

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

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

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

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

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

Dated at Rockville, Maryland
this 30th day of March 2011.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of FLORIDA POWER & LIGHT COMPANY (Turkey Point Units 6 and 7)	Docket Nos. 52-040-COL and 52-041-COL ASLBP No. 10-903-02-COL-BD01 August 22, 2012

NOTICE
(Notifying Parties of Amendments to 10 C.F.R. Part 2)

On August 3, 2012, the Nuclear Regulatory Commission amended its regulations related to adjudicatory proceedings under 10 C.F.R. Part 2.[1] These new regulations take effect on September 4, 2012, and apply to "obligations and disputes that arise after" that date.[2] We expect that the parties will familiarize themselves with these new regulations in their entirety.

The Initial Scheduling Order (ISO) will continue to govern the conduct of this proceeding.[3] If a party believes that the new regulations require a change to the ISO, or if a party thinks a change to the ISO is otherwise warranted, it should submit an appropriate motion as soon as practicable, and no later than September 7, 2012. The Board strongly encourages

[1] Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule, 77 Fed. Reg. 46,561 (Aug. 3, 2012).

[2] Id. at 46,562.

[3] See Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) (Mar. 30, 2011) (unpublished).

the parties to endeavor to reach agreement among themselves regarding any suggested changes, so that a motion, if filed, may be filed jointly.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

_____
E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 22, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE (Notifying Parties of Amendments to 10 C.F.R., Part 2**) have been served upon the following persons by Electronic Information Exchange.

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

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

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

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

Matthew Flyntz, Law Clerk, ASLBP
E-mail: matthew.flyntz@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Sara Kirkwood, Esq.
Sara Price, Esq.
Jeremy Wachutka, Esq.
Robert Weisman, Esq.
Michael Spencer, Esq.
Jessica Bielecki, Esq.
Emily Monteith, Esq.
Patrick Moulding, Esq.

E-mail:
sara.kirkwood@nrc.gov;
sara.price@nrc.gov ;
robert.weisman@nrc.gov
jeremy.wachutka@nrc.gov
michael.spencer@nrc.gov
jab2@nrc.gov
emily.monteith@nrc.gov
patrick.moulding@nrc.gov

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

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

DOCKET NO. 52-040 and 52-041-COL
NOTICE (Notifying Parties of Amendments to10 C.F.R., Part 2)

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

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

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

Erich Pica, President
Friends of the Earth
1100 15th Street, NW
11th Floor
Washington, D.C. 20555
E-mail: mkeever@foe.org

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

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

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

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

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

Dated at Rockville, Maryland
this 22nd day of August 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of FLORIDA POWER & LIGHT COMPANY (Turkey Point Units 6 and 7)	Docket Nos. 52-040-COL and 52-041-COL ASLBP No. 10-903-02-COL-BD01 September 12, 2012

NOTICE
(Granting Joint Motion to Modify Initial Scheduling Order)

On August 22, 2012, this Board notified the parties that amendments to the regulations in 10 C.F.R. Part 2 governing adjudicatory proceedings would take effect on September 4, 2012.[1] The parties were instructed that if, in light of the amendments, a change to the Initial Scheduling Order[2] (ISO) were required or otherwise warranted, they should submit an appropriate motion by September 7, 2012. Pursuant to that notice, Florida Power & Light filed a joint motion[3] on behalf of itself and the other parties requesting that paragraphs II.I and II.J of the ISO be modified to read as follows:

[1] See Notice (Notifying Parties of Amendments to 10 C.F.R. Part 2) (Aug. 22, 2012) (unpublished).

[2] See Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) (Mar. 30, 2011) (unpublished).

[3] See Joint Motion to Modify Initial Scheduling Order (Sept. 7, 2012) [hereinafter Joint Motion].

I. The continuing obligation of the Parties under 10 C.F.R. § 2.366(d) to update their respective disclosures is modified so that information or documents subsequently developed or obtained must be disclosed within thirty (30) days.

J. The Parties other than the Staff will provide initial disclosures, and the Staff will produce its initial Hearing File and mandatory disclosures, on or before April 8, 2011. The Parties shall update their disclosures and the Hearing File on the second Friday of every month beginning with the month following that in which the initial disclosures are made. Each subsequent disclosure update will cover all documents in the possession, custody, or control of each party as of two weeks prior to the disclosure.

Joint Motion at 2-3.

The joint motion is granted. Paragraphs II.I and II.J of the ISO are amended as provided herein.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

_____
E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 12, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE (GRANTING JOINT MOTION TO MODIFY INITIAL SCHEDULING ORDER) have been served upon the following persons by Electronic Information Exchange.

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

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

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

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

Matthew Flyntz, Law Clerk, ASLBP
E-mail: matthew.flyntz@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Sara Kirkwood, Esq.
Sara Price, Esq.
Jeremy Wachutka, Esq.
Robert Weisman, Esq.
Michael Spencer, Esq.
Emily Monteith, Esq.
Patrick Moulding, Esq.

E-mail:
sara.kirkwood@nrc.gov;
sara.price@nrc.gov ;
robert.weisman@nrc.gov
jeremy.wachutka@nrc.gov
michael.spencer@nrc.gov
emily.monteith@nrc.gov
patrick.moulding@nrc.gov

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

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

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

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

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

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

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

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

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

[Original signed by R. Giitter]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 12th day of September 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of FLORIDA POWER & LIGHT COMPANY (Turkey Point Units 6 and 7)	Docket Nos. 52-040-COL and 52-041-COL ASLBP No. 10-903-02-COL-BD01 September 10, 2014

Order
(Denying Waste Confidence Contention Motions and Dismissing CASE)

On June 18, 2012, the Commission received a petition seeking to suspend final agency decision on the pending applications of various nuclear reactors, including the combined license application of Florida Power and Light Company ("Applicant") for the proposed nuclear reactors Turkey Point Units 6 and 7.[1] Petitioners sought this suspension in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in New York v. NRC[2] that the NRC's 2010 Waste Confidence Decision and Temporary Storage Rule violated the National Environmental Policy Act ("NEPA"). On August 7, 2012, the Commission granted the petition, stating that "we will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand is appropriately addressed."[3]

[1] Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings (June 18, 2012).

[2] 681 F.3d 471 (D.C. Cir. 2012).

[3] CLI-12-16, 76 NRC 63, 67 (2012).

In that order, the Commission also held in abeyance a number of substantively similar contentions that had been filed in various reactor cases,[4] including contentions filed in this proceeding by Southern Alliance for Clean Energy, National Parks Conservation Association, Dan Kipnis, and Mark Oncavage ("Joint Intervenors") and Citizens Allied for Safe Energy, Inc. ("CASE") concerning temporary storage and ultimate disposal of nuclear waste at Turkey Point Units 6 and 7.[5] These contentions challenged Applicant's environmental report, submitted in support of the Turkey Point combined license application, for failing "to address the environmental impacts of spent fuel pool leakage and fires as well as the environmental impacts that may occur if a spent fuel repository does not become available."[6]

On August 26, 2014, after undergoing a two-year rulemaking process during which extensive public comments were received and considered, the Commission adopted (1) a generic environmental impact statement ("GEIS") to identify and analyze the environmental impacts of continued nuclear waste storage; and (2) associated revisions to the Temporary Storage Rule in 10 C.F.R. § 51.23 (now designated the "Continued Storage Rule").[7] In light of these actions, the Commission lifted its suspension on final licensing decisions.[8] The GEIS "concluded that the impacts of continued storage will not vary significantly across sites," noting that "[b]ecause these generic impact determinations have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual

---

[4] Id. at 68-69.

[5] See Intervenors' Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant (July 9, 2012) [hereinafter Intervenors' Contention]; Citizens Allied for Safe Energy, Inc. Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant (dated July 9, 2012, filed July 10, 2012) [hereinafter CASE's Contention].

[6] Intervenors' Contention at 1; see also CASE's Contention at 1.

[7] CLI-14-08, 80 NRC __, __ (slip op. at 4) (Aug. 26, 2014).

[8] Id. at __ (slip op. at 7).

proceedings."[9] Finally, the Commission directed the Licensing Boards, including this one, to reject pending waste confidence contentions that had been held in abeyance.[10]

Having been so directed, we deny the motions of both Joint Intervenors and CASE seeking to admit new contentions concerning storage and disposal of nuclear waste. As the Commission noted "[c]ontentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings."[11] Even if Joint Intervenors or CASE believe that the Commission's newly adopted Continued Storage Rule fails to satisfy NEPA or the court's decision in New York v. NRC, they cannot challenge the adoption or validity of the rule itself before this Board.[12]

Our denial of CASE's motion results in it no longer having any contentions before the Board. Having previously dismissed CASE as a party in this proceeding,[13] we now dismiss CASE as a participant in this proceeding.[14]

---

[9] Id. at __ (slip op. at 9).

[10] Id. at __ (slip op. at 10).

[11] Id. at __ n.27 (slip op. at 9 n.27).

[12] See 10 C.F.R. § 2.335(a).

[13] See LBP-12-07, 75 NRC 503, 505 (2012).

[14] See Licensing Board Order (Granting CASE's Motion to Receive Service by Email) (Apr. 16, 2014) at 2 (unpublished).

Joint Intervenors' NEPA Contention 2.1 remains pending before the Board.[15] At this juncture, further proceedings in this case await publication of the NRC Staff's Draft and Final Environmental Impact Statements, which are currently predicted by the NRC Staff to be available in February 2015 and February 2016, respectively.[16]

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

_____
E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 10, 2014

[15] See LBP-12-09, 75 NRC 615, 629 (2012).

[16] See Letter from Robert M. Weisman, Counsel for the NRC Staff, to the ASLBP (Aug. 7, 2014) at 2.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying Waste Confidence Contention Motions and Dismissing CASE)** have been served upon the following persons by Electronic Information Exchange.

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

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

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

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

Dr. Michael F. Kennedy
Administrative Judge
michael.kennedy@nrc.gov

Dr. William C. Burnett
Administrative Judge
william.burnett2@nrc.gov

Matthew Zogby, Law Clerk, ASLBP
matthew.zogby@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001

Richard Harper, Esq.
richard.harper@nrc.gov
Sara Kirkwood, Esq.
sara.kirkwood@nrc.gov
Patrick Moulding, Esq.
patrick.moulding@nrc.gov
Sara Price, Esq.
sara.price@nrc.gov
Michael Spencer, Esq.
michael.spencer@nrc.gov
Robert Weisman, Esq.
robert.weisman@nrc.gov
Nicholas Koontz, Paralegal
nicholas.koontz@nrc.gov

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

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

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

Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Kimberly Harshaw, Esq.
kimberly.harshaw@pillsburylaw.com
Michael G. Lepre, Esq.
michael.lepre@pillsburylaw.com
Stephen Marcus, Esq.
stephen.marcus@pillsburylaw.com
John H. O'Neill, Esq.
john.oneill@pillsburylaw.com
Maria Webb, Paralegal
maria.webb@pillsburylaw.com

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Everglades Law Center, Inc.
3305 College Avenue
Ft. Lauderdale, Florida 33314
Jason Totoiu, Esq.
jason@evergladeslaw.org

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

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

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

[Original signed by Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of September 2014

LBP-12-07

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of FLORIDA POWER & LIGHT COMPANY (Turkey Point Units 6 and 7)	Docket Nos. 52-040-COL and 52-041-COL ASLBP No. 10-903-02-COL-BD01 March 29, 2012

MEMORANDUM AND ORDER
(Denying CASE's Motions to Admit Newly Proffered Contentions 9 and 10,
and Dismissing CASE from this Proceeding)

An intervenor in this proceeding, Citizens Allied for Safe Energy, Inc. (CASE), submitted motions asking this Licensing Board to admit two newly proffered contentions.[1] For the reasons discussed below, we deny CASE's motions. Additionally, because it no longer has a contention or an unresolved pleading pending before this Licensing Board, we dismiss CASE from this proceeding.

I. BACKGROUND

A. Relevant Events Leading To The Filing Of CASE's Pending Motions

This proceeding arises from Florida Power & Light Company's (FPL's) combined license (COL) application for two new nuclear power reactors, Turkey Point Units 6 and 7, at its facility

[1] See Motion for Leave for [CASE] to File a New Contention (dated Feb. 2, 2012, filed Feb. 3, 2012) [hereinafter CASE Motion to File New Contention 9]; Motion to File a Timely Contention in Response to New Information (Feb. 10, 2012) [hereinafter CASE Motion to File New Contention 10].

near Homestead, Florida.[2] On February 28, 2011, this Board granted CASE's hearing request opposing FPL's COL application. See LBP-11-06, 73 NRC __, __ (slip op. at 119) (Feb. 28, 2011).[3]

In LBP-11-06, we, inter alia, admitted CASE's Contentions 6 and 7 for litigation.[4] Contention 6 was an environmental contention of omission that asserted FPL's Environmental Report (ER) improperly "fails to address environmental impacts in the event the applicant will need to manage Class B and Class C [low-level radioactive waste (LLRW)[5]] on the Turkey Point site for [more than two years]." LBP-11-06, 73 NRC at __ (slip op. at 104).[6] Contention 7 was a safety contention asserting that, in the event

---

[2] See [FPL, COL] Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 75 Fed. Reg. 34,777 (June 18, 2010).

[3] We also granted a hearing request filed jointly by Mark Oncavage, Dan Kipnis, the Southern Alliance for Clean Energy, and the National Parks Conservation Association (hereinafter referred to collectively as Joint Intervenors), and we granted a request by the Village of Pinecrest to participate as an interested local governmental body. See LBP-11-06, 73 NRC at __ (slip op. at 119).

[4] In addition to admitting CASE's Contentions 6 and 7, we admitted Joint Intervenors' Contention 2.1, which was an environmental contention of omission. See LBP-11-06, 73 NRC at __-__ (slip op. at 36-40). We recently dismissed that contention, concluding that FPL's Revision 3 to its COL application rendered it moot. See Licensing Board Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contention 2.1 and CASE's Contention 6 as Moot) (Jan. 26, 2012) at 6 (unpublished) [hereinafter January 26 Order]. Joint Intervenors have a request pending before this Board that seeks to admit a new contention challenging the adequacy of the measures taken by FPL to moot Contention 2.1.

[5] The NRC divides LLRW into three classes -- A, B, and C (10 C.F.R. § 61.55(a)(2)) -- based on the concentration and types of long-lived and short-lived radionuclides. See id. § 61.55(a)(1). As discussed in LBP-12-04, 75 NRC __, __ n.5 (slip op. at 2 n.5) (Feb. 28, 2012), LLRW generated in a nuclear power plant includes reactor water resin beds, contaminated filters, protective clothing and shoe covers, cleaning rags, and tools.

[6] As admitted, Contention 6 stated in full:

> Because there currently is no access to an offsite LLRW disposal facility for proposed Units 6 and 7, and because it is reasonably foreseeable that LLRW

FPL needs to manage Class B and Class C LLRW for an extended period of time, FPL's COL application "fails to provide information sufficient to enable the NRC to reach a final conclusion on safety matters regarding the means for controlling and limiting radioactive material and effluents and radiation exposures within the limits set forth in [10 C.F.R.] Part 20 and ALARA [as low as reasonably achievable, 10 C.F.R. Part 50, Appendix I]." Id. at __ (slip op. at 112).[7]

On December 16, 2011, FPL submitted to the NRC Revision 3 to its COL application for Turkey Point Units 6 and 7. See Letter from Mano K. Nazar, Executive Vice President and Chief Nuclear Officer, FPL, to U.S. Nuclear Regulatory Commission (Dec. 16, 2011) (ADAMS Accession No. ML11361A102).

On January 3, 2012, FPL filed two motions. One motion argued that Revision 3 to FPL's COL application supplied information that cured the omission in Contention 6, rendering that contention moot.[8] The other motion claimed that, in light of Revision 3, the inadequacy alleged

---

> generated by normal operations will need to be stored at the proposed site for longer than the two-year period contemplated in FPL's ER, the analysis in the ER is inadequate because it fails to address environmental impacts in the event the applicant will need to manage Class B and Class C LLRW on the Turkey Point site for a more extended period of time.

LBP-11-06, 73 NRC at __ (slip op. at 104).

[7] As admitted, Contention 7 stated in full:

> FPL's COL [application] fails to provide information sufficient to enable the NRC to reach a final conclusion on safety matters regarding the means for controlling and limiting radioactive material and effluents and radiation exposures within the limits set forth in [10 C.F.R.] Part 20 and ALARA in the event FPL needs to manage Class B and Class C LLRW for an extended period.

LBP-11-06, 73 NRC at __ (slip op. at 112).

[8] See [FPL's] Motion to Dismiss CASE Contention 6 as Moot (Jan. 3, 2012).

to exist in Contention 7 had been remedied and, accordingly, this Board should grant a favorable judgment to FPL on that contention as a matter of law.[9]

CASE filed a response stating that it "will not oppose [FPL's January 3] motions."[10] CASE said it would, however, "file new contentions in a timely manner based on new information provided in those filings as warranted." CASE January 23 Response at 1.

On January 26, 2012, this Board issued an order granting FPL's motion to dismiss Contention 6 as moot. See January 26 Order at 5-6. We observed that, as modified by Revision 3, FPL's ER included "measures like reducing the service run length of resin beds or mixing spent resins to limit radioactivity concentrations [that] will reduce the volume of LLRW produced at Turkey Point to be sufficiently bounded within the levels and environmental impacts described in 10 C.F.R. § 51.51, Table S-3." Id. (internal quotation marks omitted). Additionally, we observed that "FPL's ER Revision 3 states that any necessary facilities to temporarily store additional waste would be built consistent with NRC guidance documents, and any such facilities would have small environmental impacts in addition to yielding small radiological impacts." Id. at 6. In short, Revision 3 cured the omission identified in Contention 6. Although we dismissed Contention 6 as moot, we stated that CASE could move to file a new contention challenging the adequacy of FPL's curative action, but any such motion must be filed by February 10, 2012. Id. We emphasized that "the scope of any newly proffered contention is strictly limited to challenging the adequacy of the measures taken by FPL in curing the omission in CASE's Contention 6." Id. at 6 n.13.

---

[9] See [FPL's] Motion for Summary Disposition of CASE Contention 7 (Jan. 3, 2012).

[10] See [CASE] Response to FPL Motions to Dismiss Contention 6 as Moot and for Summary Disposition of CASE Contention 7 (Jan. 23, 2012) [hereinafter CASE January 23 Response]. The NRC Staff filed responses supporting both of FPL's motions. See NRC Staff Answer to "[FPL's] Motion to Dismiss CASE Contention 6 as Moot" (Jan. 23, 2012); NRC Staff Answer to "[FPL's] Motion for Summary Disposition of CASE Contention 7" (Jan. 23, 2012).

Regarding Contention 7, on February 28, 2012, this Board issued an order in which -- in light of FPL's Revision 3 to its Final Safety Analysis Report (FSAR) and the other filings in this proceeding, including CASE's failure to oppose FPL's request for summary disposition (see LBP-12-04, 75 NRC at __ (slip op. at 10)) -- we concluded that (1) there no longer existed a genuine dispute as to any material fact concerning Contention 7, and (2) FPL was entitled to a judgment in its favor on Contention 7 as a matter of law. See id. at __-__ (slip op. at 6-13). In particular, we determined that

> FPL's commitment . . . that it will -- if necessary -- design, construct, and operate a temporary onsite LLRW storage facility in accordance with the guidance in Appendix 11.4-A to NUREG-0800, coupled with FPL's plan in Section 11.4 of the FSAR for controlling and limiting radioactive material and effluents and radiation exposures from LLRW, which incorporates by reference the corresponding section of Revision 19 of the [Design Control Document (DCD)], provides "sufficient [information] to enable the Commission to reach a final conclusion on all safety matters" regarding "the means" FPL will use to comply with radiation protection requirements in 10 C.F.R. Part 20 (10 C.F.R. § 52.79(a)(3)), including LLRW handling and storage.

Id. at __ (slip op. at 13). We therefore granted FPL's motion for summary disposition of Contention 7. Id. at __ (slip op. at 14).

B. The Pleadings Under Consideration

1. CASE's Newly Proffered Contention 9. On February 3, 2012, CASE moved to admit newly proffered safety Contention 9, which CASE claims "is based on new information provided in FPL's [motion for summary disposition of Contention 7 filed on] January 3, 2012." See CASE Motion to File New Contention 9 at 2. Contention 9 claims that "[FPL's] revised [plan for the long-term, onsite handling of LLRW] from Turkey Point 6 and 7 is inadequate to protect public health and safety [in] all circumstances." Id., attach. 1 at (unnumbered) 1. CASE advances three arguments in support of Contention 9: (1) FPL's auxiliary onsite LLRW storage structures would "be inundated by water, either routinely due to sea level rise, or intermittently due to storm surge related to hurricanes" (id.); (2) FPL's revised FSAR does not address the

issue of permanent onsite storage for LLRW even though "the availability of permanent storage elsewhere in the nation is not assured" (id.); and (3) FPL's COL application erroneously "assumes that the current emergency plans in place with Miami-Dade County for [Turkey Point Units] 3 & 4 is likewise sufficient for [Units] 6 & 7." Id. at (unnumbered) 4.

FPL and the NRC Staff filed answers opposing admission of Contention 9.[11]

2. CASE's Newly Proffered Contention 10. On February 10, 2012, CASE moved to admit newly proffered environmental Contention 10, which CASE claims "is based on new information provided in FPL's [motion to dismiss Contention 6 filed] on January 3, 2012." See CASE Motion to File New Contention 10 at (unnumbered) 3. Contention 10 asserts that "FPL's [ER] Revision 3 does not adequately address the impact of extended storage of all types of AP1000 [LLRW]." Id., attach. 1, Contention 10 at (unnumbered) 1 [hereinafter CASE Motion to File New Contention 10, attach. 1]. In support of Contention 10, CASE argues that FPL's ER, as modified by Revision 3, fails adequately to discuss: (1) the "impact . . . of catastrophic climactic conditions with total site inundation" on LLRW (including used steam generators and contaminated soil) and "liquid pathways analysis" (id. at (unnumbered) 1-3, 5-6); (2) the unavailability of offsite storage for LLRW (see id. at (unnumbered) 6-7); and (3) the high level of LLRW radioactivity that will be stored onsite due to the need to replace defective steam generators. See id. at (unnumbered) 3-5.

FPL and the NRC Staff filed answers opposing admission of Contention 10.[12]

---

[11] See [FPL's] Answer to CASE's Motion for Leave to File a New Contention and New Contention 9 (Feb. 28, 2012) [hereinafter FPL Answer Opposing Contention 9]; NRC Staff Answer to "Motion for Leave for [CASE] to File a New Contention" (Feb. 21, 2012) [hereinafter NRC Staff Answer Opposing Contention 9]. CASE filed replies to these answers. See [CASE] Reply to NRC Staff Opposition to Contention 9 (Feb. 29, 2012); [CASE] Reply to [FPL] Answer to CASE's Motion for Leave to File a New Contention and New Contention 9 (Mar. 7, 2012).

[12] See [FPL's] Answer to CASE's Motion for Leave to File a New Contention and New Contention 10 (Feb. 27, 2012) [hereinafter FPL Answer Opposing Contention 10]; NRC Staff Answer to "Motion to File a Timely Contention in Response to New Information" (Feb. 27, 2012)

II. APPLICABLE LEGAL STANDARDS

To be admissible, a newly proffered contention must satisfy: (1) either the timeliness standards in 10 C.F.R. § 2.309(f)(2) for new and amended contentions, or the balancing test in 10 C.F.R. § 2.309(c) for nontimely contentions; *and* (2) the general contention admissibility criteria in 10 C.F.R. § 2.309(f)(1). We discuss those standards in turn.

A. Timeliness Standards In 10 C.F.R. § 2.309(f)(2)

A new or amended contention filed after the initial filing period has expired may be admitted as timely only with leave of the Licensing Board on a showing that:

> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
>
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2).

B. Balancing Test In 10 C.F.R. § 2.309(c) For Nontimely Contentions

A contention that fails to satisfy timeliness standards in section 2.309(f)(2) may still be admitted pursuant to a balancing test governing nontimely filings that weighs the following factors set forth in section 2.309(c):

> (i) Good cause, if any, for the failure to file on time;
>
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
>
> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

[hereinafter NRC Staff Answer Opposing Contention 10]. CASE filed a reply to these answers. See [CASE] Reply to [FPL] and to NRC Staff Opposition to CASE Contention 10 Regarding Turkey Point Units 6 & 7 (Mar. 6, 2012) [hereinafter CASE Reply on Contention 10].

> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
>
> (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
>
> (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
>
> (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1)(i)-(viii). The "good cause" factor is the "most important" and entitled to the most weight. AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 261 (2009). Where a petitioner fails to establish good cause, "petitioner's demonstration on the other factors must be particularly strong." Texas Utils. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73 (1992). A petition that attempts to proffer a nontimely contention without addressing the balancing factors in section 2.309(c) may be summarily rejected. See Oyster Creek, CLI-09-07, 69 NRC at 260-61.

C. Admissibility Criteria In 10 C.F.R. § 2.309(f)(1)

In addition to satisfying the timeliness standards in 10 C.F.R. § 2.309(f)(2) or the balancing test in 10 C.F.R. § 2.309(c), a newly proffered contention must satisfy the admissibility criteria in 10 C.F.R. § 2.309(f)(1), which require that a contention:

> (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 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 . . . 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 . . . .

10 C.F.R. § 2.309(f)(1). The Commission has stressed that the standards governing contention admissibility are "strict by design." Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any of the admissibility criteria in section 2.309(f)(1) warrants rejection of a contention. USEC, Inc. (American Centrifuge Plant), CLI-06-09, 63 NRC 433, 437 (2006).

III. ANALYSIS

A. Newly Proffered Contention 9 Is Not Admitted

1. Contention 9, Which Is Effectively An Opposition To FPL's Request For Summary Disposition Of Contention 7, Is Unjustifiably Late. In Contention 9, CASE asserts that "[FPL's] revised [plan for the long-term, onsite handling of LLRW] from Turkey Point 6 and 7 is inadequate to protect public health and safety [in] all circumstances." CASE Motion to File New Contention 9, attach. 1 at (unnumbered) 1. This is precisely the issue that, *without opposition from CASE*, we adjudicated in FPL's favor in LBP-12-04.

As discussed supra Part I.A, on January 3, 2012, FPL moved for summary disposition of Contention 7, arguing that its COL application, as supplemented by Revision 3, contained sufficient information to enable the NRC to reach a conclusion on safety matters regarding the means by which FPL would handle long-term onsite LLRW storage. FPL therefore claimed that it was entitled to a favorable judgment on Contention 7 as a matter of law. See LBP-12-04, 75 NRC at __, __ (slip op. at 7, 10).

Pursuant to 10 C.F.R. § 2.1205(b), CASE had twenty days from FPL's filing of its motion, or until January 23, 2012, to oppose FPL's request for summary disposition. CASE filed a timely response in which it waived its right to contest FPL's motion, stating explicitly that it "will not oppose" summary disposition of Contention 7. See CASE January 23 Response at 1.

Informed by FPL's pleadings and filings, and relying on CASE's non-opposition to FPL's motion (see LBP-12-04, 75 NRC at __ (slip op. at 10)), this Board granted summary disposition of Contention 7 in favor of FPL on February 28, 2012. See id. at __ (slip op. at 14).

Now, in its motion to admit Contention 9, CASE proffers a contention that is substantially identical to former Contention 7 and is supported by arguments that, in effect, assert that -- contrary to FPL's arguments in its summary disposition motion -- Revision 3 did not remedy the alleged inadequacies in Contention 7. But CASE allowed the January 23 deadline for challenging FPL's summary disposition motion to lapse without filing an opposition. We will not permit CASE to raise a belated challenge to FPL's summary disposition motion in the guise of seeking to admit a newly proffered contention. If we were to rule otherwise, we would be allowing CASE -- in derogation of section 2.1205(b) -- to submit an unjustifiably late filing, thereby condoning CASE's cunctation. This we decline to do.[13]

[13] CASE asserts that Contention 9 is timely because it "is based on new information provided in FPL's [summary disposition motion] of January 3, 2012." CASE Motion to File New Contention 9 at 2. But as the NRC Staff correctly explains (see NRC Staff Answer Opposing Contention 9 at 10-12), CASE fails to show that the three arguments underlying Contention 9 are based on new and materially different information, as required by 10 C.F.R. § 2.309(f)(2)(i)-(ii). Rather, CASE's arguments regarding water inundation, lack of off-site LLRW storage, and inadequate emergency planning replicate old arguments this "Board has heard and rejected three times" (id. at 10), leaving us to conclude that -- even assuming arguendo that Contention 9 is not effectively a late-filed opposition to FPL's summary disposition motion -- it is nonetheless nontimely in derogation of section 2.309(f)(2). See supra Part II.A. And CASE's failure to show (or even attempt to show) that this Board should consider this nontimely contention pursuant to the balancing test in 10 C.F.R. § 2.309(c) provides a basis for summarily rejecting Contention 9 as inexcusably nontimely. See Oyster Creek, CLI-09-07, 69 NRC at 260-61; supra Part II.B.

2. Contention 9 Also Fails To Satisfy The Admissibility Criteria In 10 C.F.R. § 2.309(f)(1). We also conclude that Contention 9 must be rejected for the alternative reason that it fails to satisfy the admissibility criteria in 10 C.F.R. § 2.309(f)(1). In its first argument underlying Contention 9, CASE asserts (CASE Motion to File New Contention 9, attach. 1 at (unnumbered) 1) that FPL's auxiliary onsite LLRW storage structures would "be inundated by water, either routinely due to sea level rise, or intermittently due to storm surge related to hurricanes." CASE argues that water-level calculations should be determined from mean high tide, but that FPL improperly "starts with mean low tide." Id. at (unnumbered) 3-4. However, CASE's motion fails to reference a specific portion of FPL's COL application that calculates the water level in the manner alleged, much less demonstrates how CASE's assertion ultimately controverts a particular analysis or conclusion in the application. Because CASE's motion fails to "include references to specific portions" of the COL application that it disputes (10 C.F.R. § 2.309(f)(1)(vi)), Contention 9, as supported by the water inundation argument, is not admissible. See FPL Answer Opposing Contention 9 at 12-18; NRC Staff Answer Opposing Contention 9 at 13-14.

Nor is Contention 9 admissible pursuant to CASE's second argument, which alleges (CASE Motion to File New Contention 9, attach. 1 at (unnumbered) 1) that FPL's revised FSAR does not address the issue of permanent onsite storage for LLRW even though "permanent storage elsewhere in the nation is not assured." CASE's argument ignores that FPL's revised LLRW management plan provides that in the event offsite storage is not available, LLRW will be stored onsite in a facility that "would be designed, constructed, and operated in accordance with the design guidance provided in NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A." Turkey Point Units 6 & 7, COL Application, Part 2 -- FSAR Rev. 3 at 11.4-3 (Dec. 2011) [hereinafter FSAR Rev. 3]. In granting FPL's motion for summary disposition of Contention 7 in LBP-12-04, we held that FPL's commitment that it will -- if necessary -- construct and operate an

onsite LLRW storage facility in accordance with the relevant NRC guidance document, coupled with FPL's plan in Section 11.4 of its FSAR for controlling radiation exposures from LLRW, "provides sufficient [information] to enable the Commission to reach a final conclusion on all safety matters regarding the means FPL will use . . . [regarding onsite] LLRW handling and storage." LBP-12-04, 75 NRC at __ (slip op. at 13) (internal quotation marks omitted). In light of this prior holding, Contention 9, as supported by CASE's second argument, is not admissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi), because it fails to show a genuine dispute exists with FPL's COL application on a material issue of law or fact. See generally FPL Answer Opposing Contention 9 at 8-12; NRC Staff Answer Opposing Contention 9 at 14.

Finally, Contention 9 is not admissible pursuant to CASE's third argument, which alleges (CASE Motion to File New Contention 9, attach. 1 at (unnumbered) 4) that FPL's COL application improperly "assumes that the current emergency plans in place with Miami-Dade County for [Turkey Point Units] 3 & 4 is likewise sufficient for [Units] 6 & 7." We reject this argument for precisely the same reason we rejected it last year in our decision in LBP-11-06; namely, "CASE's attempt to challenge FPL's current emergency plan on file with Miami-Dade County . . . fails to raise a genuine dispute of material fact under section 2.309(f)(1)(vi) with FPL's [COL application], because there is no indication the extant plan on file with Miami-Dade County is encompassed in FPL's [COL application]." LBP-11-06, 73 NRC at __ n.91 (slip op. at 87 n.91) (internal quotation marks omitted).[14]

Newly proffered Contention 9 is therefore not admitted.

[14] Contention 9, as supported by CASE's third argument, is also inadmissible for failing to "include references to specific portions" of FPL's COL application that CASE disputes. See 10 C.F.R. § 2.309(f)(1)(vi).

B. Newly Proffered Contention 10 Is Not Admitted

1. Contention 10 Is Inexcusably Nontimely. In Contention 10, CASE asserts that "FPL's [ER] Revision 3 does not adequately address the impact of extended storage of all types of AP1000 [LLRW]." CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 1. In support of this contention, CASE argues that FPL's ER fails adequately to discuss: (1) the "impact . . . of catastrophic climactic conditions with total site inundation" on stored LLRW (including used steam generators and contaminated soil) and on "liquid pathways analysis" (id. at (unnumbered) 1-3, 5-6); (2) the unavailability of offsite storage for LLRW (see id. at (unnumbered) 6-7); and (3) the high level of LLRW radioactivity that will be stored onsite due to the need to replace defective steam generators. See id. at (unnumbered) 3-5.

CASE asserts that Contention 10 is timely (CASE Motion to File New Contention 10 at (unnumbered) 2) because it "is based on new information provided in FPL's [motion to dismiss Contention 6 as moot] of January 3, 2012." Id. at (unnumbered) 3. We disagree. We conclude that Contention 10 must be rejected, because its underlying arguments are inexcusably nontimely.

In its first argument in support of Contention 10, CASE asserts that the ER fails adequately to consider the impact of total site inundation on stored LLRW (including used steam generators and contaminated soil) and on liquid pathways analysis. See CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 1-3, 5-6. This argument is nontimely, because the concern on which it is predicated -- i.e., that the Turkey Point site will become flooded -- is not based on new and materially different information. Cf. supra note 13 (rejecting as nontimely the site-inundation argument underlying Contention 9). CASE concedes that it previously and repeatedly has endeavored, without success, to raise contentions based on the possibility of site inundation. See, e.g., CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 1 ("CASE has, in many filings in this intervention, presented the matter of climate change and

tropical storm impact . . . ."). Because CASE fails to (1) show that the possibility of site inundation is based on new and materially different information added to the ER as part of FPL's revised LLRW management plan, or (2) identify any new and materially different information on which its site-inundation argument is based, this argument is nontimely pursuant to 10 C.F.R. § 2.309(f)(2)(i) and (ii). See FPL Answer Opposing Contention 10 at 7-9; NRC Staff Answer Opposing Contention 10 at 8-11.[15]

CASE's second argument in support of Contention 10 -- which asserts that FPL's revised ER fails adequately to consider the unavailability of offsite storage for LLRW (see CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 6-7) -- is likewise nontimely. Cf. supra note 13 (rejecting as nontimely the argument alleging the unavailability of offsite LLRW storage underlying Contention 9). This argument is based on a statement in the ER regarding a waste-disposal facility in Clive, Utah that CASE asserts is "only partially true." CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 7. But the statement that CASE finds objectionable is not new. CASE raised an identical objection to this statement in the intervention petition it filed in August 2010. See [CASE Revised] Petition to Intervene and Request for a Hearing, Declaration of Diane D'Arrigo in Support of [CASE] at 4 (dated Aug. 17, 2010). Because CASE's argument regarding the unavailability of offsite LLRW storage is based on information that was available to CASE over eighteen months ago, it is nontimely. See FPL Answer Opposing Contention 10 at 10; NRC Staff Answer Opposing Contention 10 at 11-12.

---

[15] FPL states (FPL Answer Opposing Contention 10 at 11) that CASE's first argument in support of Contention 10 is timely to the extent it asserts that "FPL's ER revision failed to address the potential inundation of the contingent [LLRW] storage facilities." In LBP-11-06, however, we concluded that CASE "ha[d] not demonstrated that FPL's unchallenged sea level rise analysis in the FSAR must be supplemented with an analysis in the ER." LBP-11-06, 73 NRC at __ n.103 (slip op. at 98 n.103). CASE fails to present any new or materially different information regarding the possibility of site flooding that changes our conclusion. Even assuming arguendo that FPL is correct that one aspect of CASE's first argument is timely (but see NRC Staff Answer Opposing Contention 10 at 8), Contention 10 still fails to satisfy the admissibility criteria of 10 C.F.R. § 2.309(f)(1). See infra Part III.B.2.a.

CASE's third argument in support of Contention 10 flows from the following syllogism: (1) the Westinghouse steam generators that will be used for proposed Units 6 and 7 are defectively designed and will need to be replaced during the life of the plant; (2) because no offsite LLRW storage will be available, the defective steam generators will be stored onsite when they are replaced, and they will be especially radioactive; and accordingly (3) the projected source term of the LLRW that is stored onsite will be greater than is anticipated in FPL's COL application. See CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 3-5. Each of the three prongs of this syllogism is based on information that has long been available and, accordingly, CASE's argument is nontimely for the following three, independent reasons. First, the information on which CASE bases its claim that the Westinghouse steam generator design is defective is at least seven-years-old (from a 2005 Bechtel report), and some of it is seventeen-years-old (from a 1995 Department of Energy report). See FPL Answer Opposing Contention 10 at 7-8; NRC Staff Answer Opposing Contention 10 at 12-13. Second, the information on which CASE bases its claim that the replaced steam generators will be especially radioactive was available over eighteen months ago, in September 2010. See FPL Answer Opposing Contention 10 at 8; NRC Staff Answer Opposing Contention 10 at 13. Finally, CASE attacks "the source terms described in the DCD Table 11.2-7" (CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 3), asserting that the table fails to account for the radiation from defective steam generators that will be stored onsite. See id. at (unnumbered) 3-5. But FPL's revised LLRW management plan did not change the DCD table, nor did it change the ER's discussion of that table in sections 3.5.1.2 and 5.4.1.1. The source term information challenged by CASE therefore constitutes neither new nor materially different information. See NRC Staff Answer Opposing Contention 10 at 12.

Contention 10 is thus nontimely because it is grounded on information that fails to satisfy the timeliness standards in 10 C.F.R. § 2.309(f)(2). Further, CASE makes no attempt to show

that this nontimely contention satisfies the balancing test in 10 C.F.R. § 2.309(c), thus rendering Contention 10 inexcusably late and mandating its rejection.

2. Contention 10 Also Fails To Satisfy The Admissibility Criteria In 10 C.F.R. § 2.309(f)(1). Based on our examination of the three arguments CASE advances in support of Contention 10, we conclude the contention must also be rejected for the alternative reason that it fails to satisfy the admissibility criteria in section 2.309(f)(1).

a. Site Inundation. First, CASE argues that FPL's ER fails adequately to discuss the impact of total site inundation on FPL's contingent LLRW storage facility. See CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 1-3, 5-6. More specifically, CASE asserts that the ER "does not describe . . . elevat[ing] the auxiliary extended waste storage structures" to prevent radiation dispersal that would result from the impact of sea level rise and site inundation on LLRW. Id. at (unnumbered) 2.

But it is well established that an ER need only discuss reasonably foreseeable environmental impacts of a proposed action. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002). Here, CASE does not raise a genuine issue as to whether the dispersal of radiation due to the inundation of FPL's contingent LLRW storage facility is reasonably foreseeable. In LBP-11-06, we rejected a substantially identical argument advanced by CASE:

> [R]egarding Contention 6's concern with FPL's failure to consider the impact of projected sea level rise, storm surge, and site inundations that could result in the dispersal of LLRW off the Turkey Point site . . . , we conclude CASE fails to explain why such a scenario is plausible, much less reasonably foreseeable. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002) (ER need only consider environmental impacts that are "reasonably foreseeable.") . . . .

LBP-11-06, 73 NRC at __ (slip op. at 102). Because CASE provides no new information that would bolster a conclusion that a genuine issue exists as to whether radiation dispersal due to site inundation is reasonably foreseeable, we believe the above rationale applies here and

mandates a conclusion that FPL's ER need not have addressed the possibility of radiation dispersal due to site inundation. CASE thus fails to demonstrate, contrary to 10 C.F.R. § 2.309(f)(1)(iv), that the issue of radiation dispersal due to site inundation "is material to the findings the NRC must make to support" approving FPL's COL application. See FPL Answer Opposing Contention 10 at 14, 16; NRC Staff Answer Opposing Contention 10 at 14-15.

Moreover, CASE's motion fails to dispute with specificity FPL's analysis of sea level rise and storm surge in the COL application at FSAR Section 2.4.5. In LBP-11-06, we ruled that CASE's "fail[ure] directly to controvert FPL's sea level rise analysis . . . [rendered] Contention 5 . . . inadmissible for failing to raise a genuine dispute of material fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi)." LBP-11-06, 73 NRC at __ (slip op. at 99). That rationale applies here and mandates rejection of Contention 10 pursuant to section 2.309(f)(1)(vi). See FPL Answer Opposing Contention 10 at 15-16; NRC Staff Answer Opposing Contention 10 at 15.[16]

Finally, to the extent CASE asserts that FPL's COL application fails to account for "elevat[ing]" auxiliary LLRW storage facilities to protect LLRW from flooding (CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 2), CASE ignores that FPL's FSAR, as

---

[16] In its reply pleading, CASE: (1) identifies for the first time a specific portion of FPL's COL application that it claims is deficient (see CASE Reply on Contention 10 at 7); (2) offers a new (and nontimely) argument about sea level rise (see id. at 8-10); and (3) supports its new argument with a 191-page master's thesis written in June 2009. See id., attach. 1. These actions by CASE were procedurally improper. A petitioner may not, by design or neglect, fail to include critical admissibility-related information in its initial pleading, and then attempt to remedy that failure by including the information in a reply to which the respondent has no right of response. See Louisiana Energy Servs., L.P. (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) (the NRC's procedural rules do not allow "using reply briefs to provide, for the first time, the necessary threshold support for contentions," as that "would effectively bypass and eviscerate [its] rules governing timely filing, contention amendment, and submission of late-filed contentions"); Nuclear Mgmt. Co. (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) (petitioner may not remediate deficient contention "by introducing in the reply documents that were available to it during the timeframe for initially filing contentions"). If we overlooked these procedural improprieties (but see infra Part IV), CASE's litigation position would not be enhanced, because even with this material, CASE fails to "[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)(vi).

supplemented by Revision 3, makes clear that FPL would not build a supplemental onsite LLRW storage facility without considering sea level rise and storm surge. FPL has committed itself to constructing any such facility in accordance with NUREG-0800 (see FPL Answer Opposing Contention 10 at 15 (citing FSAR Rev. 3 at 11.4-3; Turkey Point Unit 6 & 7 COL Application, Part 3 -- [ER] Rev. 3 at 3.5-15 (Dec. 2011) [hereinafter ER Rev. 3]), which calls for a flood protection analysis to assure radiological consequences do not exceed a small portion of regulatory limits. See NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A at 11.4-25 ("Facility design and operation should assure that radiological consequences of design basis events (e.g., fire, tornado, seismic occurrence, and flood) do not exceed a small fraction (10 percent) of 10 C.F.R. Part 100 dose limits . . . ."). By failing to acknowledge, much less challenge with specificity, the safety and environmental evaluations that FPL will perform prior to construction and operation of a supplemental onsite LLRW storage facility, Contention 10 fails to demonstrate the existence of a genuine dispute with the COL application on a material issue of law or fact, in contravention of 10 C.F.R. § 2.309(f)(1)(vi).

b. Unavailability Of An Offsite LLRW Storage Facility. CASE's second argument in support of Contention 10 is that FPL's ER fails adequately to discuss the unavailability of offsite storage for LLRW. See CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 6-7.

The NRC Staff states that Contention 10, as supported by CASE's second argument, fails to satisfy 10 C.F.R. § 2.309(f)(1). See NRC Staff Answer Opposing Contention 10 at 16. We agree.

In its revised LLRW management plan, FPL committed itself to storing LLRW onsite in accordance with NRC guidance and regulations in the event that offsite storage is unavailable. See LBP-12-04, 75 NRC at __ (slip op. at 12) (citing FSAR Rev. 3 at 11.4-1, 11.4-3). Additionally, FPL's ER concludes that environmental impacts resulting from the "construction

and operation of any additional onsite [LLRW] storage facilities" would be "small." ER Rev. 3 at 5.7-7.

CASE fails to explain why -- in light of FPL's conclusion that the impacts of onsite LLRW storage would be small -- the unavailability of offsite LLRW storage facilities is an environmental concern that is "material to the findings the NRC must make to support" approving FPL's COL application. 10 C.F.R. § 2.309(f)(1)(iv). Nor does CASE provide "sufficient information to show that a genuine dispute exists" with FPL's conclusion. Id. § 2.309(f)(1)(vi). This aspect of Contention 10 is therefore not admissible.

c. Increased Onsite Radioactivity. The third argument advanced by CASE in support of Contention 10 is that FPL's ER fails adequately to discuss the high level of onsite LLRW radioactivity that will result from the need to replace what CASE alleges will be defective steam generators. See CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 3-5.

FPL and the NRC Staff argue that Contention 10, as supported by CASE's third argument, fails to satisfy 10 C.F.R. § 2.309(f)(1). See FPL Answer Opposing Contention 10 at 7-8; NRC Staff Answer Opposing Contention 10 at 16-18. We agree.

Contrary to 10 C.F.R. § 2.309(f)(1)(v), CASE fails to provide alleged facts or expert opinions to support its assertion that the steam generators that will be used at proposed Turkey Point Units 6 and 7 will be defective and need to be replaced. In its attempt to show that such steam generators will need early replacement, CASE references a list of steam generators that Bechtel Power Corporation (Bechtel) replaced between 1982 and 2010. See CASE Motion to File New Contention 10, attach. 1 at (unnumbered) 3. But CASE fails to explain how the mere fact that Bechtel previously replaced some steam generators supports CASE's claim that steam generators are defective in general, much less that the specific steam generators to be used in proposed Turkey Point Units 6 and 7 will be defective. Indeed, one of the articles on which CASE relies (id., attach. 2, Kenneth Chuck Wade, Steam Generator Degradation and Its Impact

on Continued Operation of Pressurized Water Reactors in the United States, ELEC. POWER MONTHLY (Energy Info. Admin.), Aug. 1995, at xiii, xix, xxi [hereinafter CASE Motion to File Contention 10, attach. 2]) points in the opposite direction, predicting that, due to operational, material, and chemistry advances, the degradation of steam generators in the future will decrease. Notably, this prediction is supported by the fact that the list of planned steam generator replacements does not include previously replaced steam generators. See id. at xvi. Moreover, one of CASE's supporting attachments shows that the steam generators for Turkey Point Units 3 and 4 were replaced in the early 1980s. After approximately thirty years of service, it appears that neither of these steam generators has required replacement. See id., attach. 3 (labeled as "Attachment 1, Steam Generator Replacements in the U.S., compiled 01/07/2012").

In sum, contrary to section 2.309(f)(1)(v), CASE fails to provide sufficient alleged facts or expert opinions to support its argument that the steam generators at proposed Turkey Point Units 6 and 7 will be defective and require early replacement. Contention 10, as supported by CASE's third argument, is thus not admissible.[17]

Newly proffered Contention 10 is therefore not admitted.

[17] Further, CASE's documents do not provide sufficient alleged facts or expert opinions to support a claim that defects in a steam generator will perforce require that a steam generator be replaced. Rather, the article cited by CASE explains that steam generators are constructed with a surfeit of heat exchange tubes, which allows operators to plug numerous defective tubes (up to 20 percent) before steam generator replacement is necessary. See CASE Motion to File New Contention 10, attach. 2 at xiii. The article also discusses additional strategies that have been developed to prolong steam generator life. See id. at xiii-xv.

IV. FPL's MOTION TO STRIKE

On March 15, 2012, FPL filed a motion to (1) strike as untimely CASE's replies for Contentions 9 and 10, or alternatively (2) strike from CASE's reply for Contention 10 a new argument regarding the age of FPL's sea level rise data, as well as the 191-page master's thesis attached to that reply. See [FPL's] Motion to Strike CASE's Replies to Responses to CASE Proposed Contentions 9 and 10 (Mar. 15, 2012) at 7 [hereinafter FPL Motion to Strike].[18]

FPL is correct in asserting that CASE's replies were untimely. CASE itself concedes that neither was filed within the seven-day period prescribed in 10 C.F.R. § 2.309(h)(2). See [CASE] Answer to [FPL's] Motion to Strike CASE's Replies to Responses to CASE Proposed Contentions 9 and 10 (Mar. 22, 2012) at 3.[19] Mindful that CASE has exhibited a pattern of failing to comply with the Commission's procedural rules (see, e.g., FPL Motion to Strike at 3 n.4), we grant FPL's motion to strike CASE's replies for Contentions 9 and 10.

Although we grant FPL's motion to strike CASE's replies, we nevertheless reviewed those replies, and we found nothing in them that alters our conclusion that newly proffered Contentions 9 and 10 must be rejected.

---

[18] FPL represents (FPL Motion to Strike at 8) that the "NRC Staff does not oppose the motion" to strike CASE's replies.

[19] FPL is also correct that CASE's reply for Contention 10 contains an argument and an attachment that should not have been included. See FPL Motion to Strike at 5-6; supra note 16.

V. CONCLUSION

For the foregoing reasons, we (1) deny CASE's motions to admit newly proffered Contentions 9 and 10, and (2) grant FPL's motion to strike CASE's replies. Because it no longer has a contention or an unresolved pleading pending before this Licensing Board, we dismiss CASE from this proceeding.

In accordance with 10 C.F.R. § 2.341(b), a party may file a petition for Commission review within fifteen (15) days after service of this decision. Within ten (10) days after service of such a petition, any other party may file an answer supporting or opposing Commission review. See 10 C.F.R. § 2.341(b)(3). Unless otherwise authorized by law, a party must file a petition for Commission review before seeking judicial review of an agency action. See id. § 2.341(b)(1).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

Dr. William C. Burnett
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 29, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Denying CASE's Motions to Admit Newly Proffered Contentions 9 and 10, and Dismissing CASE from this Proceeding) (LBP-12-07) have been served upon the following persons by Electronic Information Exchange.

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

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

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

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

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

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Sara Kirkwood, Esq.
Sara Price, Esq.
Jeremy Wachutka, Esq.
Robert Weisman, Esq.
Joseph Gillman, Paralegal
Karin Francis, Paralegal
E-mail:
sara.kirkwood@nrc.gov;
sara.price@nrc.gov ;
robert.weisman@nrc.gov
jeremy.wachutka@nrc.gov
joseph.gilman@nrc.gov;
karin.francis@nrc.gov

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

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

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

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

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

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

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

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

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

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

Dated at Rockville, Maryland
this 29th day of March 2012