February 27, 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 TO FILE A TIMELY CONTENTION IN RESPONSE TO NEW INFORMATION"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board (Board) order dismissing CASE Contention 6 as moot,[1] the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the Citizens Allied for Safe Energy, Inc. (CASE) motion[2] to admit newly proffered CASE Contention 10.[3] For the reasons set forth below, the Staff opposes admission of proposed CASE Contention 10.

BACKGROUND

The background of this proceeding was described in detail in the Staff answer to proposed CASE Contention 9 and will not be fully repeated here. *See* NRC Staff Answer to "Motion for Leave for Citizens Allied for Safe Energy to File a New Contention" at 1-4 (Feb. 21, 2012). The developments in the proceeding pertinent to proposed Contention 10 are as follows. On December 16, 2011, Florida Power & Light Company (Applicant or FPL) filed revision 3 of its

[1] Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contention 2.1 and CASE's Contention 6 as Moot), at 6 (Jan. 26, 2012) (unpublished).

[2] Motion to File a Timely Contention in Response to New Information (Feb. 10, 2012) (CASE Motion).

[3] CASE Motion, Attachment 1, Contention 10: FPL's Turkey Point 6 & 7 Environmental Report of COL Revision 3 does not Adequately Address the Impact of Extended Storage of all Types of AP1000 LLW (Feb. 10, 2012) (Proposed Contention 10).

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 low level radioactive waste (LLRW or LLW) in accordance with relevant NRC guidance and regulations in the event that the preferred method of offsite storage is unavailable. *See* Turkey Point Units 6 and 7 COLA, Part 2, Final Safety Analysis Report [hereinafter FSAR], Section 11.4, Rev. 3; Turkey Point Units 6 and 7 COLA, Part 3, Environmental Report [hereinafter ER], Sections 3.5.3, 5.7.1.6, Rev. 3. The Applicant collectively refers to these particular revisions as its "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 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). The Board 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

[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).

omission of the environmental impacts resulting from the onsite storage of LLRW that was the subject of Contention 6.[7] *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. In response, CASE filed proposed Contention 10 on February 10, 2012. *See* CASE Motion at 2-3.

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 Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-15, 73 NRC __, __ (June 29, 2011) (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;
>
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and

[7] CASE Contention 6, stated, as revised and narrowed by this Board, that,

> Because there currently is no access to an offsite LLRW disposal facility for proposed Units 6 and 7, and because it is reasonably foreseeable that LLRW generated by normal operations will need to be stored at the proposed site for longer than the two-year period contemplated in FPL's ER, the analysis in the ER is inadequate because it fails to address environmental impacts in the event the applicant will need to manage Class B and Class C LLRW on the Turkey Point site for a more extended period of time.

Florida Power and Light Co. (Turkey Point, Units 6 & 7), LBP-11-06, 73 NRC __, __ (Feb. 28, 2011) (slip op. at 104).

> (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).[8] 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. 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., L.L.C.* (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

[8] 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;
>
> (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
>
> (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).

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., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

II. PROPOSED CASE CONTENTION 10 IS UNTIMELY AND OTHERWISE INADMISSIBLE

CASE proposes Contention 10 as follows:

> FPL's Turkey Point 6 & 7 Environmental Report of COL revision 3 does not adequately address the impact of extended storage of all types of AP1000 LLW.

Proposed Contention 10 at 1. Though CASE divides its arguments into five bases, the assertions in Contention 10 amount to the following three claims. First, Contention 10 claims that the ER fails to consider liquid pathways and human exposures resulting from the water inundation of LLRW stored on site, including used steam generator components and contaminated soil. Proposed Contention 10 at 1-2, 5-6. Second, Contention 10 claims that offsite storage of Class B and C LLRW is currently unavailable. *Id*. at 6-7. Third, Contention 10 claims that the radioactivity of the onsite LLRW storage will be greater than that considered in the ER due to the early replacement of defective steam generators and their subsequent storage on site. *Id*. at 3-5.

Staff Response: Pursuant to 10 C.F.R. § 2.309, each of these three claims is inadmissible and thus Contention 10 is inadmissible. As explained in detail below, CASE has failed to demonstrate that proposed Contention 10 is admissible for three reasons. First, none of its claims satisfies the timeliness requirements in 10 C.F.R. § 2.309(f)(2) because CASE does

not show that they are based on new and materially different information. Second, none of its claims satisfies the requirements in 10 C.F.R. § 2.309(c) because CASE addresses none of the 10 C.F.R. § 2.309(c)(1) balancing factors. Third, even if the threshold timeliness requirements were satisfied, none of the Contention 10 claims satisfies the general contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). For these reasons, proposed CASE Contention 10 is not admissible.

A. Proposed CASE Contention 10 Does Not Satisfy the Requirements in 10 C.F.R. § 2.309(f)(2) Because CASE has Not Shown that it is Based on New and Materially Different Information

Proposed Contention 10 is not timely because it fails to satisfy the requirements in 10 C.F.R. § 2.309(f)(2) and because it is a repetition of previously rejected contentions. Section 2.309(f)(2) permits admission of new contentions filed after the initial filing only upon a showing that the new contention is based on new and materially different information. 10 C.F.R. § 2.309(f)(2). Additionally, if a new contention's claim is "substantially identical" to a previously advanced and rejected claim, then the claim will be found to be untimely for being based on previously available information. *See* 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 7 (Sept. 21, 2011) (unpublished) *citing Diablo Canyon*, CLI-08-08, 67 NRC at 200-01. A claim is substantially identical to a previous claim if it uses similar language and similar expert witness support. *Diablo Canyon*, CLI-08-08, 67 NRC at 200-01.

Contention 10 was filed after the initial filing. CASE fails to show that the claims in Contention 10 concerning water inundation, unavailable offsite LLRW storage, and defective steam generators are based on new and materially different information in the Applicant's revised LLRW management plan or in any other new source. Furthermore, the water inundation claim is substantially identical to the one previously raised by CASE and rejected by this Board. Therefore, these three claims individually, and Contention 10 as a whole, are untimely.

1. The claim that the ER fails to consider liquid pathways and human exposures resulting from water inundation of LLRW stored on site, including steam generator components and contaminated soil, is not based on new and materially different information; rather, it is a repetition of claims already rejected by the Board.

The majority of the environmental impacts identified by CASE have as their root cause the asserted potential for flooding of the Turkey Point site. *See* Proposed Contention 10 at 1-2, 5-9. However, CASE fails to show that its concern with such flooding of the site is based on new and materially different information. In fact, CASE admits that it has unsuccessfully raised the possibility of site water inundation before. *See* Proposed Contention 10 at 1 ("CASE has, in many filings in this intervention, presented the matter of climate change and tropical storm impact . . . ."); Proposed Contention 10 at 2 ("[T]he revised FPL plan does not consider information that CASE offered including expert testimony in the August 20, 201[0] Revised Petition [to Intervene] . . . regarding the inevitable impact of climate change on Turkey Point."). Since CASE does not show that its flooding claim is based on new and materially different information but instead is substantially identical to previous CASE claims, this claim is untimely pursuant to 10 C.F.R. § 2.309(f)(2). Since the flooding argument is untimely, all of CASE's subsequent arguments about other environmental impacts predicated on flooding are similarly untimely. Therefore, CASE's arguments regarding the environmental impacts of radiation dispersal due to the potential flooding of onsite LLRW, onsite used steam generator components, and onsite contaminated soil, are also untimely.

This is not the first time in this proceeding that CASE has repeated a rejected argument in light of a change in the application without showing that the repeated argument is based on new and materially different information provided by that change. The claim that the Applicant's COLA is deficient because it insufficiently addresses the environmental impacts of water inundation was first proposed in CASE's petition to intervene. *See* Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing (dated Aug. 17, 2010)

(Petition).[9] The Petition argued, as part of proffered CASE Contention 5, that "neither [the FSAR nor the ER] considers and . . . incorporates any scientifically valid projection for sea level rise through this century and beyond." *Id*. at 33. The Petition also stated, as part of proffered Contention 6, 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. It concluded that, "[t]he lack of inclusion of a thorough analysis of the potential for elevated storm surge, site inundation and the possible dispersal of so-called 'Low-Level' waste off the [Turkey Point] site . . . would jeopardize the health, safety and well being of . . . the general public and the biome of South Florida." *Id*.

The Board rejected this water inundation argument. *See Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-06, 73 NRC __, __ (Feb. 28, 2011) (slip op. at 96-97). It held that Contention 5 was not admissible because the Applicant had included a factor for sea level rise in its analysis of the maximum water level due to a probable maximum hurricane. *Id*. at 98-99. Also, the Board held that CASE had failed to explain why the scenario "of site inundations that could result in the dispersal of LLRW off the Turkey Point site . . . is plausible, much less reasonably foreseeable." *Id*. at 102. For this reason, the environmental impact of the dispersal of onsite LLRW by flooding was expressly carved out of the Board's partial admission of Contention 6. *Id*. at 102, 104.

Water inundation was next raised in a CASE motion seeking to have previously rejected Contentions 1, 2, and 5 admitted in light of the Fukushima Dai-ichi accident. Amended Contentions 1, 2 and 5 at 2 (Apr. 18, 2011). The Board again denied admission of Contention 5, holding that CASE had "fail[ed] to explain how the information relating to the Fukushima

[9] 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).

event supports an argument" that inundation is "a plausible scenario." LBP-11-15, 73 NRC at __ (slip op. at 16). The Board also discussed what constitutes a showing that a new contention is based on new and materially different information. It stated that there is a showing of a new and materially different basis when the intervenor shows that (1) there is a change to the relevant portions of the COLA or (2) recent developments require altering any portions of the COLA. *Id*. at 8.

Water inundation was raised for the third time when CASE moved to have Contentions 1, 2, and 5 admitted on the basis that they were supplemented by new information contained in the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (Task Force Report).[10] Citizens Allied for Safe Energy, Inc. Motion for Reconsideration of Amended Contentions 1, 2, and 5 and New Contentions Following Fukushima Near-Term Task Force Recommendations (Aug. 11, 2011). The Board held the water inundation claim of that motion to be inadmissible because it was not based on any new and materially different information in the Task Force Report. 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 9 (Sept. 21, 2011) (unpublished).

In proffering Contention 9, CASE raised the issue of water inundation a fourth time. *See* Motion for Leave for Citizens Allied for Safe Energy to File a New Contention (Feb. 3, 2012). The Staff opposed admission of Contention 9 because CASE did not show that it was based on any new and materially different information in the Applicant's revised LLRW management plan or in any other source. NRC Staff Answer to "Motion for Leave for Citizens Allied for Safe Energy to File a New Contention" at 11-12 (Feb. 21, 2012). The Board has not yet ruled on the admissibility of CASE Contention 9.

[10] 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).

As with its previous attempts to overcome the rejection of its initial water inundation argument and resurrect the issue, CASE does not now show that its Contention 10 water inundation claim is based on new and materially different information. CASE does not show that the possibility of site inundation is based on the new information added to ER sections 3.5.3 and 5.7.1.6 as part of the Applicant's revised LLRW management plan. Nor does CASE point to any other source of new and materially different information on which to base this claim. Rather, CASE states that Contention 10 is based on the ER's failure at sections 5.4.1.1 and 5.4.2 to include site inundation as a viable pathway for exposure. Proposed Contention 10 at 2, 6. ER sections 5.4.1.1 and 5.4.2 are not new and materially different information because they were unchanged by the Applicant's revised LLRW management plan and because the latest revision of these sections is materially the same as the original revision. *Compare* ER, Sections 5.4.1.1, 5.4.2, Rev. 3 *with* ER, Sections 5.4.1.1, 5.4.2, Rev. 2 *and* ER, Sections 5.4.1.1, 5.4.2, Rev. 0. In short, CASE could have raised (and did in fact raise) its water inundation argument earlier. This renders the argument untimely. *See* LBP-11-15, 73 NRC at __ (slip op. at 8).

2. The claim that offsite storage of Class B and C LLRW is currently unavailable is not based on new and materially different information.

Contention 10 claims that the ER at 5.11.7 is partially incorrect in stating that the "permitted disposal facility . . . in Clive, Utah [(Clive facility)] . . . accepts low-level and mixed radioactive wastes" because the Clive facility only accepts Class A LLRW and not Class B or C LLRW. Proposed Contention 10 at 6-7. This assertion is not based on new and materially different information because both ER section 5.11.7 and the fact that the Clive facility cannot accept Class B or C LLRW are not new. ER section 5.11.7 was not modified as part of the Applicant's revised LLRW management plan. In fact, the quoted paragraph in ER revision 3 is identical to the corresponding paragraph in ER revision 0 except that revision 3 provides the month as well as the year as part of its in-text citations. *Compare* ER Section 5.11.7, Rev. 3 *with* ER Section 5.11.7, Rev. 0. Also, the fact that the Clive facility cannot accept Class B or C

LLRW was identified by CASE in its initial filing. *See* Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing, D'Arrigo Declaration at 4 (dated Aug. 17, 2010) ("EnergySolutions in Clive, Utah, is licensed to dispose of Class A waste and cannot take Class B or C."). Therefore, this claim could have been raised at the time of intervention and is now untimely.

3. The claim that the ER miscalculates the radioactivity of onsite LLRW storage because it does not account for the storage of defective steam generators is not based on new and materially different information.

The final claim of Contention 10 rests on the following assertions. First, CASE asserts that the Westinghouse steam generator design is defective. Proposed Contention 9 at 3-4. Because of the asserted defects in the Westinghouse steam generators that would be installed in proposed Turkey Point Units 6 & 7, CASE asserts that those steam generators will be replaced during the life of the plant. *Id*. Based on the asserted need to replace the steam generators and the assertion that there is no offsite storage for LLRW, CASE asserts that the steam generators will be stored on site. *Id*. Finally, CASE asserts that because the steam generators will be stored on site and because steam generators are especially radioactive, the projected source term of the onsite LLRW storage will be greater than anticipated in the COLA. *Id*. at 3-5. Since CASE fails to show that this claim is based on new and materially different information, it is untimely.

This portion of Contention 10 identifies fault with the source terms described in DCD Table 11.2-7. *Id*. at 3. This table is discussed in the Applicant's ER at sections 3.5.1.2 and 5.4.1.1. The Applicant's revised LLRW management plan did not change these references to DCD Table 11.2-7 nor did it change DCD Table 11.2-7 itself. *Compare* ER, Sections 3.5.1.2, 5.4.1.1, Rev. 3 *with* ER, Sections 3.5.1.2, 5.4.1.1, Rev. 2. Therefore, this source term information was previously available and cannot be the basis for a timely new contention.

Also, the information upon which CASE bases its claim that the Westinghouse steam generator design is defective is not new and materially different. First, CASE uses an article

published in 1995 as evidence of steam generator degradation. *See* Proposed Contention 10 at Attachment 2. Second, CASE compiles "recent statistic[s]" to show that steam generators are being replaced more rapidly than planned. Proposed Contention 10 at 3. CASE then erroneously credits the date that it physically compiled these "recent statistic[s]" as the date of their availability. *Id*. However, CASE's "recent statistic[s]" appear to simply reproduce a 2005 source. *Compare* Proposed Contention 10 at Attachment 3 *with* Bechtel Power Corporation, Leading the Industry: Steam Generator Replacements, 2005 *available at* http://www.bechtel.com/assets/files/PDF/SGR_Experience.pdf (employing the same usage of bullets, the same ordering of the information, and the same unexplained usage of asterisks). Information from 1995 and from 2005 is not previously unavailable information as required by 10 C.F.R. § 2.309(f)(2)(i). Therefore, this information cannot serve as the basis for a timely new contention.

Finally, CASE's argument that steam generator waste is more radioactive than the general LLRW to be stored on site in the event that offsite storage is unavailable is untimely. To show the elevated radioactivity of steam generators, CASE refers to a September 2010 letter. Proposed Contention 10 at Attachment 4. Since CASE filed its petition to intervene in August 2010, this letter was not available at the time of intervention. *See* Citizens Allied for Safe Energy, Inc. [Revised] Petition to Intervene and Request for a Hearing (dated Aug. 17, 2010). However, to be admitted, a new contention must include a showing that it has been submitted in a timely fashion based on the availability of the previously unavailable information. 10 C.F.R. § 2.309(f)(2)(iii). Filing a new contention based upon information more than a year after that information became available is not filing in a timely fashion under the provisions of the Board's initial scheduling order. Scheduling Order (Initial Scheduling Order and Administrative Directives), at 8 (Mar. 30, 2011) (unpublished).

For these reasons, the defective steam generator argument of Contention 10 is untimely.

B. Proposed CASE Contention 10 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 10, 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 10. Since proposed Contention 10 satisfies neither 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 10 Does Not Satisfy the Requirements in 10 C.F.R. § 2.309(f)(1)

In addition to the reasons set forth above, Contention 10 is also inadmissible because none of its claims satisfies the general admissibility requirements in 10 C.F.R. § 2.309(f)(1).

1. The claim that site water inundation will disperse radiation fails to satisfy 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

An intervenor must demonstrate that the issue raised in its contention is material to the findings the NRC must make to support the action that is involved in the proceeding. 10 C.F.R. § 2.309(f)(1)(iv). In this instance, the action involved is the issuance of a COL. To issue a COL, the NRC must satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). NEPA requires, among other things, consideration of the "reasonably foreseeable" environmental impacts of the proposed action. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002); LBP-11-06, 73 NRC at __ (slip op. at 72 n.78) ("It is, of course, well established that an ER need only discuss reasonably foreseeable environmental impacts of a proposed action."). Reasonably foreseeable environmental impacts do not include those that are "remote and speculative" or

those that simply represent the "worst-case" scenario. *See Independent Spent Fuel Storage Installation*, CLI-02-25, 56 NRC at 348-49. As stated by this Board in previous rejections of CASE's water inundation theory, CASE has not demonstrated that the dispersal of radiation due to site water inundation is reasonably foreseeable. *See* LBP-11-06, 73 NRC at __ (slip op. at 102) ("[R]egarding [CASE's] concern with FPL's failure to consider the impact of projected sea level rise, storm surge, and site inundations that could result in the dispersal of LLRW off the Turkey Point site, we conclude CASE fails to explain why such a scenario is plausible, much less reasonably foreseeable."); LBP-11-15, 73 NRC at __ (slip op. at 16) ("[CASE] fail[s] to explain how the information relating to the Fukushima event supports an argument that the inundation of Turkey Point . . . is a plausible scenario."). Since CASE has failed to demonstrate that this issue is material to the proceeding as a reasonably foreseeable environmental impact, it is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iv).

Additionally, according to 10 C.F.R. § 2.309(f)(1)(vi), an intervenor must show that a genuine dispute exists with the applicant on a material issue of law or fact by including references to specific portions of the application. Regarding water inundation, CASE again fails to dispute the Applicant's own analysis of sea level rise and storm surge. *See* LBP-11-06, 73 NRC at __ (slip op. at 99) ("[B]ecause [CASE] fails directly to controvert FPL's sea level rise analysis, we conclude Contention 5 is inadmissible for failing to raise a genuine dispute of material fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi)."). CASE states that sea level rise and storm surges could threaten inundation of the site, but the Applicant has addressed this possibility in its application. *See* FSAR Section 2.4.5, Rev. 0. As with previous assertions of its water inundation argument, CASE does not controvert the Applicant's analysis of the situation with CASE's own analysis to show that a genuine dispute exists with the Application. Thus the water inundation claims of Contention 10 fail to satisfy 10 C.F.R. § 2.309(f)(1)(vi) and are inadmissible.

2. The claim that offsite LLRW storage is unavailable fails to satisfy 10 C.F.R. § 2.309(f)(1)(iv).

The contention admissibility provisions in 10 C.F.R. § 2.309(f)(1)(iv) require an intervenor to 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. In order to support the action of issuing a COL, the NRC must evaluate the reasonably foreseeable environmental impacts of that action. Before the Applicant revised its LLRW management plan, the Applicant relied entirely on offsite LLRW storage. *See* LBP-11-06, 73 NRC at __ (slip op. at 104-05). Contention 6 demonstrated that the existence of offsite LLRW storage was material to the environmental review because a lack of offsite LLRW storage would force the Applicant to store LLRW onsite and thus the reasonably foreseeable impacts of such storage would have to be evaluated. *Id*. at 104-06. However, with its revised LLRW management plan, the Applicant has committed to storing LLRW on site in accordance with NRC guidance and regulations in the event that offsite storage is unavailable. *See* Florida Power & Light Company's Motion to Dismiss CASE Contention 6 as Moot at 4-5 (Jan. 3, 2012). Also, the Applicant has evaluated the environmental impacts of constructing onsite storage facilities and of storing LLRW on site and has found them to be small. *Id*. Now that the Applicant has committed to storing LLRW on site in accordance with NRC guidance and regulations in the event that offsite storage is unavailable and has evaluated the environmental impacts of such contingency operations, CASE fails to explain why the availability of offsite LLRW storage facilities is an environmental concern material to the findings the NRC must make to support the action of issuing a COL. Thus this claim fails to satisfy 10 C.F.R. § 2.309(f)(1)(iv) and is inadmissible.

3. The claim that the onsite storage of defective steam generator components will increase the radioactivity of the site fails to satisfy 10 C.F.R. § 2.309(f)(1)(v).

Pursuant to 10 C.F.R. § 2.309(f)(1)(v), an intervenor must (1) provide a concise statement of the alleged facts or expert opinions which support its position and (2) provide references to the specific sources and documents on which it intends to rely to support this

position. CASE provides no facts or expert opinion to support its assertion that the "Westinghouse style" steam generators of proposed Turkey Point 6 & 7 will be "defective." Proposed Contention 10 at 3-4. Rather, in its attempt to show that such steam generators experience "more rapid than planned" degradation, CASE references a list of all the steam generators that Bechtel Power Corporation (Bechtel) has replaced. *Id*. at Attachment 3. However, CASE does not explain how the mere fact that Bechtel has replaced steam generators provides any support for CASE's claim that steam generators are defective in general, let alone that the specific steam generators to be used in proposed Turkey Point Units 6 & 7 will be defective. In fact, the article relied upon by CASE to illustrate how steam generators can degrade undercuts this position. *See id*. at Attachment 2. The article concludes that, due to operational, material, and chemistry advances, the future degradation of steam generators is likely to be less than that experienced in the past. *Id*. This prediction is supported by the fact that the list of Bechtel steam generator replacements does not include a replacement of a non-original steam generator. *See id*. at Attachment 3. For instance, the steam generators at Turkey Point Units 3 & 4 were replaced in 1982 and 1984, respectively. *Id*. However, approximately thirty years later, the new steam generators at Turkey Point Units 3 & 4 have yet to be replaced. *Id*. "A document put forth by an intervenor as the basis for a contention is subject to scrutiny both for what it does and does not show." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-02, 43 NRC 61, 90 (1996); *rev'd in part on other grounds*, CLI-96-07, 43 NRC 235 (1996). Therefore, taken together, the very documents relied upon by CASE to support its position that the steam generators to be used in proposed Turkey Point Units 6 & 7 will be defective and will have to be replaced actually contradict CASE's position; they tend to indicate that newer steam generators are less likely to be replaced. Therefore, in contravention of 10 C.F.R. § 2.309(f)(1)(v), CASE has not provided facts or expert opinions which support its position.

CASE attempts to rectify this lack of support for its position that the steam generators of proposed Turkey Point Units 6 & 7 will have to be replaced by stating that "[c]urrently there is a rash of defective steam generators in the USA, which have only operated for two or [sic] years and are now exhibiting dangerous levels of tube breakage – including San Onofre, Three Mile Island and Arkansas One." Proposed Contention 10 at 3-4. However, in contravention of 10 C.F.R. § 2.309(f)(1)(v), CASE does not provide references to the specific sources and documents on which it intends to rely to support this statement that there is a current rash of defective steam generators. Additionally, CASE provides no facts or expert opinion to support a claim that any such defects will necessitate steam generator replacement. To the contrary, the article cited by CASE explains that steam generators are constructed with an abundance of heat exchanging tubes to allow a licensee to plug numerous tubes before steam generator replacement would be necessary. *Id*. at Attachment 2. CASE's assertions are thus undercut by its own documents. *See Yankee*, LBP-96-02, 43 NRC at 90. Most crucially, CASE provides no facts or expert opinion to suggest that the conditions leading to such defects will be present in the actual steam generators used in proposed Turkey Point Units 6 & 7.

By not providing alleged facts or expert opinions which support its position that the steam generators of proposed Turkey Point Units 6 & 7 will have to be replaced, CASE fails to satisfy 10 C.F.R. § 2.309(f)(1)(v).

CONCLUSION

For the reasons set forth above, newly proposed CASE Contention 10 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 27th 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 TO FILE A TIMELY CONTENTION IN RESPONSE TO NEW INFORMATION'" in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 27th 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 27th day of February, 2012