RAS 2614

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-250-LR
Florida Power & Light Company	)	50-251-LR
	)	ASLBP No. 01-786-03-LR
(Turkey Point Units 3 and 4)	)	

FPL'S RESPONSE TO CONTENTIONS OF MARK P. ONCAVAGE AND JOETTE LORION

I. INTRODUCTION

Florida Power & Light Company ("FPL") hereby responds to the "Amended Contentions of Mark P. Oncavage, December 22, 2000" ("Oncavage Contentions") and "Petitioner Lorion's Supplemental Filing of Contentions to Her Request for Hearing and Petition for Leave to Intervene," dated December 21, 2000 ("Lorion Supp."), concerning FPL's application to renew the operating licenses for Turkey Point Units 3 and 4. Most of the contentions proffered by Mr. Oncavage and Ms. Lorion impermissibly challenge the rules of the Nuclear Regulatory Commission ("NRC" or "Commission") governing license renewal and seek to raise issues outside of the scope of this proceeding. None of the contentions is supported by a basis demonstrating the existence of any genuine material issue in dispute. Therefore, all of the contentions should be dismissed, and the requests for hearing by Mr. Oncavage and Ms. Lorion should be denied.

Mr. Oncavage's contentions are also untimely. While the untimeliness is minor, the failure of Mr. Oncavage to show good cause for his late filing provides further support for the dismissal of his contentions.

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II. STANDARDS FOR ADMISSION OF CONTENTIONS

A. CONTENTIONS MUST BE WITHIN THE SCOPE OF THE PROCEEDING AND MAY NOT CHALLENGE THE NRC'S RULES

As a fundamental requirement, a contention is only admissible if it addresses matters within the scope of the proceeding and does not seek to attack the NRC's regulations governing the proceeding. This fundamental limitation is particularly important in a license renewal proceeding, because the Commission has conducted extensive rulemaking proceedings to define specifically and limit the technical and environmental showing that an applicant must make. The rules governing health and safety matters are contained in 10 C.F.R. Part 54, and the rules governing environmental matters are contained in 10 C.F.R. §§ 51.53(c), 51.95(c), and Appendix B to Part 51. As discussed later in this response, most of Mr. Oncavage's and Ms. Lorion's proposed contentions ignore and exceed the limited scope of this proceeding.

The rules in 10 C.F.R. Part 54 are intended to make license renewal a stable and predictable process. 60 Fed. Reg. 22, 461, 22,463 (1995). To this end, the Commission has confined 10 C.F.R. Part 54 to those issues uniquely determined to be relevant to the public health and safety during the period of extended operation, leaving all other issues to be addressed by the existing regulatory processes. 60 Fed. Reg. at 22,463. This scope is based on the principle, established in the rulemaking proceedings, that with the exception of the detrimental effects of aging and a few other issues related to safety only during the period of extended operation, the existing regulatory processes are adequate to ensure that the licensing bases of currently-operating plants provide and maintain an adequate level of safety. 60 Fed. Reg. at 22,464, 22,481-82. Accordingly, the Commission has limited the scope of the safety review to the matters in 10 C.F.R. § 54.29(a)-(c) (management of aging of certain systems, structures and

components; review of time-limited aging evaluations; 10 C.F.R. Part 51 issues; and any issue admitted based on a waiver of the regulations). The Commission has stated explicitly that the scope of Commission review determines the scope of admissible issues in a renewal hearing absent a Commission finding under 10 C.F.R. § 2.758. 60 Fed. Reg. at 22,482 n.2.

The regulations in 10 C.F.R. Part 51 governing license renewal are similarly intended to produce a more focused and, therefore, more effective review. 61 Fed. Reg. 28,467 (1998). To accomplish this objective, the NRC prepared a comprehensive Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants (NUREG-1437) and made generic findings reflected in the GEIS and in Appendix B to 10 C.F.R. Part 51. Those issues that could be resolved generically for all plants are designated as Category 1 issues and are not evaluated further in a license renewal proceeding (absent waiver or suspension of the rule by the Commission based on new and significant information). 61 Fed. Reg. at 28,468, 28,470, 28,474. The remaining (i.e., Category 2) issues that must be addressed in an applicant's Environmental Report ("ER") are defined specifically in 10 C.F.R. § 51.53(c).

Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given to [them]." Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); accord Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction as set forth in the Commission's Notice of Opportunity for Hearing. Id.; see also Commonwealth Edison Company (Zion Station, Units 1

and 2), ALAB-616, 12 NRC 419, 426-27 (1980); Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980).

It is also well established that a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations. Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 334 (1999). "[A] licensing proceeding . . . 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." Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, aff'd in part on other grounds, CLI-74-32, 8 AEC 217 (1974). Thus, a contention which collaterally attacks a Commission rule or regulation is not appropriate for litigation and must be rejected. 10 C.F.R. § 2.758; Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974). A contention which "advocate[s] stricter requirements than those imposed by the regulations" is "an impermissible collateral attack on the Commission's rules" and must be rejected. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); see also Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, aff'd in part and rev'd in part on other grounds, CLI-91-12, 34 NRC 149 (1991). Likewise, a contention that seeks to litigate a generic determination established by Commission rulemaking is "barred as a matter of law." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plants, Units 1 and 2), LBP-93-1, 37 NRC 5, 30 (1993).

These limitations are very germane to this proceeding in that the scope of admissible environmental contentions is constrained by the NRC's GEIS, and the scope of technical

contentions is constrained by 10 C.F.R. Part 54. As directed by the Commission in this and other license renewal proceedings:

> The scope of this proceeding is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses. See 10 C.F.R. §§ 54.21(a) and (c), 54.4; Nuclear Power Plant License Renewal; Revisions, Final Rule, 60 Fed. Reg. 22,461 (1995). In addition, review of environmental issues is limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c). See NUREG-1437, "Generic Environmental Impact Statement (GEIS) for License Renewal of Plant;" Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule, 61 Fed. Reg. 28,467 (1996), amended by 61 Fed. Reg. 66,537 (1996). The Licensing Board shall be guided by these regulations in determining whether proffered contentions meet the standard in 10 C.F.R. § 2.714(b)(2)(iii).

Florida Power & Light Co. (Turkey Point Units 3 and 4), CLI-00-23, slip op. at 2 (Nov. 27, 2000); Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998), motion to vacate denied, CLI-98-15, 48 NRC 45, 54 (1998); Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 NRC 123, 125 (1998); accord 65 Fed. Reg. 60,693 (2000) (Notice of Opportunity for a Hearing). See also Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22-23 (1998). The Licensing Board's Memorandum and Order of December 1, 2000, cautioned petitioners that each contention must be within the limited scope of this proceeding.

B. Contentions Must Satisfy Pleading Standards

In addition to the requirement to address matters within the scope of the proceeding, a contention is admissible only if it meets the standards set forth in 10 C.F.R. § 2.714(b)(2), which provide that "[e]ach contention must consist of:

- a "specific statement of the issue of law or fact to be raised or controverted," accompanied by

- (i) a "brief explanation of the bases of the contention;"
- (ii) a "concise statement of the alleged facts or expert opinion" supporting the contention together with references to "specific sources and documents . . . on which the petitioner intends to rely to establish those facts or expert opinion;" and
- (iii) "[s]ufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact," which showing must include "references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute . . . ."

10 C.F.R. § 2.714(b)(2). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. 10 C.F.R. § 2.714(d)(2)(i); Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, which was intended "to raise the threshold for admission of contentions." 54 Fed. Reg. 33,168 (1989); see also Oconee, CLI-99-11, 49 NRC at 334; Palo Verde, CLI-91-12, 34 NRC at 155-56. The requirements of the current rule are to be enforced rigorously. "If any one . . . is not met, a contention must be rejected." Palo Verde, CLI-91-12, 34 NRC at 155. A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

The Commission has explained that this "strict contention rule" serves multiple purposes, which include putting other parties on notice of the specific grievances and assuring that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions. Oconee, CLI-99-11, 49 NRC at 334. By

raising the threshold for admission of contentions, the NRC intended to obviate lengthy hearing delays caused in the past by poorly defined or poorly supported contentions. Id.

The Commission has made clear that the requirement for the provision of specific reference to documents or other sources of information has the effect of overturning prior precedent which had previously held that section 2.714 did not require a petitioner to describe facts which would be offered in support of a proposed contention. 54 Fed. Reg. at 33,170. The Rules of Practice now require that a petitioner include facts in support of its position in order to demonstrate that a genuine dispute as to a material issue of law or fact exists. Id. As observed by the Commission, such a requirement is consistent with judicial decisions, such as Connecticut Bankers Ass'n v. Board of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980), which held that:

> [A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an "inquiry in depth" is appropriate.

Id. (footnote omitted); see also Calvert Cliffs, CLI-98-14, 48 NRC at 41 ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . . ."). A contention, therefore, is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171.[1]

[1] See also Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983) ("[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a of the Act nor Section 2.714 of the Rules of Practice permits the

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Thus, under the amended Rules of Practice, a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for an admissible contention. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 246 (1993), review declined, CLI-94-02, 39 NRC 91 (1994). Nor is the mere citation of an alleged factual basis for a contention sufficient. Rather, a petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." 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). Where a petitioner has failed to do so, "the licensing board may not make factual inferences on [the] petitioner's behalf." Id., citing Palo Verde, CLI-91-12, 34 NRC 149.

Accordingly, the current pleading standards "require the intervenor to read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, [and] state the applicant's position and the petitioner's opposing view." 54 Fed. Reg. at 33,170. If the petitioner does not believe these materials address a relevant issue, the petitioner is "to explain why the application is deficient." Id.; see also Palo Verde, CLI-91-12, 34 NRC at 155-56. A contention that does not directly controvert a position taken by the Licensee in the license application is subject to dismissal. See Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). An allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a

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filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.").

genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable. Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 and n.12 (1990) (emphasis added), citing 10 C.F.R. §§ 2.714(b)(2)(ii) and (iii); compare Louisiana Enrichment Services (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 338-39, 347 (1991) (where petitioner provided such reasoning).

III. INADMISSIBILITY OF MR. ONCAVAGE'S CONTENTIONS

A. Mr. Oncavage's Contentions Are Beyond the Scope of this Proceeding and Do Not Meet Pleading Requirements

1. Oncavage Contention 1

Oncavage Contention 1 is inadmissible because it challenges the NRC's rules limiting the scope of this proceeding. Contention 1 alleges that the aquatic resources of the Biscayne National Park will become contaminated with radioactive material, chemical wastes, and herbicides which will endanger the health and safety of the public. As a contention raising a purported health and safety issue, this contention represents a challenge to the scope of 10 C.F.R. Part 54, which in essence is limited to a demonstration that the aging of certain systems, structures and components will be adequately managed, and that certain time-limited aging analyses have been adequately addressed.

To the extent that this contention might be construed as raising an issue under the National Environmental Policy Act (NEPA), it similarly represents a challenge to the scope of the environmental review specified in 10 C.F.R. § 51.53(c), and to the NRC's generic environmental findings in the GEIS and Appendix B to 10 C.F.R. Part 51. Radiation exposure to the public during the renewal term is a Category 1 issue determined to be small, based on a generic finding that radiation doses to the public will continue at current levels associated with

normal operations. 10 C.F.R. Part 51, App. B, Table B-1.[2] The discharge of chlorine and other biocides, the discharge of metals, the discharge of sanitary wastes and minor chemical spills, are also Category 1 issues determined to be small. 10 C.F.R. Part 51, App. B, Table B-1. See also GEIS, § 4.4.2.2 and Table 4.4.

In addition to challenging the NRC rules establishing the scope of this proceeding, Contention 1 is also inadmissible because it fails to satisfy the NRC's pleading requirements of basis and specificity. Mr. Oncavage selectively quotes three sentences from section 4.6.1.1 of the GEIS indicating that the buildup [of concentrations of radioactive material in sediments] is not explicitly accounted for in the aquatic food pathway. Oncavage Contentions, first unnumbered page. In the paragraph immediately following the one quoted by Mr. Oncavage, the same section of the GEIS states:

> Accumulation of radioactive materials in the environment is of concern not only to license renewal, but also to operation under present licenses. NRC reporting rules require that pathways that may arise as a result of unique conditions at a specific site [be] considered in licensees' evaluations of radiation exposures. If an exposure pathway is likely to contribute significantly to total dose (10 percent or more to the total dose from all pathways), it must be routinely monitored and evaluated. Environmental monitoring programs are in place at all sites to provide a backup to the calculated doses based on effluent release measurements. Since these programs are ongoing for the duration of the license, locations where unique situations give rise to significant pathways not detailed in NRC Regulatory Guide 1.109 will be identified if and when they become significant. If such pathways result in doses at a plant exceeding the design objectives of Appendix I to 10 CFR Part 50, action will be required.

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[2] Mr. Oncavage's discussion suggests that uncertainty regarding disposal of solid radioactive waste will result in greater discharges of liquid radioactive waste. The issues associated with the storage and disposal of radioactive waste are also a Category 1 issue determined to be small, based on the comprehensive regulatory controls that are in place and the low public dose achieved. 10 C.F.R. Part 51, App. B, Table B-1.

GEIS at 4-86. Thus, the GEIS considered buildup of radionuclides and concluded that environmental monitoring programs assure that public exposure remains within Appendix I limits. Mr. Oncavage provides no information to suggest that buildup could cause doses at Turkey Point to exceed 10 C.F.R. Part 50 Appendix I limits or to otherwise be significant. He provides no expert opinion or references to other documents showing there is a genuine dispute over a material issue.

Similarly, no basis for this contention is provided by Mr. Oncavage's references to statements in the original Turkey Point Final Environmental Statement ("FES") indicating a hydrological connection between the cooling canal system and the Biscayne Bay. See Oncavage Contentions, first unnumbered page. Mr. Oncavage provides no information whatsoever to show that there has been any appreciable or significant radiological or chemical contamination of the Biscayne Bay during the over 25-year period of plant operation, and he provides no information to show that any such contamination is likely during a renewal term. Once more, he provides no expert opinion or references to show there is any genuine dispute over a material issue.

Finally, Mr. Oncavage offers no basis for his unfounded assertion that the cooling canals will be used as a waste "dump." Oncavage Contentions, second unnumbered page. Mr. Oncavage provides no basis to suggest that FPL has violated or will violate the liquid effluent limitations in 10 C.F.R. Part 20 and in the Turkey Point licenses and Technical Specifications, or that these limitations in the regulations and licenses will be inadequate. And contentions should not assume that a licensee will contravene NRC regulations. GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 197 (2000). The Turkey Point operating licenses state that the licensee "shall be deemed to contain and [are] subject to the conditions specified in" 10 C.F.R. Part 20. DPR-31, Condition 3; DPR-41, Condition 3. Further, the

Turkey Point Technical Specifications (TS) require FPL to maintain a radiological effluent control program that conforms to 10 C.F.R. Parts 20 and 50 and 49 C.F.R. Part 190, and require FPL to maintain doses to members of the public as low as reasonably achievable. Turkey Point TS 6.8.1.d; 6.8.4.f; 6.14. FPL is also required to file with the NRC an Annual Radiological Environmental Operating Report and a Radioactive Effluent Release Report in accordance with 10 C.F.R. 50.36a. Turkey Point TS 6.9.1.3, 6.9.1.4. Mr. Oncavage does not address any of these provisions. He provides no references or expert opinion to support his contention, or any other factual information to demonstrate the existence of any genuine material issue.

2. Oncavage Contention 2

Oncavage Contention 2 is inadmissible because it is outside of the scope of this proceeding. Contention 2 alleges that the location of Turkey Point poses unusual and severe challenges to the integrity of spent fuel, whether in spent fuel pools or in dry cask storage (despite the fact that FPL has no dry cask storage at Turkey Point[3]); and in three subsections (designated 2A, 2B and 2C), Mr. Oncavage refers to the effects of hurricanes, air crashes, and hypothetical attacks by Cuban military aircraft.[4] This contention does not relate to the management of the aging of systems, structures and components within the scope of Part 54, or the time-limited aging analyses. Therefore, it exceeds the matters that are subject to review under Part 54 and represents an impermissible challenge to that rule.

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[3] It should also be noted that independent spent fuel storage installations are subject to separate licensing and license renewal requirements under 10 C.F.R. Part 72 (see 10 C.F.R. §§ 72.42, 72.212(a)(3); see also Oconee, supra, CLI-99-11, 49 NRC at 344 n.4), and are not within the scope of Part 54.

[4] Consideration of attacks by foreign enemies of the United States on the design of power reactors is not required by NRC regulations. 10 C.F.R. § 50.13; Siegel v. AEC, 400 F.2d. 778 (D.C. Cir. 1968).

This contention is also barred by the NRC's recently reaffirmed Waste Confidence Rule at 10 C.F.R. § 51.23. That rule states,

> The Commission has made a generic determination that, if necessary, spent fuel generated at any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite of offsite independent spent fuel storage installations.

10 C.F.R. § 51.23(a) (emphasis added). Further, to the extent Contention 2 seeks to raise a NEPA issue, it is a challenge to the generic findings in the GEIS and Appendix B to Part 51. As the Commission ruled in dismissing a similar contention in the Oconee license renewal proceeding:

> Category 1 issues include the radiological impacts of spent fuel and high-level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and on-site spent fuel. See Table B-1, Part 51, Subpart A, Appendix B. The Commission's generic determinations governing onsite waste storage preclude the Petitioners from attempting to introduce such waste issues into this adjudication.

Oconee, supra, CLI-99-11, 49 NRC at 343. The NRC has also determined generically that severe accident risk is of small significance for all plants.[5]

In addition to representing an impermissible challenge to the regulations, this contention is inadmissible because Mr. Oncavage provides no basis demonstrating the existence of a genuine dispute over a material issue. In the main part of his contention, Mr. Oncavage cites a study of a catastrophic spent fuel pool accident "for a shutdown commercial reactor" (Oncavage

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[5] See 10 C.F.R. Part 51, App. B, Table B-1; GEIS, NUREG-1437, § 5.5.2. While severe accident risk has been determined generically to be small, 10 C.F.R. § 51.53(c)(3)(L) does require consideration of severe accident mitigation alternatives (SAMAs) if they have not been previously considered in an environmental impact statement or environmental assessment. Mr.

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Contentions, second unnumbered page), but he provides no explanation how this report is applicable to an operating reactor or to the renewal term.[6] He asserts that such an accident would produce exposures in excess of the 10 C.F.R. Part 100 guidelines (id., third unnumbered page), but he provides no expert opinion or reference to provide a basis for this assertion.

Further, Mr. Oncavage provides no basis to dispute the adequacy of the Turkey Point spent fuel pool design, or the design of the safety-related systems supporting spent fuel storage (matters which are, in any event, outside the scope of the proceeding). More importantly, he provides no discussion whatsoever of the aging or aging management of these systems. For example, his contention does not address or even mention the sections (2.3.3.3, 2.4.2.1, 2.4.2.14, 3.4, 3.6.2) of FPL's application related to the spent fuel handling and storage structures and the spent fuel pool cooling system. In sum, Contention 2 provides no basis to question the adequacy of FPL's application and aging management programs.

In section 2A, Mr. Oncavage asserts, "The spent fuel facilities, wet or dry, would be particularly vulnerable to a category 5 hurricane due to inadequate construction practices and having no 'defense in depth.'" Oncavage Contentions, third unnumbered page. Mr. Oncavage does not identify any inadequate construction practices or provide any basis to suggest that construction was inadequate. Nor does he provide any basis for his assertion that there is no

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Oncavage's contention, however, does not raise SAMAs as an issue and does not address or question FPL's discussion of SAMAs in section 4.20 of the Environmental Report.

[6] The referenced study, NUREG/CR-6451, "A Safety and Regulatory Assessment of Generic BWR and PWR Permanently Shutdown Nuclear Power Plants," (August 1997), examines the basis for eliminating regulatory requirements for permanently shutdown plants without impact on public health and safety. Mr. Oncavage articulates no basis why this study is applicable to the proposed renewal of nuclear power plant operating licenses.

defense in depth. Section 2.4.2.1 of FPL's application references section 5.2 of the Final Safety Analysis Report ("FSAR") for a description of the auxiliary building in which the spent fuel pool is located. Section 5.2.3 of the FSAR indicates that the auxiliary building is designed to remain within the elastic limit under the action of a tornado wind of 225 mph acting simultaneously with a differential pressure of 1.5 psi, and that no loss of function will occur under the action of a wind of 337 mph and a pressure of 2.25 psi. Appendix 5A of the FSAR also shows that the spent fuel storage facilities are class I structures designed to withstand appropriate earthquake loads simultaneously with other applicable loads without loss of function. FSAR, Appendix 5A at 5A-1, 5A-4. Mr. Oncavage does not address any of this available information.

Mr. Oncavage refers to the effects of Hurricane Andrew on Homestead Airforce Base, but he fails to mention that this hurricane passed directly over Turkey Point and caused no damage to the auxiliary building or any other class I structures. He asserts that an even greater hurricane could have winds of 155 mph, but he provides no explanation why such winds would be a concern given the fact that the auxiliary building is designed to withstand much greater winds associated with a tornado, and no discussion of the likelihood of such an occurrence.[7] In short, section 2A of Mr. Oncavage's contentions provides no basis to question the safety of spent fuel storage.

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[7] In any event, the design bases of Turkey Point are not at issue in this proceeding. 10 C.F.R. Part 54 requires a showing that aging will be managed in a manner reasonably assuring that the intended functions of structures and components will be maintained consistent with the plant's current licensing basis. See 10 C.F.R. § 54.21(c)(3). The current licensing basis of a plant includes the design bases. 10 C.F.R. § 54.3(a). The design bases for Class I structures are set forth in Appendix 5A of the FSAR. While Class I structures are designed for greater tornado winds (as well as greater seismic loads), the wind load assumed for design is 145 mph based on the fastest wind velocity for a 100-year occurrence. FSAR at 5A-9. Hurricane Andrew, which was one of the most severe hurricanes of record, had sustained winds of 145 mph. Mr.

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In section 2B, Mr. Oncavage states that "[t]he Safety Evaluation Report for the Turkey Point license renewal is fatally flawed since it relies on the NRC Staff's Safety Assessment of June 19, 2000 as it relates to the development of the former Homestead Air Force Base into an international, commercial airport." Oncavage Contentions, third unnumbered page. He does not, however, identify what Safety Evaluation Report he is talking about. He does not provide any information showing that FPL's license renewal application for Turkey Point is flawed or inadequate. He criticizes a safety assessment which the NRC staff provided in connection with the Air Force's preparation of an environmental impact statement ("EIS") for Homestead, but he provides no expert opinion or references to support his criticism or to show that Turkey Point would not meet applicable NRC requirements whether or not Homestead is developed as a commercial airport. He discusses neither the probability nor the consequences of an accident. He also provides no explanation why it is necessary to perform any further safety assessment of the possible conversion of Homestead to a commercial airport when at this juncture there has been no final agency decision on the proposed conversion.[8]

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Oncavage's assertion that Turkey Point could be vulnerable to a greater, Category 5 hurricane, challenges Turkey Point's design bases, and not aging management.

[8] During the Part 54 rulemaking, one commenter suggested that the license renewal process should consider location of nearby hazards. The Commission did not accept this comment and explained, "the Commission . . . requires, through the annual FSAR updating process, that licensees update existing analyses of nearby hazards to the plant." 56 Fed. Reg. 64,943, 64,959 (1991). Thus, changes in external hazards are addressed through existing regulatory processes when they occur, and are not required to be addressed in any sort of anticipatory fashion in a license renewal application. Any changes to the current licensing basis of Turkey Point that may be necessary to address the possible conversion of the Homestead Air Force Base will be made if and when such conversion occurs. At this juncture, the future use of the Homestead Air Force Base remains speculative, and changes to Turkey Point's current licensing basis are not ripe.

Finally, in section 2C, Mr. Oncavage speculates that spent fuel storage facilities at Turkey Point might be attacked by Cuban Air Force MIGs. Oncavage Contentions, fifth unnumbered page. This speculation is not supported by any references, expert opinion or other supporting information suggesting that there is any credible risk. Moreover, as discussed above, consideration of foreign enemy attacks is not required in nuclear plant design. See note 4, supra.

B. Mr. Oncavage's Contentions Are Untimely

Mr. Oncavage's contentions are untimely because they were filed and served after 4:30 p.m. on the date due. The Commission's Order of November 27, 2000, CLI-00-23, and the Licensing Board's Memorandum and Order of December 14, 2000, require all filings to be served in a manner that ensures receipt by the date due; and the Licensing Board's Memorandum and Order further provides that "[t]o be timely, any pleading or other submission served on the Licensing Board members by hand delivery, facsimile transmission, or e-mail must be received by the Licensing Board no later than 4:30 p.m. Eastern time on the date due." According to the time shown on his e-mail transmission, Mr. Oncavage's contentions were filed at about 8:00 p.m. on the date due.

Late filed contentions are admissible only upon a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1). A petitioner is obliged to show that its untimely contentions meet these standards, and failure to do so alone warrants rejection of those contentions. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 347 (1998), aff'd, National Whistleblower Center v. NRC, 208 F.3d 256 (D.C. Cir. 2000), rehearing en banc denied (June 15, 2000), petition for cert. filed (No. 00-422, Sept. 13, 2000). The failure of Mr. Oncavage to address the five factors for his untimely contentions provides additional grounds supporting the dismissal of those contentions.

IV. INADMISSIBILITY OF MS. LORION'S CONTENTIONS

A. Lorion Contention 1

In essence, Lorion Contention 1 asserts that the NRC must prepare its environmental impact statement prior to conducting its technical review under 10 C.F.R. Part 54. This assertion challenges the NRC's longstanding licensing practices and is outside the scope of the proceeding.. It is also legally incorrect and raises no genuine issue. Therefore, Lorion Contention 1 inadmissible in this proceeding.

Nothing in the NRC's regulations requires the NRC staff to prepare its environmental impact statement before conducting a technical review. To the contrary, the NRC's regulations have always been implemented by conducting parallel technical and environmental reviews. See, e.g., Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 526 (1978) (describing the NRC's reviews). Indeed, the NRC's initial order in this proceeding contemplates that the NRC will issue its final SER and FES fairly close in time. Turkey Point, CLI-00-23, slip op. at 4 n.1.

Ms. Lorion refers to the Council on Environmental Quality (CEQ)[9] regulation at 40 C.F.R. § 1502.5, which states in pertinent part,

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[9] The NRC has previously held that the CEQ regulations are not applicable to the NRC, as an independent agency. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-880, 26 N.R.C. 449, 461 (1987). Court decisions have not resolved this issue conclusively. See Lower Alloways Creek v. Public Serv. Elec. & Gas Co., 687 F.2d 732, 740 n.16 (3d Cir. 1982) (CEQ regulations are not binding on an independent agency unless that agency has expressly adopted them); Limerick Ecology Action, Inc. v. NRC, 869 F.2d 719, 725 (3d Cir. 1989) (CEQ regulations are not binding on an independent agency unless that agency has expressly adopted them); People Against Nuclear Energy v. NRC, 678 F.2d 222, 231 (D.C. Cir), rev'd on other grounds, 460 U.S. 766 (1983) (CEQ regulations are applicable to all federal agencies, including the Commission); San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1302 (D.C. Cir. 1984), cert. denied, 479 U.S. 923 (1986) ("without deciding, we assume

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> An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made. . . .

40 C.F.R. § 1502.5; Lorion Supp. at 3. This regulation specifies the timing of the environmental review and indicates that an agency should start this review when an application is received, but it says nothing that can be construed as prohibiting the NRC from conducting its technical review in parallel with the environmental review. Moreover, the NRC regulations prohibit any decision on an application until after the final EIS is issued (10 C.F.R. § 51.100), so the parallel review process cannot create a situation where the EIS is being used to rationalize decisions already made. Lorion also refers to 40 C.F.R. § 1502.2(f), which states that "agencies shall not commit resources prejudicing selection of alternatives before making a final decision." Lorion Supp. at 3. Obviously, the resources referred to in this section are those related to the proposed action, and not to the NRC's staff's review. In any event, the NRC staff's technical review certainly does not prejudice the selection of any alternative under NEPA, and in fact the NRC regulations prohibit any such action. 10 C.F.R. § 51.101.

Lorion Contention 1 also appears to assert that the environmental impact statement must be a full site-specific EIS. This assertion is a direct challenge to the GEIS and to the scope of environmental review established in 10 C.F.R. §§ 51.53(c) and 51.95(c). 10 C.F.R. § 51.95(c)

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that the regulations apply to the Commission"); Sierra Club v. NRC, 862 F.2d 222, 228 (9th Cir. 1988) (there is some uncertainty about whether CEQ regulations apply to the NRC).

specifically directs the NRC staff to prepare a supplement to the GEIS, and (unless waived by the Commission) the NRC regulations are not subject to challenge in this proceeding.

Moreover, as a legal matter, the ability of an agency to consider and resolve environmental issues generically is well established. Vermont Yankee, 435 U.S. at 539-49 (upholding NRC's rule generically quantifying the environmental effects of the fuel cycle); Baltimore Gas & Electric Co. v. Natural Resources Defense Council, 462 U.S. 87, 100-01 (1983); Natural Resources Defense Council v. NRC, 539 F.2d 824, 838-40 (2d Cir. 1976), vacated on other grounds, 434 U.S. 1030 (1978); Minnesota v. NRC, 602 F.2d 412, 416-17 (D.C. Cir. 1979). There is simply no genuine issue here.

B. Lorion Contention 2

Lorion Contention 2, which asserts that the NRC must prepare a site-specific supplemental EIS, is inadmissible because it challenges the NRC's regulations in 10 C.F.R. §§ 51.53(c) and 51.95(c) prescribing how the environmental review of a license renewal application will be conducted. Ms. Lorion makes it clear that her contention is seeking a site-specific supplement to the original Turkey Point EIS – one "that includes a review of the original EIS that was conducted on Turkey Point in July 1972." Lorion Supp. at 4. The NRC's rules in Part 51, however, direct that the NRC staff shall prepare a supplement to the GEIS (10 C.F.R. § 51.95(c)) and define the contents of the environmental review (10 C.F.R. §§ 51.53(c), 51.95(c)(1)(-4)).[10] The Commission's regulations are not subject to challenge in this forum.

[10] 10 C.F.R. § 51.95(c) states that the supplemental EIS for the operating license renewal stage shall address those issues required by 10 C.F.R. § 51.71, and 10 C.F.R. § 51.71(d) states that the staff "will rely on conclusions as amplified by supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part."

The NRC's rules do require an applicant to identify any new and significant information of which it is aware regarding the environmental impacts of license renewal (10 C.F.R. § 51.53(c)(3)(iii)), and require the NRC staff to consider such information (10 C.F.R. § 51.95(c)(4)). However, the supplemental information supporting these rules makes it clear that consideration of new and significant information requires the Commission's approval to suspend or waive the rules. 61 Fed. Reg. at 28,470. The NRC staff paper which established this process, and which the Commission approved, similarly explained that litigation of Category 1 issues will not be permitted "unless the rule is suspended or waived." SECY-93-032 (Feb. 9, 1993) at 3. The standards for obtaining a waiver of a rule are set forth in 10 C.F.R. § 2.758 and require an affidavit (1) identifying the specific aspects of the subject matter of the proceeding as to which the application of the rule would not serve the purposes for which the rule was adopted, and (2) setting forth with particularity the special circumstances justifying the waiver. Ms. Lorion has not provided such an affidavit or made any showing satisfying the standards in 10 C.F.R. § 2.758.

Ms. Lorion's discussion of Contention 2 does refer to several items claimed to be new and significant, but she provides no information demonstrating how these items might affect the NRC's consideration of any Category 1 issues in the GEIS or indicate the existence of any previously unidentified impact.[11] For example, she refers to the recently passed "Everglades

[11] NRC Supplement 1 to Regulatory Guide 4.2, "Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses," states that "new and significant information" is (1) information that identifies a significant environmental issue that was not considered in NUREG-1437, and consequently, not codified in Appendix B to Subpart A of 10 CFR Part 51, or (2) information that was not considered in the analyses summarized in NUREG-1437 and that leads to an impact finding different from that codified in 10 CFR Part 51. Reg. Guide 4.2, Supp. 1, at 4.2-S-4.

Restoration Bill"[12] (Lorion Supp. at 4), but she provides no information suggesting that the renewal of the Turkey Point licenses will interfere with or affect that project, or that the restoration effort will alter the character, magnitude or significance of any of the impacts of license renewal. The Everglades Restoration Bill may signify that the Everglades is an important natural resource, but that information is not new at all.

Ms. Lorion also refers vaguely to the "intense population growth and ability to evacuate in the event of a hurricane" as information not adequately considered in the 1972 FES for Turkey Point or in FPL's ER for license renewal (Lorion Supp. at 5), but she again fails to show that these items are new and significant information affecting any Category 1 issue or raising any previously unidentified issue. Her reference to the 1972 FES misses the mark, because information is only new if it was unavailable at the time that the NRC prepared the GEIS, and the GEIS was in fact based in part on information gathered from the environmental impact statements prepared for individual plants at the construction permit and operating license stages. GEIS at 1-4. Similarly, information on the population growth in southern Florida and on its hurricane potential is not new because it was certainly available when the GEIS was prepared. Hurricane Andrew occurred in 1992, nearly four years before the final GEIS was issued, and its implications were also fully considered long before the GEIS was issued. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), DD-93-13, 37 N.R.C. 493 (1993); Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), DD-93-4, 37 N.R.C. 225 (1993).

[12] FPL assumes that Ms. Lorion is referring to section 601 of the Water Resources Development Act of 2000.

Further, FPL's ER provides demographic information including population projections (see ER, § 2.6) and evaluates the Category 2 issues affected by population growth, such as effects of license renewal on housing, offsite land use, transportation, public services, and schools. Ms. Lorion does not address any of this information or provide any indication that the analysis is deficient. In fact, her discussion of Contention 2 identifies no environmental issue affected by the population growth. The ability to evacuate in the event of a hurricane is not an environmental issue.[13]

Ms. Lorion's references to the "proposed siting of a large commercial airport within 5 miles of the plant" and the "siting a few years back of a school two miles from the plant" (Lorion Supp. at 5) are similarly vague and unsupported by any discussion suggesting that these items are significant. FPL assumes that Ms. Lorion's reference to the possible airport relates to the closure of the Homestead Airforce Base and the consideration that has been given to the possibility of converting the base to an airport. At this juncture, however, no final agency decision has been made on the possible conversion, and in any event, Ms. Lorion provides no basis to assume that converting the Air Force Base to an airport would alter any environmental impact in the GEIS or create any new and significant impact not previously evaluated.

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[13] To the extent Lorion Contention 2 might be construed as raising a safety issue, emergency preparedness issues are not within the scope of the matters delineated in 10 C.F.R. § 54.29 and, therefore not within the scope of this proceeding. As stated by the Commission when it first promulgated the rules in 10 C.F.R. Part 54, "the Commission concludes that the adequacy of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license." 56 Fed. Reg. at 64,967. If Ms. Lorion is suggesting there are deficiencies in evacuation preparations, her contention is simply a challenge to 10 C.F.R. Part 54, which is not allowed in this proceeding. If Ms. Lorion is questioning the reactor siting criteria used to license the Turkey Point reactors, this is clearly outside the scope of 10 C.F.R. Part 54 and constitutes an impermissible challenge to 10 C.F.R. Part 100.

Ms. Lorion's discussion of Contention 2 alludes to a hodgepodge of other considerations (Lorion Supp. at 5) without relating them to the GEIS or FPL's ER, and without showing there is any genuine dispute concerning a material issue. She states that NEPA requires consideration of cumulative impacts, but does not show that there is any cumulative impact that is not considered either in the GEIS (see, e.g., GEIS at 3-39, 4-94) or in FPL's ER. She states that she raised environmental justice during the NRC staff's recent scoping meeting, but she provides no specific information supporting any concern.[14] She states that a site-specific EIS must address groundwater/drinking water pathways, but her discussion of Contention 2 does not address the treatment of this issue in the GEIS (in sections 5.3.3.3 and 5.3.3.4, for example) or the fact that the normal direction of groundwater flow is into the Biscayne Bay, and not in the direction of populations using groundwater as a drinking source. See ER at 2.3-1, 3.1-7. Finally, she states that there must be a study of alternatives, but ignores the analysis of alternatives in section 7 of FPL's ER. None of these vague assertions provides a basis for the contention.

C. Lorion Contention 3

Lorion Contention 3 alleges that, under the Endangered Species Act, the NRC must consult with the Fish and Wildlife Service on how the proposed action could impact threatened and endangered species within fifty miles of the plant. To the extent that this contention focuses on the need for consultation, there is no genuine dispute over a material issue. As reflected in both the NRC's Standard Review Plan for Environmental Reviews of Nuclear Power Plants,

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[14] Environmental justice is not a topic that an applicant is required to address in its ER. See 10 C.F.R. § 51.53(c). See also 10 C.F.R. Part 51, App. B, Table B-1, n.6. The NRC Staff, however, addresses environmental justice in the supplement to the GEIS that it prepares for each plant seeking license renewal. Reg. Guide 4.2, Supp. 1, at § 4.22 ("The NRC staff will perform the environmental justice review to determine whether there will be any disproportionately high

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Supplement 1: Operating License Renewal, and in the NRC Regulatory Guide 4.2, Supp. 1, "Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses," the NRC staff is required to initiate consultation with the Fish and Wildlife Service if the NRC staff's review indicates there is a potential for adversely affecting listed or candidate species. NUREG-1555, Supp. 1 at § 4.61, Reg. Guide 4.2, Supp. 1, at § 4.10. FPL assumes that the NRC staff will consult with the Fish and Wildlife Service after the NRC staff completes its initial review of the information that FPL provided on threatened and endangered species in sections 2.5 and 4.2 of the ER. Ms. Lorion correctly points out that FPL's preliminary communications with the Fish and Wildlife Service are not a substitute for the NRC's interagency consultation. Lorion Supp. at 7. Rather, the correspondence submitted as part of the ER simply reflects FPL's efforts to keep the Fish and Wildlife Service informed and to solicit any information that might be helpful to include in the ER. This advance communication provides no basis to suggest that the NRC will not fulfill its responsibilities.

To the extent that Lorion Contention 3 is alleging that the NRC must ask the Fish and Wildlife Service to perform a study, or that such a study must assess the impact on all threatened and endangered species within fifty miles of the plant, the contention lacks any basis and specificity. As the Standard Review Plan and Regulatory Guide indicate, there are different levels of interagency consultation (informal or formal) and different levels of review (such as a biological assessment or a biological opinion) which are determined by the consulting agencies based on the type of impact perceived. Ms. Lorion provides no information indicating that the

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human health and environmental effects on minority and low-income populations and report the review in the SEIS."). See also NUREG-1555, Supp. 1, at 10.

renewal of the Turkey Point licenses will have a significant impact on any threatened or endangered species. Indeed, she does not even identify any particular species of concern. Nor does Ms. Lorion make any attempt to address the information provided in FPL's ER. Ms. Lorion provides no information to suggest that the discussion in the ER is incorrect, or that there is any need for a particular type of further study. Ms. Lorion provides no expert opinion supporting the need for a 50-mile study, or any other documents or references supporting the need for such a study. In sum, Lorion Contention 3 is inadmissible because it does not demonstrate any genuine dispute at issue.

D. Lorion Contention 4

Lorion Contention 4 is inadmissible because it challenges the NRC's regulations, is not supported by an adequate basis, and is in any event barred by collateral estoppel. While the contention and accompanying explanation ramble, the main assertion appears to be that FPL must perform an analysis of the fracture toughness of the reactor vessels for Turkey Point Units 3 and 4 using "plant-specific surveillance capsule test data," and in the accompanying explanation Ms. Lorion makes it clear that she means unit-specific surveillance capsule test data. Ms. Lorion refers to a 1985 letter from Dr. George Sih asserting that conclusions drawn from data from Unit 3 cannot be used to predict the safe operation of Unit 4 (Lorion Supp. at 8); and Ms. Lorion later asserts that the NRC should instruct FPL to test welds from both units. Lorion Supp. at 9.

The contention that FPL must use unit-specific test data is a challenge to 10 C.F.R. Part 50, Appendix H, which authorizes integrated surveillance (i.e., use of sample data from a set of reactors with similar design and operating features). Florida Power & Light Co. (Turkey Point

Nuclear Generating Plant, Units 3 and 4), LBP-89-15, 29 N.R.C. 493, 501-03 (1989).[15] Further, there is no information anywhere in Lorion Contention 4 to suggest that FPL is not complying with its integrated surveillance program or meeting the requirements of Appendix H. Rather, the statement that Ms. Lorion quotes from Dr. Sih's 1985 letter takes the unequivocal position that conclusions based on Unit 3 data cannot be considered valid for Unit 4. This position is simply contrary to the NRC's rule.

Even if this contention were somehow construed as alleging that FPL is not meeting the requirements of the integrated surveillance program, it would still be inadmissible, because there is absolutely no basis provided to support such a suggestion. Moreover, this very issue was litigated by Ms. Lorion in 1990 and resolved on the merits in favor of FPL. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-4, 31 N.R.C. 54 (1990), aff'd, ALAB-950, 33 N.R.C. 492 (1991). Dr. Sih's 1985 letter was submitted and addressed in that proceeding. LBP-90-4, 31 N.R.C. at 64-65; ALAB-950, 33 NRC at 497-99. In addition, the Southwest Research Institute report, to which Ms. Lorion refers at page 9 of her supplement, was also considered in that proceeding.[16] Ms. Lorion offers nothing that is new or changed. Therefore, Ms. Lorion is now collaterally estopped from raising this issue anew.[17]

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[15] In this case, the Licensing Board held that a contention proffered by Ms. Lorion simply attacking the integrated test program itself or as specifically approved for Turkey Point would have to be rejected pursuant to 10 C.F.R. § 2.758, but admitted a contention challenging whether FPL was meeting those requirements. 29 N.R.C. at 503. This contention was later resolved in FPL's favor by summary disposition. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-4, 31 N.R.C. 54 (1990), aff'd, ALAB-950, 33 N.R.C. 492 (1991).

[16] Ms. Lorion raised the Southwest Research Institute ("SRI") report as part of the basis for the contention that was admitted, litigated, and resolved in FPL's favor. See LBP-89-15, 29 N.R.C. at 501. As a practical matter, the SRI report is not material. The report was prepared in 1979, and FPL's integrated surveillance report was approved by the NRC for use at Turkey Point in

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Ms. Lorion asserts that the NRC should instruct FPL to rely on plant-specific surveillance data to calculate the delta RT_{NDT}, as defined in section 4.2 of the draft Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants (Aug. 2000);[18] and she suggests that this methodology requires testing weld samples from each reactor unit. Lorion Supp. at 9. The pertinent section of the draft Standard Review Plan (at section 4.2.3.1.2.1) merely summarizes the requirements of the Pressurized Thermal Shock ("PTS") rule at 10 C.F.R. § 50.61. 10 C.F.R. § 50.61(c)(2) requires the consideration of "plant specific information," but nowhere in this regulation is there any provision which prohibits consideration of data from similar units at the same plant. To the contrary, after requiring consideration of plant specific information, the PTS rule states that "[t]his information includes but is not limited to reactor vessel operating temperature and any related surveillance program results" and then explains in a footnote, "[s]urveillance program results means any data that demonstrates embrittlement trends

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1985. Id. Because the SRI Report was prepared long before the integrated surveillance program was developed, it assumed that the RT_{NDT} for Unit 4 would be calculated after 7 years of operation based on data from a Unit 4 specimen (see id.); however, after NRC approved FPL's integrated surveillance program, data from a Unit 3 specimen was used. The Licensing Board adjudicated this issue and found that the Integrated Surveillance Program specifically authorizes reliance on data from Unit 3, that intervenors' objections had been adequately answered, and "[i]ntervenors' objection to Licensee's reliance on Unit 3 surveillance capsule data from 1977 to date for predicting fracture toughness for both units is in the last analysis, a challenge to the ISP methodology Licensee is required to follow and must be dismissed as an attack on a regulation." LBP-90-4, 31 N.R.C. at 71.

[17] The doctrine of collateral estoppel applies when the individual against whom the estoppel is asserted was a party, or in privity with a party, to the earlier litigation. In addition, the issue to be precluded must be the same as that involved in the prior proceeding, and must have been actually raised, litigated and adjudged. Additionally, the issue must have been material and relevant to the disposition of the first action. Finally, the doctrine must be applied with sensitive regard to any assertion of changed circumstances or special public interest. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), ALAB-837, 23 N.R.C. 525, 536-37 (1986).

for the limiting beltline material, including but not limited to data from test reactors or from surveillance programs at other plants with or without surveillance programs integrated per 10 C.F.R. Part 50, appendix H." 10 C.F.R. § 50.61(c)(2) and n.5.[19] As a practical matter, it would be unreasonable to interpret the PTS rule as precluding use of data from an Integrated Surveillance Program specifically authorized in Appendix H to Part 50.

Ms. Lorion also notes, in her discussion of Contention 4, that the RT_{PTS} [defined in 10 C.F.R. § 50.61(a)(7)] predicted by FPL pursuant to the PTS rule[20] is 297.4F, which Ms. Lorion describes as "at the extreme high end of the 10 C.F.R. Part 50.61(b)(2) screening criterion of 300F." She then states that FPL has not provided information on the margin of error or confidence level associated with this figure. Lorion Supp. at 8. While Ms. Lorion does not explain the significance of these statements, the implication seems to be that FPL's calculation of the RT_{PTS} may be inaccurate, or that the screening criterion may be exceeded. If this is indeed what Ms. Lorion is intimating, her assertions amount to a challenge to the PTS rule.

The PTS rule prescribes the precise method of calculating RT_{PTS} and requires the application of a margin term, M, which is defined as " the margin to be added to account for

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[18] Ms. Lorion refers to a draft dated April 21, 2000, but the Draft for Public Comment is dated August, 2000.

[19] See also 60 Fed. Reg. 65,456, 65,459 (1995) ("The comments argued that the proposed rule is ambiguous with respect to the use of information from other sources that contain limiting material for a specific plant and that the NRC must have flexibility to approve use of such information on a case by case basis. . . .With respect to plant specific material surveillance data that is permitted to be used in a surveillance program, the rule was modified to make clear that such data includes results from other plant's surveillance programs and test reactors.").

[20] Pursuant to 10 C.F.R 54.21(c), an applicant may address a time-limited aging analysis (such as analysis required by the PTS rule) by demonstrating that the analysis has been extended through

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uncertainties in the values of [unirradiated reference temperature], copper and nickel contents, fluence, and the calculational procedures." 10 C.F.R. § 50.61(c)(1)(iii). The PTS rule (as well as Regulatory Guide 1.99) provides a formula for calculating this margin. Id. Thus, the calculated RT_{PTS} already includes the margin for uncertainties specified by the NRC's rule.[21] Any suggestions that additional margin is necessary or that a calculated RT_{PTS} near but below the screening criterion is inadequate simply fly in the face of the PTS rule.

E. Lorion Contention 5

Lorion Contention 5 is inadmissible because it is outside the scope of this proceeding. Contention 5 alleges that age-related degradation could increase the chance of multiple component failures occurring during a hurricane, increasing the probability of an age-related accident and resultant radiological emergency, and that the probability of such occurrence should be discussed both in FPL's application and in a site-specific EIS. Neither the NRC's regulations in 10 C.F.R. Part 54 nor the regulations in 10 C.F.R. Part 51 require such an analysis.

10 C.F.R. Part 54 does not require probabilistic studies of multiple failure. See 56 Fed. Reg. at 64,949, 64,957 (a plant specific probabilistic risk assessment (PRA) will not be a requirement for the renewal of plant operating licenses).[22] See also 60 Fed. Reg. at 22,468.

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the period of extended operations. FPL has provided this demonstration for PTS in section 4.2.1 of its application. Any suggestion that something more is required is a challenge to the rule.

[21] For Turkey Point, the margin term as required by 10 C.F.R. § 50.61(c)(1)(iii) is 56° F.

[22] The statement of considerations published with Part 54 further states:

> [T]hree comments on the proposed rule recommended the use of PRA for the selection of SSCs important to license renewal. A comment was made to emphasize the importance of common-cause failures as an important factor in assessing and managing aging. The Commission considers that at the present time appropriate aging data and models have not been developed for many SSCs

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Rather, Part 54 is deterministic and requires an applicant to demonstrate that effects of aging on long-lived, passive structures and components within the scope of the rule will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis during the period of extended operation. See 10 C.F.R. § 54.21(a)(3). This includes a demonstration that the structures and components will be able to perform their functions under all design basis loading conditions. Draft Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants (Aug. 2000), Appendix A (Branch Technical Position RLSB-1) at A.1.2.3.6. The NRC has determined that the demonstration required by 10 C.F.R. § 54.21 maintains an acceptable level of safety. 60 Fed. Reg. at 22,475 ("Reasonable assurance that the function of important systems, structures and components will be maintained throughout the renewal period, combined with the rule's stipulation that all aspects of a plant's CLB (e.g., technical specifications) and the NRC's regulatory process carry forward into the renewal period, are viewed as sufficient to conclude that the CLB (which represents an acceptable level of safety) will be maintained.") See also GEIS at 5-11 ("the combined impact of these actions [required by 10 C.F.R. Part 54] should be to provide high confidence that significant incremental increases in public risk will not result from aging effects related to the plant").

10 C.F.R. Part 51 requires that an applicant address only those issues specified in 10 C.F.R. § 51.53(c). The issues specified in section 51.53(c) do not include any requirement to

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> for inclusion in PRAs and uniform criteria do not exist for evaluating the PRA results.

56 Fed. Reg. at 64,957.

perform a probabilistic analysis of accident risk caused by hurricane-induced multiple failures. Instead, the NRC has determined generically that the risk of both design basis accidents and severe accidents is of small significance for all plants.[23] Moreover, the NRC's generic evaluation of accident risk specifically addressed the possibility that aging might increase the frequency or consequences of an accident and determined, based on the aging management required by Part 54, that significant incremental increases in risk will not occur.

Contention 5 is also inadmissible because it is not supported by any basis demonstrating a genuine dispute concerning a material issue. In her discussion of Contention 5, Ms. Lorion first quotes the GEIS at page 5-10 to suggest that aging could cause increased failures of structures and components, leading to higher frequency and severity of accidents. Lorion Supp. at 10-11. Ms. Lorion fails to include in her quotation, or disclose, the subsequent discussion in the same paragraph of the GEIS describing the aging management required by Part 54 and concluding that it provides high confidence that significant incremental increases in public risk will not result from aging effects. GEIS at 5-11. Thus, the GEIS provides no support for Ms. Lorion's contention.

Ms. Lorion next asserts that its does not appear that FPL and the NRC staff have analyzed whether the effects of aging will be adequately managed so that structures and components will be maintained in the event of an external event hurricane or beyond design

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[23] See 10 C.F.R. Part 51, App. B, Table B-1; GEIS, NUREG-1437, §§ 5.5.1, 5.5.2. As previously noted, while severe accident risk has been determined generically to be small, 10 C.F.R. § 51.53(c)(3)(L) does require consideration of severe accident mitigation alternatives (SAMAs) if they have not been previously considered in an environmental impact statement or environmental assessment. Ms. Lorion's contention, however, does not raise SAMAs as an issue and does not address or question FPL's discussion of SAMAs in section 4.20 of the Environmental Report.

basis hurricane. Lorion Supp. at 10. Ms. Lorion provides no support for this assertion. As stated earlier, the demonstration required by 10 C.F.R. § 54.21 encompasses all design basis loading conditions, and this includes the wind-induced loads that are part of the plant's design basis. It is true that the effects of beyond design basis hurricanes have not been analyzed specifically, but the NRC staff has analyzed the severe accident risk from external events generically. The NRC staff determined that "the risk from sabotage and beyond design basis earthquakes at existing nuclear power plants is small and additionally, that the risks from other external events, are adequately addressed by a generic consideration of internally initiated severe accidents." GEIS at 5-18. Consequently, there is no basis to assume that beyond design basis hurricanes pose significant risk, and no showing by Ms. Lorion that there is a genuine, material issue.

Next, Ms. Lorion asserts that the location of Turkey Point in a hurricane region presents special circumstances because of the "inability to evacuate," and she provides a quotation, purportedly from 10 C.F.R. § 50.4(a)(1), for the proposition that "no operating license" may be issued without a finding of adequate protective measures in the event of a radiological emergency. Lorion Supp. at 11. 10 C.F.R. § 50.4 establishes administrative requirements for filings and correspondence and has nothing to do with emergency preparedness. FPL assumes Ms. Lorion intends to refer to 10 C.F.R. § 50.47(a)(1), but her quotation from this section is very selective. 10 C.F.R. § 50.47(a) requires a finding of emergency preparedness in connection with an "initial" operating license. Ms. Lorion omits the word "initial" from her quotation. Moreover, Ms. Lorion does not mention the last sentence in section 50.47(a)(1), which states, ""[n]o finding under this section is necessary for issuance of a renewed nuclear power reactor operating license." Ms. Lorion refuses to recognize that emergency preparedness issues are not

within the scope of the matters delineated in 10 C.F.R. § 54.29. As stated by the Commission when it first promulgated the rules in 10 C.F.R. Part 54, "the Commission concludes that the adequacy of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license." 56 Fed. Reg. at 64,967.

In any event, Ms. Lorion provides no information showing that FPL's emergency plan or evacuation time estimates are inadequate.[24] She provides no expert opinion and identifies no references showing there is any genuine dispute over a material issue. In sum, she offers nothing other than her unsupported speculation.

Ms. Lorion's discussion of Contention 6 concludes with some disparaging remarks concerning the monetary quantification of severe accident risk. Ms. Lorion describes this

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[24] Ms. Lorion states without any support that Hurricane Andrew caused extensive damage to the plant and the surrounding area was unable to evacuate if it had become necessary. This type of unsupported statement underscores the importance of the requirements in 10 C.F.R. § 2.714(b) to provide a basis including sufficient supporting information to demonstrate a genuine material dispute. The adequacy of the plant design and emergency preparedness were addressed in a Director's Decision, which concluded:

> [t]he Turkey Point nuclear units functioned well and withstood the hurricane wind forces. Although the storm caused significant onsite and offsite damage, it did not damage the nuclear safety-related portions of Units 3 and 4, which could pose a radiological hazard to the public if they failed. These safety-related systems were designed to withstand hurricane-force winds. All emergency systems functioned as designed and the EDGs operated in a reliable manner and supplied adequate power to critical cooling functions throughout the period when the offsite power was not available. Before the storm arrived, the Licensee, in accordance with its emergency planning procedures, brought the units to the hot shutdown mode, and the units remained in a stable condition throughout.

Turkey Point, DD-93-13, 37 N.R.C. at 512. The adequacy of emergency preparedness was also addressed in another Director's Decision, which concluded that "the emergency response plan continues to be adequate and there is reasonable assurance that protective measures can and will be taken in the event of a radiological emergency at Turkey Point." Turkey Point, DD-93-4, 37 N.R.C. at 236. Therefore, the experience from Hurricane Andrew in fact shows that FPL and the NRC are very capable of dealing with a major hurricane – even one that passes directly over the station.

quantification as "tasteless" and "ridiculously low" (Lorion Supp. at 11), but she provides no support for her criticism. As FPL's ER indicates, the analysis uses the NRC's Regulatory Analysis Technical Handbook, NUREG/BR-0184, which implements the Commission's Regulatory Analysis Guidelines. NUREG/BR-0058, Rev. 2, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission" (Nov. 1995). The $2000-per-person-rem conversion factor is specifically approved in the Commission's guidelines. Id. at 22. See also 60 Fed. Reg. 65,694 (1995). Without this monetary conversion, there would be no basis to quantitatively compare the costs and benefit of SAMAs.

F. Lorion Contention 6

Lorion Contention 6 is inadmissible because it is outside the scope of this proceeding and challenges the NRC's rules. The first sentence of contention 6 alleges that a growing South Florida population increases risk and requires a probabilistic risk assessment to determine whether emergency preparedness requirements and dose limits can be met to protect the public safety. As discussed previously, emergency preparedness issues are not within the scope of the matters delineated in 10 C.F.R. § 54.29 and there is no requirement in 10 C.F.R. Part 54 to make safety findings based on a PRA. Therefore, this portion of the contention is an impermissible challenge to the NRC's rules in 10 C.F.R. Part 54. See 56 Fed. Reg. at 64,967.

The second sentence of Lorion Contention 6 contends that the environmental impacts from a severe accident must be analyzed in a site-specific EIS pursuant to NEPA. This portion of the contention is a challenge to 10 C.F.R. § 51.53(c), which does not require such an evaluation.

Lorion Contention 6 is also vague and unsupported by an adequate basis. Ms. Lorion provides no expert opinion, references, or other supporting information showing that evacuation

plans or estimates are inadequate, or that the generic evaluation of severe accident risk in the GEIS is incorrect. She does not show that there is any genuine dispute concerning material issues.

For example, Ms. Lorion states that according to some chart (the source of which she does not identify), there will be 3.9 million people living within 50 miles of Turkey Point in 2025. Lorion Supp. at 12. This figure appears consistent with the GEIS, which estimated the 50-mile population for Turkey Point at 4.1 million in assessing accident risk. GEIS at Table 5.3. It also appears generally consistent with the projections in FPL's ER of the county population growth through 2020. Therefore, these numbers do not reflect any material dispute. Ms. Lorion adds that her figure appears to be much lower than other figures that have been cited for the estimated population growth in South Florida (Lorion Supp. at 12), but she does not identify these other figures or their sources.

Ms. Lorion also claims that the proposal to build a commercial airport at the Homestead Air Base "would greatly increase the population in the vicinity of the plant and could stress the evacuation capability of the surrounding community" (Lorion Supp. at 12), but she provides no support for this claim. She identifies no references that quantify the population growth that might occur if this proposal moves forward. Nor does she provide any discussion of the timing of the project or its impact on emergency planning or severe accident analysis. Finally, she provides no explanation why the NRC and FPL should attempt to address impacts related to the development of a commercial airport when there has not yet been any final decision to proceed with or approve the project.

Ms. Lorion next quotes page 5-11 of the GEIS to suggest that the increase in accident risk from population increases must be examined. Lorion Supp. at 12. She conveniently fails to

mention that the GEIS then states, "[s]uch an examination is presented in the following sections, which will discuss and assess the potential adverse impacts to the environment from postulated accidents during the license renewal period." GEIS at 5-11. Thus, rather than indicating a need to assess the risk from population increases, the GEIS indicates that such risk has already been evaluated generically. Accordingly, Ms. Lorion's reference to the GEIS provides no basis for her contention.

Lorion argues that the NRC must prepare a site-specific EIS to determine whether accident dose at Turkey Point could exceed the accident dose consequences described in the GEIS, because the GEIS indicates that Turkey Point, like some other early sites, does not have a liquid pathway analysis. Lorion Supp. at 13. However, the GEIS compares key features of Turkey Point with the Seabrook plant (GEIS at 5-85), which does have a liquid pathway analysis, and concludes:

> [F]rom the data in Table 5.25, assuming all the radionuclides from the reactor reach the groundwater, the population dose from Turkey Point at [middle year of relicense] would not be expected to exceed Seabrook (considering the differences in reactor size and surrounding population). Therefore it can be concluded that the risk from groundwater releases at an ocean site would be a small fraction of that from atmospheric releases.

GEIS at 5-95. Thus, in reaching its generic conclusions, the GEIS specifically considered Turkey Point, including the nonexistence of a liquid pathway analysis for Turkey Point. Ms. Lorion may disagree with the discussion in the GEIS, but she identifies no new and significant information that might alter the NRC's conclusions. She provides no information indicating that the NRC's discussion is incorrect, that dose from liquid pathways at Turkey Point would exceed those calculated for Seabrook, or that the risk from groundwater releases at Turkey Point would be significant compared to atmospheric releases. Ms. Lorion identifies no expert testimony

supporting her assertions, and no documents other than the GEIS itself. Moreover, while her main contention is that the NRC must prepare a site-specific EIS, rather than the supplement to the GEIS specified in 10 C.F.R. § 51.95(c), she provides no affidavits required by 10 C.F.R. § 2.758 to support any waiver of the NRC's rules.

G. Lorion Contention 7

Lorion Contention 7 is inadmissible because it is outside the scope of this proceeding and represents a challenge to the NRC's rules. Contention 7 appears to consists of two assertions: (1) that FPL must demonstrate that it can permanently and safely store waste offsite, and (2) that FPL must also analyze the potential environmental impacts of a spent fuel pool accident in a site-specific EIS. These assertions are beyond the scope of the issues that must be addressed under the regulations in 10 C.F.R. Parts 51 and 54, and are barred by the NRC's Waste Confidence Rule.

To the extent that this contention seeks to raise a health and safety concern, it is beyond the scope of the issues that must be addressed pursuant to 10 C.F.R. Part 54. Part 54 does not require any showing that an applicant will be able to dispose of nuclear waste offsite. Lorion Contention 7 does not relate to the management of the aging of systems, structures and components within the scope of 10 C.F.R. Part 54, to time-limited aging analyses, or any other matter that must be examined pursuant to Part 54. Therefore, it exceeds the matters that are subject to review under 10 C.F.R. Part 54 and represents an impermissible challenge to that rule.

This contention is also barred by the NRC's recently reaffirmed Waste Confidence Rule at 10 C.F.R. § 51.23. That rule states that:

> The Commission has made a generic determination that, if necessary, spent fuel generated at any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation

> (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite of offsite independent spent fuel storage installations.

10 C.F.R. § 51.23(a) (emphasis added). Further, to the extent Contention 2 seeks to raise a NEPA issue, it is a challenge to the generic findings in the GEIS and Appendix B to Part 51. As the Commission ruled in dismissing a similar contention in the Oconee license renewal proceeding:

> Category 1 issues include the radiological impacts of spent fuel and high-level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and on-site spent fuel. See Table B-1, Part 51, Subpart A, Appendix B. The Commission's generic determinations governing onsite waste storage preclude the Petitioners from attempting to introduce such waste issues into this adjudication.

Oconee, supra, CLI-99-11, 49 NRC at 343. The NRC has also determined generically that severe accident risk is of small significance for all plants. Neither the adequacy of offsite disposal capacity or the risk from onsite storage activities are issues that may be considered under the Part 51 regulations, absent a waiver of those rules.

Lorion Contention 7 also lacks any basis showing there is a genuine issue in dispute. Ms. Lorion provides no information showing that nuclear waste storage activities at Turkey Point are unsafe or pose an unacceptable accident risk. She mentions the risk from hurricanes (Lorion Supp. at 15), but provides no information showing that the waste storage facilities are incapable of withstanding a hurricane. She provides no meaningful discussion of the design of those facilities or of the aging management activities described in FPL's application to demonstrate that structures and components will continue to perform their design functions. She also refers to an NRC study of severe accidents in spent fuel pools (id.), but provides no information how this

study applies to Turkey Point or why the generic evaluation of severe accident risk in the GEIS is inadequate.[25] In sum, Lorion Contention 7 provides no basis for any concern.

H. Lorion Contention 8

Lorion Contention 8 is inadmissible because it is outside the scope of this proceeding and challenges the NRC's rules. Contention 8 alleges that under NEPA, FPL must assess any current impact that radiation may be having on the environment surrounding the plant in order to assess the cumulative impact that may result from extending the operating license. This contention represents a challenge to the scope of the environmental review specified in 10 C.F.R. § 51.53(c), and to the NRC's generic environmental findings in the GEIS and Appendix B to 10 C.F.R. Part 51. Offsite radiological impacts (i.e., individual effects from other than disposal of spent fuel and high-level waste) are category 1 issues determined to have small effects, based on a generic finding in the GEIS. 10 C.F.R. Part 51, App. B, Table B-1. Therefore, Lorion Contention 8 is excluded from consideration in this proceeding.

Lorion Contention 8 is also inadmissible because it is not specific or supported by an adequate basis. Ms. Lorion provides no expert opinion, references, or other supporting information showing how extended operation of the Turkey Point units will increase the radiation in the environment around the facility. She refers vaguely to cumulative impacts (Lorion Supp. at 16), but she provides no information showing that the impact of continued operations has been underestimated in the GEIS, which specifically considered cumulative

[25] NUREG/CR-4982 was a report prepared to address Generic Issue 82 concerning the risk of beyond design basis accidents in spent fuel pools. This Generic Issue was resolved without imposing any new requirements because of the large inherent safety margins in the design and construction of spent fuel pools. See NUREG-0933, A Prioritization of Generic Safety Issues, at Section 3, Generic Issue 82.

impacts. See GEIS at §§ 3.8.1.7, 4.6.2.3. She refers vaguely to bioaccumulation and buildup of radioactivity, but she provides no information relating these topics to Turkey Point. Lorion Supp. at 16. She provides no discussion of the annually reported results of FPL's radiation monitoring programs or any other data to suggest that levels of radioactivity might increase. She also fails to support her implied allegations that plant operation is having an adverse impact on the aquatic and human quality of life near the facility. In sum, this contention is nothing more than conclusory speculation.

Ms. Lorion refers to a statement in the GEIS indicating that the BEIR V report concludes that the risk of radiation exposure was greater than previously estimated. Lorion Supp. at 17. Ms. Lorin therefore argues that the NRC should study the impacts of license renewal and take advantage of what has been learned about radiation exposure. Id. The same section of the GEIS cited by Ms. Lorion, however, indicates that the NRC adopted the higher BEIR V risk coefficients. GEIS at E-31. Therefore, Ms. Lorion fails to show there is any material issue in dispute.

I. Lorion Contention 9

Lorion Contention 9 is inadmissible because it is outside the scope of this proceeding. Contention 9 alleges that under NEPA, NRC must assess whether the proposed action conflicts with the federal investment in the Everglades Restoration Plan. This contention does not address any of the Category 2 issues that establish the scope of environmental review in this proceeding.

In the same vein, Ms. Lorion's discussion of Contention 9 makes it clear that her concern is that a severe accident at Turkey Point could negate the Everglades restoration effort. The NRC has assessed severe accident risk generically in the GEIS (see 10 C.F.R. Part 51, App. B,

Table B-1; GEIS, NUREG-1437, § 5.5.2.),[26] and Ms. Lorion provides no information necessary to waive the Part 51 rules to litigate any issues beyond those specified in 10 C.F.R. § 51.53(c).

This contention, as many others, is not adequately specific or supported by an adequate basis. Ms. Lorion provides no expert opinion, references, or other supporting information showing that Turkey Point license renewal is in any way incompatible with restoring the Everglades or any other environmental restoration project.[27] She provides no meaningful discussion of the Everglades Restoration Plan. She utterly fails to identify any factual dispute that could be resolved in this proceeding. Simply asserting that some matter ought to be considered is not a sufficient basis for an admissible contention. Rancho Seco, LBP-93-23, 38 N.R.C. at 246. In sum, this contention is nothing more than sheer speculation, without any factual basis.

V. CONCLUSION

For the reasons stated above, none of the contentions proffered by Mr. Oncavage or Ms. Lorion is admissible in this proceeding. Since Mr. Oncavage has failed to advance any admissible contention, and because his contentions were not timely filed, the Request for Hearing / Petition for Leave to Intervene of Mark P. Oncavage should be denied. Since Ms. Lorion has likewise failed to advance any admissible contention, the Request for Hearing and

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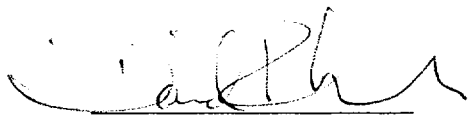
[26] While the NRC has left consideration of SAMAs as a Category 2 issue, Lorion Contention 9 does not seek to raise any SAMA issue. It does not identify any mitigation alternative that should be considered and does not address the evaluation of SAMAs in section 4.20 of the FPL's ER. Instead, Lorion is simply contending that severe accident risk must be assessed.

[27] Ms. Lorion refers to a 1988 article quoting former Commissioner Rogers as likening nuclear plant aging to a loaded gun. These reported statements by Commissioner Rogers predate the license renewal rules and say nothing about aging that is managed in accordance with the requirements of 10 C.F.R. Part 54, as demonstrated by FPL in its application for Turkey Point. The 1988 article raises no genuine material issue concerning Turkey Point.

Petition for Leave to Intervene of Joette Lorion should also be denied. 10 C.F.R. § 2.714(b)(1)-(2); Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 248-49 (1996); Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 N.R.C. 111, 117-18 (1995).

Respectfully Submitted,



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Dated: January 8, 2001

January 8, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-250-LR
Florida Power & Light Company	)	50-251-LR
	)	ASLBP No. 01-786-03-LR
(Turkey Point Units 3 and 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "FPL's Response to the Contentions of Mark P. Oncavage," dated January 8, 2001, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by e-mail, this 8th day of January, 2001.

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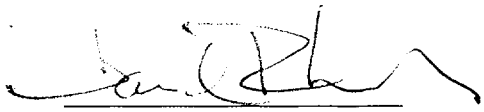

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