February 21, 2012

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-COL and 52-041-COL
	)	
(Turkey Point Units 6 and 7)	)	
	)	

NRC STAFF ANSWER TO "MOTION FOR LEAVE FOR CITIZENS ALLIED FOR SAFE ENERGY TO FILE A NEW CONTENTION"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board (Board) Scheduling Order in this proceeding,[1] the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the "Motion for Leave for Citizens Allied for Safe Energy [(CASE)] to File a New Contention" (CASE Motion) dated February 3, 2012. *See* CASE Motion, Attachment 1, CASE Contention 9: Florida Power & Light Company's Revised Long Term Low-Level Nuclear Waste [Management Plan] from Turkey Point 6 and 7 is Inadequate to Protect Public Health and Safety [in] all Circumstances (Feb. 3, 2012) (Proposed Contention 9). For the reasons set forth below, the Staff opposes admission of proposed CASE Contention 9.

BACKGROUND

On June 30, 2009, Florida Power & Light Company (Applicant or FPL) submitted to the NRC an application for combined licenses for two AP1000 reactor units to be designated as Turkey Point Units 6 and 7. *See* Application for Combined License for Turkey Point Units 6 and 7 (COLA), Part 1, General and Financial Information, Section 1.0, Rev. 0 (ML091870846).

[1] Scheduling Order (Initial Scheduling Order and Administrative Directives), at 8 (Mar. 30, 2011) (unpublished) (Scheduling Order).

On August 17, 2010, CASE filed a petition to intervene. Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing (dated Aug. 17, 2010).[2] On February 28, 2011, this Board admitted CASE as a party to this proceeding. *See Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-06, 73 NRC __, __ (Feb. 28, 2011) (slip op. at 1). The Board held to be admissible two of the contentions proffered by CASE: Contention 6 and Contention 7. *Id*. at 1, 104, 112. CASE Contention 6 was an environmental contention of omission related to the long-term, onsite storage of low level radioactive waste (LLRW or LLW). *Id.* at 107. CASE Contention 7 was a safety contention related to the sufficiency of the Applicant's provisions for long-term, onsite storage of LLRW. *Id*. at 107, 112. In LBP-11-06, the Board found the rest of the proffered CASE contentions inadmissible, including CASE Contention 5 regarding sea level rise and CASE Contentions 1 and 2 regarding emergency planning. *Id*. at 85, 89, 96.

On June 29, 2011, the Board rejected a CASE request to admit CASE Contentions 1, 2, and 5 as supplemented by what CASE characterized as new information related to the Fukushima Dai-ichi event, finding the contentions untimely and otherwise inadmissible. *Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-15, 73 NRC __, __ (June 29, 2011) (slip op. at 1-3). On September 21, 2011, CASE moved a third time to have Contentions 1, 2, and 5 admitted, this time on the basis that they were supplemented by the new information contained in the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (Task Force Report).[3] Memorandum and Order (Denying CASE's Motion to Reconsider Rejection of Amended Contentions and to Admit Two Newly Proffered Contentions,

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[2] The CASE petition to intervene is described here as "revised" and "dated Aug. 17, 2010" because CASE's original petition to intervene submitted on August 17 was incomplete and the Board and the parties responded instead to its revised petition submitted on August 20, with the exception that any new arguments introduced by the revision were excluded from the proceeding. *See Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-06, 73 NRC __, __ (Feb. 28, 2011) (slip op. at 3 n.3).

[3] U.S. Nuclear Regulatory Commission, Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) (ML111861807) (Task Force Report).

and Denying FPL's Request to Impose Remedial Measures on CASE), at 4 (Sept. 21, 2001) (unpublished). The Board again found the contentions inadmissible, stating that "CASE is precluded from resurrecting an argument that is materially identical to its earlier argument." *Id*. at 7.

On December 16, 2011, the Applicant filed Revision 3 of its combined license (COL) application (COLA) with the NRC. *See* Letter from M. Nazar to NRC Document Control Desk, Submittal of the Annual Update of the COL Application – Revision 3 (Dec. 16, 2011) (ML11361A102). This included revisions to the Applicant's Final Safety Report (FSAR) and Environmental Report (ER) committing the Applicant to onsite storage of Class B and C LLRW in accordance with relevant NRC guidance and regulations in the event that the preferred method of offsite storage is unavailable. *See* Florida Power & Light Company's Motion to Dismiss CASE Contention 6 as Moot at 4 (Jan. 3, 2012); COLA, Part 2, Final Safety Analysis Report [hereinafter FSAR], Section 11.4, Rev. 3; COLA, Part 3, Environmental Report [hereinafter ER], Sections 3.5.3, 5.7.1.6, Rev. 3. These particular revisions are collectively referred to as the Applicant's "revised LLRW management plan." *See* Florida Power & Light Company's Motion for Summary Disposition of CASE Contention 7 at 2 n.1 (Jan. 3, 2012).

Based on the information provided by its revised LLRW management plan, the Applicant moved to dismiss CASE Contention 6 as moot,[4] and moved for summary disposition of CASE Contention 7.[5] The Staff supported both of these motions.[6] In its answer, CASE stated that it "will not oppose these motions." *See* Citizens Allied for Safe Energy, Inc. Response to FPL Motions to Dismiss CASE Contention 6 as Moot and for Summary Disposition of CASE

[4] Florida Power & Light Company's Motion to Dismiss CASE Contention 6 as Moot (Jan. 3, 2012).

[5] Florida Power & Light Company's Motion for Summary Disposition of CASE Contention 7 (Jan. 3, 2012).

[6] *See* NRC Staff Answer to "Florida Power & Light Company's Motion to Dismiss CASE Contention 6 as Moot" (Jan. 23, 2012); NRC Staff Answer to "Florida Power & Light Company's Motion for Summary Disposition of CASE Contention 7" (Jan. 23, 2012).

Contention 7 at 1 (Jan. 23, 2012). On January 26, 2012, the Board granted the Applicant's motion to dismiss CASE Contention 6 as moot. Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contention 2.1 and CASE's Contention 6 as Moot), at 3 (Jan. 26, 2012) (unpublished). It held that Contention 6 is moot because, with its revisions to its ER as part of its revised LLRW management plan, the Applicant had cured the omission of the environmental impacts resulting from the onsite storage of LLRW that was the subject of Contention 6. *Id*. at 5-6. Though this resolved Contention 6, the Board stated that CASE may proffer a new contention by February 10, 2012, "strictly limited to challenging the adequacy of the measures taken by FPL in curing the omission" of these environmental impacts. *Id*. at 6 n.13.

As for the safety impacts related to the onsite storage of LLRW, the Applicant's motion for summary disposition of CASE Contention 7, which directly addresses this issue, is still pending before the Board.

On February 3, 2012, CASE filed the motion at hand. It proffers a purportedly new contention concerning the safety consequences of water inundation and emergency planning deficiencies, which CASE asserts is based upon the new information of the Applicant's revised LLRW management plan made generally available to CASE on January 3, 2012, as part of the Applicant's motion for summary disposition of CASE Contention 7. Proposed Contention 9 at 1.

DISCUSSION

I. LEGAL STANDARDS

To be admissible, a newly proffered contention must satisfy: (1) either the timeliness standards in 10 C.F.R. § 2.309(f)(2) for new and amended contentions or the standards in 10 C.F.R. § 2.309(c) for nontimely contentions; and (2) the general contention admissibility standards in 10 C.F.R. § 2.309(f)(1). *See* LBP-11-15, 73 NRC at __ (slip op. at 3).

New or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer upon a showing that

> (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). A contention is generally not timely if it is fundamentally the same as a previous contention. *See Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-08, 67 NRC 193, 200-01 (2008) (new contention found to be inadmissible because it was substantially the same as a previous contention, as demonstrated by similar language and expert witness support).

A contention that does not qualify for admission as a new or amended contention under 10 C.F.R. § 2.309(f)(2) may still be admitted according to the balancing factors governing nontimely filings set forth in 10 C.F.R. § 2.309(c)(1).[7] Pursuant to 10 C.F.R. § 2.309(c)(2), each of these factors, as applicable, is required to be addressed in the requestor's nontimely filing.

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[7] 10 C.F.R. § 2.309(c)(1) requires a determination that the contention should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

> (i) Good cause, if any, for the failure to file on time;
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> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
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> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
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> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
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> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
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> (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
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> (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
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> (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1).

The first factor, whether good cause exists for the failure to file on time, is the "most important" and entitled to the most weight. *Amergen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 261 (2009). Where no showing of good cause for the failure to file on time is addressed by the petitioner, "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).

In addition to satisfying the requirements in 10 C.F.R. § 2.309(f)(2) for a new or amended contention or the requirements in 10 C.F.R. § 2.309(c) for a nontimely contention, the contention must set forth with particularity the 10 C.F.R. § 2.309(f)(1) general contention admissibility requirements, which are that the contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention 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) . . . provide 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).

The 10 C.F.R. § 2.309(f)(1) requirements should "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." *Id*. The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). Attempting to meet these requirements by "[m]ere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

II. PROPOSED CASE CONTENTION 9 IS UNTIMELY AND OTHERWISE INADMISSIBLE

CASE Contention 9 should not be admitted because it does not satisfy the requirements in either 10 C.F.R. § 2.309(f)(2) or 10 C.F.R. § 2.309(c), it does not satisfy the requirements in 10 C.F.R. § 2.309(f)(1), and it is an untimely answer opposing the Applicant's motion for summary disposition of Contention 7 rather than a new contention.

CASE proposes Contention 9 as follows:

> Florida Power & Light Company's revised long term low-level nuclear waste from Turkey Point 6 and 7 is inadequate to protect public health and safety all circumstances [sic].

Proposed Contention 9 at 1. Proposed CASE Contention 9 asserts that the Applicant's COLA fails to provide information sufficient to enable the NRC to reach a final conclusion on safety matters regarding the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 C.F.R. Part 20 in the event that "the reactor site will be inundated by water, either routinely due to sea level rise, or intermittently due to storm surge

related to hurricanes." *Id*. In addition to this water inundation argument, CASE also asserts that the Applicant's COLA is deficient because (1) "permanent storage elsewhere in the nation is not assured," and (2) the "application assumes that the current emergency plans in place with Miami-Dade County for TPN 3 & 4 is likewise sufficient for TPN 6 & 7." *Id*. at 1, 4. CASE claims that Contention 9 is based on the "new information" made available by the Applicant's revised LLRW management plan, a copy of which was attached to the Applicant's January 3, 2012, motion for summary disposition of CASE Contention 7. *Id*. at 1.

Staff Response: Pursuant to 10 C.F.R. § 2.309, each of these three claims is inadmissible and thus Contention 9 is inadmissible. As explained in detail below, CASE has failed to demonstrate that proposed Contention 9 is admissible for four reasons. First, though CASE asserts that Contention 9 is based on the Applicant's revised LLRW management plan, Contention 9 is very similar in language and expert opinions to previous CASE Contentions 1, 2, 5, and 7, and CASE has failed to show that Contention 9 is based on new and materially different information as required by 10 C.F.R. § 2.309(f)(2)(i)-(ii). Second, CASE does not address the applicable factors in 10 C.F.R. § 2.309(c)(1) and therefore Contention 9 cannot be admitted as a nontimely contention. Third, even if Contention 9 satisfied either the timeliness requirements or the nontimely filing requirements, each of its arguments fails to satisfy the general contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Finally, to the extent that Contention 9 concerns the sufficiency of the Applicant's LLRW management plan with regard to safety, CASE should have made this argument in response to the Applicant's motion for summary disposition of Contention 7, which specifically addresses the issue.[8] Any

[8] CASE Contention 7, states, as revised and narrowed by this Board, that,

> FPL's COLA fails to provide information sufficient to enable the NRC to reach a final conclusion on safety matters regarding the means for controlling and limiting radioactive material and effluents and radiation exposures within the limits set forth in Part 20 and ALARA in the event FPL needs to manage Class B and Class C LLRW for an extended period.

LBP-11-06, 73 NRC at __ (slip op. at 112).

sufficiency argument regarding the safety of the Applicant's LLRW management plan is not a new contention but a nontimely answer to the Applicant's motion. *See* 10 C.F.R. § 2.1205(b) (requiring that any answer to a motion for summary disposition be served within twenty days after service of the motion).

For these reasons, CASE Contention 9 should not be admitted.

A. Proposed CASE Contention 9 Does Not Satisfy the Requirements in 10 C.F.R. § 2.309(f)(2) Because It Simply Repeats Claims from Previously Denied CASE Contentions 1, 2, and 5 and Currently Pending CASE Contention 7

To satisfy the requirements in 10 C.F.R. § 2.309(f)(2), CASE must show that proposed Contention 9 is based on new information that is materially different than information previously available and that Contention 9 was submitted in a timely fashion based on the availability of this information. 10 C.F.R. § 2.309(f)(2). Contention 9 identifies the Applicant's revised LLRW management plan as such new and materially different information. Proposed Contention 9 at 1. However, CASE has not shown either that Contention 9 was submitted in a timely fashion based upon the availability of the revised LLRW management plan or that Contention 9 is actually based on the information in this plan.

The Applicant's revised LLRW management plan became generally available on January 3, 2012, as Appendix 1 to the Applicant's motion for summary disposition of CASE Contention 7. *See* Florida Power & Light Company's Motion for Summary Disposition of CASE Contention 7 (Jan. 3, 2012). CASE Contention 9 was submitted 31 days later on February 3, 2012. *See* CASE Motion. According to the Scheduling Order, "[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. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c)." Scheduling Order, at 8. Therefore, proposed Contention 9 does not satisfy the timely submission requirement in 10 C.F.R. § 2.309(f)(2)(iii) as

interpreted by the Scheduling Order and thus is only admissible if it addresses the nontimely filing requirements in 10 C.F.R. § 2.309(c), which, as discussed below, it does not.

Additionally, CASE does not make a "showing" that the Applicant's revised LLRW management plan is the information upon which Contention 9 is based. 10 C.F.R. § 2.309(f)(2). Though CASE states that Contention 9 is based on the Applicant's revised LLRW management plan, it then immediately admits that the arguments of Contention 9 have been made before. *See id*. at 1 ("[T]he applicant's plan is not sufficient because it does not consider information that CASE offered in its original Petition [t]o Intervene."); *id*. at 1-2 ("CASE has previously raised the matter of sea-level rise and storm surge with respect to the applicant's plan to operate nuclear reactors far into the end of this century."). In fact, Contention 9 is based upon concerns that have been expressed by CASE since its admission as an intervenor and not new concerns based upon the Applicant's recent commitment to store LLRW on site in accordance with NRC guidance in the event that offsite storage is unavailable. With its concerns regarding water inundation, lack of offsite LLRW storage, and emergency planning, CASE is repeating the arguments of Contentions 1, 2, and 5, which the Board has heard and rejected three times, and is also revisiting the argument of pending Contention 7. *See* LBP-11-06, 73 NRC at __ (slip op. at 85, 89, 96); LBP-11-15, 73 NRC at __ (slip op. at 1-3); Memorandum and Order (Denying CASE's Motion to Reconsider Rejection of Amended Contentions and to Admit Two Newly Proffered Contentions, and Denying FPL's Request to Impose Remedial Measures on CASE), at 4 (Sept. 21, 2001) (unpublished).

This is not the first time in this proceeding that CASE has resurrected old arguments based on purportedly new information that does not in fact provide support for those claims. For instance, in response to the Task Force Report, CASE requested admission of previously denied Contentions 1, 2, and 5, but did not rely on information in the Task Force Report as a basis for admission. Memorandum and Order (Denying CASE's Motion to Reconsider Rejection of Amended Contentions and to Admit Two Newly Proffered Contentions, and Denying FPL's

Request to Impose Remedial Measures on CASE), at 2-4 (Sept. 21, 2011) (unpublished). Regarding CASE's Contention 2 claim that the Applicant failed to take into account population growth when calculating evacuation time estimates, the Board stated that "this is an argument that is substantially identical to an argument CASE previously advanced, which this Board previously rejected . . . CASE is precluded from resurrecting an argument that is materially identical to its earlier argument." *Id*. at 7. For this proposition, the Board cited *Diablo Canyon*, in which the Commission held a purportedly new contention to be inadmissible because it was substantially the same as a previous contention as demonstrated by its use of similar language and similar expert witness support. CLI-08-08, 67 NRC at 200-01.

Contention 9 is similarly inadmissible for failure to show that it is based on new and materially different information because it is substantially the same, in both its language and the asserted expert support, as Contentions 1, 2, 5, and 7. First, "the likelihood that the reactor site will be inundated by water, either routinely due to sea level rise, or intermittently due to storm surge related to hurricanes" is a rephrasing of some of the August 17, 2010, arguments made in Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing. Proposed Contention 9 at 1. That pleading contained the expert opinion of Harold R. Wanless who argued, in part, that sea level rise was not being properly accounted for resulting in an underestimate of the risk from storms and of the plant's ability to contain nuclear accidents. Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing at 34-35 (dated Aug. 17, 2010). The original pleading also stated that any LLRW management plan "must anticipate the possible inundation of the site during a storm surge in the not-so-distant future" and that "[t]he elevated inundation of the Turkey Point site with extended storage, and therefore decades accumulation of so-called 'Low-Level' waste . . . has not been adequately analyzed." *Id*. at 40. Therefore, when CASE argues in Contention 9 that water inundation is a risk to the onsite storage of LLRW amplified by the fact that sea level rise is being improperly calculated, the basis for this argument is not the identified "new information" of

the Applicant's revised LLRW management plan. Second, Contention 9 also asserts as one of its bases its purported disagreement with the revised LLRW management plan concerning the availability of offsite LLRW storage. Proposed Contention 9 at 2-3. This claim fails to satisfy 10 C.F.R. § 2.309(f)(2) because CASE is simply rephrasing its original argument and expert opinion without explaining how this argument is now based on any new and materially different information in the Applicant's revised LLRW management plan. *Compare* Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing at 44-45 (dated Aug. 17, 2010) *with* Proposed Contention 9 at 3. Finally, by asserting that "FPL's application assumes that the current emergency plans in place with Miami-Dade County for TPN 3 & 4 is likewise sufficient for TPN 6 & 7," Contention 9 is not referring to new and materially different information in the revised LLRW management plan. Rather, it is repeating CASE's initial filing word-for-word. *See* Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing at 14 (dated Aug. 17, 2010). Therefore, it is apparent that the information upon which these claims are based is not the revised LLRW management plan, but information that was previously available.

Because CASE did not submit Contention 9 within thirty days of the availability of the revised LLRW management plan and because CASE fails to show that proposed Contention 9 is based on new and materially different information in the revised LLRW management plan, the contention fails to satisfy the requirements in 10 C.F.R. § 2.309(f)(2), and is inadmissible.

B. Proposed CASE Contention 9 Does Not Satisfy the Requirements in 10 C.F.R. § 2.309(c) Because It Does Not Address the 10 C.F.R. § 2.309(c)(1) Factors

A contention, such as proposed CASE Contention 9, that does not qualify for admission as a new or amended contention under 10 C.F.R. § 2.309(f)(2) may still be admitted as a nontimely contention pursuant to 10 C.F.R. § 2.309(c). To satisfy the requirements in 10 C.F.R. § 2.309(c), the petitioner "shall address" the applicable listed balancing factors. 10 C.F.R. § 2.309(c)(2). In this instance, CASE has addressed none of the 10 C.F.R. § 2.309(c)(1)

balancing factors and therefore cannot rely upon this section for admission of its proposed Contention 9. Since proposed CASE Contention 9 neither satisfies the new or amended contention requirements in 10 C.F.R. § 2.309(f)(2) nor the nontimely contention requirements in 10 C.F.R. § 2.309(c), it is inadmissible.

C. Proposed CASE Contention 9 is Inadmissible for Failure to Satisfy the Requirements in 10 C.F.R. § 2.309(f)(1)

For the reasons stated above, CASE has not shown that any of the three Contention 9 claims are based on the information in the Applicant's revised LLRW management plan, which renders the contention untimely and inadmissible. However, even if they had been timely raised, none of the claims satisfies the general admissibility requirements in 10 C.F.R. § 2.309(f)(1).

1. The Contention 9 claim concerning water inundation does not satisfy 10 C.F.R. § 2.309(f)(1)(v) and (vi).

CASE's repetition of its concern that sea level rise and storm surges will affect the ability of the Turkey Point site to control and limit radioactive exposures does not satisfy 10 C.F.R. § 2.309(f)(1)(v) and (vi). Section 2.309(f)(1)(v) requires a contention to set forth with particularity the alleged facts or expert opinions supporting the position "together with references to the specific sources and documents on which the requestor/petitioner intends to rely." 10 C.F.R. § 2.309(f)(1)(v). CASE relies on expert opinions to support the possibility of water inundation but does not actually reference the specific source of these opinions. Rather, CASE refers to the source as "one of CASE's experts." Proposed Contention 9 at 3. This non-specific attribution is insufficient to satisfy 10 C.F.R. § 2.309(f)(1)(v). Also, CASE does not "show that a genuine dispute exists" with the Applicant by reference to "specific portions of the application" as required by 10 C.F.R. § 2.309(f)(1)(vi). CASE's unnamed expert argues that water level calculations should be determined from mean high tide but, according to this unnamed expert, "FPL starts with the mean low tide." *Id*. at 3-4. However, neither CASE nor the unnamed expert references a specific portion of the COLA that calculates water level in this

manner, let alone how CASE's assertion ultimately controverts a particular analysis or conclusion in the application. Therefore, because CASE does not provide references to the specific sources on which it intends to rely and because CASE does not provide references to the portions of the COLA that it disputes, its Contention 9 claim related to sea level rise and storm surge is inadmissible for failure to meet 10 C.F.R. § 2.309(f)(1)(v) and (vi).

2. The Contention 9 claim concerning the existence of offsite LLRW storage does not satisfy 10 C.F.R. § 2.309(f)(1)(vi).

CASE's argument that offsite LLRW storage is unavailable is inadmissible for failure to satisfy 10 C.F.R. § 2.309(f)(1)(vi). While the Applicant's original LLRW management plan called for all LLRW to be stored offsite, the Applicant's revised LLRW management plan states that if offsite storage is not available, LLRW will be stored onsite in accordance with all relevant NRC guidance and regulations. *See* Florida Power & Light Company's Motion for Summary Disposition of CASE Contention 7 at 3-4 (Jan. 3, 2012). Consequently, without explaining a genuine deficiency with the Applicant's updated contingency plans for onsite storage, CASE fails to explain why a dispute directed solely to the existence of offsite LLRW storage represents a genuine dispute with the application. Therefore, Contention 9, as it relates to the existence of offsite LLRW storage, is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi).

3. The Contention 9 claim concerning emergency plans does not satisfy 10 C.F.R. § 2.309(f)(1)(vi).

The concern that "FPL's application assumes that the current emergency plans in place with Miami-Dade County for TPN 3 & 4 is likewise sufficient for TPN 6 & 7" is inadmissible for the same reason this Board previously held it to be inadmissible:

> CASE's attempt to challenge FPL's current emergency plan "on file with Miami-Dade County" . . . fails to raise a genuine dispute of material fact under section 2.309(f)(1)(vi) with FPL's COLA, because there is no indication the extant plan on file with Miami-Dade County is encompassed in FPL's COLA.

LBP-11-06, 73 NRC at __ (slip op. at 87 n.91). Because this portion of Contention 9 concerned with emergency plans includes no references to specific portions of the COLA, it fails to satisfy 10 C.F.R. § 2.309(f)(1)(vi) and is thus inadmissible.

D. CASE Cannot Change its Answer to the Applicant's Motion for Summary Disposition of Contention 7 by Submitting a Purportedly New Contention Based on the Same Information that is the Basis for that Motion for Summary Disposition

Contention 9 states that the Applicant's revised LLRW management plan "is not sufficient" and that "[i]t is important that the applicant not only have an extended storage plan for LLW . . . it must be a plan that will deliver a basis for a safety finding before granting a COL." Proposed Contention 9 at 1, 2. This is exactly the substance of Contention 7, which is a safety contention regarding the sufficiency of the Applicant's LLRW management plan. *See* LBP-11-06, 73 NRC at __ (slip op. at 112) (requiring that the Applicant "provide information sufficient to enable the NRC to reach a final conclusion on safety matters regarding the means for controlling and limiting radioactive material and effluents and radiation exposures within the limits set forth in Part 20 and ALARA in the event FPL needs to manage Class B and Class C LLRW for an extended period."). If CASE still seeks to challenge the sufficiency of the Applicant's LLRW management plan with regard to safety, as Contention 9 seems to contend, then its opportunity to pursue that argument is in the context of the pending motion for summary disposition of already-admitted Contention 7, which asserts that summary disposition is appropriate because there remains no genuine dispute of fact regarding the adequacy of the Applicant's LLRW management plan and that the Applicant is entitled to judgment as a matter of law. *See* Florida Power & Light Company's Motion for Summary Disposition of CASE Contention 7 at 1-2 (Jan. 3, 2012). The proper course of action for CASE was to raise these onsite storage safety concerns in response to the Applicant's motion for summary disposition of Contention 7, not to circumvent that argument by raising the same safety concerns as "new" Contention 9. In its answer to the Applicant's motion for summary disposition of Contention 7, CASE stated that it "will not oppose" the motion. Citizens Allied for Safe Energy, Inc. Response

to FPL Motions to Dismiss CASE Contention 6 as Moot and for Summary Disposition of CASE Contention 7 at 1 (Jan. 23, 2012). This answer of no opposition was timely because it was submitted within twenty days after the January 3, 2012, service of the motion for summary disposition. *See* 10 C.F.R. § 2.1205(b). CASE's decision not to oppose the motion should control its position on the issue. In effect, Contention 9, which was submitted on February 3, 2012 (31 days after service of the motion for summary disposition of Contention 7), represents CASE changing its answer to a motion for summary disposition and doing so outside the twenty-day time limit for submitting answers to motions for summary disposition. Given the absence of any clear request (or justification) for such a late filing, Contention 9 should not be admitted.

CONCLUSION

For the reasons set forth above, newly proposed CASE Contention 9 is inadmissible and should be rejected.

Respectfully submitted,

/signed (electronically) by/
Jeremy L. Wachutka
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1571
Jeremy.Wachutka@nrc.gov

Dated at Rockville, Maryland
this 21st day of February, 2012

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 and 52-041
	)	
(Turkey Point Units 6 and 7)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO 'MOTION FOR LEAVE FOR CITIZENS ALLIED FOR SAFE ENERGY TO FILE A NEW CONTENTION'" in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 21st day of February, 2012:

Administrative Judge, Chairman
E. Roy Hawkens
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Roy.Hawkens@nrc.gov

Administrative Judge
Dr. Michael F. Kennedy
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Michael.Kennedy@nrc.gov

Administrative Judge
Dr. William C. Burnett
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: William.Burnett2@nrc.gov

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

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

William C. Garner
Gregory T. Stewart
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Dr., Suite 200
Tallahassee, FL 32308
E-mail: bgarner@ngnlaw.com;
gstewart@ngnlaw.com

Lawrence D. Sanders
Mindy Goldstein
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Rd.
Atlanta, GA 30322
E-mail: Lawrence.Sanders@emory.edu;
magolds@emory.edu

Richard Grosso
Everglades Law Center, Inc.
3305 College Ave.
Ft. Lauderdale, FL 33314
E-mail: Richard@evergladeslaw.org

Mitchell S. Ross
James M. Petro, Jr.
Counsel for the Applicant
Florida Power & Light Co.
Mail Stop LAW/JB
700 Universe Blvd.
Juno Beach, FL 33408
E-mail: Mitch.Ross@fpl.com
james.petro@fpl.com

John H. O'Neill, Jr.
Matias F. Travieso-Diaz
Stefanie Nelson George
Kimberly A. Harshaw
Counsel for the Applicant
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
E-mail: John.O'Neill@pillsburylaw.com;
Matias.Travieso-Diaz@pillsburylaw.com;
Stefanie.George@pillsburylaw.com
Kimberly.Harshaw@pillsburylaw.com

Steven C. Hamrick
Counsel for the Applicant
Florida Power & Light Co.
801 Pennsylvania Ave., Ste. 220
Washington, D.C. 20004
E-mail: Steven.Hamrick@fpl.com

Barry White
Citizens Allied for Safe Energy
10001 S.W. 129th Terr.
Miami, FL 33176
E-mail: bwtamia@bellsouth.net

/Signed (electronically) by/
Jeremy L. Wachutka
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1571
Jeremy.Wachutka@nrc.gov

Dated at Rockville, Maryland
this 21st day of February, 2012