

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

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,<sup>1</sup> and March 25, 2015,<sup>2</sup> the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby responds to the “Southern Alliance for Clean Energy [SACE] Motion for Leave to File a New Contention Concerning Reliance By Turkey Point Environmental Impact Statement on The Continued Spent Fuel Storage Rule” (Motion) dated April 13, 2015. As explained in more detail below, the contention is inadmissible for failure to meet the requirements of 10 C.F.R § 2.309(f)(1) and the Staff opposes the motion.

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<sup>1</sup> *Florida Power and Light Co.* (Turkey Point Units 6 and 7), Initial Scheduling Order and Administrative Directives (Mar. 30, 2011) (unpublished) (ML110890768) (Initial Scheduling Order).

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Power and Light Co.* (Turkey Point Units 6 and 7), Order (Granting Motion for Additional Time) (Mar. 25, 2015) (unpublished) (ML15084A225) (2015 Scheduling Order).

The Motion is substantively identical to a petition and motion to reopen filed previously in the *Fermi 3* combined license (COL) proceeding.<sup>3</sup> In its ruling on those filings in CLI-15-12, the Commission denied the petition because “a contention that challenges an agency regulation does not raise an issue appropriately within the scope of this individual licensing proceeding and is not admissible absent a waiver.”<sup>4</sup> The Commission also ruled that because the proposed contention does not engage the COL application, it does not demonstrate “a genuine dispute with the applicant on a material issue.”<sup>5</sup>

Just as the Commission did in *Fermi 3* and *Callaway*, the Board should deny the Motion because it challenges a Commission rule without requesting a waiver and because it fails to raise a genuine issue of fact or law material to the proceeding. Moreover, the Board should also find that the unsupported timeliness arguments in the Motion are insufficient under both the Commission’s standards at 10 C.F.R. § 2.309 and 10 C.F.R. § 2.326.

#### BACKGROUND

On June 30, 2009, 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 AP1000 Pressurized Water

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<sup>3</sup> *Compare* Motion with Beyond Nuclear’s Hearing Request and Petition to Intervene in Combined License Proceeding for Fermi Unit 3 Nuclear Power Plant (Feb. 12, 2015) (ADAMS Accession No. ML15043A567) and Beyond Nuclear’s Motion to Reopen the Record of Combined License Proceeding for Fermi Unit 3 Nuclear Power Plant (Feb. 12, 2015) (ADAMS Accession No. ML15043A566). The Motion is also substantively identical to a petition and motion to reopen filed in the *Callaway* license renewal proceeding. Missouri Coalition for the Environment’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Callaway Nuclear Power Plant (Dec. 8, 2014) (ADAMS Accession No. ML14342B010) and Missouri Coalition for the Environment’s Motion to Reopen the Record of License Renewal Proceeding for Callaway Unit 1 Nuclear Power Plant (Dec. 8, 2014) (ADAMS Accession No. ML14342B011).

<sup>4</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC \_\_ (Apr. 23, 2015) (slip op. at 4) (citing *Union Electric Co.* (Callaway Nuclear Power Plant, Unit 1), CLI-15-11, 81 NRC \_\_, \_\_ (slip op. at 4) (Apr. 23, 2015)).

<sup>5</sup> *Id.*

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 Mano K. Nazar, FPL, to Michael Johnson, Office of New Reactors, NRC, dated June 30, 2009 (ADAMS Accession No. ML091830589). The proposed units would be known as Turkey Point Units 6 & 7.

In response to a Notice of Hearing,<sup>6</sup> on August 17, 2010, SACE and Mark Oncavage, Dan Kipnis, and the National Parks Conservation Association (“Joint Intervenors”) submitted a Petition through which they sought to intervene in this proceeding. See Petition for Intervention (Aug. 17, 2010) (ML102300582). The Board found Joint Intervenors’ Contention NEPA 2.1 admissible and admitted the Joint Intervenors as parties to this proceeding. See *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-11-06, 73 NRC 149, 190-94, 226 (2011). Contention NEPA 2.1, as amended in 2012, remains pending before the Board. See *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Memorandum and Order (Granting in Part and Denying in Part Motion for Summary Disposition of Amended Contention 2.1) (Aug. 30, 2012) (unpublished) (ML12243A323).

On July 9, 2012, following the D.C. Circuit’s decision in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), the Joint Intervenors filed a proposed new contention concerning temporary storage and ultimate disposal of nuclear waste. 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) (ADAMS Accession No. ML12191A357). Similar contentions were filed in multiple reactor licensing proceedings. See *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 n.10 (2012).

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<sup>6</sup> “Florida Power & Light Company, [COL] 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).

Pursuant to the Commission's direction, that proposed new contention was held in abeyance pending further order from the Commission. See *id.* at 68–69.

On August 26, 2014, the Commission approved a final rule (Continued Storage Rule) and a generic environmental impact statement (GEIS) regarding the environmental impacts of continued storage of spent fuel.<sup>7</sup> At the same time, the Commission issued its decision in CLI-14-08. *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). In CLI-14-08, the Commission stated that in the Continued Storage GEIS, it had determined that the environmental impacts of continued storage would not vary significantly from site to site and could, therefore, be analyzed generically. *Id.* at 78. The Commission explained that, because the generic impacts of continued storage had been the subject of extensive public participation in the Continued Storage rulemaking, those generic determinations “are excluded from litigation in individual proceedings.” *Id.* at 79. Citing longstanding precedent, the Commission reiterated that “[c]ontentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings.” *Id.* n.27. The Commission observed that the Staff could make decisions on the issuance of final licenses once it “completed its review of the affected applications and has implemented the Continued Storage Rule[.]” *Id.* at 77. The Commission then directed the Board to dismiss the 2012 continued storage contention, consistent with the Commission's decision. *Id.* at 79. In an Order dated September 10, 2014, the Board dismissed the 2012 continued storage contention. Order (Denying Waste Confidence Contention Motions and Dismissing Case) (Sept. 10, 2014) (unpublished) (ML14253A284). On

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<sup>7</sup> See SRM-SECY-14-0072, Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20), at 2, Attachment 5 (Aug. 26, 2014) (ML14237A092); see SECY-14-0072, Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20) (July 21, 2014) (attaching the GEIS and a draft Final Rule, Continued Storage of Spent Nuclear Fuel). The Commission paper, the Continued Storage Final Rule and the GEIS may be found at ADAMS Accession No. ML14177A482 (package).

September 19, 2014, the Continued Storage Rule was published in the *Federal Register* with an effective date of October 20, 2014. Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238 (Sept. 19, 2014) (Final Rule).

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, SACE submitted a motion in which it proposed a new contention regarding the continued storage of spent nuclear fuel (SNF) in this proceeding. On April 23, 2015, the Commission denied substantively identical motions to admit new contentions in the *Fermi 3* COL and *Callaway* license renewal proceedings. *Callaway*, CLI-15-11, 81 NRC \_\_ (slip op.); *Fermi 3*, CLI-15-12, 81 NRC \_\_ (slip op.)

## DISCUSSION

### I. LEGAL STANDARDS

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 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).

The Commission's contention admissibility requirements are set forth in 10 C.F.R. § 2.309(f)(1). In accordance with 10 C.F.R. § 2.309(f)(1), an admissible contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised;
- (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... [including] references to specific sources and documents [that support the petitioner's

position]on which the requestor/petitioner intends to rely to support its position on the issue;

- (vi) ...provide sufficient information to show that a genuine dispute with the Applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief....

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that the rules on contention admissibility are “strict by design.”<sup>8</sup> Failure to comply with any of these requirements is grounds for the dismissal of a contention.<sup>9</sup>

Challenges to Commission regulations and generic determinations are beyond the scope of NRC adjudications.<sup>10</sup> A proposed contention otherwise inadmissible as an out-of-scope collateral attack on a Commission rule may, however, be entertained if (1) the proponent of the contention petitions for the waiver of the rule in the particular proceeding, (2) the presiding officer determines that the waiver petition has made a *prima facie* showing that the application of the specific rule would not serve the purposes for which the rule was adopted and then certifies the matter directly to the Commission, and (3) the Commission makes a determination on the matter.<sup>11</sup> If the presiding officer determines that the petitioner has not made the required *prima facie* showing, “no evidence may be received on [the] matter and no discovery, cross

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<sup>8</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

<sup>9</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999), *citing Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

<sup>10</sup> *See Arizona Pub. Serv. Co.* (Palo Verde Nuclear Station, Units No. 1, 2, and 3), LBP-91-19, 33 NRC 397, 410 (1991), *appeal granted in part*, CLI-91-12, 34 NRC 149 (1991); *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974), *citing Florida Power & Light Co.* (Turkey Point Units No. 3 and 4), 4 AEC 787, 788 (1972) (“[A] licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission’s regulatory process.”).

<sup>11</sup> 10 C.F.R. § 2.335(b) and (d).

examination, or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.”<sup>12</sup> Instead, the participant may challenge the rule by filing a petition for rulemaking under 10 C.F.R. § 2.802.<sup>13</sup>

Contentions must also raise a genuine material issue of law or fact with the specific application.<sup>14</sup> In other words, the proponent of the contention must show how resolution of the dispute would make a difference in the outcome of the licensing proceeding.<sup>15</sup> A contention that raises only a generic issue and fails to link that issue to any specific aspect of the pertinent application is inadmissible for failure to raise a genuine material issue.<sup>16</sup> While a disagreement as to the interpretation of the language of a rule may raise a genuine issue of law, a challenge to the rule itself does not.<sup>17</sup> Such a challenge fails because it does not raise a material issue of law as contemplated by the regulation.

Where the original date for filing of contentions has passed, the provisions of 10 C.F.R. § 2.309(c) apply. Section 2.309(c) provides that a contention may be filed after the original deadline provided 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

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<sup>12</sup> 10 C.F.R. § 2.335(c).

<sup>13</sup> 10 C.F.R. § 2.335(e).

<sup>14</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>15</sup> *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 354 (2006) *citing* Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (Final Rule).

<sup>16</sup> *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 609 (2011).

<sup>17</sup> *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539, 566 (2012), *rev'd in part*, CLI-12-19, 76 NRC 377 (2012), *remanding* LBP-13-1, 77 NRC 57 (2013), *aff'd on other grounds*, CLI-13-7, 78 NRC 199 (2013).

- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

Whether a contention is timely filed depends in large part on when the new information became available. The Commission generally considers a contention based on new information to be filed in a timely fashion if the contention is filed within 30 days of the availability of the information; that is also the standard established by the Board in this proceeding for additional contentions. See Initial Scheduling Order at 8.

## II. THE MOTION FAILS TO PROFFER AN ADMISSIBLE CONTENTION

In its Motion, SACE seeks admission of a single “place-holder” contention challenging the NRC’s reliance, in proposing to license Turkey Point Units 6 and 7, on the Continued Storage Rule.<sup>18</sup> The Motion states that “[t]he 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.”<sup>19</sup> SACE’s Motion acknowledged that it

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.<sup>20</sup>

The Motion goes on to identify seven specific alleged failures in the Continued Storage Rule and GEIS.<sup>21</sup>

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<sup>18</sup> See Motion at 3. As previously noted, *see supra* at 2, SACE’s proposed contention is essentially identical to the proposed contentions dismissed by the Commission on April 23, 2015. The present Motion should be dismissed for all of the reasons discussed in those Orders.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* (citation omitted).

<sup>21</sup> Motion at 6-8.



Simply stated, SACE's proposed contention is an impermissible challenge to the Commission's Continued Storage Rule and GEIS. As the Commission recently held with respect to a substantively identical proposed contention, a "placeholder" contention such as the instant contention is not admissible under the Commission's rules of practice because it impermissibly challenges an agency regulation and is therefore outside the scope of an individual licensing proceeding.<sup>22</sup> SACE also raises no site-specific environmental issue with respect to the Turkey Point Units 6 and 7 COL application and thus does not raise a genuine issue of material fact or law. Moreover, its Motion was untimely filed.

A. The Proposed Contention Challenges a Rulemaking that Is Beyond the Scope of this Proceeding

SACE's proposed contention is a challenge to the Continued Storage Final Rule and Continued Storage GEIS and, as a challenge to a Commission rule, is beyond the scope of this proceeding.<sup>23</sup> Every alleged failure and violation of NEPA that SACE asserts is an alleged failure or violation by virtue of the Continued Storage Rule or the Continued Storage GEIS.<sup>24</sup> Its only challenge to the Staff's environmental impact statement for the Turkey Point Units 6 and 7 COL application is the fact that the Continued Storage Rule adopted the environmental impacts described in the Continued Storage GEIS and deemed it incorporated into the Staff's environmental impact statement.

Commission regulations bar such challenges to its rules: 10 C.F.R. § 2.335(a) provides that "no rule or regulation of the Commission, or any provision thereof . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this

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<sup>22</sup> *Fermi 3*, CLI-15-12, 81 NRC at \_\_ (slip op. at 3-4).

<sup>23</sup> 10 C.F.R. § 2.309(f)(1)(iii).

<sup>24</sup> Motion at 7-8.

part.” Contentions that challenge Commission regulations or its regulatory processes are beyond the scope of adjudicatory proceedings and have been regularly dismissed as such.<sup>25</sup> Most recently and to the point, in ruling on an essentially identical contention, the Commission held that such contention was not admissible because it impermissibly challenges an agency regulation and is therefore outside the scope of individual licensing proceedings.<sup>26</sup> Similarly, in CLI-14-08, the Commission explained, “[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 proceedings.”<sup>27</sup> Consistent with this case law, SACE’s challenge to the Continued Storage GEIS should be rejected.

In accordance with the provisions of 10 C.F.R. § 2.335(b), SACE could challenge the rule in an adjudicatory proceeding if it sought and obtained a waiver of the prohibition against such challenges. But SACE explains that it does not seek a waiver because “[n]o purpose would be served by such a waiver, because SACE does not seek an adjudicatory hearing on the NRC’s generic environmental findings.”<sup>28</sup> Given that SACE’s proposed contention challenges the NRC’s Continued Storage Rule and GEIS, SACE’s affirmative decision to forego a waiver petition compels rejection of the contention.<sup>29</sup>

#### B. The Proposed Contention Fails to Raise a Genuine Material Issue

As explained above, the contention is inadmissible as an impermissible attack on the

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<sup>25</sup> See e.g., *Fermi 3*, CLI-15-12, 81 NRC \_\_\_ (slip op.); *Palo Verde*, LBP-91-19, 33 NRC at 400, 410, *appeal granted in part*, CLI-91-12, 34 NRC 149 (1991); *Peach Bottom*, ALAB-216, 8 AEC at 20, *citing Florida Power & Light Co.* (Turkey Point Units No. 3 and 4), 4 AEC 787, 788 (1972) (“[A] licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission’s regulatory process.”).

<sup>26</sup> *Fermi 3*, CLI-15-12, 81 NRC at \_\_\_ (slip op. at 4).

<sup>27</sup> *Calvert Cliffs*, CLI-14-08, 80 NRC at \_\_\_ (slip op. at 9).

<sup>28</sup> Motion at 3 n.3.

<sup>29</sup> *Limerick*, CLI-12-19, 76 NRC at 386-87.

Commission's Continued Storage Rule and GEIS. As the contention constitutes an impermissible attack on an agency regulation it cannot raise a genuine issue for dispute as required by 10 C.F.R. § 2.309(f)(1)(vi); the dispute is, *per se*, not a genuine one.<sup>30</sup> All SACE disputes is the incorporation of the Continued Storage Rule and GEIS into the Turkey Point Units 6 and 7 COL EIS. The incorporation was, however, mandated by the Commission.<sup>31</sup> As the *Limerick* board observed, "while a disagreement over the proper interpretation of NRC regulations may give rise to an admissible contention," an interpretation that is in direct conflict with the plain meaning of a regulation and the agency's Statement of Considerations fails "to present a genuine dispute of fact or law . . . as required by NRC regulations."<sup>32</sup> SACE's contention, which is in direct conflict with the Continued Storage Rule, thus fails to present a genuine dispute as required by 10 C.F.R. § 2.309(f)(1)(vi).<sup>33</sup>

C. The Proposed Contention is Untimely

SACE's Motion makes it clear that SACE's dissatisfaction is with the Continued Storage Rule and GEIS; its only criticism of the Turkey Point Units 6 and 7 COL EIS is that it incorporates the Continued Storage Rule and GEIS.<sup>34</sup> Since SACE's Motion is actually a challenge to the

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<sup>30</sup> *Limerick*, LBP-12-8, 75 NRC at 566, *rev'd on other grounds*, CLI-12-16, 76 NRC 377 (2012).

<sup>31</sup> 10 C.F.R. § 51.23 (revised); see Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238, 56,260 (Sept. 19, 2014) (Final Rule).

<sup>32</sup> *Limerick*, LBP-12-8, 75 NRC at 566.

<sup>33</sup> The Indian Point licensing board dismissed a site-specific environmental contention challenging the Continued Storage GEIS, noting that the Commission has "determined that site-specific environmental aspects of continued storage should not be considered in individual licensing proceedings." See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Order (Dismissing Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4), at 3 (Nov. 10, 2014) (unpublished Licensing Board Order) (ADAMS Accession No. ML14314A350). See also *Fermi 3*, CLI-15-12, 81 NRC at \_\_\_ (slip op. at 4) (holding that an essentially identical contention was not admissible because it impermissibly challenged an agency regulation and was therefore outside the scope of the individual licensing proceeding).

<sup>34</sup> Motion at 2.

Continued Storage Rule and GEIS, the timely filing requirements should be determined based on the effective date of the rule and no later. While the Continued Storage Rule went into effect on October 20, 2014, the language of the rule and the analysis behind it were available to the public months in advance of the effective date. The Continued Storage Rule and GEIS were available as early as September 19, 2014, when the Continued Storage Rule and GEIS were published in the *Federal Register*.<sup>35</sup> SACE had an obligation to raise its contention in a timely manner based on the effective date of the rule, at the latest.<sup>36</sup> The Motion should therefore be dismissed as untimely.

### CONCLUSION

For the reasons set forth above, and consistent with the Commission's dismissal of substantively identical petitions and motions in CLI-15-11 and CLI-15-12, the Motion should be denied and dismissed.

Respectfully submitted,

**/Signed (electronically) by/**

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<sup>35</sup> 79 Fed. Reg. at 56,260.

<sup>36</sup> SACE admits that the "sole purpose" of the contention is to challenge the NRC's reliance in the Turkey Point Units 6 and 7 COL proceeding on the GEIS and Continued Storage rule. Motion at 2. Because the rule itself makes clear that the findings in the GEIS are incorporated into individual licensing proceedings, the Motion fails to demonstrate why the contention could not have been filed at least at the time the rule became effective, if not even earlier. As noted above, *see supra* n.3, this contention is similar to one filed in the *Callaway* license renewal proceeding on December 8, 2014. That SACE subsequently took more than four months to file a substantively identical contention only reinforces its untimeliness.

**Executed in Accord with 10 C.F.R. § 2.304(d)**

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**Executed in Accord with 10 C.F.R. § 2.304(d)**

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Dated at Rockville, Maryland  
this 8<sup>th</sup> day of May, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF ANSWER TO 'SOUTHERN ALLIANCE FOR CLEAN ENERGY MOTION FOR LEAVE TO FILE A NEW CONTENTION CONCERNING RELIANCE BY TURKEY POINT ENVIRONMENTAL IMPACT STATEMENT ON THE CONTINUED SPENT FUEL STORAGE RULE'" has been filed through the E-Filing system this 8<sup>th</sup> day of May, 2015 and has been served upon the following person by electronic mail (e-mail) this 8<sup>th</sup> day of May, 2015:

Barry White  
Citizens Allied for Safe Energy  
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**/Signed (electronically) by/**  
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Dated at Rockville, Maryland  
this 8<sup>th</sup> day of May, 2015