

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket Nos. 50-250-LA
) 50-251-LA
(Turkey Point Nuclear Generating,)
Units 3 and 4))

NRC STAFF ANSWER TO CITIZENS ALLIED FOR SAFE ENERGY
MOTION TO INVALIDATE NUCLEAR REGULATORY COMMISSION
ENVIRONMENTAL ASSESSMENT OF JULY [31], 2014

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c) and the Atomic Safety and Licensing Board's (Board) initial scheduling order,¹ the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby files its answer to Citizens Allied For Safe Energy's (CASE) Motion to Invalidate Nuclear Regulatory Commission Environmental Assessment of July [31], 2014 (Motion).² CASE's Motion seeks to invalidate the Staff's Environmental Assessment (EA) due to an alleged procedural violation³ and proposes a new contention based on this supposed violation.⁴ For the reasons set forth below, the Motion should be denied.

BACKGROUND

This proceeding concerns Florida Power and Light Company's (FPL) request for license amendments to increase the allowable temperature limit in the Technical Specifications for the

¹ Initial Scheduling Order (May 8, 2015) (unpublished) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15128A369). The Staff is filing its answer pursuant to 10 C.F.R. § 2.323(c) instead of 10 C.F.R. § 2.309(i) because the Motion seeks relief beyond the admission of a late-filed contention.

² Citizens Allied for Safe Energy Motion to Invalidate [NRC] Environmental Assessment of July [31], 2014 (Aug. 25, 2015) (ADAMS Accession No. ML15237A351) (Motion). See Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 3, 79 Fed. Reg. 44,464 (July 31, 2014) (Environmental assessment and final finding of no significant impact; issuance).

³ Motion at 2.

⁴ *Id.*

ultimate heat sink, or the cooling canal system, that would require shutdown actions.⁵ The Staff's associated EA was published on July 31, 2014 (July 31, 2014 EA).⁶ CASE filed a timely petition to intervene (Petition), which raised several challenges to the Staff's July 31, 2014 EA.⁷

On March 23, 2015, the Board issued LBP-15-13 which, among other things, granted CASE's Petition with respect to the adequacy of the Staff's July 31, 2014 EA.⁸ Subsequently, Petitions for Review of LBP-15-13 were filed with the Commission.⁹ On August 25, 2015, CASE filed a motion to invalidate the July 31, 2014 EA based on an alleged procedural violation and proposed a new contention based on this claimed procedural error.¹⁰

LEGAL STANDARDS

The regulations and the Board's initial scheduling order (ISO) allow for the filing of motions.¹¹ Motions filed pursuant to 10 C.F.R. § 2.323 can request the Board to take a variety of actions, including to compel documents or to stay a proceeding.¹² Pursuant to 10 C.F.R. § 2.323(b), a motion must be in writing and state with particularity the grounds and the relief

⁵ Letter from Michael Kiley, Vice President, FPL, to NRC, License Amendment Request No. 231, Application to Revise Technical Specifications to Revise Ultimate Heat Sink Temperature Limit (July 10, 2014) (ADAMS Accession No. ML14196A006).

⁶ 79 Fed. Reg. at 44,466. See also Florida Power & Light Company; Turkey Point Nuclear Generating Units 3 and 4, 79 Fed. Reg. 44,214 (July 30, 2014) (providing opportunity to request a hearing).

⁷ Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing (Oct. 14, 2014) (ADAMS Accession No. ML14290A510).

⁸ *Florida Power & Light Co.* (Turkey Point Nuclear Generating, Units 3 and 4), LBP-15-13, 81 NRC at __ (Mar. 23, 2015) (slip op.) (LBP-15-13).

⁹ NRC Staff Notice of Appeal and Brief in Support of Appeal from LBP-15-13 (Apr. 17, 2015) (ADAMS Accession No. ML15107A389); Florida Power & Light Company's Notice of Appeal and Brief of LBP-15-13 (Apr. 17, 2015) (ADAMS Accession No. ML15107A410).

¹⁰ "The 2014 EA in this matter was not prepared by nor was it placed into the FR by the [] proper office holder as stated in NUREG-1748, and therefore, should be invalidated." Motion at 2.

¹¹ See 10 C.F.R. § 2.323; ISO at 11.

¹² See, e.g., Florida Power & Light Company's Motion to Stay Hearing Pending Commission Review of its Appeal (Apr. 17, 2015) (ADAMS Accession No. ML15107A413).

sought. An opposed motion will be rejected if it does not include the certification specified in 10 C.F.R. § 2.323(b) that a sincere effort to resolve the issues has been made and was unsuccessful.¹³

The regulations also provide for the filing of new or amended contentions after the initial filing deadline. To be admissible, a new or amended contention filed after the initial deadline¹⁴ must satisfy the “good cause” criteria of 10 C.F.R. § 2.309(c)(1)(i)-(iii) and the admissibility criteria of 10 C.F.R. § 2.309(f)(1)(i)-(vi).¹⁵

To satisfy the “good cause” criteria of 10 C.F.R. § 2.309(c)(1), the intervenor must show that the information upon which a new contention is based was not previously available, the information upon which a new contention is based is materially different from information previously available, and the new contention has been submitted in a timely fashion based on the availability of the subsequent information.¹⁶

Pursuant to § 2.309(f)(1), a contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely

¹³ ISO at 12.

¹⁴ The initial deadline for filing has passed. See *Florida Power & Light Company; Turkey Point Nuclear Generating Units 3 and 3*, 79 Fed. Reg. 47,689 (stating that the initial period for filing a petition for intervention on the license amendment closed on October 14, 2014).

¹⁵ 10 C.F.R. § 2.309(c) and (f).

¹⁶ 10 C.F.R. § 2.309(c)(1)(i)-(iii).

at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]

(vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (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.¹⁷

"Failure to comply with any of the § 2.309(f)(1) requirements renders a contention inadmissible."¹⁸

DISCUSSION

CASE's Motion should be denied because CASE has not shown that the relief requested is warranted or that its new contention meets the Commission's contention admissibility requirements for late filed contentions.¹⁹

I. CASE's Request to Invalidate the July 31, 2014 EA Should Be Denied

CASE's Motion asks the Board to invalidate the Staff's July 31, 2014 EA due to a "procedural violation."²⁰ In particular, CASE claims that the July 31, 2014 EA was not properly signed or placed into the *Federal Register* and should therefore be invalidated.²¹ CASE's request to invalidate the July 31, 2014 EA should be denied because CASE provides no grounds for such action.

¹⁷ LBP-15-13 at (slip op. 12-13) (citing 10 C.F.R. § 2.309(f)(1)).

¹⁸ *Id.* at 13 (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)).

¹⁹ The Staff notes that CASE's Motion was opposed and should have contained the certification required by the Board's ISO and regulations. ISO at 12 (providing that an opposed motion will be rejected if it does not include the certification in 10 C.F.R. § 2.323(b)).

²⁰ Motion at 2.

²¹ *Id.* See also *id.* at 5 ("CASE hereby requests that the 2014 be invalidated, that any authorization it provided be rescinded and that related required operational limitations be imposed.").

CASE's request to invalidate the July 31, 2014 EA is premised on the idea that the July 31, 2014 EA did not follow NUREG-1748,²² and that this constituted a material breach of NRC's regulations.²³ As an initial matter, NUREG-1748 is not a regulation or requirement.²⁴ As stated on Page-1-1 of NUREG-1748, "this guidance is not a substitute for legislation and regulations and compliance with this document is not required."²⁵ Thus, NUREG-1748 has no binding authority and does not support CASE's request to invalidate the July 31, 2014 EA.²⁶

Moreover, CASE's Motion does not identify any regulatory deficiency related to the July 31, 2014 EA that supports invalidating the document. For example, CASE asserts that the July 31, 2014 EA should be invalidated because it was not placed in the *Federal Register* by a particular person. However, NRC regulations do not require an EA to be placed in the *Federal Register* at all, much less by a particular person. Instead, as "required by § 51.35, the appropriate NRC staff director [or designee]²⁷ will publish the finding of no significant impact^[28] in the FEDERAL REGISTER,"²⁹ and the finding of no significant impact will "[i]nclude the environmental assessment or a summary of the environmental assessment."³⁰ Thus, under the

²² NUREG-1748, Final Report, *Environmental Review Guidance for Licensing Actions Associated with [Nuclear Material Safety and Safeguards (NMSS)] Programs* (Aug. 2003) (ADAMS Accession No. ML032450279) (NUREG-1748).

²³ Motion at 4-5. *Id.* at 4 (citing to the NUREG as a regulation that is "to be observed and binding.").

²⁴ See NUREG-1748 at 1-1.

²⁵ The Staff relayed this to CASE during consultation on this Motion and CASE's Motion recognizes that compliance with NUREG-1748 is not a requirement. Motion at 3.

²⁶ Motion at 4-5.

²⁷ As used in 10 C.F.R. part 51, NRC Staff Director means, *inter alia*, Director, Office of Nuclear Reactor Regulation, and the designee of any NRC staff director. 10 C.F.R. § 51.4.

²⁸ A Finding of No Significant Impact (FONSI) is a concise public document for which the Commission is responsible that briefly states the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which therefore an environmental impact statement will not be prepared. 10 C.F.R. § 51.14.

²⁹ 10 C.F.R. § 51.119(a) (emphasis added).

³⁰ 10 C.F.R. § 51.32(a)(4) (emphasis added).

Commission's rules, it is permissible simply to tell the public where they may view the EA, rather than publishing the entire EA in the *Federal Register*.³¹ Thus, CASE's assertion does not support invalidating the July 31, 2014 EA.

CASE also asserts that the July 31, 2014 EA should be invalidated because the Acting Chief, Plant Licensing Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation signed the July 31, 2014 EA instead of the Project Manager.³² However, CASE cites only to NUREG-1748 for this proposition.³³ As discussed, NUREG-1748 is not a regulation or requirement. Further, there is no requirement that a particular person prepare or sign an EA. The Acting Branch Chief who signed the July 31, 2014 EA had all licensing oversight and supervisory duties for Turkey Point Nuclear Generating Unit Nos. 3 and 4.³⁴ Thus, the Acting Branch Chief had authority to sign the July 31, 2014 EA. CASE does not indicate why this delegation was improper or why a delegation would merit invalidating the July 31, 2014 EA. Therefore, CASE's request to invalidate the July 31, 2014 EA should be denied.

³¹ 10 C.F.R. § 51.119(b) (The finding of no significant impact "will state that copies of the finding, the environmental assessment setting forth the basis for the finding and any related environmental documents are available for public inspection and where inspection may be made.").

³² CASE argues that the EA should have been signed instead by the Project Manager. Motion at 2, 4 (citing NUREG-1748).

³³ Motion at 1, 4.

³⁴ Letter from Ryan E. Lantz, Acting Deputy Director, Division of Operator Licensing, Office of Nuclear Reactor Regulation to Mr. Mano Nazar, Executive Vice President and Chief Nuclear Officer, NextEra Energy, Turkey Point Nuclear Generating Unit Nos. 3 and 4 Branch Chief Reassignment for Plant Licensing Branch II-2 (May 5, 2014) (ADAMS Accession No. ML14119A347). In this instance, the Acting Branch Chief was also a Senior Project Manager. See also Management Directive 9.1 (ADAMS Accession No. ML041400108) (discussing delegations of authority).

II. CASE's New Contention Should Be Denied Because It Does Not Meet the Contention Admissibility Requirements

In addition to requesting that the July 31, 2014 EA be invalidated on procedural grounds, CASE's Motion also puts forth a new contention based on the alleged procedural violation.³⁵ CASE's new contention should be denied because it does not meet the contention admissibility requirements for late filed contentions.

The new contention in CASE's Motion is being filed after the initial filing deadline of October 14, 2014. Therefore, it must meet the applicable contention admissibility requirements in 10 C.F.R. §§ 2.309(c) and 2.309(f).³⁶ CASE's Motion does not address, much less meet, any of the 10 C.F.R. § 2.309(f) requirements. Therefore, the Board should find CASE's new contention inadmissible.³⁷

Likewise, CASE's Motion does not address or meet the 10 C.F.R. § 2.309(c) requirements. CASE's new contention is based on NUREG-1748 and the Staff's July 31, 2014 EA. However, both of these documents have been publicly available for over a year.³⁸ Therefore, CASE cannot argue that this information is new and materially different information under 10 C.F.R. § 2.309(c) to support its new contention.

CONCLUSION

For the reasons set forth above, CASE's Motion should be denied.

³⁵ Motion at 2 ("The 2014 EA in this matter was not prepared by nor was it paced into the [Federal Register] by the proper office holder as stated in NUREG-1748, and therefore, should be invalidated."). See *id.* (stating that this contention is "separate from and not related to any other motion or order in these proceedings; it is entirely a technical matter unrelated to the substance of the contention admitted by the ASLB on March 23, 2015.").

³⁶ A party, such as CASE, who already has met the standing requirements of 10 C.F.R. § 2309(d) does not need to re-address standing. 10 C.F.R. § 2.309(c)(4).

³⁷ See LBP-15-13 at 12-13 ("Failure to comply with any of the § 2.309(f)(1) requirements renders a contention inadmissible.").

³⁸ NUREG- 1748 has been publicly available in ADAMS since 2010. The challenged EA was publicly available on July 31, 2014 and was the subject of CASE's timely Petition.

Respectfully submitted,

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O15-D21
Washington, DC 20555
Telephone: (301) 415-2321
E-mail: catherine.kanatas@nrc.gov

Dated at Rockville, Maryland
this 3rd day of Sept. 2015

CERTIFICATION OF COUNSEL

I certify that I have made a sincere effort to be available to consult with CASE, and to attempt in good faith to resolve the factual and legal issues raised in the Motion, and that my efforts to resolve the issues have been unsuccessful.

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O15-D21
Washington, DC 20555
Telephone: (301) 415-2321
E-mail: catherine.kanatas@nrc.gov
Date of Signature: September 3, 2015

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)
FLORIDA POWER & LIGHT CO.) Docket No. 50-250-LA
) 50-251-LA
(Turkey Point Nuclear Generating)
Unit Nos. 3 and 4))

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the foregoing “NRC STAFF ANSWER TO CITIZENS ALLIED FOR SAFE ENERGY MOTION TO INVALIDATE NUCLEAR REGULATORY COMMISSION ENVIRONMENTAL ASSESSMENT OF JULY [31], 2014” dated September 3, 2015, have been served upon the following persons by the Electronic Information Exchange, the NRC’s E-Filing System, in the above-captioned proceeding, or via electronic mail as indicated by an asterisk, this 3rd day of September, 2015.

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

Michael M. Gibson, Chair
Administrative Judge
E-mail: michael.gibson@nrc.gov

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

Dr. William W. Sager
Administrative Judge
E-mail: william.sager@nrc.gov

Matthew Zogby, Law Clerk
E-mail: matthew.zogby@nrc.gov

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

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
Brian Harris, Esq.
David Roth, Esq.
Edward Williamson, Esq.
Daniel Straus, Esq.
John Tibbetts, Paralegal
E-mail: brian.harris@nrc.gov
david.roth@nrc.gov

edward.williamson@nrc.gov
daniel.straus@nrc.gov
john.tibbetts@nrc.gov

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

801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
E-mail: steven.hamrick@fpl.com

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

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O15-D21
Washington, DC 20555
Telephone: (301) 415-2321
E-mail: catherine.kanatas@nrc.gov
Date of Signature: September 3, 2015