May 8, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO "CITIZENS ALLIED FOR SAFE ENERGY PETITION TO INTERVENE AND REQUEST FOR HEARING REGARDING THE DRAFT EIS FOR TURKEY POINT 6 & 7 COL"

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323 and 2.309 and the Atomic Safety and Licensing Board (Board) Orders dated March 30, 2011,[1] and March 25, 2015,[2] the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby responds to the "Citizens Allied for Safe Energy [CASE] Petition to Intervene and Request for Hearing Regarding the Draft EIS for Turkey Point 6 & 7 COL" (CASE Petition) dated April 13, 2015. For the reasons set forth below, the Staff agrees that CASE has re-established standing, but opposes admission of the proposed new contentions because they either fail to meet the criteria of 10 C.F.R. § 2.309(c)(1) for contentions filed after the deadline set in the Notice of Hearing or fail to meet the contention requirements of 10 C.F.R § 2.309(f)(1)(iv)–(vi).

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[1] *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Initial Scheduling Order and Administrative Directives (Mar. 30, 2011) (unpublished) (ML110890768) (Initial Scheduling Order).

[2] *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Order (Granting Motion for Additional Time) (Mar. 25, 2015) (unpublished) (ML15084A225) (2015 Scheduling Order).

BACKGROUND

On June 30, 2009, the Florida Power and Light Company (Applicant or FPL), pursuant to the Atomic Energy Act of 1954, as amended (AEA) and the Commission's regulations, submitted an application for combined licenses (COL) for two nuclear power reactors to be located adjacent to the existing Turkey Point Units 1 through 5, at the Turkey Point site near Homestead, Florida (Application). *See* Letter from M. K. Nazar, FPL, to M. Johnson, Office of New Reactors, NRC, dated June 30, 2009 (ADAMS Accession No. ML091830589). The Application designated the proposed units as Turkey Point, Units 6 & 7. Application Rev. 0, Part 1 at 1 (ML091870846). The Application includes an Environmental Report (ER), which provides the Applicant's assessment of the environmental impacts of the proposed action, as required by the 10 C.F.R. §§ 52.80(b) and 51.50(c). *See* Application, Part 3 (ER).[3]

In response to a Notice of Hearing,[4] on August 17, 2010, CASE submitted a petition through which it sought to intervene in this proceeding. *See* Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing (Aug. 17, 2010) (ML102300287).[5] In a decision dated February 28, 2011, the Board ruled that CASE had standing, admitted CASE Contentions 6 and 7, and admitted CASE and as a party to this proceeding. *See Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-11-06, 73 NRC 149, 226-27, 241-43, 244-46, 248 (2011).[6]

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[3] The ADAMS Accession number for the ER depends on the ER revision and section cited.

[4] *See* "Florida Power & Light Company, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity for Leave to Petition 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).

[5] CASE filed a revised Petition on August 20, 2010 (ML102320411) (CASE 2010 Amended Petition). *See Turkey Point*, LBP-11-06, 73 NRC 149, 166 n.3 (2011).

[6] In LBP-11-06, the Board found the rest of the contentions CASE proposed in its petition inadmissible, including Contention 5 on sea level rise. *See Turkey Point*, LBP-11-06, 73 NRC at 237, 248.

On January 26, 2012, the Board granted FPL's motion to dismiss CASE Contention 6. *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contention 2.1 and CASE's Contention 6 as Moot), at 3, 7 (Jan. 26, 2012) (unpublished) (ML12026A438). The Board later dismissed CASE's only remaining contention and dismissed CASE from this proceeding. *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-12-04, 75 NRC 213, 217; LBP-12-07, 75 NRC 503, 520 (2012).

On July 9, 2012, following the D.C. Circuit's decision in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), CASE filed a proposed new contention concerning temporary storage and ultimate disposal of nuclear waste. [CASE] 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) (ML12192A306). In an Order dated September 10, 2014, issued pursuant to Commission direction, the Board dismissed CASE's continued storage contention and dismissed CASE as a participant in this proceeding. Order (Denying Waste Confidence Contention Motions and Dismissing CASE) (Sept. 10, 2014) (unpublished) at 3 (ML14253A284), citing *Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-08, 80 NRC 71 (2014).

On March 5, 2015, the NRC published a notice of availability of a draft Environmental Impact Statement (EIS) on the Application. On April 13, 2015, in accordance with the Board's 2015 Scheduling Order, CASE submitted its Petition.

DISCUSSION

I. LEGAL STANDARDS

A. Standing to Intervene

In accordance with the Commission's Rules of Practice:

> [a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written

> request for hearing or petition for leave to intervene and a specification of the contentions that the person seeks to have litigated in the hearing.

10 C.F.R. § 2.309(a). The regulations further provide that the Licensing Board "will grant the [petition] if it determines that the [petitioner] has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)]. *Id*.

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

> (i) The name, address and telephone number of the requestor or petitioner;
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> (ii) The nature of the requestor's/petitioner's right under the [AEA] 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; and
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> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1). As the Commission has observed, "[a]t the heart of the standing inquiry is whether the petitioner has 'alleged such a personal stake in the outcome of the controversy' as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues." *Sequoyah Fuels Corp. and Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994) (citing *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 72 (1978), and quoting *Baker v. Carr,* 369 U.S. 186, 204 (1962)).

To demonstrate such a "personal stake," the Commission applies contemporaneous judicial concepts of standing. Accordingly, petitioner must (1) allege an "injury in fact" that is (2) "fairly traceable to the challenged action" and (3) is "likely" to be "redressed by a favorable decision." *Sequoyah Fuels*, 40 NRC at 71-72 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotations omitted) and citing *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)). *See*

also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

In reactor licensing proceedings, licensing boards have typically applied a "proximity" presumption to persons "who reside in or frequent the area within a 50-mile radius" of the proposed plant. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 147-48 (2001) (collecting cases and summarizing the development of the Commission's standing doctrine). The Commission noted this practice with approval, stating that "[w]e have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto[.]" *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) citing *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979).

The proximity presumption establishes standing without the need to establish the elements of injury, causation, or redress. *Turkey Point*, LBP-01-6, 53 NRC at 150. The Commission has affirmed that the 50-mile proximity presumption applies to applications for new nuclear power plants, including combined license applications. *Calvert Cliffs 3 Nuclear Project LLC & Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915-18 (2009).

An organization may establish its standing to intervene based upon a theory of organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based upon the standing of its members). To demonstrate organizational standing, an organization must be able to intervene in its own right. "Organizations seeking to intervene in their own right must satisfy the same standing requirements as individuals seeking to intervene . . . because an organization, like an individual, is considered a 'person' as we have defined that word in 10 C.F.R. § 2.4 and as we have used it in 10 C.F.R. § 2.309 regarding standing." *Consumers Energy Co.* (Palisades

Nuclear Power Plant), CLI-07-18, 65 NRC 399, 411 (2007). Thus, to establish organizational standing, an organization "must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA." *Quivira Mining Co*. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999); *Metropolitan Edison Co*. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

Where an organization seeks to establish representational standing, it must show that at least one of its members may be affected by the proceeding, it must identify that member by name and address and it must show that the member "has authorized the organization to represent him or her and to request a hearing on his or her behalf." *See, e.g., Palisades,* CLI-07-18, 65 NRC at 409; *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-07, 63 NRC 188, 195 (2006) (citing *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000)). Further, for the organization to establish representational standing, the member seeking representation must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief may require an individual member to participate in the organization's legal action. *Palisades*, CLI-07-18, 65 NRC at 409; *Private Fuel Storage*, CLI-99-10, 49 NRC at 323 (citing *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).[7]

B. Legal Standards for Contention Admissibility

To be admissible, a newly proffered contention must satisfy: (1) the timeliness standards in 10 C.F.R. § 2.309(c)(1) for new and amended contentions; and (2) the general contention

[7] A petitioner must make a fresh standing demonstration in *each* proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next. *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010) (emphasis in original).

admissibility standards in 10 C.F.R. § 2.309(f)(1). *See Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-15, 73 NRC 629, 633 (2011).[8] New or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer upon a showing that:

> (i) The information upon which the amended or new contention is based was not previously available;
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> (ii) The information upon which the filing is based is materially different from information previously available; and
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> (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) (modifying requirements of former 10 C.F.R. § 2.309(f)(2)).

In addition to satisfying the requirements in 10 C.F.R. § 2.309(c)(1) for a new or amended contention filed after the deadline, the petitioner must set forth with particularity the reasons why the proposed contention satisfies the 10 C.F.R. § 2.309(f)(1) general contention admissibility requirements, which are that the contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
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> (vi) . . . provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of

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[8] The Commission has consolidated its requirements for filing contentions after the deadline set in the Notice of Hearing in 10 C.F.R. § 2.309(c)(1). *See* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,591 (Aug. 3, 2012).

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

10 C.F.R. § 2.309(f)(1).

The 10 C.F.R. § 2.309(f)(1) requirements should "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." *Id*. The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). Attempting to meet these requirements by "[m]ere 'notice pleading' does not suffice." *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

II. CASE HAS RE-ESTABLISHED STANDING

In support of its standing in this proceeding, CASE provides declarations demonstrating that it has members who live within 50 miles of the Turkey Point site. CASE Petition at 7.[9]

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[9] CASE attached declarations of CASE members as Exhibits to the CASE Petition filed on April 13, 2015. CASE members declare that they live within 50 miles of the Turkey Point site, as set forth in the following Declarations: (1) C.J. McKeon, signed 4/8/2015 (CASE Exhibit 4 at 1); (2) Norman W. Schwartz, signed 4/9/2015 (CASE Exhibit 4 at 2); (3) Anna Bystrik, signed 4/12/2015 (CASE Exhibit 5 at 1); (4) Jack Selts, signed 4/12/2015 (CASE Exhibit 5 at 3); (5) Maribel Argomaniz, signed 4/12/2015 (CASE Exhibit 5 at 4); (6) George Riemos, signed 4/12/2015 (CASE Exhibit 5 at 5); (7) Olga Michel,

(Continued…)

CASE asserts representational standing to intervene in this proceeding by stating that members of their organizations who live within 50 miles of the proposed site have authorized it to represent them in this proceeding. *Id.* CASE states that:

> The attached Declarations declare that people who live near (within 50 miles, though some live much closer) the Turkey Point site, declare further that they are members of CASE and that they support this petition. Thus, they have presumptive standing in this intervention by virtue of their support for the action and their proximity to the proposed nuclear plants that may be constructed on the site.

Id. The CASE declarations establish that identified CASE members have standing to intervene in his or her own right by satisfying the proximity presumption. All of the filed declarations that the NRC Staff was able to open indicate that these individuals live within 50 miles of the proposed Turkey Point Units 6 and 7 site. Further, all of these individuals have authorized CASE to represent their interests in the instant proceeding. Accordingly, CASE has satisfied the standards for representational standing set forth in *Palisades*, CLI-07-18, 65 NRC at 409.[10] The Staff agrees that CASE has demonstrated representational standing to intervene in this proceeding.

III. THE PROPOSED NEW CONTENTIONS ARE INADMISSIBLE

A. PROPOSED CONTENTION 1

> The cumulative long term environmental impact of up to 70 million gallons a day of chemical laden aerosol, as described in the DEIS, from six cooling towers is a threat to FPL workers and

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signed 4/9/2015 (CASE Exhibit 7 at 1); (8) Veronic Aghayan, undated (CASE Exhibit 8 at 1); (9) Philip Stoddard, signed 4/9/2015 (CASE Exhibit 9 at 1); (10) Ronnie White, signed 4/13/2015 (CASE Exhibit 10 at 1); and (11) Barry White, signed 4/13/2015 (CASE Exhibit 11). CASE Exhibit 3 was submitted in a file format that the NRC Staff was unable to open. CASE Exhibit 6 included a file name, but not a declaration.

[10] CASE asserted standing only on a theory of representational standing, but did not assert organizational standing. Accordingly, the Staff has not addressed organizational standing in its response.

> to the nearby protected habitat and will increase salinity and saltwater intrusion in the Biscayne Aquifer.

CASE Petition at 11A.[11]

Basis:

CASE asserts four bases for proposed Contention 1, the essence of which relate to asserted effects on human health and habitat and saltwater intrusion. First, CASE contends that "incomplete and not exhaustive consideration was the case and the procedural policy in several aspects of the DEIS including the cumulative long term impact of chemical laden aerosol descending daily on FPL on-site workers, on local protected habitat and on the Turkey Point Cooling Canal System." CASE Petition at 11A. Second, CASE contends that the DEIS does not present safe levels for humans "for *every* chemical and substance in the aerosol and that the DEIS does not fully explore the impact of aerosol salinity on the existing cooling canals *in an already hyper-saline situation.*" *Id*. at 11A (emphasis in original); 12. In particular, CASE asserts a pattern of exposure of FPL workers to chemical-laden drift from the cooling towers proposed for Turkey Point Units 6 and 7. *Id*. at 11B. Third, CASE contends that chemical laden water from the cooling towers will descend onto Biscayne National Park, Homestead Bay Front Park, and on FPL's own wetlands and cooling canals (into which the existing Turkey Point Units 3, 4, and 5 discharge cooling water).[12] *Id*. In view of these three bases, CASE asserts that the DEIS should state specific safe levels for every chemical and substance in the aerosol. *Id*. at 12. Fourth, CASE contends that the DEIS does not adequately address the impact of increased temperature and salinity in the CCS from saltwater intrusion. *Id*. at 13.

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[11] Two pages of the CASE Petition bear the number "11"; to avoid confusion the Staff will refer to the dual page 11's as 11A and 11B.

[12] Units 3 and 4 are nuclear power reactors, while Unit 5 is gas-fired. DEIS at 1-1. CASE refers to these cooling canals as the Cooling Canal System (CCS) (CASE Petition at 11A), and the DEIS denotes this set of cooling canals as the Industrial Wastewater Facility (IWF) (DEIS at 2-7).

Staff Response: Proposed Contention 1 is inadmissible for three reasons. First, CASE does not satisfy the requirements of 10 C.F.R. § 2.309(c)(1) for contentions filed after the deadline set pursuant to § 2.309(b) in the Notice of Hearing. Second, CASE does not assert facts or expert opinion adequate to support proposed Contention 1, as required by 10 C.F.R. § 2.309(f)(1)(v). Third, CASE does not identify a genuine dispute with the DEIS regarding a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

1. CASE does not establish good cause for filing proposed Contention 1 after the deadline set in the Notice of Hearing as required by § 2.309(c)(1).

In regard to the effects of cooling tower drift on worker health, CASE refers to information on drift deposition in the DEIS at 5-9, information on occupational health in DEIS § 5.8.5 at 5-93, and on salt deposition associated with the use of water from Radial Collector Wells (RCW) in DEIS Figure 5-3, page 5-33. CASE Petition at 11B, 12. With reference to DEIS Figure 2-26, CASE also asserts that the drift or salt deposition may affect sensitive areas in the Biscayne Bay Aquatic Preserve, the Florida Keys National Marine Sanctuary, the Biscayne National Park and the Everglades National Park. *Id*. at 13. In regard to salinity, CASE refers to a decision by another Licensing Board regarding Turkey Point Units 3 and 4 (the amendment proceeding)[13] (*id*. at 14-15), and information in the DEIS regarding cooling tower drift when the source of cooling water is the RCW system (*id*. at 15-20).

CASE, however, does not assert that this information was not previously available, as required by § 2.309(c)(1)(i), nor does CASE explain how any information not previously

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[13] *Florida Power & Light Company* (Turkey Point Nuclear Generating, Units 3 and 4), LBP-15-13, 81 NRC ___, slip op. (March 23, 2015) (*Turkey Point 3&4)* (ML15082A197). In the amendment proceeding, the Licensing Board admitted the following contention:

> The NRC's environmental assessment, in support of its finding of no significant impact related to the 2014 Turkey Point Units 3 and 4 license amendments, does not adequately address the impact of increased temperature and salinity in the CCS on saltwater intrusion arising from (1) migration out of the CCS; and (2) the withdrawal of fresh water from surrounding aquifers to mitigate conditions within the CCS. *Turkey Point 3&4,* LBP 15-13, 81 NRC at __ (slip op. at 24).

available is materially different from previously available information, as required by § 2.309(c)(1)(ii). Indeed, information regarding salt cooling water drift and etiological agents has been available since 2009. *See* ER Rev. 0, § 5.3.3.2.3 at 5.3-8 to 5.3-9; § 5.3.4.1 at 5.3-11 to 5.3-12 (ML091870919). Section 2.309(f)(2) requires that "[o]n issues arising under [NEPA], participants shall file contentions based on the applicant's environmental report," which CASE did not do with respect to salt drift and etiological agents. Information regarding chemical contaminants in cooling water has been available since 2012. *See* DEIS Table 5-1, citing FPL 2012-TN263[14]; ER Rev. 6, Table 3.6-2 at 3.6-7 (ML14311A277). Even the information regarding the temperature of the cooling canals, as discussed in the *Turkey Point 3&4* decision in LBP-15-13, was available as of July 30, 2014. *Turkey Point 3&4,* LBP-15-13, 81 NRC at __ (slip op. at 3). Accordingly, CASE has not met the criteria of § 2.309(c)(1) for filing proposed Contention 1 after the deadline set in the Notice of Hearing in accordance with § 2.309(b).[15]

2. CASE does not assert facts or expert opinion adequate to support proposed Contention 1, as required by 10 C.F.R. § 2.309(f)(1)(v) .

In regard to CASE's assertion of impacts from cooling tower drift or salt deposition, either to worker health or to sensitive areas such as National Parks, CASE does not offer any facts or expert opinion to support proposed Contention 1. Further, to the extent CASE asserts that there will be any environmental effects from CECs,[16] CASE does not specifically describe

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[14] FPL 2012-TN263 is a Letter, with Attachment, from W. Maher, FPL, to NRC, Document Control Desk, "Response to NRC Request for Additional Information [RAI] Letter 1112081 (RAI 5765) Related to ESRP Section 4.2, Water-Related Impacts" (March 7, 2012) (ML12074A041). The Attachment includes tables that set forth data on chemicals in cooling water. FPL2012-TN263, Attachment at 4-26. FPL2012-TN263, including the Attachment, has been publicly available in ADAMS since March 22, 2012. DEIS Table 5-2 also references this RAI in regard to drift deposition of chemicals in the cooling canals.

[15] CASE includes a map of tritium sampling results in its Petition (CASE Petition at 21), but does not explain its relevance to proposed Contention 1, much less whether the information on that map was previously unavailable and materially different from previously available information.

[16] While CASE refers to CECs (*see* CASE Petition at 16), it is unclear whether the "chemicals" CASE discusses throughout its basis for proposed Contention 1 has anything to do with CECs. *See id*. at 11-13. The remaining basis for proposed Contention 1 appears focused on salinity. *See id*. at 14-20.

them, nor does CASE offer any expert opinion regarding the effects of CECs. CASE does not describe what connection exists between these substances and postulated particulate releases from the proposed Turkey Point units, or what adverse health effects CASE believes would result if deposition of any of the listed substances were to occur. In determining contention admissibility, a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998) (*citing Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995) (A petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention.")) Accordingly, CASE has not satisfied § 2.309(f)(1)(v) with respect to these portions of its basis for proposed Contention 1.

Similarly, CASE asserts that cooling tower aerosol will eventually cause further saltwater intrusion beyond what the DEIS shows in Figure 2-20 (DEIS at 2-67), *USGS Estimated Extent of Saltwater Intrusion from 1951 to 2008*. CASE Petition at 20. In this regard, CASE appears to rely on a map of tritium concentrations from deep well sampling (*see id*. at 21) to support its view that saltwater intrusion extends further than shown on DEIS Figure 2-20 (*id*. at 20). CASE, however, does not offer any facts or expert opinion to interpret these figures and maps or otherwise support its claims. While CASE contends that the operation of Turkey Point 3 and 4 has raised the salinity level in the area from freshwater to that of seawater and that cooling tower aerosol from proposed Units 6 and 7 will raise it even higher (*id.* at 20), CASE does not explain how this might happen or offer any expert opinion on that subject. In particular, CASE does not quantify how much higher operation of the Unit 6 and 7 cooling towers might raise the salinity of the cooling canals by virtue of salt drift. Nor does CASE offer any facts or expert

opinion to support its assertion that such an increase in salinity would "promote unchecked high salinity and algae bloom in the CCS threatening the continued operation of Turkey Point Units 3 & 4 at current levels." *Id*. at 20. Accordingly, CASE has not satisfied § 2.309(f)(1)(v) with respect to its assertions regarding salinity as a basis for proposed Contention 1.[17]

3. CASE does not identify a genuine dispute with the DEIS regarding a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

In the DEIS, the Staff has documented a complete evaluation of the effects of cooling tower drift. *See* DEIS §§ 5.2.1.4, 5.3.1.1, and 5.3.2.1. In particular, the Staff documented the effects of cooling tower drift on Biscayne Bay. *See* DEIS at 5-9 to 5-12. In regard to Biscayne Bay, the Staff concluded that "with the extremely low contaminant-deposition rates (Table 5-1) and high tidal exchange rate, contaminant concentrations from drift deposition in the water column would be too small to detect." *Id*. at 5-12. CASE does not dispute anything in the evaluation or this conclusion. Similarly, the Staff documented the effects of cooling tower drift on the cooling canals. *See id*. at 5-19 to 5-20. The Staff concluded that "[c]omparison of the contaminant concentrations [listed in Table 5-2] with detection limits indicates that all of the concentrations from this mass balance calculation are below current detection limits." *Id*. at 5-20. CASE does not dispute this conclusion. Moreover, the Staff mentioned the temperature and salinity of the cooling canals in the DEIS. *See id*. at 2-46 to 2-47.

Given the above undisputed conclusions from the DEIS, CASE's assertion that "[t]he DEIS should state specific safe levels for *every* chemical and substance in the aerosol" (CASE Petition at 12 (emphasis in original)) does not amount to a genuine dispute on a material issue

[17] CASE submitted as Attachment 1 to its Petition a legal pleading, "Miami-Dade County's Response and Objections to Notice of Intent to Modify Conditions of Certification" (Feb. 6, 2015), which was filed before the State of Florida Department of Environmental Protection, but offers no indication of its significance, or how it relates to proposed Contention 1. A petitioner "must make clear why cited references provide a basis for a contention." *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2010) citing *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003). CASE has not satisfied *USEC* in regard to Attachment 1 to its Petition.

of law or fact. In particular, it would be pointless for the DEIS to state specific safe levels for chemicals whose concentrations are below the detection levels. The Commission has explained that "an environmental impact statement [is not] intended to be a 'research document,' reflecting the frontiers of scientific methodology, studies, and data," but a tool for reasonable analysis that allows an agency "'to draw the line and move forward with decisionmaking.'" *See Entergy Nuclear Generation Co*. (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010) (quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 11-13 (1st Cir. 2008)).

Further, CASE quotes portions of the DEIS but does not explain or present information to contradict the DEIS. "[P]etitioners must do more than submit 'bald or conclusory allegation[s]' of a dispute with the applicant. They must 'read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view,' and 'explain[] why they have a disagreement with [the applicant].'" *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 NRC 75, 81 (2003) (Internal citations omitted). Moreover, the bases for proposed Contention 1 fail to identify a specific dispute with any analysis or conclusion in the DEIS. CASE fails to specify what plausible health effects it contends have been overlooked, much less why these effects would be of possible significance to the result of the proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(vi). *See Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 748-49 (2005) ("'Materiality' requires that the petitioner show why the alleged error or omission is of possible significance to the result of the proceeding. This means that there must be some significant link between the claimed deficiency and either health and safety of the public, or the environment"). Having likewise failed to identify how consideration of the asserted aerosol emissions would potentially contradict the DEIS, the contention does not establish that there is a genuine dispute with the DEIS on a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

For the foregoing reasons, proposed Contention 1 is inadmissible.

B. PROPOSED CONTENTION 2

> Exhaustive consideration of alternative technologies would have included, among other findings, the fact that forty percent of nuclear reactors throughout the world and twenty percent of the reactors in the U.S. use once-through seawater for cooling; so should Turkey Point 6 & 7.

CASE Petition at 22.

Basis:

CASE asserts the following three bases for proposed Contention 2: First, NEPA requires Federal agencies to consider the environmental impacts of proposed actions and reasonable alternatives to those actions. *Id*. Second, the DEIS discussion of once-through cooling is "incomplete and not exhaustive." *Id*. Third, use of once-through cooling would save over 18 trillion gallons of contaminated water per year. *Id*. at 23.

Staff Response: Proposed Contention 2 is inadmissible for three reasons. First, CASE does not satisfy the requirements of 10 C.F.R. § 2.309(c)(1) for contentions filed after the deadline set pursuant to § 2.309(b) in the Notice of Hearing. Second, CASE does not assert facts or expert opinion adequate to support proposed Contention 1, as required by 10 C.F.R. § 2.309(f)(1)(v). Third, CASE does not identify a genuine dispute with the DEIS regarding a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

1. CASE does not establish good cause for filing proposed Contention 2 after the deadline set in the Notice of Hearing as required by § 2.309(c)(1).

The DEIS documents the Staff evaluation of once-through cooling in DEIS § 9.4.1.3. DEIS at 9-250. CASE, however, fails to assert that this information was not previously available, as required by § 2.309(c)(1)(i). Nor does CASE explain how such information, if not previously available, is materially different from previously available information, as required by § 2.309(c)(1)(ii). Indeed, the original 2009 version of the ER included information regarding once-through cooling. ER Rev. 0, § 9.4.1.1.2.1 at 9.4-2 to 9.4.-3 (ML091870924).

Section 2.309(f)(2) requires that "[o]n issues arising under [NEPA], participants shall file contentions based on the applicant's environmental report," which CASE did not do with respect to once-through cooling. Accordingly, CASE has not met the criteria of § 2.309(c)(1) for filing proposed Contention 2 after the deadline set in the Notice of Hearing in accordance with § 2.309(b).

2. CASE does not assert facts or expert opinion adequate to support proposed Contention 2, as required by 10 C.F.R. § 2.309(f)(1)(v) .

CASE does not offer any facts or expert opinion to support proposed Contention 2. CASE offers no facts or expert opinion to support its assertions that 1) once-through cooling would save over 18 trillion gallons of contaminated water per year (CASE Petition at 23); 2) Turkey Point Units 6 and 7 will consume 90 MGD of "freshwater" (*id*.); 3) this "freshwater" could be fully treated with new technologies and become potable (*id*.); 4) FPL earns 10.5% on invested capital, and the price of building pipelines to implement once-through cooling would wind up on FPL's balance sheet (*id*. at 24); and 5) using once-through cooling would save the Southwest Florida Water Management District $ 90,000,000 by not building a pipeline to move reclaimed wastewater to the Turkey Point site (*id*.). Accordingly, CASE has not satisfied § 2.309(f)(1)(v) with respect to any of its assertions in connection with proposed Contention 2.

3. CASE does not identify a genuine dispute with the DEIS regarding a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

In the DEIS, the Staff has documented a complete evaluation of the effects of using once-through cooling as an alternative to the proposed cooling system. *See* DEIS at 9-250. CASE does not refer to this discussion in its Petition, except to call it "incomplete and not exhaustive." CASE Petition at 22. CASE, however, does not identify any specific deficiency in the DEIS discussion of once-through cooling or dispute the reasons why the Staff declined to evaluate the once-through cooling alternative in more detail. According to the Council on Environmental Quality, to evaluate alternatives, an agency "shall [r]igorously explore and objectively evaluate all reasonable alternatives, and *for alternatives which were eliminated from*

detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a) (emphasis added). This is just what the Staff has done in regard to once-through cooling, and no further evaluation is warranted. CASE has not provided any information to the contrary, and does not establish that there is a genuine dispute with the DEIS on a material issue related to proposed Contention 2, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

For the foregoing reasons, proposed Contention 2 is inadmissible.

C. PROPOSED CONTENTION 3

> Current political and economic influence over regulatory agencies and giving two power companies energy monopolies in Florida might put the State in violation of the Atomic Energy Act of 1954, as Amended in NUREG-0980.

CASE Petition at 26.

Basis:

Although the contention is stated in terms of "energy monopolies," the essence of the CASE basis for proposed Contention 3 appears to be its claim that the State of Florida is violating an agreement under Section 274 of the AEA. *Id*. at 27-33. However, CASE does briefly refer to energy company monopolies in Florida. *Id*. at 33-34.

Staff Response: To the extent CASE is requesting the NRC to exercise the antitrust authority in § 105c. of the AEA, the Energy Policy Act of 2005 states "[§ 105c.] does not apply to an application for a license to construct or operate a utilization facility . . . under section 103 or 104b. that is filed after the date of enactment of this paragraph." § 105c.(9) of the AEA, P.L. 109-58, § 625, 119 Stat. 784 (2005). Since the Application was filed in 2009, § 105c. does not apply to it. Accordingly, to the extent proposed Contention 3 raises any issue in regard to antitrust concerns under § 105c. of the AEA, those concerns cannot be within the scope of this proceeding, in contravention of 10 C.F.R. § 2.309(f)(1)(iii).

In regard to § 274b. of the AEA, CASE is correct that Florida is an "Agreement State," *i.e.*, Florida executed an agreement with the NRC's predecessor, the Atomic Energy

Commission (AEC), under § 274b. of the AEA and assumed jurisdiction over a variety of materials in accordance with that agreement. *See* Agreement Between Atomic Energy Commission and State of Florida, 29 Fed. Reg. 9,463 (July 10, 1964). Section 274c. of the AEA provides, however, that "[n]o agreement entered into pursuant to [§ 274b.] shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of— (1) the construction and operation of any production or utilization facility[.]" Not surprisingly, Article II of the AEC agreement with Florida reiterates that restriction. *See id*. at 9,463. Accordingly, the issue raised by proposed Contention 3 in regard to the Florida § 274b. state agreement cannot be within the scope of this proceeding, in contravention of 10 C.F.R. § 2.309(f)(1)(iii).

For the foregoing reasons, proposed Contention 2 is inadmissible.[18]

[18] Because proposed Contention 3 is inadmissible as a matter of law, the NRC Staff is not addressing the other information CASE asserts in its Petition at 26-34.

CONCLUSION

In view of the foregoing, the CASE Petition should be denied.

Respectfully submitted,

/Signed (electronically) by/
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Executed in Accord with 10 C.F.R. § 2.304(d)
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Dated at Rockville, Maryland
this 8th day of May, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF ANSWER TO 'CITIZENS ALLIED FOR SAFE ENERGY PETITION TO INTERVENE AND REQUEST FOR HEARING REGARDING THE DRAFT EIS FOR TURKEY POINT 6 & 7 COL'" has been filed through the E-Filing system and has been served upon the following person by electronic mail (e-mail) this 8th day of May, 2015:

Barry White
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/Signed (electronically) by/
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Dated at Rockville, Maryland
this 8th day of May, 2015.