LBP-01-06

RAS 2784

DOCKETED 02/26/01
SERVED 02/26/01

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

In the Matter of Florida Power and Light Company (Turkey Point, Units 3 and 4)	Docket No. 50-250/251-LR ASLBP No. 01-786-03-LR February 26, 2001

MEMORANDUM AND ORDER
(Ruling on Petitioners' Standing and Contentions)

On September 11, 2000, the Applicant, Florida Power and Light Company, filed an application pursuant to 10 C.F.R. Part 54 for a 20-year extension of the operating licenses for its Turkey Point Units 3 and 4 located in Miami-Dade County, Florida. After accepting the application for docketing, the NRC Staff issued a notice of opportunity for hearing on October 12, 2000. See 65 Fed. Reg. 60,693 (Oct. 12, 2000). In response to the agency's hearing notice, Mark P. Oncavage filed a timely pro se petition to intervene and request for hearing on October 24, 2000.[1] Subsequently, on November 22, 2000, he filed a letter, in effect,

[1] See Request for Hearing/Petition for Leave to Intervene of Mark P. Oncavage (Oct. 24, 2000) [hereinafter Oncavage Petition].

amending his petition[2] after the Applicant and the NRC Staff filed answers opposing his petition on the grounds that he lacked standing to intervene.[3] Also, on November 22, 2000, a second pro se Petitioner, Joette Lorion, filed an intervention petition and hearing request after obtaining an extension of time for filing her petition from the Commission.[4] Thereafter, in a November 27, 2000, order containing guidance on the conduct of any proceeding, the Commission referred the intervention petitions to the Atomic Safety and Licensing Board Panel for appropriate action. See Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327 (2000). On November 29, 2000, this Licensing Board was established to rule on the intervention petitions and conduct any necessary proceeding. See 65 Fed. Reg. 75,976 (Dec. 5, 2000).

In their answers to Ms. Lorion's petition, neither the Applicant nor the Staff contest her standing to intervene.[5] Pursuant to the schedule established by the Licensing Board, the Petitioners then supplemented their petitions with their final contentions[6] and the Applicant and the Staff filed responses in which they each objected to all the Petitioners' proffered

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[2] See Letter from Mark P. Oncavage, Miami, Florida, to Atomic Safety and Licensing Board (Nov. 22, 2000) [hereinafter Oncavage Amended Petition].

[3] See FPL's Opposition to Request for Hearing and Petition for Leave to Intervene of Mark P. Oncavage (Nov. 9, 2000) [hereinafter FPL's Opposition]; NRC Staff's Response to Request for Hearing and Petition for Leave to Intervene Filed by Mark P. Oncavage (Nov. 13, 2000) [hereinafter Staff's Response].

[4] See Request for Hearing and Petition for Leave to Intervene of Joette Lorion (Nov. 22, 2000) [hereinafter Lorion Petition].

[5] See FPL's Response to Request for Hearing and Petition for Leave to Intervene of Joette Lorion (Dec. 8, 2000) [hereinafter FPL's Response]; NRC Staff's Response to Request for Hearing and Petition for Leave to Intervene Filed by Joette Lorion (Dec. 8, 2000) [hereinafter Staff's Lorion Response].

[6] See Amended Contentions of Mark P. Oncavage (Dec. 22, 2000) [hereinafter Oncavage Contentions]; Petitioner Lorion's Supplemental Filing of Contentions to Her Request for Hearing and Petition for Leave to Intervene (Dec. 21, 2000) [hereinafter Lorion Contentions].

contentions.[7] On January 18, 2001, the Licensing Board held a prehearing conference in Homestead, Florida, to hear arguments on the Petitioners' standing and the admissibility of their proffered contentions.

For the reasons set forth below, the Board finds that, although both parties have standing to intervene, neither Petitioner proffered admissible contentions. Their intervention petitions, therefore, must be denied.

I. Standing

A. Mr. Oncavage's Standing

In his initial intervention petition, Mr. Oncavage asserts that he is a resident of Miami-Dade County and that his home is about 15 miles from the Applicant's Turkey Point facility. He further states that he seeks "[t]he convening of an Atomic Safety and Licensing Board . . . to decide whether the Applicant and the NRC are proposing operations detrimental to the health and safety of the public by considering, for approval, license renewal." Oncavage Petition at 1. After the Applicant and the Staff filed answers opposing his intervention petition on the grounds that he had failed to demonstrate his standing to intervene by showing an injury in fact fairly traceable to the Applicant's renewal request, Mr. Oncavage filed, in effect, an amended petition asserting that his home lies to the southwest of Turkey Point and is often downwind of the facility. Oncavage Amended Petition at 1. In his amended petition, he cites a table from an agency study showing the generic results of a pressurized water reactor core melt accident indicating that there would be tens of thousands of latent fatalities and thousands of square miles of contaminated land from such an event. Mr. Oncavage then asserts that in the event of

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[7] See FPL's Response to Contentions of Mark P. Oncavage and Joette Lorion (Jan. 8, 2001) [hereinafter FPL's Contention Response]; NRC Staff's Answer to Contentions Filed by Ms. Joette Lorion and Mr. Mark Oncavage (Jan. 9, 2001) [hereinafter Staff's Contention Answer].

a core melt accident at Turkey Point, he and his wife likely would be casualties and his property would be contaminated. Id. at 1-2. He also references a 1982 Sandia Laboratories report that he characterizes as showing a worst case accident at Turkey Point causing similar fatalities and land contamination. Id. at 3. Finally, Mr. Oncavage claims that "[a] plant operating well beyond its license period of forty years deserves thorough examination by the public, state and local governments, the Atomic Safety and Licensing Board, and all aspects of the NRC. I believe the NRC carries the heaviest burden in proving the safety of the plant . . . ." Id. at 2.

A petitioner's right to participate in a Commission licensing proceeding stems from section 189a of the Atomic Energy Act which provides in pertinent part that "in any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding." 42 U.S.C. § 2239(a)(1)(A). Paralleling that statutory language, the Commission's regulations provide that "any person whose interest may be affected by a proceeding" may seek to intervene. 10 C.F.R. § 2.714(a)(1). The regulations further specify that "the petition shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioners should be permitted to intervene." 10 C.F.R. § 2.714(a)(2). In ascertaining whether a petitioner has set forth a sufficient "interest" to intervene in this proceeding within the meaning of the Atomic Energy Act and the Commission's regulations, the Commission long ago held that contemporaneous judicial concepts of standing are to be applied. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614 (1976).

As the Commission has frequently recited, those judicial concepts of standing require a petitioner to assert a concrete and particularized injury that is fairly traceable to the challenged

action and likely to be redressed by a favorable decision. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999); Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999); Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). The injury also must be to an interest arguably within the zone of interests protected by the statutes governing NRC proceedings such as the Atomic Energy Act and the National Environmental Policy Act of 1969 (NEPA). Yankee, CLI-98-21, 48 NRC at 195-96; Quivira Mining Company (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998).

As the Applicant and the Staff correctly assert, Mr. Oncavage has failed to demonstrate that he has suffered any concrete and particularized injury that is caused by the license renewal proceeding he seeks to challenge. Rather, he has merely asserted that he owns a home 15 miles downwind from Turkey Point and that agency studies show a hypothetical worst case core melt accident at Turkey Point would likely be fatal to him and contaminate his property. But his petition fails to articulate how license renewal will cause him harm. Although he alleges dire consequences from a core melt accident, he fails to set out any chain of causation linking those consequences with license renewal as he must to establish his standing. His failure to show the requisite causation link generally would be fatal to his standing claim under judicial standing precepts.

Mr. Oncavage's failure to plead the traditional elements for standing, however, does not end our inquiry. In certain types of proceedings, the agency has recognized a proximity or geographical presumption that presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or

other source of radioactivity. Because the Commission has not previously addressed the proximity presumption in the context of a license renewal proceeding,[8] it is appropriate to consider whether the presumption applies to establish Mr. Oncavage's standing -- a Petitioner who lives 15 miles downwind of Turkey Point.

The proximity presumption first appears to have been applied in Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973), where, in a reactor operating license proceeding, the Appeal Board found that the proximity of petitioners living 30 to 40 miles from the reactor established their standing to intervene. Thereafter, in Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974), the proximity presumption was found applicable in a reactor construction permit proceeding to establish the standing of petitioners whose everyday activities took place within 25 miles of the proposed facility. Then, in Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 55-56 (1979) the presumption was found applicable in an operating license amendment proceeding for the expansion of spent fuel pools to establish the standing of a petitioner whose members lived in close proximity to the nuclear plants. Finally, the Appeal Board found that the presumption applied in a Part 30 byproduct materials license renewal proceeding for an

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[8] In the agency's first licensee renewal proceeding involving the Oconee reactors, the petitioners' standing was uncontested and the Licensing Board found that the petitioners met the traditional standing criteria. See Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 384-85 (1998). In a brief footnote, however, the Licensing Board opined that, although unnecessary to its standing determination, the 50-mile proximity presumption for reactor construction permit and operating license proceedings should also apply to license renewal proceedings because, in effect, there was no difference between what could happen to the reactor during the extended license renewal period and the original operating term. Id. at 385 n. 1. Upon review, the Commission stated that "because the Petitioners' standing is not an issue on this appeal, the Commission finds it unnecessary to consider the validity of the Board's view on the 50-mile presumption question." Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 n.2 (1999).

irradiation facility where some of the petitioners' members lived as close as 3 to 5 miles to the facility. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 154 (1982).

After over a decade and a half of applying the proximity presumption in various proceedings, the Commission characterized the type of proceedings subject to it in a reactor exemption case, stating that

> in the past, we have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool. However, those cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations of the facility with a clear potential for offsite consequences.

Florida Power and Light Company (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (citations omitted). The Commission then articulated the rule for determining the applicability of the proximity presumption: "Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific 'injury in fact . . . .' " Id. at 329-30.

Subsequent to its St. Lucie decision, the Commission has applied the test for determining the applicability of the proximity presumption, or otherwise indicated its applicability, in a variety of contexts, including not only other reactor operating license amendment proceedings, see, e.g., Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999), but also reactor decommissioning proceedings, see, e.g., Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 247-48 (1996), nonpower research reactor license proceedings, see, e.g.,

Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995), and materials license enforcement proceedings, see, e.g., Sequoyah Fuels Corporation (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994).

These latter decisions are significant because they clearly indicate that, "outside the nuclear power reactor construction permit or operating license context," Yankee, CLI-96-7, 43 NRC at 247, the rule laid down in St. Lucie is intended to be applied across the board to all proceedings regardless of type because the rationale underlying the proximity presumption is not based on the type of proceeding per se but on whether "the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences." Georgia Tech, CLI-95-12, 42 NRC at 116. As the Commission explained earlier in Sequoyah Fuels,

> [t]he determination of how proximate a petitioner must live or have frequent contacts to a source of radioactivity depends on the danger posed by the source at issue. The rule of thumb generally applied in reactor licensing proceedings (a presumption of standing for persons who reside or frequent the area within a 50-mile radius of the facility) is not applied in material cases. However, a presumption based on geographical proximity (albeit at distances much closer than 50 miles) may be applied where there is a determination that the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences.

CLI-94-12, 40 NRC at 75 n.22 (citations omitted).

Applying the rationale underlying the proximity presumption to the circumstances of the instant reactor license renewal proceeding where Mr. Oncavage lives 15 miles downwind of the Turkey Point reactors necessarily leads to the conclusion that the presumption applies. Here, the primary source of radioactivity is the reactor core and spent fuel in the fuel pools of the Turkey Point reactors and that source is without question "significant" because it is at least as large as the source leading to the creation of the presumption in the first place in construction

permit and initial operating license proceedings. And, because it is the source of radioactivity that produces the obvious potential for offsite consequences, not the type of proceeding involved, it is equally apparent that the same "obvious potential for offsite consequences" that initially led to the creation of the presumption in construction permit and operating license proceedings is also present here. Finally, in the instant case, the distance from the significant source of radioactivity that is presumed to affect the Petitioners logically must be the same 50-mile distance that forms the current basis for the proximity presumption for reactor construction permit and initial operating license proceedings. Because Mr. Oncavage lives considerably less than 50 miles from the Turkey Point facility, however, we need not conjure abstruse reasons why the 50-mile rule of thumb for the presumption is inapplicable but only need to determine if the presumption is applicable to this Petitioner living 15 miles downwind from the reactors. We find that it neither strains credulity nor rationality to conclude that the Petitioner may fairly be presumed to have an interest that may be affected over the course of the extended operating license terms of the Turkey Point reactors located 15 miles upwind of him.

The NRC Staff argues, in effect, that a license renewal action is not the functional equivalent of initial reactor licensing and that the proximity presumption, therefore, should not apply at all. This is so, according to the Staff, because in a renewal action "operating parameters and associated safety findings are unaffected and unchanged, and, by virtue of the rulemaking action associated with the promulgation of 10 C.F.R. Part 54, are beyond the scope of the proceeding except to the very limited extent that they may be affected by aging-management considerations." Staff Response at 6. The Staff's argument however, overlooks the rationale for the presumption as articulated by the Commission in a myriad of instances other than initial reactor licensing actions. The applicability of the presumption is not dependent upon the type of proceeding per se as the Staff would have it but on whether "the proposed

action involves a significant source of radioactivity producing an obvious potential for offsite consequences." Sequoyah Fuels, CLI-94-12, 40 NRC at 75 n.22.

Contrary to the Staff, the Applicant asserts that the appropriate test for determining the applicability of the presumption is whether there is an obvious potential for offsite consequences. It then argues "that in a license renewal proceeding where the NRC has generically determined that severe accident risk is small, and where issues such as the adequacy of plant design, conduct of operations, and emergency planning are beyond the scope of the technical review defined by 10 C.F.R. Part 54, there is not any obvious potential for offsite consequences." FPL's Opposition at 3-4 (citation omitted). Although the Applicant is correct that in license renewal actions the matters subject to challenge are severely circumscribed, its argument again overlooks the fact that the rationale for the presumption does not focus on whether or not the type of proceeding involved is highly circumscribed but whether the licensing action involves a significant source of radioactivity producing an obvious potential for offsite consequences. Sequoyah Fuels, CLI-94-12, 40 NRC at 75 n.22. Clearly, the significant sources of radioactivity at Turkey Point hold the potential for offsite consequences that are obvious. One of the clearest examples involves the offsite consequences that could result from reactor vessel embrittlement during the extended operating term.

Indeed, in analogous circumstances, the Commission in Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87 (1993), determined, in effect, that the proximity presumption was appropriate to establish the standing of petitioners living 13 and 15 miles from the reactor so it cannot be gainsaid that the presumption is inapplicable to Mr. Oncavage here. Specifically, in clarifying its Perry decision in Sequoyah Fuels, CLI-94-12, 40 NRC at 75, the Commission indicated that in Perry it had merely applied the proximity presumption finding an obvious potential for offsite consequences. Perry, of

course, involved petitioners living within 15 miles of the reactor who challenged an operating license amendment to remove from the plant's technical specifications the specimen withdrawal schedule used in determining whether a reactor vessel has become embrittled. See Perry, CLI-93-21, 38 NRC at 90, 95. It would appear axiomatic that the same result must obtain here because reactor vessel embrittlement is one of the primary and most obvious concerns in extending the operating term of a reactor. And, precisely because the presumption establishes Mr. Oncavage's standing to intervene without the need to establish the standing elements of injury, causation, or redressability, the Petitioner need not raise reactor embrittlement to establish his standing. Accordingly, Mr. Oncavage has standing to intervene.

B. Ms. Lorion's Standing

In light of the rationale for the proximity presumption, there appears to be no reasoned basis to conclude that it does not also apply to establish the standing of Ms. Lorion who lives 20 miles from the Turkey Point reactors. Nevertheless, Ms. Lorion has also established her standing to intervene under the traditional criteria for determining standing of injury, causation, and redressability.

In her petition, Ms. Lorion states that she lives within 20 miles of the Turkey Point nuclear power plant and that, as an environmentalist, she has dedicated many years of her life to protecting and preserving the Florida Everglades and South Florida ecosystem. Lorion Petition at 1. Ms. Lorion asserts that she, her family, and friends all use the South Florida ecosystem for hiking, boating, bird watching, fishing, contemplation, and observation of the diverse plant and animal species that frequent the ecosystem. Id. Finally, she claims that extending the licenses of the old and embrittled Turkey Point nuclear units beyond their original license terms could increase the probability and consequences of a nuclear accident at the facility, thereby increasing the threat of injury to her, her family, and property. Id. Thus, in her

intervention petition, Ms. Lorion has adequately alleged an injury in fact to her health, safety, and property interests fairly traceable to, and remediable by, the license renewal action for Turkey Point that is within the zone of interests protected by the Atomic Energy Act. Accordingly, we find Ms. Lorion has standing to intervene in this proceeding.

II. Contentions

Under the Commission's Rules of Practice, each of the Petitioners must proffer at least one admissible contention to become a party to the license renewal proceeding. 10 C.F.R. § 2.714(b)(1). The Commission's regulations also set forth specific requirements for contention admissibility. Each contention must specify the issue of law or fact being raised. 10 C.F.R. § 2.714(b)(2). In addition, each contention must contain a brief explanation of the bases for the contention. 10 C.F.R. § 2.714(b)(2)(i). Further, the contention must contain a concise statement of the alleged facts or expert opinion that supports the contention and upon which the Petitioner intends to rely in proving the contention, together with references to specific documents or other sources establishing those facts or expert opinion. 10 C.F.R. § 2.714(b)(2)(ii). Finally, the contention must provide sufficient information to show that a genuine dispute exists on a material issue of law or fact, and this showing must include references to the specific portions of the license application that the petitioner disputes, along with the reasons for each objection. 10 C.F.R. § 2.714(b)(2)(iii).

Not only must a contention meet the pleading requirements of section 2.714(b)(2), but the subject matter of all contentions is limited to the scope of the proceeding delineated by the Commission in its hearing notice and referral order delegating to the Licensing Board the authority to conduct the proceeding. See CLI-00-23, 52 NRC at 329; Duke Power Company (Catawba Nuclear Power Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985). A corollary of this fundamental principle of NRC adjudication, of course, is that any contention

challenging a Commission regulation, whether directly or indirectly, is always outside the scope of the proceeding and therefore impermissible. See 10 C.F.R. § 2.758; Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-8, 29 NRC 399, 416-17 (1989); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987).

In this license renewal proceeding, the Commission's referral order to the Licensing Board is detailed and direct in setting forth the only subjects open to challenge in the proceeding. Specifically, the Commission stated that

> [t]he 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 Nuclear Power Plants"; 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).

CLI-00-23, 52 NRC at 329.

In brief, the regulations and lengthy statements of consideration explaining the regulatory provisions referenced in the Commission's referral order are the product of extensive rulemaking proceedings on license renewal. On the basis of those rulemaking activities, the Commission promulgated license renewal regulations that specifically limit the technical and environmental showings that an Applicant need make in its renewal application. Similarly,

those regulations limit the safety and environmental review the agency undertakes in determining whether to extend the operating license term.

With respect to technical issues, the renewal regulations, 10 C.F.R. Part 54, are footed on the principle that, with the exception of the detrimental effects of aging and a few other issues related to safety only during the period of extended operations, the agency's existing regulatory processes are sufficient to ensure that the licensing bases of operating plants provide an acceptable level of safety to protect the public health and safety. 60 Fed. Reg. at 22,464. Thus, 10 C.F.R. Part 54 is confined to the small number of issues uniquely determined by the Commission to be relevant for protecting the public health and safety during the renewal term, leaving all other issues to be addressed by the agency's existing regulatory processes. Id. at 22,463-64. Accordingly, in 10 C.F.R. § 54.21, the Commission identified the limited matters the Applicant need include in its renewal application. Similarly, in 10 C.F.R. § 54.29, the Commission limited the scope of its safety review for license renewal to (1) managing the effects of aging of certain systems, structures, and components; (2) review of time-limited aging evaluations; and (3) any matters for which the Commission itself has waived the application of these rules. Thus, as the Commission stated, "[t]he scope of Commission review determines the scope of admissible contentions in a renewal hearing absent a Commission finding under 10 C.F.R. 2.758." 60 Fed. Reg. at 22,482 n.2.

With respect to environmental issues, the Commission's license renewal regulations in 10 C.F.R. Part 51 and Subpart A, Appendix B,[9] are based on NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996) [hereinafter GEIS]. In issuing Appendix B to Part 51, the Commission adopted the generic

[9]This section will hereinafter be referred to as 10 C.F.R. Part 51, Appendix B, without reference to Subpart A.

findings of the GEIS regarding the scope and magnitude of the environmental impacts of license renewal. Accordingly, the license renewal regulations only require the agency to prepare a supplement to the GEIS for each license renewal action. 10 C.F.R. § 51.95(c). For those issues listed in Appendix B as Category 1 issues, the Commission resolved the issues generically for all plants and those issues are not subject to further evaluation in any license renewal proceeding. See 61 Fed. Reg. at 28,468, 28,470. Consequently, the Commission's license renewal regulations also limit the information that the Applicant need include in its environmental report, see 10 C.F.R. § 51.71(d), and the matters the agency need consider in draft and final supplemental environmental impact statements to the GEIS. See id.; 10 C.F. R. § 51.95(c). The remaining issues in Appendix B designated as Category 2 issues are site specific and, pursuant to 10 C.F.R. § 51.53(c), must be addressed in various ways by the Applicant in its environmental report. Similarly, pursuant to 10 C.F.R. §§ 51.71(d), 51.95(c), those issues must be addressed in the NRC's draft and final supplemental environmental impact statements for the facility at issue.

To determine the admissibility of Ms. Lorion's nine proffered contentions and Mr. Oncavage's two proferred contentions, these regulatory strictures on the permissible subjects for contentions in license renewal proceedings, as well as the Commission's contention pleading requirements, must be applied.

A. Ms. Lorion's Contentions

In her first contention, Ms. Lorion asserts that the "bifurcated, simultaneous NRC Relicensing Process" violates the National Environmental Policy Act (NEPA) by failing to prepare a site-specific supplemental environmental impact statement (SEIS) to evaluate the consequences of this major federal action prior to commencing the relicensing process under 10 C.F.R. Part 54, thereby prejudicing the process and failing to take the "hard look" NEPA

requires. Lorion Contentions at 2. As the basis for her contention, Ms. Lorion claims that, under NEPA, the agency must prepare a site-specific SEIS that includes a review of the original Turkey Point environmental impact statement before investing time and resources in the relicensing process. Id. at 3. She argues that "the NRC's bifurcated, simultaneous, generic process," commits considerable time and resources to the relicensing process before preparing the SEIS and that this process prejudices the Commission's evaluation of the environmental impact of the relicensing proposal and its analysis of alternatives. Id. The Applicant argues that Ms. Lorion's first contention is inadmissible on the grounds that it challenges the Commission's licensing practices, is legally incorrect, and raises no genuine disputed issue. See FPL's Contention Response at 18-20. The Staff objects to the contention as an improper challenge to the Commission's regulations. See Staff's Contentions Answer at 5-7.

Ms. Lorion's first contention essentially raises two legal issues: first, whether the Commission's license renewal regulations violate NEPA by requiring only the preparation of a supplement to the GEIS and not the preparation of a site-specific SEIS; and second, whether the agency's practice in license renewal proceedings of conducting its environmental review pursuant to 10 C.F.R. Part 51 in parallel with its technical review under 10 C.F.R. Part 54 violates NEPA. Contentions raising purely legal issues, i.e., "legal contentions," as in the case of fact-based contentions, must raise issues within the allowable scope of the proceeding to be admissible. Unlike the vast majority of licensing proceedings, the Commission's referral order in this, as well as earlier license renewal proceedings, is explicit and precise in limiting the scope of the proceeding. See CLI-00-23, 52 NRC at 329; Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3), CLI-98-17, 48 NRC 123, 125 (1998). In delegating to the Licensing Board the authority to conduct this proceeding, the Commission simply did not authorize it to determine whether the Commission's license renewal regulations violate NEPA or

whether the Commission's review practices in license renewal proceedings violate NEPA as Ms. Lorion argues. Ms. Lorion's first contention raising these two legal issues is, therefore, beyond the scope of the proceeding as set forth in CLI-00-23 and hence inadmissible.

Ms. Lorion's second contention asserts that significant new circumstances and new information requires that the NRC conduct a site-specific SEIS on Turkey Point "before 10 C.F.R. Part 54 activities begin." Lorion Contentions at 4. As a basis for the contention, she states that the site-specific SEIS must supplement the original 1972 Turkey Point EIS. Id. She further alleges that the original Turkey Point EIS does not address, or inadequately addresses, substantial environmental issues such as the Everglades restoration project, the intense population growth of the area, and the ability to evacuate in the case of a hurricane, the siting of Turkey Point in a hurricane zone in light of Hurricane Andrew, the proposed siting of a commercial airport within five miles of the plant, and the siting of a school two miles from the plant. Id. at 4-5. The Applicant argues Ms. Lorion's second contention presents an impermissible challenge to the Commission's license renewal regulations, see FPL's Contention Response at 20-24, while the Staff argues the contention is vague and unsupported. See Staff's Contention Answer at 7-8.

In asserting that the NRC must prepare a site-specific supplemental EIS to the original 1972 Turkey Point EIS, Ms. Lorion's second contention impermissibly challenges the Commission's license renewal regulations. Specifically, 10 C.F.R. § 51.95(c) directs the NRC Staff to prepare a supplement to the GEIS, not a site-specific supplement to the original EIS for Turkey Point as Ms. Lorion seeks. Although the Commission's license renewal regulations require that the Applicant's environmental report identify any new and significant information regarding the environmental impacts of license renewal, see 10 C.F.R. § 51.53(c)(3)(iv),

and require the Staff to consider such information in the supplemental EIS, see 10 C.F.R. § 51.95(c)(4), Ms. Lorion can challenge the Staff's treatment of that information with respect to an environmental impact codified in 10 C.F.R. Part 51, Appendix B as a Category 1 issue only by filing a rulemaking petition pursuant to 10 C.F.R. § 2.802 and such information cannot be challenged in a license renewal proceeding absent a waiver of the renewal rules by the Commission. See 61 Fed. Reg. at 28,470. Accordingly, Ms. Lorion's second contention is inadmissible as a challenge to the Commission's license renewal regulations.

In her second contention, Ms. Lorion also requests, pursuant to 10 C.F.R. § 2.758, that the NRC waive its rule on generic environmental impact statements for this proceeding. Lorion Contentions at 6. She asserts that "special circumstances and significant new information . . . cause the application of the rule to not serve its intended purpose of assessing the environmental impacts of the proposed action on the fragile South Florida environment." Id. Ms. Lorion's rule waiver request, however, fails to meet the requirements of 10 C.F.R. § 2.758 in either form or substance.

The Commission's waiver rule requires that a petition seeking the waiver of a regulation show "that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted." 10 C.F.R. § 2.758(b). The waiver rule also mandates that the waiver petition

> shall be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested.

Id. Ms. Lorion filed no affidavit with her rule waiver request as required by section 2.758(b) and her brief, one-sentence request falls far short of the showing required for the Licensing Board to certify the waiver petition to the Commission. See 10 C.F.R. § 2.758(d). None of the matters identified by Ms. Lorion in the contention present special circumstances with respect to the GEIS and raise any new issues that have not already been generically considered in NUREG-1437 and 10 C.F.R. Part 51, Appendix B. Further, none of these matters raise any issues that would lead to different impacts from those identified in 10 C.F.R. Part 51, Appendix B. Thus, Ms. Lorion has made no showing that the application of the rule would not serve the purposes for which it was adopted. For example, Ms. Lorion refers to the Everglades restoration effort. Lorion Contentions at 4. She provides absolutely no information, however, showing that the Turkey Point license renewal will affect the project in any way. Similarly, Ms. Lorion refers to intense population growth and the inability to evacuate in the event of a hurricane. Id. at 5. Again, Ms. Lorion fails to demonstrate how this information affects any Category I issue or raises a previously unidentified issue that would lead to a different impact than those in 10 C.F.R. Part 51, Appendix B. Accordingly, Ms. Lorion's rule waiver request is denied.

In her third contention, Ms. Lorion states that, under the Endangered Species Act, the NRC must consult with the Fish and Wildlife Service (FWS) on whether the license renewal adversely impacts threatened and endangered species within 50 miles of Turkey Point. Lorion Contentions at 6. As a basis for the contention, Ms. Lorion asserts that the NRC has not conducted the required consultation with the FWS, and that under the Endangered Species Act the agency cannot limit its review of impacts on threatened and endangered species to the area immediately surrounding the plant. Id. at 7. The Applicant opposes the admission of this contention, arguing that it lacks adequate specificity and basis and does not demonstrate any genuine dispute over a material issue. See FPL's Contention Response at 25-26. Similarly, the

Staff argues that Ms. Lorion's third contention lacks an adequate basis under 10 C.F.R. § 2.714(b). See Staff's Contentions Response at 9-10.

The Applicant and the Staff are correct that Ms. Lorion's third contention is inadmissible. To the extent the focus of the contention is on the need for consultation by the NRC with FWS, Ms. Lorion has not shown that there is a genuine dispute over a material issue of law or fact. As the Staff points out, it is currently engaged in the consultation process with FWS as required by the Endangered Species Act so it is premature to assert, as Ms. Lorion does in the contention, that the NRC has not conducted the required consultation. See id. at 9. Similarly, because the level of consultation between the NRC and FWS is dependent upon the type of impact on threatened and endangered species that is found, it is also premature to judge that issue until the process has been completed and the Staff conclusions are set forth in its SEIS. Thus, there is no genuine dispute at this time over any material issue about consultation between the NRC and FWS. If Ms. Lorion is aggrieved by some aspect of the actual consultation process after it is completed, she may seek to file a late-filed contention focusing on the consultation process. Any such contention, however, must meet the requirements of 10 C.F.R. § 2.714(a)(1) as well as the contention pleading requirements of 10 C.F.R. § 2.714(b)(2). It should also be noted that, in her contention, Ms. Lorion does not challenge any information in the Applicant's environmental report regarding threatened or endangered species. Having failed timely to contest any of this material or claim that the Applicant has failed to include important information in its report, any subsequent challenge to the Staff determinations in the SEIS based upon the information about threatened or endangered species in the Applicant's environmental report will face an uphill climb meeting the late filed contention criteria of section 2.714(a)(1). Cf. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045-49 (1983).

Additionally, the portion of Ms. Lorion's contention alleging that the impact on threatened and endangered species must be measured by using a 50-mile radius around the plant lacks any basis. The contention provides no information, expert opinion, or fact-based argument demonstrating that the Turkey Point license renewal will have a negative impact on any threatened or endangered species as required by 10 C.F.R. § 2.714(b)(2)(ii). See Oconee, CLI-99-11, 49 NRC at 342. Although Ms. Lorion claims broadly that there are over 64 threatened or endangered species in the South Florida ecosystem, her contention even fails to identify any particular species of concern. Lorion Contentions at 6. Similarly, her contention provides no expert opinion, studies, or statutory citation supporting her claim that the Endangered Species Act requires a study of endangered species within a 50-mile radius of Turkey Point as required by section 2.714(b)(2)(ii). Although Ms. Lorion cites Appendix G, page G-17 of the Applicant's Environmental Report as support for her claim, that Appendix and the map on page G-17 concern the Coastal Zone Management Act and have no relevance to the Endangered Species Act. Therefore, Ms. Lorion's third contention is inadmissible for failing to comply with the contention pleading requirements of 10 C.F.R. § 2.714(b)(2).

Ms. Lorion's fourth contention asserts that the NRC should require the Applicant to perform a plant-specific analysis of the fracture toughness of the reactor vessels for Turkey Point Units 3 and 4 to prove that an acceptable margin of safety exists for each reactor vessel. Lorion Contentions at 7. As a basis for the contention, she states that plant-specific testing and analysis based on plant-specific operating history may demonstrate that one or both reactor vessels are more embrittled than the Applicant's current analyses indicate. According to Ms. Lorion, the NRC should instruct the Applicant to test weld samples from each reactor vessel to prove adequate margins of safety. Id. at 7, 8. In support of her assertions, Ms. Lorion refers, inter alia, to a 1985 letter from Dr. George Sih, a Professor of Fracture Mechanics at

Lehigh University, asserting that conclusions drawn from Unit 3 reactor vessel data cannot be used to predict the condition of the Unit 4 reactor vessel. Id. at 8. The Applicant opposes the admission of the contention, arguing that it impermissibly challenges the Commission's regulations, lacks an adequate basis, and is barred by collateral estoppel. See FPL's Contention Response at 26-30. For its part, the Staff asserts that the contention improperly challenges the agency's regulations and is barred by collateral estoppel. See Staff's Contention Answer at 11-12 & n.10.

Ms. Lorion's contention that the Applicant must only use plant-specific test data to monitor changes in the fracture toughness properties of each Turkey Point reactor vessel beltline region presents a direct challenge to 10 C.F.R. Part 50, Appendix H III.C.1.a. That regulatory provision expressly authorizes integrated surveillance of reactors with similar design and operating features. Ms. Lorion's fourth contention does not assert that the Applicant's integrated surveillance program fails to meet the requirements of Part 50, Appendix H or that the Applicant is not complying with its own program. Rather, the contention and the supporting letter of Dr. Sih take a position squarely contrary to the Commission's reactor vessel material surveillance program regulation. Accordingly, Ms. Lorion's fourth contention is inadmissible for impermissibly challenging 10 C.F.R. Part 50, Appendix H.

Ms. Lorion's fifth contention alleges that, because age-related degradation at Turkey Point could increase the chance of multiple component failures during a hurricane, thereby increasing the probability of an age-related accident and radiological emergency, the probability of such occurrences should be analyzed and discussed in quantitative terms in the Applicant's license renewal application and a site-specific SEIS to meet the requirements of 10 C.F.R. § 50.4(a)(1). Lorion Contentions at 10. As a basis for the contention, Ms. Lorion quotes the GEIS at page 5-10 to the effect that the potential effects of aging could increase the number of

failures of components and structures resulting in a higher frequency and severity of accidents. Id. She then states that neither the Applicant nor the NRC "have analyzed whether the effects of aging will be adequately managed so that the structures and components will be maintained in the event of an external event hurricane, or beyond design basis hurricane, for the period of extended operation." Id. The Applicant opposes the contention for raising an issue beyond the scope of the proceeding by improperly challenging the Commission's regulations. It also argues that the contention is inadmissible because it is not supported by any basis demonstrating a genuine dispute concerning a material issue. See FPL's Contention Response at 30-35. The Staff argues that the issue raised by the contention is beyond the scope of the proceeding. See Staff's Contention Answer at 12-15.

In seeking to require the Applicant and the NRC to prepare probabilistic risk analyses of multiple failures, Ms. Lorion's fifth contention again impermissibly challenges the Commission's regulations. Neither 10 C.F.R. Part 54 nor 10 C.F.R. Part 51 require such analyses. As previously noted (see supra page 14), the license renewal regulations in Part 54 are confined to the small number of issues that the Commission has determined are uniquely relevant to protecting the public health and safety during the renewal term, and all other issues are to be addressed by the agency's existing regulatory processes, so they are beyond the scope of any license renewal review. See 60 Fed. Reg. at 22,463-64. Thus, 10 C.F.R. § 54.21(a)(3) requires an Applicant to demonstrate for each structure and component within the scope of the rule (see 10 C.F.R. §§ 54.4, 54.21(a)(1)) "that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB [current licensing basis] for the period of extended operation." Neither that section nor any other rule provision requires the Applicant to prepare a probabilistic risk analysis of multiple failures as sought by Ms. Lorion. Indeed, the Commission has indicated that probabilistic risk assessments are not

required for the renewal of an operating license. See 60 Fed. Reg. at 22,468; see also 56 Fed. Reg. 64,943, 64,949, 64,957 (Dec. 13, 1991).[10] Similarly, the Commission's environmental regulations in 10 C.F.R. Part 51 do not require probabilistic risk assessments. Section 51.53(c) lists the information the Applicant must include in its environmental report, and a probabilistic risk analysis of multiple failures is not specified. Likewise sections 51.71(d) and 51.95(c) set forth the requirements the agency must follow in preparing the draft and final SEIS for the Turkey Point license renewal, and nowhere do those provisions require the preparation of a probabilistic risk analysis of multiple failures. Accordingly, Ms. Lorion's fifth contention presents an impermissible challenge to the Commission's regulations by seeking to impose requirements in addition to those set forth in the regulations. See Shoreham, CLI-87-12, 26 NRC at 395; Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982).[11]

In her sixth contention, Ms. Lorion claims that, because of the rapidly growing South Florida population, the Applicant must prepare a probabilistic risk assessment analyzing the increased risk over the extended license term whether emergency preparedness requirements

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[10]In revising the license renewal rule in 1995, the Commission indicated that, unless clarified or reevaluated, the materials in the statement of considerations for the 1991 license renewal rule remained valid. 60 Fed. Reg. at 22,463.

[11]Ms. Lorion's fifth contention states that a probabilistic risk analysis must be performed in order "to meet the requirements of 10 C.F.R. 50.4(a)(1)." Lorion Contentions at 10. In the basis of her contention, she states that the location of Turkey Point in a hurricane region presents "special circumstances" because the radiological threat from a hurricane-induced accident would be greater due to the inability to evacuate. Id. at 11. Next, citing the 1984 Code of Federal Regulations, she asserts that "10 C.F.R. 50.4(a)(1) (1984)" provides that the NRC may not issue an operating license without a finding of adequate protective measures in the event of a radiological emergency. Id. The provision Ms. Lorion cites, however, both then and now, deals with correspondence and filing requirements and has nothing to do with emergency preparedness. We assume that Ms. Lorion intended to cite 10 C.F.R. § 50.47(a)(1), but that provision deals with the agency's emergency preparedness findings for initial operating licenses and, since 1991, the regulation has expressly excluded renewed operating licenses from its requirements.

and dose limits can be met in the event of an accident. Lorion Contentions at 12. The contention also declares that the environmental impacts of a severe accident must be analyzed in a site-specific EIS pursuant to NEPA. Id. As a basis for the contention, Ms. Lorion states that, because the South Florida population has increased so dramatically since Turkey Point was built, the NRC must require the Applicant to demonstrate that the appropriate populations can be safely evacuated during the extended license term in the event of an accident. Id. Ms. Lorion also asserts that the NRC must prepare a site-specific EIS considering a severe accident at Turkey Point that analyzes aquatic food, shoreline, swimming, air, and surface and groundwater pathways. Id. at 14. The Applicant and the Staff both argue that the contention is inadmissible for challenging the Commission's regulations. See FPL's Contention Response at 35-38; Staff's Contention Answer at 15-16.

Like Ms. Lorion's second, fourth, and fifth contentions, her sixth contention is inadmissible for improperly challenging the Commission's license renewal regulations. As previously discussed (see supra pages 23-24), the Commission's license renewal regulations do not require the preparation or use of probabilistic risk assessments. Further, emergency preparedness information is not within the scope of the matters that the Applicant must include in its license renewal application under 10 C.F.R. Part 54 or its environmental report under 10 C.F.R. Part 51. As the Commission stated in promulgating the first license renewal regulations in 10 C.F.R. Part 54,

> the Commission's regulations require the routine evaluation of the effectiveness of existing emergency preparedness plans against the 16 planning standards and the modification of emergency preparedness plans when the 16 standards are not met. Through its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors. Thus these drills, performance criteria, and independent evaluations provide a process to ensure continued adequacy of

> emergency preparedness in light of changes in site characteristics that may occur during the term of the existing operating license, such as transportation systems and demographics. There is no need for a licensing review of emergency planning issues in the context of license renewal.
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> . . . .
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> In conclusion, the Commission has carefully considered the issues raised by commenters on the need to make a finding on the adequacy of existing emergency preparedness plans in order to grant a renewal license. For the reasons stated above, 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 64,966-67. Accordingly, the first issue identified in Ms. Lorion's contention is inadmissible.

The second issue in Ms. Lorion's sixth contention seeking an analysis of the impacts of a severe accident at Turkey Point is also inadmissible for challenging the Commission's regulations. Although the Commission generically considered severe accidents in the GEIS and found the consequences small for all plants, see NUREG-1437, GEIS, § 5.5.2, it classified severe accidents as a Category 2 issue in 10 C.F.R. Part 51, Appendix B. Therefore, severe accident issues are not automatically excluded from consideration during license renewal.

As the Commission stated in its referral order, however, "review of environmental issues is limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c)." CLI-00-23, 52 NRC at 329. With respect to 10 C.F.R. Part 51, Appendix B, Category 2 issues, those provisions limit the scope of the draft and final SEIS to the matters that 10 C.F.R. § 51.53(c) requires the Applicant to provide in its environmental report. In turn, section 51.53(c) does not require the Applicant broadly to consider severe accident risks. Rather, it only requires the Applicant to consider "severe accident mitigation alternatives" (SAMA). 10 C.F.R. § 51.53(c)(3)(ii)(L). The Commission, therefore, has left consideration of SAMAs as the only Category 2 issue with respect to severe accidents, but this portion of Ms. Lorion's contention does not seek to raise

any issue related to severe accident mitigation alternatives. Her contention neither identifies any mitigation alternatives that should be considered nor challenges the Applicant's evaluation of SAMAs in its environmental report. Rather, Ms. Lorion's final contention simply claims that a severe accident must be addressed. Accordingly, because the contention goes beyond the limited context in which severe accidents may be considered as a Category 2 issue in 10 C.F.R. Part 51, Appendix B, the second sentence of Ms. Lorion's sixth contention impermissibly challenges the Commission's license renewal regulations and is also inadmissible.

Ms. Lorion's seventh contention asserts that the Applicant must demonstrate that it can permanently and safely store low and high-level waste offsite for the extended period of plant operation. Lorion Contentions at 14. Additionally, the contention claims that the NRC should analyze in a site-specific SEIS the potential environmental impacts from a spent fuel pool accident involving the additional spent fuel from the years of extended operation. Id. As a basis for the contention, Ms. Lorion asserts that there currently is not enough storage capacity at Turkey Point to store the high-level waste from extended operation onsite and that the current low-level waste repository at Barnwell, South Carolina may be closed to waste from Florida in the next few years. Id. at 14. Because the federal government has yet to build a permanent waste repository, she claims the waste will remain onsite outside the containment building, and the fact that the facility is in an area of high-hurricane frequency increases the risk and probability that the waste could contaminate the environment. Id. at 15. The Applicant and the Staff both argue that the contention is outside the scope of the proceeding and represents a challenge to the agency's rules. See FPL's Contention Response at 38-40; Staff's Contention Answer at 16-18.

Ms. Lorion's seventh contention is inadmissible for impermissibly challenging the Commission's regulations. Specifically, 10 C.F.R. § 51.53(c)(2) provides, contrary to

Ms. Lorion's contention, that the Applicant need not discuss in its environmental report the storage of spent fuel for its facility. Further, pursuant to section 51.53(c)(3)(i), the Applicant's environmental report is not required to contain any analysis of the environmental impacts identified as Category 1 issues in 10 C.F.R. Part 51, Appendix B. The impacts associated with spent fuel and high-level waste disposal, low-level waste disposal, mixed waste storage, and onsite spent fuel storage are all Category 1 issues that are not subject to further evaluation in this license renewal proceeding. See 10 C.F.R. Part 51, Appendix B, Table B-1; Oconee, CLI-99-11, 49 NRC at 343. Additionally, Ms. Lorion's contention also presents an impermissible challenge to the Commission's Waste Confidence Rule, 10 C.F.R. § 51.23(a) which states that

> [t]he Commission has made a generic determination that, if necessary, spent fuel generated in 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 or offsite independent spent fuel storage installations.

As an improper challenge to the Commission's regulations, Ms. Lorion's seventh contention cannot be admitted.

In her eighth contention, Ms. Lorion states that NEPA requires the Applicant to assess any current impact that radiation may be having on the environment surrounding the plant in order to determine the cumulative impact that may result from extending the operating license term. Lorion Contentions at 15. As a basis for the contention, Ms. Lorion asserts that the impact of the current operation of Turkey Point on the unlined, porous cooling canals and the aquatic and human environment around the plant must be analyzed so that the cumulative impact on extended operations can be assessed. Id. at 16. Specifically, she claims that "[t]he impact of radionuclides and any bioaccumulation or biomagnification that may be occurring in the food chain, marine life, plant, and humans from plant emissions and the coastal disposition

and dispersion should be analyzed." Id. The Applicant and the Staff both oppose the admission of the contention for impermissibly challenging the Commission's regulations. See FPL's Contention Response at 40-41; Staff's Contention Answer at 18-19.

Like many of her other contentions, Ms. Lorion's eighth contention is inadmissible because it challenges the NRC's rules. By seeking to have the Applicant assess the current radiological impacts of the operation of Turkey Point in order to assess the cumulative impacts of extended operation, Ms. Lorion's contention goes beyond the scope of the information that the Applicant needs to include in its environmental report pursuant to 10 C.F.R. § 51.53(c). Further, offsite radiological impacts are classified as a Category 1 issue in 10 C.F.R. Part 51, Appendix B and, therefore, are excluded from consideration in this proceeding.

Ms. Lorion's final contention, like a portion of the basis of her second contention, claims that, under NEPA, the NRC must assess whether the proposed action conflicts with the federal investment in the Everglades restoration plan. Lorion Contentions at 17. As the basis for her contention, Ms. Lorion asserts that neither the NRC nor the Applicant have addressed the important environmental issue of the Everglades restoration and whether the Turkey Point license renewal is consistent with this $8 billion federal restoration action. Id. at 17. According to the contention, an age-related accident at Turkey Point has the potential to negate the restoration project and "the risk and consequences of such an event on this major federal/state government program must be assessed." Id. The Applicant argues Ms. Lorion's ninth contention is inadmissible because it is outside the scope of the proceeding. See FPL's Contention Response at 41-42. The Staff claims the contention fails to meet the contention pleading requirements of 10 C.F.R. § 2.714(b)(2). See Staff's Contention Answer at 19.

Ms. Lorion's ninth and final contention again presents an improper challenge to the Commission's regulations and is, therefore, inadmissible. By seeking to have the NRC and the

Applicant specifically consider the environmental impacts of license renewal on the restoration project for the Everglades, the contention goes beyond the information the Applicant needs to provide in its environmental report pursuant to 10 C.F.R. § 51.53(c) and the issues the NRC must consider in preparing the draft and final SEIS in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c), respectively. Thus, the contention is inadmissible.

Additionally, the basis of Ms. Lorion's contention makes clear that her real concern is that a severe accident at Turkey Point could negate the Everglades restoration effort. As previously discussed (see supra page 26), severe accidents are a 10 C.F.R. Part 51, Appendix B, Category 2 issue that may only be considered in the context of severe accident mitigation alternatives. Ms. Lorion's contention, however, does not seek to raise any issue related to SAMAs. The contention does not identify any mitigation alternatives that should be considered and it does not mention, much less challenge, the Applicant's evaluation of SAMAs in its environmental report. Rather, Ms. Lorion's final contention merely claims that a severe accident at Turkey Point must be addressed. Consequently, the contention is inadmissible for exceeding the scope of the allowable consideration of severe accidents as a Category 2 issue in license renewal proceedings.

B. Mr. Oncavage's Contentions

Mr. Oncavage's first contention alleges that the aquatic resources of Biscayne National Park will become contaminated with radioactive material, chemical wastes, and herbicides during the license renewal term, thereby endangering the health and safety of consumers of food products from the Park and Card Sound. Oncavage Contentions at 1. As a basis for the contention, Mr. Oncavage claims that liquid radioactive wastes are routed from the plant into the cooling canals and that there is massive seepage from the canals into Biscayne Bay and Card Sound. Id. Additionally, he alleges that the dumping into the cooling canals of

radioactive-laden resins, solvents, and wash water, at much higher levels than in the past, is likely during the renewal term. Id. at 2. He also asserts that accidental spills of radioactive materials at Turkey Point will migrate through the groundwater to the Bay and Sound, circumstances which he claims create a Category 2 groundwater conflict issue under 10 C.F.R. Part 51, Appendix B. Id. at 1-2. Because of the buildup of radionuclides from Turkey Point in the various biota of Biscayne Bay and Card Sound, Mr. Oncavage argues that the consumers of seafood from these waters are placed at an unacceptable risk and neither the Applicant nor the NRC has studied this problem as part of the license renewal process. Id. at 2. The Applicant and the Staff both object to the admission of the contention arguing that it challenges the Commission's license renewal regulations by exceeding the scope of allowable issues for such proceedings. See FPL's Contention Response at 9-12; Staff's Contention Answer at 20-21.

Like many of Ms. Lorion's contentions, Mr. Oncavage's first contention is inadmissible for impermissibly challenging the Commission's licensing renewal regulations. In referring the case to the Licensing Board, the Commission limited the scope of the proceeding with respect to safety issues to a review of the plant structures and components requiring an aging management review for the extended license term in accordance with 10 C.F.R. § 54.21(a) and the plant systems, structures, and components subject to time-limited aging analyses under 10 C.F.R. § 54.21(c). CLI-00-23, 52 NRC at 329. With respect to environmental issues, the Commission limited the scope of the proceeding to the issues the agency must address in the draft and final SEIS pursuant to 10 C.F.R. §§ 51.71(d) and 51.95(c). Id. To the extent Mr. Oncavage's first contention purports to raise a health and safety issue, it presents a challenge to 10 C.F.R. § 54.21 because the contention does not raise any aspect of the Applicant's aging management review or evaluation of the plant's systems, structures, and

components subject to time-aging analysis. If, on the other hand, Mr. Oncavage's first contention seeks to raise an environmental issue, it presents a challenge to 10 C.F.R. § 51.53(c) and 10 C.F.R. Part 51, Appendix B by raising issues beyond the limited scope of those provisions. Specifically, 10 C.F.R. § 51.53(c) lists the information that the Applicant must include in its license renewal environmental report and expressly excludes, in section 51.53(c)(3)(i), information on the environmental impacts of any issues identified as Category 1 issues in Appendix B of 10 C.F.R. Part 51. The Appendix, in turn, identifies radiation exposures to the public during the license renewal term as a Category 1 issue. It also identifies the discharge of chlorine and other biocides as well as the discharge of sanitary waste and minor chemical spills as Category 1 issues. As previously discussed (see supra page 15), all Category 1 issues are barred from further consideration in license renewal proceedings. Similarly, Mr. Oncavage's assertion that radioactivity migrating through the groundwater from Turkey Point to Biscayne Bay creates a 10 C.F.R. Part 51, Appendix B, Category 2 groundwater conflict issue does nothing to enhance the contention's admissibility. Although 10 C.F.R. Part 51, Appendix B, Category 2 issues may be considered during the license renewal process, all the Category 2 groundwater conflict issues deal with the issue of withdrawal of groundwater by an Applicant when there are competing groundwater uses -- a situation far different from Mr. Oncavage's allegation. Accordingly, the contention impermissibly challenges the Commission's license renewal regulations and is inadmissible.

Mr. Oncavage's second contention has multiple parts. He first asserts that the location of Turkey Point poses unusual challenges to the safe storage of spent fuel. Oncavage Contentions at 2. As a basis for this portion of the contention, he relies upon an agency study concerning permanently shut down reactors and alleges that a catastrophic radiological accident at a spent fuel pool that contains the additional inventory from extended operation

would produce public exposures in excess of 10 C.F.R. Part 100 limits and presents a Category 2 issue. Id. The Applicant and the Staff both argue that the first portion of the contention is outside the scope of the proceeding and presents an impermissible challenge to the license renewal regulations. See FPL's Contention Response at 12-14; Staff's Contention Answer at 21-22.

Contrary to the assertion in the first portion of Mr. Oncavage's second contention and as previously discussed (see supra pages 27-28), the issue of onsite spent fuel storage is a 10 C.F.R. Part 51, Appendix B, Category 1 issue that cannot be examined further in a license renewal proceeding. Additionally, the contention is barred by the Commission's Waste Confidence Rule, 10 C.F.R. § 51.23(a), in which the Commission found that spent fuel could be stored safely onsite during and after the renewal term. See Oconee, CLI-99-11, 49 NRC at 343. Further, Mr. Oncavage's allegation that an accident involving spent fuel is a Category 2 issue does not make the contention admissible. As discussed earlier (see supra page 26), only severe accident mitigation alternatives may be considered for license renewal severe accident Category 2 issues, and Mr. Oncavage has not raised any issue involving mitigation alternatives. Accordingly, the first portion of Mr. Oncavage's contention impermissibly challenges the agency's license renewal regulations and is inadmissible.

In Part 2A of his second contention, Mr. Oncavage claims that either wet or dry spent fuel facilities at Turkey Point would be particularly vulnerable to a category 5 hurricane. Oncavage Contentions at 3. As the basis for part 2A of the contention, Mr. Oncavage asserts that hurricanes were excluded from the GEIS as accident initiators and that a category 5 hurricane hitting Turkey Point would produce catastrophic damage to spent fuel facilities due to inadequate construction practices and because there is no defense in depth for spent fuel. Id. The Applicant and the Staff both assert that part 2A of the contention is outside the scope of

the proceeding. See FPL's Contention Response at 12-13, 15; Staff's Contention Answer at 23.

Like the first portion of the contention, part 2A is also inadmissible for challenging the 10 C.F.R. Part 51, Appendix B, Category 1 issue of onsite spent fuel storage, as well as the Commission's Waste Confidence Rule, 10 C.F.R. § 51.23(a). Additionally, contention 2A challenges the design basis of Turkey Point in alleging that the spent fuel pool facility cannot withstand a class 5 hurricane. The current licensing basis for Turkey Point includes the design basis of the plants, see 10 C.F.R. § 54.3(a), which, in turn, includes resistance to external hazards. Under the Commission's license renewal regulations, issues involving the current licensing basis for the facility are not within the scope of review of license renewal. Rather, license renewal review only includes issues relating to the management of aging systems, structures, and components, or time-limited aging analyses under 10 C.F.R. Part 54. Because part 2A of the contention speaks to the former and not the latter, it is beyond the allowable scope of the proceeding. Hence, the contention is inadmissible.

Finally, part 2B of Mr. Oncavage's contention states that the "Safety Evaluation Report" for the Turkey Point license renewal is fatally flawed because it relies upon a June 19, 2000, Safety Assessment by the NRC Staff concerning the development of the nearby former Homestead Air Force Base into a commercial airport. Oncavage Contentions at 3. As the basis for this portion of the contention, Mr. Oncavage states that the U.S. Air Force and the Federal Aviation Administration requested the Staff to examine the safety implications of developing an airport 4.9 miles from the plant site but that the Staff's safety assessment uses an inappropriate aircraft crash probability model, an understated factor for bird aircraft strike hazards, and incomplete information for computing the height of target component for crash probability, thereby rendering the Staff's assessment worthless. Id. at 3-4. The Applicant and

the Staff both claim that part 2B of the contention is also beyond the scope of the proceeding. See FPL's Contention Response at 12-13, 16-17; Staff's Contention Answer at 23-25.

Putting aside the obvious flaw in part 2B of Mr. Oncavage's contention because the Staff has yet to produce its SER for the Turkey Point license renewal, the issue of the effects of aircraft crashes on the Turkey Point spent fuel facilities is inadmissible for presenting a challenge to the Commission's license renewal regulations. Like part 2A of the contention concerning the effects of a class 5 hurricane on the spent fuel facilities, part 2B also impermissibly challenges the 10 C.F.R. Part 51, Appendix B, Category 1 issue of onsite spent fuel storage, as well as the Commission's Waste Confidence Rule, 10 C.F.R. § 51.23(a). Again like part 2A, the contention also impermissibly challenges the design basis for external hazards at Turkey Point. Accordingly, part 2B of Mr. Oncavage's final contention is inadmissible.[12]

III. Conclusion

For the reasons set forth in Part I of this Memorandum and Order, we find that both Mr. Oncavage and Ms. Lorion have standing to intervene in this license renewal proceeding. For the reasons detailed in Part II.A, however, we find that all nine of Ms. Lorion's proffered contentions are inadmissible. Further, for the reasons set forth in Part II.B, we find that both of Mr. Oncavage's proffered contentions also are inadmissible. Accordingly, pursuant to 10 C.F.R. § 2.714(b)(1), neither Petitioner is admitted as a party to the proceeding and both intervention petitions must be denied. Because there are no other intervening parties to the proceeding, the proceeding is hereby terminated.

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[12]As filed, Mr. Oncavage's final contention included part 2C concerning Cuban air strikes against the Turkey Point spent fuel facilities. See Oncavage Contentions at 4-5. Subsequently, Mr. Oncavage withdrew that portion of the contention. (Tr. 42).

As provided in 10 C.F.R. § 2.714a, the Petitioners, within ten (10) days of service of this Memorandum and Order, may appeal the Order to the Commission by filing a notice of appeal and accompanying brief.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

/RA/

_____
Thomas S. Moore
ADMINISTRATIVE JUDGE

/RA/

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Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/

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Dr. Charles N. Kelber
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 26, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER AND LIGHT COMPANY	)	Docket Nos. 50-250/251-LR
	)	
(Turkey Point Nuclear Plant,	)	
Units 3 and 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON PETITIONERS' STANDING AND CONTENTIONS) (LBP-01-06) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-250/251-LR
LB MEMORANDUM AND ORDER (RULING ON PETITIONERS' STANDING AND CONTENTIONS) (LBP-01-06)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of February 2001