

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

E. Roy Hawkens, Chair
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 52-040 and 52-041
)	ASLBP No. 10-903-02-COL-BD01
Turkey Point, Units 6 and 7)	
)	
)	May 15, 2015
)	

**REPLY BY SOUTHERN ALLIANCE FOR CLEAN ENERGY
TO OPPOSITIONS BY FPL AND NRC STAFF
TO MOTION TO ADMIT NEW CONTENTION REGARDING THE
CONTINUED SPENT FUEL STORAGE RULE**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(2), Southern Alliance for Clean Energy (“SACE”) hereby replies to oppositions by Florida Power & Light Company (“FPL”) and the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) Staff to SACE’s motion for leave to file a placeholder contention.¹ SACE’s contention asserts that issuance of a combined license in the above captioned proceeding would violate the National Environmental Policy Act (“NEPA”) to the extent that the licensing decision

¹ See Florida Power & Light Company’s Answer Opposing Southern Alliance for Clean Energy’s Motion for Leave to File a New Contention Concerning Reliance by Turkey Point Draft Environmental Impact Statement on the Continued Spent Fuel Storage Rule (May 8, 2015) (“FPL Answer”) and NRC Staff Answer to “Southern Alliance for Clean Energy Motion for Leave to File a New Contention Concerning Reliance by Turkey Point Environmental Impact Statement on the Continued Spent Fuel Storage Rule” (May 8, 2015) (“NRC Staff Answer”).

relies on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014)) (“Continued Spent Fuel Storage Rule”) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”). The sole purpose of the contention is to ensure that in the event the U.S. Court of Appeals for the D.C. Circuit overturns the Continued Spent Fuel Storage Rule or Continued Spent Fuel Storage GEIS in *New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (consolidated) (filed October 31, 2014), the Court’s decision will be applied to any licensing decision made by the Commission in this proceeding, including a licensing decision made during the pendency of *New York et al. v. NRC*.

In *Union Elec. Co.* (Callaway Nuclear Power Plant, Unit 1), CLI-15-11, 81 NRC __ (Apr. 23, 2015) (“CLI-15-11”), the Commission ruled that a contention substantially similar to SACE’s contention was inadmissible because “it impermissibly challenges an agency regulation and is therefore outside the scope of this individual licensing proceeding.” *Id.*, slip op. at 4.² SACE acknowledges that this ruling is likely dispositive of the admissibility of the contention at issue here.

CLI-15-11, however, did not address the issue of timeliness, which is also disputed by FPL and NRC Staff. Therefore, SACE will respond to timeliness arguments in this reply.

² See also, *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC __, slip op. at 4 (Apr. 23, 2015) (“CLI-15-12”) (“As we explained in the *Callaway* decision, a contention that challenges an agency regulation does not raise an issue appropriately within the scope of this individual licensing proceeding and is not admissible absent a waiver.”)

II. DISCUSSION

FPL and NRC Staff argue that SACE's contention is untimely because it was not filed within thirty days of the promulgation of the Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS.³ In making this argument, they ignore the fact that SACE's contention is a "placeholder" that depends on a future event: the potential reversal by the U.S. Court of Appeals of the Rule or GEIS. The contention will not be admissible unless and until that event comes to pass. It is nonsensical to measure the timeliness of SACE's placeholder contention against a past event that is, by itself, insufficient to trigger the admissibility of the contention.

Moreover, in their answers, FPL and NRC Staff fail to acknowledge that filing this placeholder contention is the only means available to SACE to ensure that if the U.S. Court of Appeals reverses the Rule or GEIS in *New York et al. v. NRC*, that decision will be applied to any reactor licensing decision made for Turkey Point Units 6 and 7 while the lawsuit was pending. The NRC would not entertain such a contention *after* the reactor licenses have been issued. While the Commission found in CLI-15-11 that it was not necessary to *admit* a placeholder contention to the Callaway license renewal proceeding in order to protect petitioners' interest in applying the *New York et al. v. NRC* decision to Callaway, it did not disagree with petitioners' claim that was it necessary for petitioners to *file* their placeholder contention before the NRC renewed the Callaway license. *See* CLI-15-11, slip op. at 5. The same holds true for the contention at issue here.

³ *See*, NRC Staff Answer at 11-12; FPL Answer at 5-6. As discussed in SACE's motion for leave to file the placeholder contention, the contention is based upon the DEIS, which incorporates the Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS. SACE's motion was timely filed on or before April 13, 2015, the deadline established by the Board for the filing of contentions based on new information in the DEIS. SACE Motion at 9.

III. CONCLUSION

For the foregoing reasons, the Commission should rule that SACE's contention was timely filed.

Respectfully submitted this 15th day of May, 2015.

/signed electronically by/

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CERTIFICATE OF SERVICE

I hereby certify that the **REPLY BY SOUTHERN ALLIANCE FOR CLEAN ENERGY TO OPPOSITIONS BY FPL AND NRC STAFF TO MOTION TO ADMIT NEW CONTENTION REGARDING THE CONTINUED SPENT FUEL STORAGE RULE** has been filed through the Electronic Information Exchange system this 15th day of May, 2015.

_____/signed (electronically) by/
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