

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

September 10, 2014

Order

(Denying Waste Confidence Contention Motions and Dismissing CASE)

On June 18, 2012, the Commission received a petition seeking to suspend final agency decision on the pending applications of various nuclear reactors, including the combined license application of Florida Power and Light Company (“Applicant”) for the proposed nuclear reactors Turkey Point Units 6 and 7.<sup>1</sup> Petitioners sought this suspension in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in New York v. NRC<sup>2</sup> that the NRC’s 2010 Waste Confidence Decision and Temporary Storage Rule violated the National Environmental Policy Act (“NEPA”). On August 7, 2012, the Commission granted the petition, stating that “we will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court’s remand is appropriately addressed.”<sup>3</sup>

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<sup>1</sup> Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings (June 18, 2012).

<sup>2</sup> 681 F.3d 471 (D.C. Cir. 2012).

<sup>3</sup> CLI-12-16, 76 NRC 63, 67 (2012).

In that order, the Commission also held in abeyance a number of substantively similar contentions that had been filed in various reactor cases,<sup>4</sup> including contentions filed in this proceeding by Southern Alliance for Clean Energy, National Parks Conservation Association, Dan Kipnis, and Mark Oncavage (“Joint Intervenor”) and Citizens Allied for Safe Energy, Inc. (“CASE”) concerning temporary storage and ultimate disposal of nuclear waste at Turkey Point Units 6 and 7.<sup>5</sup> These contentions challenged Applicant’s environmental report, submitted in support of the Turkey Point combined license application, for failing “to address the environmental impacts of spent fuel pool leakage and fires as well as the environmental impacts that may occur if a spent fuel repository does not become available.”<sup>6</sup>

On August 26, 2014, after undergoing a two-year rulemaking process during which extensive public comments were received and considered, the Commission adopted (1) a generic environmental impact statement (“GEIS”) to identify and analyze the environmental impacts of continued nuclear waste storage; and (2) associated revisions to the Temporary Storage Rule in 10 C.F.R. § 51.23 (now designated the “Continued Storage Rule”).<sup>7</sup> In light of these actions, the Commission lifted its suspension on final licensing decisions.<sup>8</sup> The GEIS “concluded that the impacts of continued storage will not vary significantly across sites,” noting that “[b]ecause these generic impact determinations have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual

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<sup>4</sup> Id. at 68-69.

<sup>5</sup> See Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant (July 9, 2012) [hereinafter Intervenor’s Contention]; Citizens Allied for Safe Energy, Inc. Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Turkey Point Nuclear Power Plant (dated July 9, 2012, filed July 10, 2012) [hereinafter CASE’s Contention].

<sup>6</sup> Intervenor’s Contention at 1; see also CASE’s Contention at 1.

<sup>7</sup> CLI-14-08, 80 NRC \_\_, \_\_ (slip op. at 4) (Aug. 26, 2014).

<sup>8</sup> Id. at \_\_ (slip op. at 7).

proceedings.”<sup>9</sup> Finally, the Commission directed the Licensing Boards, including this one, to reject pending waste confidence contentions that had been held in abeyance.<sup>10</sup>

Having been so directed, we deny the motions of both Joint Intervenors and CASE seeking to admit new contentions concerning storage and disposal of nuclear waste. As the Commission noted “[c]ontentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings.”<sup>11</sup> Even if Joint Intervenors or CASE believe that the Commission’s newly adopted Continued Storage Rule fails to satisfy NEPA or the court’s decision in New York v. NRC, they cannot challenge the adoption or validity of the rule itself before this Board.<sup>12</sup>

Our denial of CASE’s motion results in it no longer having any contentions before the Board. Having previously dismissed CASE as a party in this proceeding,<sup>13</sup> we now dismiss CASE as a participant in this proceeding.<sup>14</sup>

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<sup>9</sup> Id. at \_\_ (slip op. at 9).

<sup>10</sup> Id. at \_\_ (slip op. at 10).

<sup>11</sup> Id. at \_\_ n.27 (slip op. at 9 n.27).

<sup>12</sup> See 10 C.F.R. § 2.335(a).

<sup>13</sup> See LBP-12-07, 75 NRC 503, 505 (2012).

<sup>14</sup> See Licensing Board Order (Granting CASE’s Motion to Receive Service by Email) (Apr. 16, 2014) at 2 (unpublished).

Joint Intervenors' NEPA Contention 2.1 remains pending before the Board.<sup>15</sup> At this juncture, further proceedings in this case await publication of the NRC Staff's Draft and Final Environmental Impact Statements, which are currently predicted by the NRC Staff to be available in February 2015 and February 2016, respectively.<sup>16</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

***/RA/***

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E. Roy Hawkens, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 10, 2014

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<sup>15</sup> See LBP-12-09, 75 NRC 615, 629 (2012).

<sup>16</sup> See Letter from Robert M. Weisman, Counsel for the NRC Staff, to the ASLBP (Aug. 7, 2014) at 2.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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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 **ORDER (Denying Waste Confidence Contention Motions and Dismissing CASE)** have been served upon the following persons by Electronic Information Exchange.

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Turkey Point, Units 6 and 7, Docket Nos. 52-040 and 52-041-COL

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[Original signed by Clara Sola]  
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Dated at Rockville, Maryland,  
this 10<sup>th</sup> day of September 2014