

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD PANEL**

Before the Licensing Board:

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

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040 and 52-041
	)	ASLBP No. 10-903-02-COL-BD01
Turkey Point, Units 6 and 7	)	
	)	
	)	April 13, 2015
	)	

**SOUTHERN ALLIANCE FOR CLEAN ENERGY’S MOTION FOR LEAVE TO FILE  
A NEW CONTENTION CONCERNING RELIANCE BY  
TURKEY POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT ON  
THE CONTINUED SPENT FUEL STORAGE RULE**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.309(c), 2.309(f)(1), and 2.309(f)(2), Southern Alliance for Clean Energy (“SACE”) seeks leave to file a new contention challenging the legal adequacy of the Draft Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Units 6 and 7, NUREG-2176 (published February 2015) (the “DEIS”).<sup>1</sup> SACE contends that under the National Environmental Policy Act (“NEPA”), the DEIS does not provide the NRC with an adequate legal basis for licensing Turkey Point Units 6 and 7 because it relies entirely for its evaluation of the environmental impacts of spent fuel storage and disposal on the Continued

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<sup>1</sup> SACE has already been admitted, along with the National Parks Conservation Association, Mark Oncavage, and Dan Kipnis, as a party to this proceeding. Together, these parties have one contention – Contention 2.1 – still pending before the Board. The contention at issue in this motion, however, is being filed by SACE alone.

Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014)) (“Continued Spent Fuel Storage Rule”) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”).

While SACE seeks admission of its contention, SACE does not seek to litigate the substantive content of its contention in an adjudicatory hearing. Instead, SACE has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded SACE’s comments in the final versions of the Rule and GEIS. SACE also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).<sup>2</sup> The sole purpose of this contention is to lodge a formal challenge to the NRC’s complete and unqualified reliance, in the separate licensing proceeding for Turkey Point Units 6 and 7, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS.

SACE submits its contention with the reasonable expectation that it will be denied, because the subject matter of the contention is generic. SACE respectfully submits that nevertheless, the filing of a contention is the only procedural means offered by Commission regulations for ensuring that any court decision resulting from SACE’s appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual Turkey Point Units 6 and 7 licensing proceeding, which relies on the Continued Spent Fuel Storage Rule and

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<sup>2</sup> As discussed below in Section II.A, *Beyond Nuclear v. NRC* was consolidated with four other cases and is now captioned *New York v. NRC*.

GEIS.<sup>3</sup> In effect, this contention is a place-holder.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Waste Confidence and Continued Spent Fuel Storage Proceedings**

For several decades, the NRC relied on its “Waste Confidence” Rule and Temporary Storage Rule to address, in reactor licensing and re-licensing proceedings, safety and environmental issues associated with spent fuel storage and disposal. In 2010, the NRC published updates to the Waste Confidence Rule (the “Waste Confidence Update”) and Temporary Storage Rule, which were challenged by several state governments and environmental organizations. Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) and Temporary Storage Rule, 75 Fed Reg. 81,032 (Dec. 23, 2010). In *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”), the U.S. Court of Appeals vacated the Waste Confidence Update and Temporary Storage Rule, and remanded them to the NRC for further proceedings.

On July 9, 2012, following on the Court’s decision, SACE submitted a contention in this proceeding, asserting that in the absence of a valid GEIS for spent fuel storage and disposal, the environmental impacts and alternatives must be analyzed in the individual licensing proceeding. Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and

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<sup>3</sup> In this context, SACE notes that its contention is not accompanied by a petition for a waiver of 10 C.F.R. §§ 51.71(d), 51.95(c)(2), or any of the other regulations on which the Commission relies to bar members of the public from litigating generic NEPA issues in individual licensing proceedings. No purpose would be served by such a waiver because SACE does not seek an adjudicatory hearing on the NRC’s generic environmental findings. Instead, SACE’s only purpose in raising its contention is to ensure that any decision by the U.S. Court of Appeals regarding the validity of the Continued Spent Fuel Storage Rule and GEIS will also be applied to this proceeding, in which the NRC relies on them.

Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant. SACE also petitioned the NRC to suspend the Turkey Point Units 6 and 7 licensing proceeding pending the agency's compliance with the Court's remand. At the request of SACE and other petitioners, the NRC subsequently suspended licensing and re-licensing decisions for all reactors, including Turkey Point Units 6 and 7. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-16, 76 NRC 63 (2012) ("CLI-12-16"). As instructed by the Commission in CLI-12-16, the Atomic Safety and Licensing Board (the "Board") held SACE's contention in abeyance pending further order of the Commission. Memorandum and Order (Suspending Deadlines for Submission of Reply Briefs Related to Proposed Waste Confidence Contention) (Aug. 9, 2012).

Then, on September 13, 2013, in response to the Court's remand in *New York I*, the NRC published a proposed rule entitled Waste Confidence – Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776 (Sept. 13, 2013) ("Proposed Waste Confidence Rule"). The NRC also published a Draft Waste Confidence GEIS (NUREG-2157, noticed at 78 Fed. Reg. 56,621 (Sept. 13, 2013)).

On December 20, SACE joined thirty-two other environmental organizations in submitting Comments by Environmental Organizations on Draft Waste Confidence Generic Environmental Impact Statement and Proposed Waste Confidence Rule and Petition to Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal (ADAMS Accession No. ML14030A152, corrected on Jan. 7, 2014 in ML14024A297) ("SACE et al. Comments"). The SACE et al. Comments were supported by expert declarations by Dr. Arjun Makhijani, David Lochbaum, Dr. Gordon Thompson, and Mark Cooper (ADAMS Accession No. ML14030A152). The comments and supporting declarations made detailed and

comprehensive criticisms of the Proposed Waste Confidence Rule and Draft Waste Confidence GEIS, charging that they were inadequate to satisfy NEPA or the Atomic Energy Act on both legal and technical grounds. Other organizations, as well as state and local governments, also filed comments critical of the Proposed Rule and Draft GEIS.

Despite these criticisms, in September 2014, the NRC published the Final Continued Spent Fuel Storage Rule and Final Continued Spent Fuel Storage GEIS, without changing its environmental analysis in any significant respect. The Final Continued Spent Fuel Storage Rule also omitted “Waste Confidence” safety findings required by the Atomic Energy Act. Upon issuance of the Rule and GEIS, the Commission lifted the suspension of licensing and re-licensing for Turkey Point Units 6 and 7 and other reactors. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-08, 80 NRC 71 (2014). The Board subsequently dismissed SACE’s contention regarding spent fuel storage and disposal impacts. *Florida Power and Light Co.* (Turkey Point Nuclear Power Plant, Units 6 and 7), Order Denying Waste Confidence Contention Motions and Dismissing CASE (Sept. 10, 2014).

SACE took two legal actions in response to the NRC’s issuance of the Final Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS. First, SACE filed a contention and petition to suspend licensing of Turkey Point Units 6 and 7, charging that the NRC may not license Unit 6 and 7 unless and until it makes “Waste Confidence” findings regarding the safety of spent fuel disposal. *Intervenors’ Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Findings in the Licensing Proceeding at Turkey Point Nuclear Power Plant* (Sept. 29, 2014); *Petition to Suspend Final Decisions in all Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence*

Safety Findings (Sept. 29, 2014). The Commission denied the Petition in CLI-15-04 (Feb. 26, 2015).

Second, SACE joined seven other environmental organizations in seeking judicial review of the Rule and GEIS by the U.S. Court of Appeals for the District of Columbia Circuit under NEPA, the Atomic Energy Act, and the Administrative Procedure Act, *inter alia*. *Beyond Nuclear et al. v. NRC*, No. 14-1216 (filed Oct. 29, 2014). The case was consolidated with similar appeals by the States of New York, Connecticut, and Vermont; the Prairie Island Indian Community; and Natural Resources Defense Council. *See New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed October 31, 2014) (“*New York II*”). The parties are now awaiting a briefing schedule.

#### **B. NEPA Review for Turkey Point Units 6 and 7 Licensing Proceeding**

In 2009, Florida Power and Light Company (“FPL”) applied for a combined license (“COL”) to construct and operate Turkey Point Units 6 and 7. On March 5, 2015, the NRC publicly announced the availability of Turkey Point Units 6 and 7 DEIS, which incorporated the Final Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS. DEIS at 6-14 – 6-16.

### **IV. CONTENTION**

#### **A. Statement of Contention**

The DEIS for Turkey Point Units 6 and 7 is inadequate to satisfy NEPA because (at pages 6-14 – 6-16) it incorporates by reference the generic conclusions of the Continued Spent Fuel Storage Rule and GEIS. The Continued Spent Fuel Storage Rule and GEIS, in turn, suffer from the following failures enumerated in SACE et al.’s Comments:

- In blatant violation of NEPA and the Court’s decision in *New York I*, the Continued Spent Fuel Storage GEIS fails to examine the probability and consequences of failure to site a repository. Instead of examining the risk of failing to site a repository, the GEIS rationalizes the risk away, by arbitrarily assuming that spent fuel will be protected by “institutional controls” for an infinite period of time at reactor sites. This assumption is not only absurd and inconsistent with the Nuclear Waste Policy Act (“NWPA”), but it also defeats the Court’s purpose of forcing NRC to reckon with the environmental consequences of its failure to site a repository.
- The GEIS fails to acknowledge that the Continued Spent Fuel Storage Rule is a licensing action, and therefore it distorts the statement of purpose and need for the rule as relating to administrative rather than environmental concerns. As a result, the GEIS also mischaracterizes the alternatives that must be considered. Instead of evaluating alternatives related to storage and disposal of spent fuel, the GEIS examines alternatives related to the administrative question of how to prepare an EIS. The result is a farcical cost-benefit analysis that utterly fails to address alternatives for avoiding or mitigating the environmental impacts of storing spent fuel or siting a repository.
- The GEIS’ analysis of the environmental impacts of extended spent fuel storage ignores the fact that NRC knows very little about the behavior of spent fuel in long-term or indefinite storage conditions, especially the potentially significant effects of long-term dry cask storage on high burnup fuel integrity. In violation of NEPA, the NRC makes no attempt to quantify these uncertainties.
- The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk, ignores a range of causes for accidents, and fails to assess certain site-specific features that could increase the impacts of a leak or fire.
- In violation of NEPA, the GEIS makes no attempt to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. Although spent fuel disposal and long-term storage costs are high enough to tip the balance of a cost-benefit analysis for reactor licensing away from licensing, nowhere does the NRC explain how it will take these costs into account in reactor licensing decisions.
- In violation of NEPA, the GEIS fails to support the limited conclusions in the Continued Spent Fuel Storage Rule and GEIS regarding the technical feasibility of spent fuel disposal.
- The NRC has splintered the analysis of environmental impacts associated with storage and disposal of spent fuel into an array of safety findings and environmental analyses. While the issues covered by these separate findings and analyses overlap and involve

cumulative impacts, the NRC refuses to integrate them. The NRC also refuses to correct inconsistencies between them.

**B. Statement of Basis for the Contention**

The basis for SACE's contention is provided in the SACE et al. Comments and attachments, including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper.

**C. Demonstration that the Contention is Within the Scope of the Proceeding**

The contention is within the scope of the proceeding because it challenges the adequacy of the NRC's NEPA review for the licensing of Turkey Point Units 6 and 7.

**D. Demonstration that the Contention is Material to the Findings the NRC Must Make to License This Reactor**

The contention is material to the findings that the NRC must make in order to license this reactor because it asserts that the environmental findings in the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS are not supported and are legally deficient.

**E. Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials**

The statements of fact or expert opinion supporting the contention are set forth in the SACE et al. Comments and attachments, including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper.

**F. A Genuine Dispute Exists with the Applicant on a Material Issue of Law or Fact**

This contention raises a genuine dispute with both the applicant and the NRC regarding whether the NRC has satisfied NEPA for the purpose of licensing Turkey Point Units 6 and 7.

**V. THE CONTENTION IS TIMELY PURSUANT TO 10 C.F.R. §§ 2.309(c) and 2.309(f)(2)**

The contention meets the timeliness requirements of 10 C.F.R. § 2.309(c) and § 2.309(f)(2), which call for 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.

First, the information on which the contention is based – the DEIS for Turkey Point Units 6 & 7 – was not publicly noticed until March 5, 2015. 80 Fed. Reg. 12043 (March 5, 2015).

Second, the information in the DEIS is materially different from the information in the Environmental Report (“ER”), because neither the original ER nor any of its revisions reference the Continued Spent Fuel Storage Rule or GEIS.<sup>4</sup>

Third, the contention is timely because it has been submitted on or before April 13, 2015, the deadline established by the Board for the filing of contentions based on new information in the DEIS. *Florida Power and Light Co.* (Turkey Point Nuclear Power Plant, Units 6 and 7), Order Granting Motion for Additional Time (March 25, 2015).

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<sup>4</sup>The ER (dated June 30, 2009) and five of its revisions pre-dated the NRC’s issuance of the Continued Spent Fuel Storage Rule and GEIS in September 2014. Although FPL submitted Rev. 6 of the ER on October 29, 2014, after the NRC had issued the Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS, the revised ER does not reference the final Rule or GEIS.

**VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)**

Counsel for SACE certifies that on April 7, 2015, we contacted counsel for the applicant and the NRC staff in an attempt to obtain their consent to this motion. Counsel for the applicant and the NRC staff stated that they would oppose this motion.

**VII. CONCLUSION**

For the reasons stated, SACE respectfully requests that its contention be admitted.

Respectfully submitted this 13<sup>th</sup> day of April, 2015.

/signed electronically by/  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 6 and 7)

Docket Nos. 52-040-COL and 52-041-COL

**CERTIFICATE OF SERVICE**

I hereby certify that the **SOUTHERN ALLIANCE FOR CLEAN ENERGY'S MOTION FOR LEAVE TO FILE A NEW CONTENTION CONCERNING RELIANCE BY TURKEY POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT ON THE CONTINUED SPENT FUEL STORAGE RULE** has been filed through the Electronic Information Exchange system this 13<sup>th</sup> day of April, 2015.

\_\_\_\_\_/signed (electronically) by/

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