

May 8, 2015

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket Nos. 52-040-COL
Florida Power & Light Company)	52-041-COL
)	
Turkey Point Units 6 and 7)	ASLBP No. 10-903-02-COL
(Combined License Application))	

**FLORIDA POWER & LIGHT COMPANY’S ANSWER OPPOSING
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(i)(1), Applicant Florida Power & Light Company (“FPL”) hereby answers and opposes the April 13, 2015 Motion for Leave to File a New Contention Concerning Reliance by Turkey Point Draft Environmental Impact Statement on the Continued Spent Fuel Storage Rule (“Motion”) filed by Southern Alliance for Clean Energy (“SACE”) in this combined license (“COL”) proceeding for the proposed Turkey Point Units 6 and 7. The proposed Contention seeks to challenge the NRC Staff’s reliance on the recently promulgated Continued Storage Rule, 10 C.F.R. § 51.23(b) and its companion Generic Environmental Impact Statement (the “GEIS”)¹ in the Turkey Point Units 6 and 7 Draft Environmental Impact Statement (the “DEIS”).² Motion at 1. The Atomic Safety and Licensing Board (the “Board”) must reject the proposed Contention because it is untimely and inadmissible. Indeed, in two

¹ Continued Storage of Spent Nuclear Fuel Rule, 79 Fed. Reg. 56,238 (Sept. 19, 2014); NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (Sept. 2014) (“GEIS”).

² NUREG-2176, Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Units 6 and 7, Draft Report for Comment (Feb. 2015).

recently issued Orders,³ the Commission rejected essentially identical contentions as impermissible challenges to the Continued Storage Rule.

II. THE PROPOSED CONTENTION IS INADMISSIBLE

SACE's proposed Contention must be rejected as an impermissible challenge to the Continued Storage Rule. The Continued Storage Rule establishes how the environmental impact determinations in the GEIS are to be considered in the environmental reviews for specified licensing proceedings, including new reactor licensing proceedings such as Turkey Point 6 and 7. The Continued Storage Rule states:

The environmental reports described in §§ 51.50, 51.53, and 51.61 are not required to discuss the environmental impacts of spent nuclear fuel storage in a reactor facility storage pool or an ISFSI for the period following the term of the reactor operating license, reactor combined license, or ISFSI license. The impact determinations in NUREG-2157 regarding continued storage shall be deemed incorporated into the environmental impact statements described in §§ 51.75, 51.80(b), 51.95, and 51.97(a). The impact determinations in NUREG-2157 regarding continued storage shall be considered in the environmental assessments described in §§ 51.30(b) and 51.95(d), if the impacts of continued storage of spent fuel are relevant to the proposed action.

10 C.F.R. § 51.23(b). The environmental impact statements described in 10 C.F.R. § 51.75 include those supporting issuance of a combined license. Section 51.75(c), Combined license stage, was also amended in the Continued Storage rulemaking to provide:

As stated in § 51.23, the generic impact determinations regarding the continued storage of spent fuel in NUREG-2157 shall be deemed incorporated into the environmental impact statement.

10 C.F.R. § 51.75(c).

³ *Union Electric Company* (Callaway Nuclear Plant, Unit 1), CLI-15-11, 81 N.R.C. ___, slip op. (Apr. 23, 2015) (“CLI-15-11”); *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 N.R.C. ___, slip op. (Apr. 23, 2015) (“CLI-15-12”).

Contrary to the explicit direction provided in the Continued Storage Rule, SACE's proposed Contention states:

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[.]

Motion at 6. As the proposed Contention's bases, SACE alleges seven failures of the GEIS that purportedly undermine the Continued Storage Rule. *Id.* at 6-8. Among other things, SACE alleges that the GEIS fails to examine the probability and consequences of failure to site a repository, to quantify alleged uncertainties concerning the long-term or indefinite storage spent fuel storage conditions, to "fully consider" spent fuel pool leaks and fires, or 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. *Id.* at 7. Acknowledging that none of these bases specifically pertains to the proposed Turkey Point Units, SACE concedes that "the subject matter of the contention is generic" and notes that it has not petitioned for waiver of the Continued Storage Rule. *Id.* at 2, 3 n.3. In addition, SACE asserts that it "does not seek to litigate the substantive content of its contention in an adjudicatory proceeding," and that the "sole purpose" of its contention "is to lodge a formal challenge to the NRC's" reliance on the Continued Spent Fuel Storage Rule to ensure that "any court decision resulting from SACE's appeal of the generic Continued Spent Fuel Storage Rule and GEIS will be applied to the individual Turkey Point Units 6 and 7 licensing proceeding." *Id.* at 2. SACE has filed what it calls a "place-holder" contention. *Id.* at 3.

Controlling Commission precedent requires that the Board reject the proposed Contention out of hand. In the recently issued *Callaway* and *Fermi* decisions, the Commission ruled

inadmissible contentions essentially identical to the one SACE proffers here. Just like SACE, the petitioner in the *Callaway* proceeding (for example) (1) proffered a “placeholder contention” seeking to challenge the NRC Staff’s reliance on the Continued Storage Rule and GEIS in the environmental impact statement at issue in that proceeding, but did not seek waiver of the rule; (2) offered seven bases for its contention, all of which challenged the generic findings of the GEIS and not the application at issue in that proceeding; (3) argued that it did “not seek to litigate the substance of its contention;” and (4) stated that its reason for filing the contention was to ensure that any court decision on its appeal of the Continued Storage Rule and GEIS would be applied to the individual *Callaway* proceeding. CLI-15-11 at 3-4.

The Commission ruled the proffered *Callaway* contention inadmissible because it impermissibly challenged the Continued Storage Rule and was therefore outside the scope of the proceeding. CLI-15-11 at 4. The Commission also ruled that, because all of the contention’s bases challenged the generic findings in the GEIS and did not “pertain specifically to the *Callaway* license renewal application,” the contention failed to “provide sufficient information to determine a genuine dispute with the applicant on a material issue.” *Id.* In light of the *Callaway* petitioner’s recourse to the D.C. Circuit for legal review of the Continued Storage Rule and GEIS, the Commission ruled that a “placeholder” contention was “not necessary to ensure that [petitioner’s] challenges to the Continued Storage Rule and GEIS receive a full and fair airing.” *Id.* at 5. The Commission also said that it would take “appropriate action consistent with the court’s direction...[s]hould the D.C. Circuit find any infirmities in the Continued Storage Rule or GEIS.” *Id.*

SACE has proffered an essentially identical contention challenging the Continued Storage Rule with essentially the same seven generic bases as the contentions at issue in

Callaway and *Fermi*. Consistent with this controlling precedent, the Board must reject SACE's proposed Contention. SACE's proposed Contention is beyond the scope of this combined license proceeding, 10 C.F.R. § 2.309(f)(1)(iii), because it impermissibly challenges the Continued Storage Rule. CLI-15-11 at 4. And, not one of the proposed Contention's bases pertains specifically to the proposed Turkey Point Units 6 and 7. They all thus fail to raise a genuine dispute on a material issue of law or fact under 10 C.F.R. § 2.309(f)(1)(vi). *Id.* Finally, SACE is seeking legal review of the Continued Storage Rule and GEIS before the D.C. Circuit. Therefore, admitting a placeholder contention is not necessary to ensure that SACE will have a full and fair airing of its concerns with the Continued Storage Rule and GEIS. *Id.* at 5.

The Board should also find that SACE's proposed Contention is untimely, and that SACE has failed to demonstrate good cause for its untimely filing. Section 2.309(c) provides that a new or amended contention filed after the deadline for hearing requests and contentions will not be entertained, absent a determination that a participant has demonstrated good cause by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(1). SACE claims that its proposed contention is timely because it is based on the DEIS, which discusses the Continued Storage Rule, in contrast to the Turkey Point Units 6 and 7 Environmental Report, which does not. Motion at 9. SACE's arguments do not demonstrate the proposed Contention's timeliness.

The Commission approved the Continued Storage Rule on August 26, 2014,⁴ and the Rule was published in the Federal Register on September 19, 2014. 79 Fed. Reg. 56,238. SACE knew, when the Commission approved the Continued Storage Rule on August 26, 2014, that the Commission had determined to apply the conclusions in the Continued Storage GEIS in all COL proceedings. As the Continued Storage Rule stated, SACE knew that the generic conclusions in the GEIS would be considered incorporated into the DEIS. Thus, the actual publication of the Turkey Point Units 6 and 7 DEIS provided no information that was new or materially different from that which was previously available, and thus provides no good cause for the Contention under the Section 2.309(c) factors. Indeed, the only information in the DEIS related to these issues are statements reflecting the Commission’s approval and publication of the Continued Storage Rule, the provision in that rule deeming the GEIS conclusions incorporated, and the Commission’s decision in CLI-14-08⁵, which held that the Continued Storage Rule cured the deficiencies in the prior Waste Confidence Rule identified by the D.C. Circuit. *See* DEIS at 6-14 to 6-16.

A document such as the DEIS that “merely summariz[es] earlier documents or compil[es] pre-existing, publicly available information into a single source do[es] not render ‘new’ the summarized or compiled information.” *See Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 N.R.C. 333, 344 (2011). A document that merely compiles and organizes preexisting information does not provide good cause for a late contention. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (2010).

⁴ Staff Requirements –SECY-14-0072 – Final Rule: Continued Storage of Spent Nuclear Fuel (Aug. 26, 2014) (ADAMS Accession No. ML14237A092).

⁵ *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 N.R.C. 71 (2014).

III. CONCLUSION

Consistent with SACE's "reasonable expectation that [the Contention] will be denied" (Motion at 2), the Board should reject it for all of the foregoing reasons.

Respectfully submitted,

/Signed electronically by David R. Lewis/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Florida Power & Light Company's Answer Opposing 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 have been served through the E-Filing system on the participants in the above-captioned proceeding, this 8th day of May, 2015.

/Signed electronically by David R. Lewis/

David R. Lewis