

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawken, Chairman
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 6 and 7)

Docket Nos. 52-040-COL
and 52-041-COL

ASLBP No. 10-903-02-COL-BD01

February 28, 2012

MEMORANDUM AND ORDER
(Granting FPL Motion for Summary Disposition
of CASE Contention 7)

I. INTRODUCTION

This proceeding concerns Florida Power & Light Company's (FPL's) combined license (COL) application for two new nuclear power reactors, Turkey Point Units 6 and 7, at its facility near Homestead, Florida.¹ On February 28, 2011, this Board granted hearing requests and petitions to intervene from two groups of intervenors² opposing FPL's COL application. See LBP-11-06, 73 NRC ___, ___ (slip op. at 119) (Feb. 28, 2011).³

¹ See [FPL, COL] 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).

² These groups are (1) Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association [hereinafter referred to collectively as Joint Intervenors]; and (2) Citizens Allied for Safe Energy, Inc. [hereinafter CASE].

³ We also granted a request by the Village of Pinecrest to participate as an interested local governmental body. See LBP-11-06, 73 NRC at ___ (slip op. at 119).

In LBP-11-06, we, inter alia, admitted CASE's Contention 7 for litigation.⁴ As admitted, that contention asserts that, in the event FPL needs to manage Class B and Class C low-level radioactive waste (LLRW)⁵ for an extended period of time, FPL's COL application "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 materials and effluents and radiation exposures within the limits set forth in [10 C.F.R.] Part 20 and ALARA [as low as reasonably achievable]." LBP-11-06, 73 NRC at ___ (slip op. at 112).

On December 16, 2011, FPL submitted to the NRC Revision 3 to its COL application for Turkey Point Units 6 and 7. See Letter from Mano K. Nazar, Executive Vice President and Chief Nuclear Officer, FPL, to U.S. Nuclear Regulatory Commission (Dec. 16, 2011) (ADAMS Accession No. ML11361A102).

⁴ In LBP-11-06, we also admitted two other contentions: Joint Intervenor's Contention 2.1 and CASE's Contention 6, both which were contentions of omission. We recently granted FPL's motion to dismiss these two contentions, concluding that FPL's Revision 3 to its COL application had rendered them moot. See Licensing Board Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenor's Contention 2.1 and CASE's Contention 6 as Moot) (Jan. 26, 2012) at 6 (unpublished). Joint Intervenor and CASE have requests pending before this Board that seek to admit new contentions challenging the adequacy of the measures that FPL took to moot the contentions dismissed in our January 26 Memorandum and Order.

⁵ The Low-Level Radioactive Waste Policy Act defines LLRW as "radioactive material that -- (i) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in [42 U.S.C. §] 2014(e)(2) . . .); and (ii) the [NRC] . . . classifies as [LLRW]." 42 U.S.C. § 2021b(9)(A)(i)-(ii). The NRC divides LLRW into three classes, A, B, and C (10 C.F.R. § 61.55(a)(2)), based on the concentration and types of long-lived and short-lived radionuclides. Id. § 61.55(a)(1). LLRW from a nuclear power plant consists principally of reactor water resin beds (see infra Part III.A), but it also includes, e.g., contaminated filters, protective clothing and shoe covers, cleaning rags, and tools. See U.S. Nuclear Regulatory Commission, Radioactive Waste: Production, Storage, Disposal, NUREG/BR-0216, Rev. 2 at 19 (May 2002).

On January 3, 2012, FPL filed a motion for summary disposition of CASE's Contention 7.⁶ CASE does not oppose the motion,⁷ and the NRC Staff supports it.⁸

For the reasons discussed below, we conclude that Contention 7 presents no genuine dispute of material fact and that FPL is entitled to judgment as a matter of law. Accordingly, we grant FPL's motion for summary disposition of Contention 7.

II. APPLICABLE LEGAL STANDARDS

A. Regulatory Standards Governing LLRW Handling and Storage in a COL Application. As relevant here, a COL application must include a Final Safety Analysis Report (FSAR) containing certain "information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of" the COL, including "[t]he kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in [10 C.F.R. Part 20]." 10 C.F.R. § 52.79(a)(3). Part 20 "outlines a number of radiation protection requirements with which licensees must comply," such as "procedures and controls to reduce occupational doses and doses to members of the public to levels that are as low as reasonably achievable." Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), CLI-09-16, 70 NRC 33, 37 (2009) (referencing 10 C.F.R. § 20.1101(b)).

In the Vogtle proceeding, which involved a COL application incorporating the same certified design as the design referenced for Turkey Point Units 6 and 7 (i.e., the Westinghouse

⁶ [FPL's] Motion for Summary Disposition of CASE Contention 7 (Jan. 3, 2012) [hereinafter Motion for Summary Disposition of Contention 7].

⁷ [CASE] Response to FPL Motions to Dismiss Contention 6 as Moot and for Summary Disposition of CASE Contention 7 (Jan. 23, 2012) [hereinafter CASE Response].

⁸ NRC Staff Answer to "[FPL's] Motion for Summary Disposition of CASE Contention 7" (Jan. 23, 2012) [hereinafter NRC Staff Answer].

AP1000), the Commission construed section 52.79(a)(3) as imposing “no quantity or time restrictions relative to onsite storage of such waste [LLRW].” Vogtle, CLI-09-16, 70 NRC at 36. In a subsequent COL application proceeding also involving the Westinghouse AP1000 design, the Commission observed that “[a]bsent a licensed LLRW disposal facility that will accept waste from [a COL applicant’s facility], it is reasonably foreseeable that LLRW generated by normal operations will be stored at the site for a longer term than is currently envisioned in” that COL application. Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-02, 71 NRC 27, 46 (2010). The Commission therefore instructed that the level of “LLRW storage information required by 10 C.F.R. § 52.79(a)(3) is tied to the COL applicant’s particular plans for compliance through design, operational organization, and procedures” (id.) (citing Vogtle, CLI-09-16, 70 NRC at 37), including how that applicant “intends to handle an accumulation of LLRW.” Id. at 47.

B. Summary Disposition Standards. This proceeding is governed by the informal hearing procedures of 10 C.F.R. Part 2, Subpart L (see LBP-11-06, 73 NRC at __ (slip op. at 120)), which provide that motions for summary disposition “must be in writing and must include a written explanation of the basis of the motion, and affidavits to support statements of fact.” 10 C.F.R. § 2.1205(a). Such motions are to be evaluated pursuant to the same “standards for summary disposition set forth in [10 C.F.R. Part 2,] subpart G.” Id. § 2.1205(c). Those Subpart G standards state that a motion for summary disposition shall be granted “if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a decision as a matter of law.” Id. § 2.710(d)(2).

The Commission has instructed that the standards governing summary disposition “are based upon those the federal courts apply to motions for summary judgment under Rule 56 of

the Federal Rules of Civil Procedure.” Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010).

Pursuant to those standards, the moving party bears the initial burden of showing the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the nonmoving party opposes the motion, it cannot rest on the allegations or denials of a pleading; instead, it must “go beyond the pleadings and by [the nonmoving party’s] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” Id. at 324 (internal quotation marks omitted); see 10 C.F.R. § 2.710(b). If, however, the nonmoving party declines to oppose the moving party’s prima facie showing of undisputed material facts, Commission regulations provide that those facts will be considered admitted. 10 C.F.R. § 2.710(a).

That a nonmoving party declines to oppose a motion for summary disposition, however, does not perforce mean the moving party is entitled to a favorable judgment. “[T]he party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and if he does not discharge that burden then he is not entitled to judgment. No defense to an insufficient showing is required.” Adikes v. S.H. Kress & Co., 398 U.S. 144, 161 (1970) (quoting 6 James Wm. Moore et al., Moore’s Federal Practice ¶ 56.22[2] at 2824-25 (2d ed. 1966)).

In other words, where -- as here -- a nonmoving party declines to oppose a motion for summary disposition, the Board shall accept as admitted the moving party’s prima facie showing of material facts. The Board cannot grant summary disposition on those facts, however, unless the moving party discharges its burden of demonstrating that it “is entitled to a decision as a matter of law.” 10 C.F.R. § 2.710(d)(2); see United States v. 5800 SW 74th Ave., 363 F.3d 1099, 1101-02 (11th Cir. 2004); Anchorage Assoc. v. Virgin Islands Bd. of Tax Rev., 922 F.2d 168, 174-76 (3d Cir. 1990); Jaroma v. Massey, 873 F.2d 17, 20 (1st Cir. 1989); Pac. Gas &

Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-08-07, 67 NRC 361, 372 (2008).

Guided by the above analytic framework, we proceed to analyze FPL's motion for summary disposition.

III. ANALYSIS

A. No Genuine Dispute of Material Fact Exists. As designed and discussed in FPL's COL application, the Turkey Point facility has onsite LLRW storage capability "for greater than two years at the expected rate of [LLRW] generation and greater than one year at the maximum rate of [LLRW] generation." See Turkey Point Units 6 & 7, COL Application, Part 2 -- FSAR, Rev. 3, Chap. 11 -- Radioactive Waste Management at 11.4-1 (Dec. 2011) [hereinafter FSAR Rev. 3]. FPL's original COL application contemplated that it would not exceed the facility's LLRW storage capacity because it planned to ship such waste periodically to the Studsvik facility in Erwin, Tennessee, which would accept and temporarily store the LLRW pending shipment to a permanent LLRW disposal facility. See Turkey Point Units 6 & 7, COL Application, Part 2 -- FSAR, Rev. 0, Chap. 11 -- Radioactive Waste Management at 11.4-1 to 11.4-2 (June 2009).

In LBP-11-06, we agreed with CASE that, on the record before us, FPL's reliance on the ability of Studsvik to accept and to store LLRW from proposed Units 6 and 7 was questionable due to the closure of the Barnwell LLRW disposal facility in South Carolina to LLRW producers from Florida, such as FPL. Absent an LLRW disposal facility to which Studsvik could send LLRW, it followed that, contrary to FPL's COL application, FPL might be required to store LLRW at the proposed Turkey Point facility for longer than two years. See LBP-11-06, 73 NRC at ___ - ___ (slip op. at 109-12). CASE's Contention 7 thus asserts that the FSAR in FPL's COL application is inadequate because it does not provide sufficient information to demonstrate how FPL plans to store LLRW onsite for more than two years in a manner that will comply with the

radiation exposure limits in Part 20 and radiation exposure guidance in Part 50, Appendix I (guides for meeting the “as low as reasonably achievable” (ALARA) criterion in light water reactors).⁹

In its motion for summary disposition, FPL states that, as a result of Revision 3 to its FSAR, there is no genuine dispute of material fact as to the sufficiency of the information FPL has provided in the FSAR to enable the NRC to reach a conclusion regarding FPL’s ability to provide long-term onsite storage of LLRW while complying with 10 C.F.R. Part 20. See Motion for Summary Disposition of Contention 7 at 1-2. Specifically, FPL states that “[o]n December 16, 2011, FPL submitted Revision 3 to its [COL application], which included revisions to Section 11.4 of its FSAR. The revised Section 11.4 provides FPL’s plan, if needed, for controlling exposures from storage of an extended accumulation of LLRW.” Id., attach. 2, Statement of Material Facts on Which No Genuine Dispute Exists.

FPL’s plan for controlling radiation exposure from onsite storage of LLRW consists of the following: (1) in the first instance, FPL does *not* plan to store LLRW onsite for extended periods of time, because it intends routinely to ship LLRW to an offsite storage facility (FSAR Rev. 3 at 11.4-1, 11.4-3);¹⁰ (2) if additional LLRW onsite storage capacity is required because adequate offsite storage or disposal capacity is unavailable, FPL could implement a contingency plan to

⁹ Contention 7 states in full:

FPL’s COL [application] 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 [10 C.F.R.] 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).

¹⁰ FPL states that it currently ships Class B and Class C LLRW from its two operating Turkey Point nuclear reactors to Studsvik for storage and ultimate disposal. See Motion for Summary Disposition of Contention 7 at 2 n.3.

implement waste minimization strategies to extend the duration of its existing capacity (id. at 11.4-1); and (3) as a backup contingency plan, FPL would expand its LLRW storage capacity by designing, constructing, and operating additional onsite storage in accordance with NUREG-0800, Standard Review Plan Chapter 11 Radioactive Waste Management Appendix 11.4-A, Design Guidance for Temporary Storage of Low-Level Radioactive Waste. Id. at 11.4-1, 11.4-3. Any change to the facility to create additional onsite LLRW storage would be evaluated by performing written safety analyses pursuant to 10 C.F.R. § 50.59, and if the acceptability of the proposed additional storage could not be demonstrated by a section 50.59 analysis, FPL would seek a license amendment to approve the proposed storage. Id. at 11.4-3.

In a declaration provided by Paul R. Jacobs,¹¹ FPL provides the following factual details regarding its contingency plan for long-term onsite LLRW storage. FPL's LLRW will be generated primarily from purification media (i.e., spent resin) discharges that will occur during planned outages, which are expected to occur at eighteen-month intervals. See Jacobs Decl. at 2, 3. The spent resin discharges will first be held in resin catch tanks in the rail car bay of the Auxiliary Building, the capacity of which may be supplemented by additional temporary mobile systems, if needed. See id. at 3.¹² When FPL has accumulated sufficient spent resin in the catch tanks, it will process the resin (primarily by dewatering it) and place the processed resin in

¹¹ Mr. Jacobs is the New Nuclear Project Engineering Supervisor for FPL's Turkey Point Units 6 and 7 nuclear power plant project. Mr. Jacobs' extensive educational background and professional experience are set forth in his declaration and appended curriculum vitae. See Motion for Summary Disposition of Contention 7, attach. 3, Declaration of Paul R. Jacobs in Support of [FPL's] Motion for Summary Disposition of CASE Contention 7 (Dec. 27, 2011) [hereinafter Jacobs Decl.].

¹² Mr. Jacobs states (Jacobs Decl. at 2) that data provided from plant chemistry monitoring will provide "adequate information . . . to anticipate the amount of [LLRW] that will be generated during an outage and will need to be stored." The "estimated maximum annual activity is described in [AP1000 Design Control Document] Table 11.4-3. The AP1000 plant design has sufficient storage capacity to accommodate the maximum generation rate of Class B and C LLRW." Id. at 3.

storage (i.e., shipping) containers. See id. at 2, 3. Pursuant to the Westinghouse AP1000 Design Control Document (DCD) § 11.4.2.1, the Auxiliary Building has sufficient space to store at least two media discharges in tanks and shipping containers. See id. at 4. “[I]t will [thus] be the third [planned] outage involving media discharge before even additional temporary storage could potentially be needed (about four and a half years).” Id. Mr. Jacobs further declares that FPL

will have sufficient time after Turkey Point Units 6 & 7 start operating to complete all activities to construct additional storage, if needed, as called for in its contingency plan -- at least two refueling outages (about three years). . . . The LLRW storage facility can be constructed within six months. Therefore, an additional storage facility could be constructed prior to the third outage requiring media discharge, even if work is not started until after completing the second outage (about 36 months from the start of operations).

Id. at 4-5.

Finally, Mr. Jacobs explains that

FPL’s plan for controlling and limiting radioactive material and effluents and radiation exposures from Class B and C LLRW is found in Section 11.4 of its FSAR, “Solid Waste Management,” which incorporates by reference the corresponding section of Revision 19 to the DCD. This includes specific commitments regarding the kinds and quantities of waste (DCD § 11.4.2.1 at 11.4-3 to 11.4-6), the design of storage containers (DCD § 11.4.2.1 at 11.4-4), and how the waste will be processed and packaged (DCD § 11.4.2.3.3 at 11.4-10 to 11.4-11). It also includes FPL’s stated plan to transfer Class B and C LLRW to Studsvik for treatment, storage, and ultimate disposal, as FPL is doing currently for its existing operating nuclear plants. FSAR § 11.4.6 at 11.4-2. It also includes FPL’s contingency plan in the event additional onsite storage capacity for [LLRW] is required. In that case, FPL’s FSAR states that additional temporary storage “would be designed, constructed, and operated in accordance with the design guidance provided in NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A.” FSAR § 11.4.2.4.3 at 11.4-1.

Jacobs Decl. at 4.

We conclude that the above material facts stated by FPL have prima facie support in the record. The NRC Staff “agrees” with FPL’s characterization of the material facts. See NRC

Staff Answer at 4. Because CASE does not dispute these facts (CASE Response at 1), we deem them admitted pursuant to 10 C.F.R. § 2.710(a).¹³

B. Based on the Undisputed Material Facts, FPL is Entitled to Judgment as a Matter of Law. The legal question presented is whether FPL's FSAR, as supplemented by Revision 3, provides "sufficient [information] to enable the Commission to reach a final conclusion on all safety matters" regarding "the means [FPL will use] for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in [10 C.F.R. Part 20]" 10 C.F.R. § 52.79(a)(3). Although CASE does not oppose FPL's motion for summary disposition (CASE Response at 1), we may grant that motion only if FPL has demonstrated it is entitled to judgment as a matter of law. See supra Part II.B. We conclude that FPL has satisfied that burden.¹⁴

Preliminarily, we consider whether section 52.79(a)(3) prescribes with specificity the information that an applicant must provide in its COL application. The Commission explicitly left that issue open in CLI-09-16 (see Vogtle, CLI-09-16, 70 NRC at 37-38), but it provided an instructive discussion that, in our view, bears on the issue. As relevant here, the Commission indicated that section 52.79(a)(3) "requires that a COL application contain information . . .

¹³ FPL acknowledges that, as admitted, Contention 7 raises one potential question of fact, namely, "whether FPL's letter of intent with Studsvik adequately establishes where [LLRW] will be disposed of while maintaining compliance with Part 20." Motion for Summary Disposition of Contention 7 at 4. FPL suggests that there is a factual basis to conclude that FPL will not need to plan for long-term onsite storage of LLRW in light of the licensing in Texas of a disposal facility called Waste Control Specialists that is authorized to accept and dispose of out-of-compact LLRW. See id. at 3 n.4. As we see it, however, and as FPL and the NRC Staff both seem to acknowledge (id. at 4-5; NRC Staff Answer at 6), the factual issue of whether offsite LLRW storage and disposal facilities will ultimately be available is not material to summary disposition of Contention 7, because Revision 3 of FPL's FSAR, in compliance with 10 C.F.R. § 52.79(a)(3), provides an adequate contingency plan for the long-term onsite storage of LLRW in the event that offsite storage and disposal facilities are not available. See infra Part III.B.

¹⁴ The NRC Staff "agrees" with FPL's legal analysis and argues that FPL "is entitled to a decision in its favor as a matter of law." See NRC Staff Answer at 4.

pertain[ing] to how the COL applicant intends, through its design, operational organization, and procedures, to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 [including, but] not limited to [LLRW] handling and storage.” Id. at 36-37. “As such, the required information is tied to the COL applicant’s particular plans for compliance through design, operational organization, and procedures.” Id. at 37.

Based on the Commission’s discussion in CLI-09-16, we conclude -- in agreement with the analysis and conclusion in Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-08, 71 NRC 433 (2010) -- that the scope and specificity of information required under section 52.79(a)(3) is a fact-bound determination that “is tied to the applicant’s ‘particular plans for compliance through,’ but not necessarily the details of, ‘design, operational organization, and procedures’ associated with any contingent long-term LLRW facility.” Id. at 444 (quoting Vogtle, CLI-09-16, 70 NRC at 37).

In other words, to comply with section 53.79(a)(3)’s requirement to provide “sufficient [information] to enable the Commission to reach a final conclusion on all safety matters” regarding “the means” FPL will use to comply with 10 C.F.R. Part 20 (10 C.F.R. § 52.79(a)(3)), FPL’s FSAR must identify particular plans pertaining to “design, operational organization, and procedures” that demonstrate how it intends “to comply with relevant substantive radiation protection requirements in 10 C.F.R. Part 20 [including, but] not limited to [LLRW] handling and storage.” Vogtle, CLI-09-16, 70 NRC at 37. We conclude that FPL’s FSAR, as amended by Revision 3, satisfies this requirement.¹⁵

¹⁵ The NRC Staff urges us to follow the Licensing Board’s rationale in the Vogtle decision (NRC Staff Answer at 14), which we do. The Staff cautions, however, that by following the Vogtle rationale, we will go into conflict with the decision in Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-10-20, 72 NRC ____ (slip op.) (Nov. 18, 2010), which -- in the Staff’s view -- construed section 52.79(a)(3) to require an FSAR to provide “more information than is contemplated by the Vogtle holding and by 10 C.F.R. § 52.79(a)(3).” Id. at 12. Although we appreciate the NRC Staff’s candor in pointing out what it perceives to be a conflict between decisions of the Vogtle and Levy Boards, its assessment, in our view, is not

FPL's FSAR indicates that its principal means for handling LLRW will be to package it in shipping containers and routinely ship it to a storage facility, thereby avoiding the need for long-term onsite storage. See FSAR Rev. 3 at 11.4-3. If offsite shipping of LLRW is not available when Units 6 and 7 become operational, "temporary storage capability is available on site for greater than two years at the expected rate of [LLRW] generation and greater than one year at the maximum rate of [LLRW] generation, as described in DCD Subsection 11.4.2.4.2 paragraph ten." Id. at 11.4-1.¹⁶

The FSAR provides two contingency plans for handling the onsite accumulation of LLRW for a longer period of time. First, "[i]mplementation of waste minimization strategies could extend the duration of temporary [LLRW] storage capability." FSAR Rev. 3 at 11.4-1. For example, FPL could decrease the generation of LLRW by "reducing the service run length of resin beds or mixing spent resins to limit radioactivity concentrations." Turkey Point Units 6 & 7 COL Application, Part 3 -- Environmental Report, Rev. 3 at 5.7-7 (Dec. 2011).

Second, FPL's FSAR provides that "[i]f additional storage capacity for [LLRW] were required, further temporary storage would be designed, constructed, and operated in accordance with the design guidance provided in NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A." FSAR Rev. 3 at 11.4-3; accord id. at 11.4-1. Appendix 11.4-A to NUREG-0800, which is entitled "Design Guidance for Temporary Storage of Low-Level Radioactive

ineluctable, especially given the Levy Board's explicit avowal (LBP-10-20, 72 NRC at ___ (slip op. at 37)) that its "decision is consistent with Vogtle." As we indicated above in text, whether an FSAR contains sufficient information to satisfy section 52.79(a)(3) is a fact-bound determination that must be made on a case-by-case basis. Cf. Tennessee Valley Auth. (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-03, 69 NRC 68, 76-77) (2009) ("[t]he questions of the safety . . . impacts of onsite low-level waste *storage* are . . . largely site- and design-specific, and appropriately decided in an individual licensing proceeding").

¹⁶ The FSAR states: "All packaged and stored [LLRW] is shipped to offsite disposal/storage facilities and temporary storage of [LLRW] is only provided until routine offsite shipping can be performed. Accordingly, there is no expected need for permanent onsite storage facilities at Units 6 & 7." FSAR Rev. 3 at 11.4-3.

Waste,” contains detailed information pertaining to the safe design, construction, and operation of onsite LLRW storage facilities. In our judgment, FPL’s commitment (FSAR Rev. 3 at 11.4-3) that it will -- if necessary -- design, construct, and operate a temporary onsite LLRW storage facility in accordance with the guidance in Appendix 11.4-A to NUREG-0800, coupled with FPL’s plan in Section 11.4 of the FSAR for controlling and limiting radioactive material and effluents and radiation exposures from LLRW, which incorporates by reference the corresponding section of Revision 19 of the DCD, provides “sufficient [information] to enable the Commission to reach a final conclusion on all safety matters” regarding “the means” FPL will use to comply with radiation protection requirements in 10 C.F.R. Part 20 (10 C.F.R. § 52.79(a)(3)), including LLRW handling and storage. See Vogtle, CLI-09-16, 70 NRC at 37.

Further, FPL states that it would conduct an analysis under 10 C.F.R. § 50.59 to determine whether the construction of an additional onsite LLRW storage facility could be made without a license amendment, but if a license amendment were necessary, FPL represents that it would seek approval from the NRC to construct such a facility (see FSAR Rev. 3 at 11.4-3), which, FPL declares, “can be constructed within six months.” Jacobs Decl. at 5.¹⁷

We conclude that FPL’s FSAR contains sufficient information to satisfy 10 C.F.R. § 52.79(a)(3). FPL is therefore entitled to a decision on Contention 7 in its favor as a matter of law.

¹⁷ In Vogtle, the Board correctly observed that, if the need arises, there is a “longstanding agency recognition of the availability of the mechanisms under 10 C.F.R. §§ 50.59 or 50.90 for obtaining authorization to construct additional onsite LLRW storage facilities.” Vogtle, LBP-10-08, 71 NRC at 444 (citing Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, NRC Regulatory Issue Summary 2008-32, Interim [LLRW] Storage at Reactor Sites at 2-4 (Dec. 30, 2008)).

IV. CONCLUSION

For the foregoing reasons, we grant FPL's motion for summary disposition of CASE
Contention 7.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

Dr. William C. Burnett
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 28, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 52-040 and 52-041-COL
(Juno Beach, Florida))	
)	
(Turkey Point, Units 6 & 7))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Granting FPL Motion for Summary Disposition of CASE Contention 7) (LBP-12-04) have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

E. Roy Hawkins
Administrative Judge, Chair
E-mail: roy.hawkins@nrc.gov

Dr. Michael F. Kennedy
Administrative Judge
E-mail: michael.kennedy@nrc.gov

Dr. William C. Burnett
Administrative Judge
E-mail: william.burnett2@nrc.gov

Joshua Kirstein, Law Clerk, ASLBP
E-mail: josh.kirstein@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4M
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Marian Zobler, Esq.
Sara Kirkwood, Esq.
Patrick Moulding, Esq.
Sara Price, Esq.
Jeremy Wachutka, Esq.
Joseph Gillman, Paralegal
Karin Francis, Paralegal
E-mail: marian.zobler@nrc.gov;
robert.weisman@nrc.gov;
sara.kirkwood@nrc.gov;
patrick.moulding@nrc.gov
sara.price@nrc.gov ;
jeremy.wachutka@nrc.gov
joseph.gilman@nrc.gov;
karin.francis@nrc.gov

OGC Mail Center: Members of this office have received a copy of this filing by EIE service.

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

DOCKET NO. 52-040 and 52-041-COL
MEMORANDUM AND ORDER (Granting FPL Motion for Summary Disposition of CASE
Contention 7) (LBP-12-04)

Counsel for the Applicant
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Alison M. Crane, Esq.
John H. O'Neill, Esq.
Matias F. Travieso-Diaz, Esq.
Kimberly Harshaw, Esq.
Maria Webb, Paralegal
E-mail: alison.crane@pillsburylaw.com
John.ONeill@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com
maria.webb@pillsburylaw.com
kimberly.harshaw@pillsbury.com

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Rd. SE
Atlanta, GA 30322
Lawrence D. Sanders, Esq.
Mindy Goldstein, Esq.
E-mail: lsande3@emory.edu
E-mail: magolds@emory.edu

Counsel for Mark Oncavage, Dan Kipnis,
Southern Alliance for Clean Energy (SACE),
and National Parks Conservation Association
Everglades Law Center, Inc.
3305 College Avenue
Ft. Lauderdale, Florida 33314
Richard Grosso, Esq.
E-Mail: richard@evergladeslaw.org

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Mitchell S. Ross
Vice President & General Counsel – Nuclear
E-mail: mitch.ross@fpl.com
James Petro, Esq.
Senior Attorney
E-mail: james.petro@fpl.com
William Blair
Nextera Energy Resources
E-mail: william.blair@fpl.com

Florida Power & Light Company
801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
Mitchell S. Ross
E-mail: steven.hamrick@fpl.com;
Mitchell.ross@fpl.com

Counsel for the Village of Pinecrest
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
William C. Garner, Esq.
Gregory T. Stewart, Esq.
E-mail: bgarner@ngnlaw.com
E-mail: gstewart@ngnlaw.com

(CASE) Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, FL 33176
Barry J. White
E-mail: bwtamia@bellsouth.net

[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of February 2012