September 6, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO "CITIZENS ALLIED FOR SAFE ENERGY, INC. MOTION FOR RECONSIDERATION OF AMENDED CONTENTION 1, 2 AND 5 AND NEW CONTENTIONS FOLLOWING FUKUSHIMA NEAR-TERM TASK FORCE RECOMMENDATIONS"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board ("Board") Order dated March 30, 2011,[1] the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to "Citizens Allied For Safe Energy, Inc. ["CASE"] Motion For Reconsideration Of Amended Contention 1, 2 and 5 And New Contentions Following Fukushima Near-Term Task Force Recommendations" ("August 2011 Petition"), dated August 11, 2011. For the reasons set forth below, the Staff opposes admission of the proposed contentions, as they do not meet the NRC requirements for admission in 10 C.F.R. §§ 2.309(c), (f)(1), and (f)(2).

BACKGROUND

This proceeding concerns the application filed by Florida Power and Light Company ("FPL" or "Applicant") for combined licenses ("COLs") for Turkey Point Units 6 and 7.[2] The

[1] *Florida Power & Light Co.* (Turkey Point, Units 6 and 7), (Mar. 30, 2011) (unpublished order) (slip op. at 8) ("Initial Scheduling Order") (ML110890768).

[2] *See* Florida Power & Light Company; Acceptance for Docketing of an Application for Combined License for Turkey Point Units 6 and 7, 74 Fed. Reg. 51,621 (Oct. 7, 2009).

Application references the Westinghouse Electric Company standard AP1000 design certified in 10 C.F.R. Part 52, Appendix D, which Westinghouse has proposed to amend as described in Revision 17 of the AP1000 design control document ("DCD"). Application Part 1 at 1. On June 14, 2010, the NRC published a notice of hearing on the Application.[3] CASE filed a petition to intervene on August 17, 2010, and an amended petition on August 20, 2010 ("2010 Petition"). On February 28, 2011, the Board granted the petition and admitted portions of two of CASE's contentions. *Florida Power and Light Co.* (Turkey Point Units 6 and 7), LBP-11-06, 73 NRC __ (Feb. 28, 2011) (slip op.) ("LBP-11-06"). In that Order, however, the Board also ruled that CASE proposed contentions 1, 2, and 5 were inadmissible. LBP-11-06, slip op. at 85-93, 96-99.

On April 18, 2011, CASE filed a "Motion to Amend Contentions 1, 2 and 5 of the CASE Revised Petition to Intervene," and "Amended Contentions 1, 2 and 5" ("April 2011 Petition"). On June 29, 2011, the Board denied CASE's amended proposed contentions. *Florida Power and Light Co.* (Turkey Point Units 6 and 7), LBP-11-15, 73 NRC __ (June 29, 2011) (slip op.) ("LBP-11-15"). In LBP-11-15, the Board noted that the NRC had charged a Task Force with performing near-term and long-term reviews that, among other things, "should evaluate all technical and plicy issues related to the event to identify additional research, generic issues, changes to the reactor oversight process, rulemakings, and adjustments to the regulatory framework that should be conducted by NRC." *Id*. at 1-2, quoting NRC Actions Following the Events in Japan, COMGBJ11-0002 at 2 (Mar. 21. 2011) (ML110800456). The Board indicated that if the Task Force's recommendations result in changes to regulations that are relevant to the Application, compliance with those changed regulations would become part of the NRC

[3] *See* Florida Power & Light Company, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave to Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 75 Fed. Reg. 34,777 (June 18, 2010) ("Notice of Hearing").

Staff's technical review. LBP-11-15, slip op. at 2. The Board further indicated that any other new and material information that emerges from the Fukushima event and its aftermath might give rise to an opportunity to proffer new contentions in this proceeding. *Id*.

In its August 2011 Petition, CASE again proposed Contentions 1, 2, and 5 in view of information in "Recommendations for Enhancing Reactor Safety in the 21st Century (The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident)" ("Task Force Report") (ML111861807), dated July 12, 2011, and proposed two new contentions in light of the Task Force Report. August 2011 Petition at 2.[4] As explained below, CASE does not demonstrate that any of the contentions are admissible, since the August 2011 Petition neither demonstrates that the new contentions meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) nor the late filing requirements of 10 C.F.R. § 2.309(c)(1) or the new or amended contention requirements of 10 C.F.R. § 2.309(f)(2).[5]

DISCUSSION

As a preliminary matter, the Staff addresses the form of CASE's filing. Although the August 2011 Petition is styled as a "motion for reconsideration," it does not request reconsideration of any Board decision. Rather, it requests that the Board "reconsider" its earlier rejection of proposed contentions 1, 2, and 5 based on new information, and appears to use the term "reconsideration" in the vernacular rather than as a term of art under the governing regulations. *See* August 2011 Petition at 5-18. Specifically, CASE does not address the standards of 10 C.F.R. § 2.323(e) for requesting reconsideration of a decision. *See generally Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage

[4] The Staff refers herein to the version of the CASE New Petition filed on August 16, 2011, which corrected certain typographical errors.

[5] While the CASE August 2011 Petition is styled as a "motion for reconsideration," it does not request reconsideration of any Board decision. Rather, it requests that the Board "reconsider" its earlier rejection of proposed contentions 1, 2, and 5 based on new information. *See* August 2011 Petition at 5-18.

Installation), CLI-06-27, 64 NRC 399, 400-401 and n.6 (2006) (discussing the standards for reconsideration, including the "compelling circumstance" required by § 2.323(e)).[6] Accordingly, the Staff submits that the August 2011 Petition should be treated in its entirety as a motion for the admission of new contentions pursuant to 10 C.F.R. § 2.309, rather than a motion for reconsideration.

I. Legal Standards for Contention Admissibility

The admissibility of new and amended contentions in NRC adjudicatory proceedings is governed by three regulations. These are (1) 10 C.F.R. § 2.309(f)(1), establishing the general admissibility requirements for contentions; (2) 10 C.F.R. § 2.309(f)(2), concerning new and timely contentions; and (3) 10 C.F.R. § 2.309(c), concerning non-timely contentions. *See Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571-72 (2006). The Staff explained these requirements in its answer to the April 2011 Petition (*see* "NRC Staff Answer To 'Citizens Allied For Safe Energy, Inc. Motion To Amend Contentions 1, 2 and 5 Of The Case Revised Petition To Intervene' And 'Amended Contentions 1, 2 and 5'" at 2-5 (May 13, 2011) (Staff May 2011 Answer), and the Board described them in its decision denying the April 2011 Petition (*see* LBP-11-15, slip op. at 3-6). Accordingly, the Staff does not repeat that discussion here in its entirety, but emphasizes three legal principles.

First, all contentions must comply with the general admissibility requirements in § 2.309(f)(1).[7] Failure to comply with any of these requirements is grounds for dismissal of the

[6] For example, § 2.323(e) requires that motions for reconsideration be filed within 10 days of the action for which reconsideration is requested, but CASE filed the August 2011 Petition 43 days after the Board issued LBP-11-15.

[7] The requirements in § 2.309(f)(1) state that, to be admissible, a contention must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted…;

(ii) Provide a brief explanation of the basis for the contention;

contention. Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). Second, under 10 C.F.R. § 2.309(f)(2), a contention filed after the initial filing period may be admitted with leave of the Board if it meets the following requirements:

> (i) The information upon which the amended or new contention is based was not previously available;
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> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
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> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2). Third, a contention that does not qualify for admission as a new contention under § 2.309(f)(2) may still be admitted if it meets the provisions governing nontimely contentions set forth in 10 C.F.R. § 2.309(c)(1).[8] In its Initial Scheduling Order, the

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> (iii) Demonstrate that the issue raised … is within the scope of the proceeding;
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> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]
>
> (vi) . . .[P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief[.]

10 C.F.R. § 2.309(f)(1)(i)-(vi).

[8] Pursuant to 10 C.F.R. § 2.309(c)(2), each of the factors in § 2.309(c)(1) is required to be addressed in the requestor's nontimely filing. The first factor, whether good cause exists for the failure to

Board specifically directed that a "motion and proposed new or amended contention . . . shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available." Initial Scheduling Order at 8. "If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c)." *Id*.

II. Admissibility and Timeliness of Proposed Contentions 1, 2, and 5

The August 2011 Petition once again proposes Contentions 1, 2, and 5, which the Board has now rejected twice. LBP-11-06, slip op. at 85-99; LBP-11-15, slip op. at 6-17. Proposed Contentions 1 and 2 concern emergency planning, while Contention 5 concerns the effects of sea level rise. August 2011 Petition at 5-18. CASE offers the Task Force Report as new information supporting the proposed contentions. *Id*. at 3-4. As discussed below, however, the proposed contentions do not meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) or the timeliness criteria of 10 C.F.R. § 2.309(f)(2) or 10 C.F.R. § 2.309(c)(1) and should be denied.

A. Proposed Contention 1

The August 2011 Petition states proposed Contention 1 as follows:

> Contention 1 – Failure and Omission of the FPL COL for the Proposed Turkey Point Nuclear Reactors 6 & 7 to Provide for an Adequate Public Safety Plan

August 2011 Petition at 5. CASE limits the scope of proposed Contention 1 by stating that it "will address Potassium Iodide distribution and general health and safety concerns under Contention 1." *Id*. at 6. CASE relies on two pieces of information to support proposed Contention 1. First, CASE cites the notes of Dr. Philip Stoddard, Mayor of South Miami, Florida,

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file on time, is entitled to the most weight. *See, e.g., State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993). Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (quoting *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977)).

from a meeting with Mr. Curtis Somerhoff on August 4, 2011, that assert that "County has no plan to get potassium iodide (KI) to children and pregnant women before radiation exposure in a radiological emergency, as is necessary to prevent thyroid damage," and further summarize Mayor Stoddard's conversation with Mr. Somerhoff. *Id*. at 6-7. Second, CASE quotes Task Force Report Recommendation 11.4, which recommends that the NRC "[c]onduct training in coordination with the appropriate Federal partners, or radiation, radiation safety and the appropriate use of KI in the local community." *Id*. at 7, quoting Task Force Report at 62.

Staff Response: Proposed Contention 1 is inadmissible for three reasons. First, the notes from the meeting between Mayor Stoddard and Mr. Somerhoff are not materially different than information previously available, as required by 10 C.F.R. § 2.309(f)(2). Second, Task Force Recommendation 11.4 does not demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the requested action, as required by 10 C.F.R. § 2.309(f)(1)(iv). Third, the Task Force recommendation does not identify a genuine dispute with the Application regarding a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

1. The notes from the meeting between Mayor Stoddard and Mr. Somerhoff are not materially different than information previously available.

The essence of what CASE concludes from the notes of the meeting between Mayor Stoddard and Mr. Somerhoff is that KI should be distributed before an accident. August 2011 Petition at 6-7. This assertion is cumulative, if not identical, to information CASE previously submitted in its petitions in this proceeding. *Compare* August 2011 Petition at 6-7 *with* April 2011 Petition at 7-10;[9] 2010 Petition at 11, 14-15. For example, the meeting notes assert that the World Health Organization calls for predistribution of KI (August 2011 Petition at 6), while

[9] As submitted, the April 2011 Petition does not include page numbering. The Staff's page references, therefore, reflect the page numbering of the Adobe Acrobat pdf document as received through the Electronic Information Exchange.

the April 2011 Petition indicates that Food and Drug Administration state that state and local governments may consider predistribution of KI (April 2011 Petition at 10). Accordingly, the meeting notes do not provide information that is materially different than information previously available,[10] as required by § 2.309(f)(2), and do not provide a basis for admission of proposed Contention 1 under that section.[11]

2. Task Force Recommendation 11.4 does not demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the requested action.

CASE does not relate Task Force Recommendation 11.4 to any NRC requirement, nor does CASE attempt to show that Recommendation 11.4 is necessary for adequate protection, or could otherwise somehow result in a denial of the Application. *See* August 2011 Petition at 3-7. Moreover, the Task Force Report itself is silent in regard to predistribution of KI. *See* Task Force Report at 58-61. Rather, the recommendation is to educate the public regarding the appropriate use of KI in the local community, whatever that might be. *Id*. at 59-62. Accordingly, Task Force Recommendation 11.4 does not provide information material to the decision in this proceeding with respect to the issue raised by proposed Contention 1, *i.e.*, the predistribution of KI, as required by § 2.309(f)(1)(iv).

3. Task Force Recommendation 11.4 does not identify a genuine dispute with the application regarding a material issue of law or fact.

CASE does not relate Task Force Recommendation 11.4 to the Application. *See* August 2011 Petition at 3-7. CASE states that several Task Force recommendations "seem to apply to CASE's Contentions" (*id*. at 3), after which CASE lists them, including Recommendation 11.4

[10] The Board ruled that the information CASE previously provided in regard to KI failed to raise a genuine dispute of material fact with the Application, as required by § 2.309(f)(1)(vi). LBP-11-06, slip op. at 88-89. The information regarding predistribution of KI in the August 2011 Petition suffers from the same failing, since it is cumulative to the information CASE previously submitted on that topic.

[11] Section 2.309(c) does not appear to apply to the information in the meeting notes, since CASE did raise this argument earlier in its original petition. *See* 2010 Petition at 11.

(*id*. at 4), without further explanation. In discussing proposed Contention 1, CASE simply quotes Recommendation 11.4 once again. *Id*. at 7. As such, CASE fails to demonstrate how the recommendation somehow raises a dispute with the Application. Accordingly, Task Force Recommendation 11.4 and proposed Contention 1 do not identify a genuine dispute with Application at all, much less in regard to a material issue of law or fact, as required by § 2.309(f)(1)(vi).

In view of the foregoing, the August 2011 Petition contains no new information to meet the standards of 10 C.F.R. §§ 2.309(f)(1) and (2) in regard to proposed Contention 1. The Board denied earlier versions of proposed Contention 1 (*see* LBP-11-06, slip op. at 88-89; LBP-11-15, slip op. at 6-10), and it should once again be denied.

B. Proposed Contention 2

The August 2011 Petition states proposed Contention 2 as follows:

> Contention 2 – Failure and Omission of the FPL COL for the Proposed Turkey Point Nuclear Reactors 6 & 7 to Provide for the Safe and Orderly Evacuation of the Population During or Following a Nuclear Event (Unusual Nuclear Occurance)

August 2011 Petition at 7. In support of proposed Contention 2, CASE states five general bases. First, CASE quotes the Task Force conclusion that emergency planning ("EP") has proven its effectiveness following recent hurricanes, and criticizes that conclusion. *Id.* at 7-8, citing Task Force Report at 60. Second, CASE quotes the Task Force Report as stating "ETEs [evacuation time estimates] are currently recalculated when the population around a nuclear plant either increases or decreases significantly," and claims that this contradicts the Applicant's position that it need not base the ETEs in the Application on potential population increases. August 2011 Petition at 8, citing Task Force Report at 60. Third, CASE cites the Task Force Report regarding enhancing mitigation (August 2011 Petition at 10-11) and revising NRC regulations (*id*. at 11-12). Fourth, CASE summarizes the August 4, 2011, meeting between Mayor Stoddard and Mr. Somerhoff, and asserts four points. Based on the August 4 meeting,

CASE asserts, in essence, that (1) there will be a "shadow evacuation" beyond the 10-mile Emergency Planning Zone ("EPZ") that renders the ETE invalid (*id*. at 13); (2) there will be gridlock in the event of an evacuation (*id*.); (3) shelter space is inadequate (*id*. at 13-15); and (4) there are not provisions for evacuating people living outside the 10-mile EPZ (*id*. at 14-16). Finally, CASE quotes the Task Force statement that "[t]he Task Force acknowledges that every situation will differ, so detailed preplanning in this areo is not plausible," and interprets this statement to mean that real planning for an evacuation is impossible. *Id*. at 9, 16, quoting the Task Force Report at 60, 61.

Staff Response: As explained below, proposed Contention 2 is inadmissible for four reasons. First, the bases CASE asserts fail to raise a genuine dispute of fact or law with the Application, as required by § 2.309(f)(vi). Second, the bases fail to provide the alleged facts or expert opinion sufficient to support the contention, as required by § 2.309(f)(v). Third, some of the bases do not provide information that is materially different than information previously available, as required by § 2.309(f)(2). Fourth, some of CASE's bases are simply irrelevant to proposed Contention 2. As set forth below, the staff analyzes each of CASE's bases in terms of these four failings, as applicable.

1. CASE's criticism of the Task Force conclusion that EP has proven its effectiveness following recent hurricanes does not raise a genuine dispute with the Application.

In determining contention admissibility, "[a]ny contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed." *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 433 (2008) (citing Rancho Seco, LBP-93-23, 38 NRC at 247-48). With respect to the effectiveness of emergency plans, CASE disagrees with the conclusions of the Task Force. August 2011 Petition at 7-8, quoting Task Force Report at 60. CASE, however, fails to explain how its disagreement with the Task Force conclusion that EP

has proven its effectiveness somehow raises a dispute with the Application. Accordingly, this basis for proposed Contention 2 is not admissible.

2. CASE's claim that the Task Force Report contradicts the Applicant's position that it need not base the ETEs in the Application on potential population increases is not materially different from information previously available, and fails to raise a genuine dispute of fact or law with the Application.

CASE appears to complain that the ETE in the Application does not take into account population growth. August 2011 Petition at 8-9. In its 2010 Petition, however, CASE also asserted that the ETE in the Application was inadequate for failure to take population growth into account. April 2011 Petition at 14-15. CASE's assertion that the Task Force Report raises the same issue is therefore not materially different from its earlier argument, and is not an acceptable basis for a new contention under § 2.309(f)(2).

In addition, CASE's assertion regarding the Task Force Report on this point is simply wrong, as the Task Force Report does not indicate that an applicant needs to account for projected population growth in its ETE. *See* Task Force Report at 60. Rather, the Task Force Report merely states that as actual population significantly changes near nuclear power facilities, the ETEs are revised. *Id*. A petitioner's imprecise reading of a reference document does not create a contention suitable for litigation. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995). CASE's imprecise reading of the Task Force Report in regard to ETEs and population growth does not establish a genuine dispute of fact or law with the Application. Accordingly, this basis for proposed Contention 2 does not satisfy § 2.309(f)(1)(vi).

3. CASE's citation to the Task Force Report discussion regarding enhancing mitigation and the revision of NRC regulations fails to raise a genuine dispute of fact or law with the Application and is otherwise irrelevant to proposed Contention 2.

CASE quotes extensively from the Task Force Report discussion of the Task Force recommendations for revision of NRC regulations and enhancing mitigation features. August 2011 Petition at 10-12. CASE, however, fails to relate this information to the Application. *Id*.

Moreover, the Task Force Report discussion regarding the enhancement of mitigation itself does not discuss EP. Task Force Report at 34-39.

In determining contention admissibility, "[a]ny contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed." *See Millstone*, LBP-08-9, 67 NRC at 433. Accordingly, these bases of proposed Contention 2 do not represent a genuine, material dispute with the application, contrary to 10 C.F.R. § 2.309(f)(1)(vi).[12]

4. The CASE assertions based on the August 4, 2011, meeting between Mayor Stoddard and Mr. Somerhoff are not materially different from information previously available.

CASE previously raised issues regarding what it believed would be "realistic" behavior by persons near the proposed facility and a "shadow evacuation area" in the event of an evacuation. 2010 Petition at 24-25; April 2011 Petition at 28, 33-36. Specifically, in the original proposed Contention 2, CASE referenced "Evacuation Behavior in Response to Nuclear Power Plant Accidents," by Donald Zeigler and James Johnson, Jr. and quoted the authors as saying that "[t]o plan for only a 10 mile evacuation is to significantly under plan for a nuclear power station accident" and that a "shadow evacuation effect" has been identified in which people outside the 10 mile evacuation radius will also leave the area. 2010 Petition at 23-24; April 2011 Petition at 29-30. CASE's assertion in the August 2011 Petition regarding a "shadow evacuation" is not materially different from these assertions. *See* August 2011 Petition at 13. Similarly, CASE's assertions regarding gridlock (*id*.) are not materially different from its earlier

[12] CASE generally asserts that the regulations "are faulty" (August 2011 Petition at 11), apparently in reliance on Task Force Report Recommendation 1. *See* Task Force Report at 22-23. Proposed Contention 2 does not further specify what fault CASE finds with the regulations, and CASE, therefore, fails to give notice to the other parties to this proceeding as to what CASE seeks to litigate in this regard. Accordingly, Proposed Contention 2 fails to provide a specific statement of the issue of law or fact to be raised or controverted in regard to any assertedly "faulty" NRC regulations, contrary to § 2.309(f)(1). In addition, any complaint regarding the existing regulations is prohibited by 10 C.F.R. § 2.335(a), since CASE has not sought a waiver of that regulation pursuant to § 2.335(b).

complaints regarding evacuation routes (2010 Petition at 16; April 2011 Petition at 15). Further, CASE explicitly previously raised its concern about the 10-mile plume exposure EPZ,[13] and the Board explicitly rejected it. LBP-11-15, slip op. at 15, n.22. CASE also asserts that shelter space is inadequate. August 2011 Petition at 13-14, 15. CASE, however, made similar assertions in its first petition. *See* 2010 Petition at 13-14. Accordingly, CASE provides information about shelter that is also not materially different from the information it previously provided on that topic. CASE makes no attempt to show that any of the information discussed above is new, as required by § 2.309(f)(2). Moreover, the snippets CASE provides do not provide documentary evidence or expert opinion to support any of these assertions, nor does CASE cite to any portion of the Application it seeks to dispute with respect to these assertions, contrary to §§ 2.309(f)(1)(v) and (iv). *See* August 2011 Petition at 13-16. Accordingly, all the bases derived from the August 4 meeting notes should be rejected.

5. CASE's imprecise reading of the Task Force Report does not create an admissible contention.

CASE quotes two Task Force statements as support for its position that emergency planning for the Turkey Point site is impossible. August 2011 Petition at 9, 16, quoting Task Force Report at 60, 61. First, CASE quotes this statement:

> As supported by the proposed EP rule, the scenarios described in NUREG/CR-7202 provide a basis for licensees to develop a comprehensive set of ETEs. Performing additional time estimates for natural disasters with unpredictable damage would offer no corresponding benefit to licensee personnel in providing appropriate protective action recommendations to offsite officials or to offsite emergency planners in developing evacuation and other protective action strategies.

[13] Establishment of the 10-mile plume exposure pathway EPZ for nuclear power plants is specifically required by regulation and discussed in Commission guidance. *See* 10 C.F.R. § 50.47(c)(2); NUREG-0396.

August 2011 Petition at 9, quoting Task Force Report at 60. CASE states that the Task Force seems to have taken a position similar to CASE's, *i.e.*, that emergency planning is impossible for Turkey Point. *Id.* at 9.

CASE, however, misreads the Task Force Report. The quoted text states that the "scenarios in NUREG/CR-7002 *provide a basis* for licensees to develop a comprehensive set of ETEs." Task Force Report at 60 (emphasis supplied). That is, the Task Force believes the scenarios adequate for ETE development. If the scenarios *did not* provide such a basis, the Task Force certainly would have so indicated, and likely would have made a recommendation to address ETE development. Notably, the Task Force made no such recommendation. *See id*. at 62 (summarizing recommendations). The Task Force statement that "[p]erforming *additional* time estimates for natural disasters . . . would offer no corresponding benefit" (*id*. (emphasis added)) merely indicates that development of natural disaster-specific ETEs in addition to the comprehensive ETEs already developed is unnecessary.

In regard to the second statement, CASE omits a portion of the Task Force statement necessary to its understanding. In context, the Task Force stated:

> While the U.S. EP framework has always noted that the plume exposure pathway EPZ provides a basis for expansion, insights from real-world implementation at Fukushima, including the realities of multiunit events, might further enhance U.S. preparedness for such an event. The Task Force acknowledges that every situation will differ, so detailed preplanning in this area is not plausible. As information and insights emerge about the challenges faced by Japanese officials while implementing protective actions around Fukushima, the NRC and its partners should evaluate those insights *to identify enhancements* to the decisionmaking framework in the United States.

Id. at 61 (emphasis added). The clear import of this passage is that the NRC may well be able to identify enhancements to the EP decisionmaking framework in the U.S. from insights into the events at Fukushima, and indeed, Task Force Recommendation 11.2 is explicitly directed to this end. *See id*. at 62. Rather than indicating that EP is impossible as CASE asserts, the Task Force Report indicates only that EP decisionmaking might be enhanced. CASE's imprecise

reading of the two statements it quotes from the Task Force Report does not create an admissible contention. *See Georgia Tech*, LBP-95-6, 41 NRC at 300.[14]

In view of the foregoing, the August 2011 Petition contains no new information to meet the standards of 10 C.F.R. §§ 2.309(f)(1) and (2) in regard to proposed Contention 2. The Board denied earlier versions of proposed Contention 2 (*see* LBP-11-06, slip op. at 89-93; LBP-11-15, slip op. at 11-15), and it should once again be denied.

C. Proposed Contention 5

The August 2011 Petition states proposed Contention 5 as follows:

> Contention 5 – Failure and Omission of the FPL COL for the Proposed Turkey Point Nuclear Reactors 6 & 7 Analysis to Consider or Incorporate Any Scientifically Valid Projection for Sea Level Rise and Climate Change Throughout the End of this Century and Beyond

August 2011 Petition at 16. CASE cites the Task Force Report only for the proposition that it makes "many statements regarding flooding, storm surge and other meteorological events and the need to prepare for them. However, sea level rise and clime change are not mentioned once." *Id*.

Staff Response: CASE admits that the Task Force Report contains no information in support of proposed Contention 5. *Id*. As this is the only potential source of new information under 10 C.F.R. §§ 2.309(c) and (f)(2), proposed Contention 5 must be denied.[15] Further, in proposed Contention 5, CASE states its disagreement with the Task Force's omission of sea

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[14] CASE also complains that the NRC "never" addressed the CASE assertion that contamination would overtake those evacuating in the event of an accident. *See* August 2011 Petition at 9. As this assertion indicates, CASE raised this complaint previously. 2010 Petition at 13. Then, as now, CASE offered no documents, expert opinion, or other facts to support this assertion. "[P]etitioners must do more than submit 'bald or conclusory allegation[s]' of a dispute with the application." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), LBP-03-12, 58 NRC 75, 81 (2003). The Staff did indeed address this point in the "NRC Staff's Answer to 'Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing'" at 14-15 (Sept. 13, 2010).

[15] CASE refers in passing to a study by Dr. Harold Wanless. August 2011 Petition at 18. CASE discussed this study in more detail previously (April 2011 Petition at 37-40), but the Board rejected a contention identical to proposed Contention 5 nonetheless. LBP-11-15, slip op. at 15-17.

level rise and climate change from the Task Force Report, rather than stating a dispute with the Application. *Id*. Accordingly, proposed Contention 5 fails to show that a genuine dispute exists with the Applicant on a material issue of fact or law, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iv), and it should be denied.

III. Admissibility and Timeliness of New Contentions 9 and 10

A. Proposed Contention 9

The August 2011 Petition states proposed Contention 9 as follows:

> Contention 9 (A New Contention) – All Pending Licensure Procedures for All Unlicensed Nuclear Reactors Should be Suspended for at Least Two Years or Until the NRC Board of Commissioners Accepts the Task Force Report and All Near-Term and Longer Term Recommendations are Fully Defined and Implemented

August 2011 Petition at 18. As a basis for this request, CASE states that existing regulations, procedures, and processes are wanting and must be "re-revised" and changed. *Id*. CASE quotes the Task Force Report at length (*id*. at 19-22), and suggests that two years is the minimum time for suspending licensing proceedings (*id* at 19).

Staff Response: Although styled as a new contention, proposed Contention 9 meets none of the admissibility requirements of 10 C.F.R. § 2.309(f)(1). In short, CASE fails to state any issue of law or fact to be raised in the proceeding, as required by § 2.309(f)(1)(i); CASE fails, *per* force, to demonstrate that the issue is material the findings the NRC must make to support the requested action, as required by § 2.309(f)(1)(iv); CASE fails to provide any statement of alleged facts or expert opinion which support CASE's position, as required by § 2.309(f)(1)(v); and CASE fails to provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact, as required by § 2.309(f)(1)(vi).

In addition, to the extent Contention 9 is intended as a request for a stay of the proceeding, the standards applicable to such requests in 10 C.F.R. § 2.1213(d) would apply because this is a proceeding under 10 C.F.R. Part 2, Subpart L. *See* LBP-11-06, slip op. at 120. Proposed Contention 9, however, is silent in regard to the standards of § 2.1213(d), and

the Board should therefore not entertain the CASE request embodied in proposed Contention 9.[16] *See generally Vermont Yankee Nuclear Power Corp. and Amergen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 83-84 (2000) (applying the standards of § 2.1327(d), which are identical to those of § 2.1213(d), to a request for a stay in a license transfer proceeding).

B. Proposed Contention 10

The August 2011 Petition states proposed Contention 10 as follows:

> Contention 9 (A New Contention) – The Commission Must Establish and Enforce New Guidelines for the Seperation [sic] of the Nuclear Industry Firms and Representatives From Participation in Staff Deliberations, Decisions and Actions.

August 2011 Petition at 22. As bases for proposed Contention 10, CASE indicates that it has observed a "close relationship" between the Applicant and the Staff, and infers that "Chairman Jaczko anticipated [this] problematical relationship" by stating "[t]he task force efforts should be informed by some stakeholder input but should be independent of industry efforts." *Id*., citing Task Force Report at 77 (App. B, Tasking Memorandum, COMGBJ-11-0002 (March 23, 2011)). CASE cites to a website posting to the effect that the Japanese regulator improperly colluded with Japanese politicians and power companies, and further asserts that certain unspecified actions by unspecified regulators are improper. *Id*. at 23.

As for what role the NRC should adopt with respect to these matters, CASE states:

> The NRC operates almost with no higher level supervision when it should actually be more closely aligned with the Department of Energy. Nuclear energy should be one seat at the energy table with an administrative body determining the best balance of energy sources for any given situation.

[16] The caption of every filing in which immediate affirmative relief is requested must reference that fact explicitly by adverting to that fact and including the word "motion." *See Duke Power Co*. (Cherokee Nuclear Station, Units 1, 2, & 3), ALAB-457, 7 NRC 70, 71 (1978). CASE failed to indicate in the caption of the August 2011 Petition that it was requesting a stay or suspension of this proceeding. Accordingly, the other parties to the proceeding need not have answered proposed Contention 9 within 10 days of its filing, as 10 C.F.R. §§ 2.323(c) or 2.1213(c) might otherwise have required.

Id. After extensively quoting the Task Force Report and characterizing NRC guidelines and standards as "questionable," CASE concludes that the Task Force overreached in concluding that "continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security." *Id*. at 25.

Staff Response: Although CASE labels proposed Contention 10 as a new contention, just as it does proposed Contention 9, CASE makes no attempt to meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). Accordingly, proposed Contention 10 is not admissible in this proceeding. Nonetheless, the Staff below addresses CASE's asserted bases.

With respect to the "close relationship" between the Applicant and Staff that CASE asserts, CASE also complains that "[r]esponses to petitions from [the Applicant and Staff] arrive simultaneously and are frequently almost verbatim copies of each other." August 2011 Petition at 22. CASE, however, does not provide any example of simultaneously served Applicant and Staff filings, or Applicant and Staff filings that are "almost verbatim" copies of each other.

Nonetheless, the Staff submits that the Applicant and Staff have the same filing schedules or deadlines, which are set by the NRC Rules of Practice in 10 C.F.R. Part 2, as sometimes modified by the Board, so it is unsurprising that Staff and Applicant filings are sometimes filed close in time. Further, the Staff and Applicant often respond to the same petitions or filing from other parties, so again it is unsurprising if similar language appears in such Staff and Applicant responses, constrained as they are by the language of the petition or other filing. And of course, the Staff and Applicant are often addressing the same procedural rules in 10 C.F.R. Part 2 or applicable Commission decisions, so it should be no surprise that the Staff and Applicant frequently discuss those rules and decisions using the rule and decision text, which, *per force*, is identical. There is nothing sinister in such occurrences.

Chairman Jaczko's March 23, 2011, Tasking Memorandum is not to the contrary. The Chairman did not state any reason for giving the instruction CASE quotes, and the Staff will not speculate on what might be such a reason. In this regard, the Commission has plenary authority over the Staff, and the Staff follows Commission instructions to the best of its ability. *See generally Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516-17 (1980) (Commission has inherent supervisory authority even over matters in adjudication).

With respect to CASE's assertion of improper conduct by Japanese regulators, politicians, and power companies, CASE does not explain the relevance of such conduct to the NRC. With respect to the allusion in proposed Contention 10 to unspecified bad behavior by unspecified regulators, CASE fails to give the Staff adequate notice of what it seeks to litigate. CASE's arguments in this regard amount to vague and generalized complaints about what NRC policy should be. The Commission's strict contention requirements are design to prevent licensing boards and parties from wasting their time on such matters. *See generally Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (contention requirements are intended to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose).

As for CASE's suggestion that the NRC should be "more closely aligned with the Department of Energy ["DOE"]," Congress decided otherwise in passing the Energy Reorganization Act of 1974, as amended ("ERA of 1974"), in which it separated the Atomic Energy Commission ("AEC") into two parts, one of which became the DOE, and the other the NRC. ERA of 1974, § 2, 42 U.S.C. § 5801. One of Congress's express purposes in enacting the ERA of 1974 was to separate the regulatory functions of the AEC from the other AEC functions. *Id*., § 2(c), 42 U.S.C. § 5801(c). To the extent that CASE wishes the ERA of 1974 to be undone and the NRC placed under the control of DOE, its remedy lies with Congress, and not the NRC.

Finally, with respect to CASE's argument that the Task Force "overreached" in finding that continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security, CASE does not identify any specific information to the contrary. August 2011 Petition at 25. Rather, CASE merely recites the Task Force recommendation that the NRC undertake rulemaking as an indication that the preceding conclusion is indefensible. *Id*. The Task Force, however, did not state that the current rules were inadequate. Task Force Report at 18-22. That improvements are available does not mean that the current rules are deficient. *See id*. CASE observations in this regard should be rejected.

CONCLUSION

For the above reasons, the Staff submits that the August 2011 Petition should be denied.

Respectfully submitted,

/Signed (electronically) by/
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Dated at Rockville, Maryland
this 6th day of September, 2011

CORRECTED ON
SEPTEMBER 7, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO "CITIZENS ALLIED FOR SAFE ENERGY, INC. MOTION FOR RECONSIDERATION OF AMENDED CONTENTION 1, 2 AND 5 AND NEW CONTENTIONS FOLLOWING FUKUSHIMA NEAR-TERM TASK FORCE RECOMMENDATIONS" have been served upon the following persons by Electronic Information Exchange this 6th day of September, 2011:

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Dated at Rockville, Maryland
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