UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, 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 June 25, 2015

MEMORANDUM AND ORDER
(Denying CASE's Petition to Intervene)

Citizens Allied for Safe Energy, Inc. (CASE) petitions to intervene in this proceeding involving the combined license (COL) application of Florida Power & Light Company (FPL) for Turkey Point Units 6 and 7.[1] CASE's petition proffers three contentions challenging the adequacy of the NRC Staff's Draft Environmental Impact Statement (DEIS) for Turkey Point Units 6 and 7. For the reasons discussed below, we conclude that, although CASE has established standing, it fails to proffer an admissible contention. We therefore deny CASE's petition to intervene.

I. Background

On June 18, 2010, after receiving FPL's COL application for Turkey Point Units 6 and 7, the NRC Staff published a notice of hearing and opportunity to petition to intervene.[2] The notice of hearing prompted the submittal of three intervention petitions -- one from CASE; another from Southern Alliance for Clean Energy, the National Parks Conservation Association, Mark

[1] [CASE] Petition to Intervene and Request for Hearing Regarding the Draft EIS for Turkey Point 6 & 7 COL (Apr. 13, 2015) [hereinafter Petition].

[2] 75 Fed. Reg. 34,777 (June 18, 2010).

Oncavage, and Dan Kipnis (collectively, Joint Intervenors); and the third from the Village of Pinecrest, Florida.[3] On February 28, 2011, this Board granted two of the petitions, admitting CASE's Contentions 6 and 7 and Joint Intervenors' Contention 2.1.[4] We later dismissed CASE's Contention 6 as moot[5] and granted FPL's motion for summary disposition of CASE's Contention 7.[6] We subsequently denied CASE's motion to admit two newly proffered contentions and dismissed CASE from the proceeding.[7]

In July 2012, CASE moved for leave to file a new contention concerning temporary storage and ultimate disposal of nuclear waste at Turkey Point Units 6 and 7.[8] Following the Commission's adoption of the Continued Storage Rule and accompanying generic environmental impact statement, this Board denied CASE's contention and once again dismissed CASE from the proceeding.[9] Joint Intervenors' Contention 2.1, as amended and reformulated, is now the sole contention pending before the Board.[10]

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[3] See LBP-11-06, 73 NRC 149, 164-65 (2011).

[4] LBP-11-06, 73 NRC at 251-52. Although we denied the Village of Pinecrest's petition to intervene, we granted its request to participate as an interested local governmental body pursuant to 10 C.F.R. § 2.315(c). See id.

[5] See Licensing Board 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).

[6] Licensing Board Memorandum and Order (Granting FPL Motion for Summary Disposition of CASE Contention 7) at 13 (Feb. 28, 2012) (unpublished).

[7] LBP-12-07, 75 NRC 503, 520 (2012).

[8] [CASE] 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).

[9] Licensing Board Order (Denying Waste Confidence Contention Motions and Dismissing CASE) at 3 (Sept. 10, 2014) (unpublished).

[10] See LBP-15-19, 81 NRC __, __ (slip op. at 7) (June 10, 2015).

In February 2015, the NRC published the DEIS for Turkey Point Units 6 and 7.[11] On April 13, 2015,[12] CASE filed the petition to intervene we now consider, seeking to admit three contentions challenging the adequacy of the DEIS.[13] On May 8, 2015, FPL[14] and the NRC Staff[15] each filed answers opposing CASE's petition. Neither FPL nor the NRC Staff contests CASE's standing to intervene. Both argue, however, that CASE's petition should be denied because the three proposed contentions fail to satisfy either the timeliness standards of 10 C.F.R. § 2.309(c)(1) or the admissibility standards of 10 C.F.R. § 2.309(f)(1).[16] CASE did not file a reply to the FPL and NRC Staff answers.

II. Standing

To participate in an NRC licensing proceeding, a petitioner must establish standing to intervene.[17] In determining whether a petitioner has demonstrated standing, the Commission

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[11] Division of New Reactor Licensing, Office of New Reactors, Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Nuclear Plant Units 6 and 7 Draft Report for Comment, NUREG-2176 (Feb. 2015) (ADAMS Accession Nos. ML15055A103 and ML15055A109) [hereinafter DEIS].

[12] The Board set April 13, 2015 as the deadline for filing new contentions based on the DEIS. See Licensing Board Order (Granting Motion for Additional Time) at 3 (Mar. 25, 2015) (unpublished).

[13] See Petition at 11a. CASE's petition includes two pages labeled "11." To avoid confusion, this order refers to these pages as "11a" and "11b."

[14] See [FPL's] Answer Opposing [CASE] Petition to Intervene and Request for Hearing Regarding the Draft EIS for Turkey Point 6 & 7 (May 8, 2015) [hereinafter FPL Answer].

[15] See NRC Staff Answer to [Petition] (May 8, 2015) [hereinafter NRC Staff Answer].

[16] See FPL Answer at 1; NRC Staff Answer at 1.

[17] See 10 C.F.R. § 2.309(a). CASE previously established standing in this proceeding, see LBP-11-06, 73 NRC at 226-27, but we dismissed it as a party three years ago. See LBP-12-07, 75 NRC at 520. The Commission has stated that "a petitioner must make a fresh standing demonstration in each proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next." PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-07, 71 NRC 133, 138 (2010). Although this is not a new proceeding, the Commission's rationale in Bell Bend for requiring a fresh demonstration of standing applies.

generally applies contemporaneous judicial concepts of standing.[18] In certain reactor licensing proceedings, however, including COL applications, the Commission grants standing to petitioners who live within 50 miles of the facility at issue under the "proximity presumption," effectively dispensing with the need to make an affirmative showing of injury, causation, and redressability.[19]

When an organization, such as CASE, seeks to intervene on behalf of its members, it may establish representational standing by showing that (1) one or more of its members would individually satisfy standing requirements; (2) the member has authorized the organization to represent its interest; and (3) the interest represented is germane to the organization's purpose.[20]

CASE claims representational standing under the proximity presumption on behalf of its members,[21] several of whom have submitted declarations stating that they (1) live between 15 and 40 miles from Turkey Point; and (2) authorize CASE to represent their interests in this proceeding.[22] CASE and its members express concern over "the impact and consequences of the operation of the facility on the land, water, ecology and economics of the area."[23] This showing is sufficient for CASE to establish representational standing to intervene in this proceeding.

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[18] See, e.g., Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992)).

[19] See, e.g., Calvert Cliffs 3 Nuclear Project, LLC, & Unistar Nuclear Operating Servs., LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009).

[20] See Private Fuel Storage, LLC (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

[21] Petition at 5.

[22] See, e.g., Petition, Exs. 3, 4, 5, 7, 8, 9, 10.

[23] Petition at 5.

III. Legal Standards for Contention Admissibility

When a COL application is initially docketed, a petitioner seeking to raise contentions under the National Environmental Policy Act (NEPA) must base them on the applicant's environmental report (ER).[24] Where, as here, the initial deadline for the filing of contentions has passed and a petitioner seeks to raise contentions under NEPA based on the NRC Staff's DEIS, it must demonstrate good cause for its belated filing by showing that:

> (i) The information upon which the filing is based was not previously available;
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> (ii) The information upon which the filing is based is materially different from information previously available; and
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> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.[25]

In addition to being timely, the proposed new contention must satisfy the six-factor contention admissibility standard in 10 C.F.R. § 2.309(f)(1), which states, in relevant part, that a petitioner 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) . . . [P]rovide 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

[24] See 10 C.F.R. § 2.309(f)(2).

[25] 10 C.F.R. § 2.309(c)(1).

> 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.[26]

The Commission has emphasized that the contention admissibility standard is "strict by design."[27] Failure to comply with any of the section 2.309(f)(1) requirements renders a contention inadmissible.[28]

IV. Contention Admissibility Analysis

CASE's petition proffers three contentions, all of which allege that the DEIS for Turkey Point Units 6 and 7 is deficient in certain respects. FPL and the NRC Staff oppose admission of the contentions. As explained below, we conclude that the contentions are not admissible and, accordingly, we deny CASE's petition to intervene.

A. Contention 1

> The cumulative long term environmental impact of up to 70 million gallons a day of chemical laden aerosol, as described in the DEIS, from six cooling towers is a threat to FPL workers and to the nearby protected habitat and will increase salinity and saltwater intrusion in the Biscayne Aquifer.[29]

1. CASE's Position on Contention 1

In Contention 1, CASE alleges that the DEIS inadequately considers impacts related to chemical and salt deposits from the cooling towers serving Turkey Point Units 6 and 7.[30] CASE's concerns relate to (1) the impact of chemical deposits resulting from the use of reclaimed wastewater; (2) the impact of salt deposits resulting from the use of seawater from

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[26] 10 C.F.R. § 2.309(f)(1).

[27] Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001); accord USEC, Inc. (American Centrifuge Plant), CLI-06-09, 63 NRC 433, 437 (2006).

[28] See Private Fuel Storage, CLI-99-10, 49 NRC at 325.

[29] Petition at 11a.

[30] Petition at 11a.

Biscayne Bay; and (3) reliance upon FPL statements about how it plans to operate the cooling towers.[31]

First, CASE alleges that the DEIS improperly fails to "state specific safe levels for every chemical and substance in the aerosol" deposited by the cooling towers, along with the source of this information.[32] According to CASE, this information is necessary because aerosol drift poses potential danger not only to FPL's workers, but also to the Biscayne Bay Aquatic Preserve, Florida Keys National Marine Sanctuary, Biscayne National Park, and Everglades National Park.[33]

Second, CASE alleges that the DEIS "does not mention, and indeed minimizes the actual environmental impact of the salt water [that the] cooling towers will deposit in the area."[34] According to CASE, salt deposits from the Turkey Point Units 6 and 7 cooling towers will fall on the cooling canal system that serves Turkey Point Units 3 and 4, which are "in an already hyper-saline situation."[35] CASE claims this will exacerbate saltwater intrusion in the region beyond what is described in the DEIS and threaten South Miami-Dade County's water supply.[36]

Third, CASE alleges that the DEIS improperly defers to FPL's claims that Turkey Point will only use water from the Biscayne Bay as an alternative source of water for the cooling towers for a maximum of 60 days per year.[37] To support this claim, CASE cites to recent FPL

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[31] See Petition at 12, 15, 19.

[32] Petition at 12.

[33] Petition at 11b, 13.

[34] Petition at 16-17.

[35] Petition at 11a (emphasis omitted).

[36] See Petition at 16-17, 20.

[37] Petition at 19.

requests for use of freshwater to mitigate problems in the cooling canal system, arguing that FPL cannot be trusted to fulfill previous commitments when problems arise.[38]

2. Board Ruling on Contention 1

In its original 2010 petition, CASE proffered a contention very similar to Contention 1, alleging that FPL's application violated the Atomic Energy Act's (AEA's) requirement to protect public health and safety because the "six cooling towers for . . . Turkey Point will release tons of particulates annually from treated waste water or seawater . . . threatening the health and safety of Turkey Point employees . . . and could contaminate all land and water surfaces in the area."[39] We denied admission of CASE's original contention because, although CASE alleged a violation of the AEA, it failed to identify how the chemical deposits created an issue of radiological health and safety.[40] Here, CASE alleges that the NRC's DEIS is inadequate because chemical and salt deposits from the Turkey Point cooling towers will have negative environmental impacts on FPL's employees and on the surrounding environment. But CASE fails to identify any materially different information that was not previously available such that it could not have challenged the ER's treatment of environmental impacts related to the deposits in 2010. We therefore reject Contention 1 as untimely pursuant to 10 C.F.R. § 2.309(c)(1)(i) and (ii).

Even if CASE had shown good cause for its belated filing of Contention 1, we would deem it to be inadmissible because CASE does not (1) provide adequate support for the contention, as required by 10 C.F.R. § 2.309(f)(1)(v); or (2) demonstrate a genuine dispute with the DEIS, as required by 10 C.F.R. § 2.309(f)(1)(vi).

First, CASE fails to provide alleged facts or expert opinion to support admission of Contention 1. CASE makes a number of assertions about the impact of chemical and salt water

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[38] Petition at 19.

[39] [CASE] Petition to Intervene and Request for a Hearing at 27 (Aug. 17, 2010).

[40] See LBP-11-06, 73 NRC at 232-34.

deposits contained in cooling tower aerosol, but it does not provide any documentary or expert opinion to support its claims. The only support provided by CASE consists of (1) a licensing board decision admitting a contention in the Turkey Point Units 3 and 4 license amendment proceeding;[41] (2) a document indicating Miami-Dade County's objection to proposed modifications at the cooling canals serving existing Turkey Point units;[42] (3) two images indicating salinity and salt water intrusion related to the cooling canals;[43] and (4) a newspaper article discussing FPL's request for water diversion to the cooling canals.[44] All of these references relate to the cooling canal system that serves Turkey Point Units 3 and 4. CASE does not show how any of this information supports the claims made in Contention 1 relating to proposed Units 6 and 7. CASE's failure to provide supporting information mandates rejection of Contention 1 pursuant to section 2.309(f)(1)(v).[45]

Second, for each of CASE's stated concerns, Contention 1 fails to present a genuine dispute with the DEIS as required by section 2.309(f)(1)(vi). CASE cites to part of the DEIS, claiming that it "indicates that there is danger from aerosol drift . . . to FPL workers,"[46] but ignores the bulk of the DEIS discussion about mitigation of those dangers. For instance, the DEIS states that "the facility's worker protection plan [and] the planned disinfection for the cooling water is expected to eliminate or minimize health risk to workers."[47] The NRC Staff also

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[41] Petition at 13-15.

[42] Petition at 17.

[43] Petition at 18, 21.

[44] Petition at 19.

[45] As the Commission stated in Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003), a petitioner has the obligation not just to refer generally to documents, "but to provide analysis and supporting evidence as to why particular sections of those documents . . . [support] the contention." CASE fails to meet that obligation.

[46] Petition at 11b.

[47] DEIS at 5-93.

conducted modeling to analyze impacts from the cooling tower drift, ultimately concluding that impacts on FPL workers would be minimal and that no additional mitigation would be required.[48] Notably, CASE's petition itself undercuts the admissibility of Contention 1, stating that "the reported levels of chemicals which will remain in the reclaimed water . . . will not be at dangerous levels."[49]

Additionally, although CASE, in support of Contention 1, claims that the DEIS fails to mention or evaluate the impact of cooling tower salt deposits on the cooling canal system, Biscayne Bay, and the surrounding area, CASE's petition actually quotes from the DEIS's discussion of that very issue.[50] The DEIS contains an extended discussion of those potential impacts, determining that they will likely be minimal.[51] The DEIS even considers recent developments in the cooling canals, determining that there is "no indication that the recent changes to the [cooling canal system] would result in changes to the environmental review for the proposed Units 6 and 7."[52]

Finally, in its quest to admit Contention 1, CASE fails to acknowledge the DEIS's extensive discussion of seawater use for cooling purposes. CASE asserts that the DEIS improperly defers to FPL's assurances that the cooling towers will not utilize seawater from the Biscayne Bay for more than 60 days per year.[53] The DEIS, however, discusses at length an NRC Staff commissioned U.S. Geological Survey study that examined impacts of seawater

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[48] DEIS at 5-94 to 5-95.

[49] Petition at 12.

[50] See Petition at 15 (quoting the DEIS at 5-58).

[51] See DEIS at 5-56 to 5-59.

[52] DEIS at 2-47.

[53] Petition at 19.

pumping for three different time periods, each of which exceeded 60 days.[54] Thus, contrary to CASE's assertion, the DEIS does not defer to FPL, but rather considers conditions far more extreme than FPL expects to occur. Contention 1 therefore fails to present a genuine dispute of material fact with the DEIS and, accordingly, it is not admissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi).

B. Contention 2

> Exhaustive consideration of alternative technologies would have included, among other findings, the fact that forty percent of nuclear reactors throughout the world and twenty percent of the reactors in the U.S. use once-through seawater for cooling; so should Turkey Point 6 & 7.[55]

1. CASE's Position on Contention 2

Contention 2 alleges that the DEIS does not include a "genuine and exhaustive" consideration of reasonable alternatives for cooling Turkey Point Units 6 and 7.[56] Specifically, CASE states that the DEIS should have considered the use of once-through seawater for cooling purposes, which, CASE claims, (1) has been used successfully at nuclear reactors throughout the world; and (2) boasts both economic and environmental benefits.[57] CASE accuses FPL of deciding not to use once-through cooling solely for economic reasons.[58]

2. Board Ruling on Contention 2

We deny admission of Contention 2 as untimely under 10 C.F.R. § 2.309(c)(1) because CASE does not show that the contention is based upon materially different information from that which was previously available. FPL considered once-through cooling as an alternative in the ER submitted with its application in 2009, choosing instead to propose use of draft cooling

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[54] See DEIS G-34.

[55] Petition at 22.

[56] Petition at 22.

[57] See Petition at 23-24.

[58] Petition at 24.

towers.[59] CASE could have made its claims related to once-through cooling in its initial petition to intervene. CASE presents nothing to suggest that new and materially different information has emerged since 2009 to support the filing of a new contention now. We therefore reject Contention 2 as inexcusably late.

Even if CASE had shown good cause for filing Contention 2 late, we would reject it as inadmissible because CASE does not (1) provide adequate support for the contention, as required by 10 C.F.R. § 2.309(f)(1)(v); or (2) demonstrate a genuine dispute with the DEIS, as required by 10 C.F.R. § 2.309(f)(1)(vi).

First, CASE fails to provide alleged facts or expert opinion to support admission of Contention 2. CASE makes a number of assertions about the benefits of once-through cooling, the downside of using reclaimed water for cooling, and the reasons why FPL chose the latter for cooling Turkey Point Units 6 and 7.[60] CASE does not, however, provide any documentary or expert opinion to support its claims.[61] Although the Commission has said that a licensing board may "appropriately view [p]etitioners' support for its contention in a light that is favorable to the [p]etitioner, it cannot do so by ignoring [the regulatory requirement] that all petitioners provide . . . a statement of fact or expert opinion upon which they intend to rely."[62] CASE's failure to provide such supporting information mandates rejection of Contention 2 pursuant to section 2.309(f)(1)(v).

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[59] FPL, Turkey Point Units 6 & 7, COL Application, Environmental Report at 9.4-2 to 9.4-3 (Rev. 0 July 2009) (ADAMS Accession No. ML091870926); see also DEIS at 9-249 (stating that FPL's ER "considered a range of [circulating-water system (CWS)] heat dissipation systems, including a once-through cooling system").

[60] See Petition at 23-25.

[61] CASE provides only a single reference to a book discussing the extent of once-through cooling in nuclear reactors throughout the world. See Petition at 23. However, this reference does not support the bulk of the claims made by CASE in Contention 2.

[62] Ariz. Pub. Serv. Co. (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991).

Second, CASE fails to demonstrate a genuine dispute with the DEIS, which -- contrary to CASE's assertion -- does in fact discuss once-through cooling as a potential alternative to the use of draft cooling towers.[63] After explaining the operation of a once-through cooling system, the DEIS states that "[w]hile there is essentially no consumptive use of water in a once-through heat-dissipation system, the elevated temperature of the receiving waterbody would result in some induced evaporative loss that decreases the net water supply. The elevated temperature can also adversely affect the biota of the receiving waterbody."[64] The DEIS also states that the water-supply needs for once-through cooling for proposed Units 6 and 7 would be approximately 1,700,000 gallons per minute, and that "the only waterbody in the vicinity of Units 6 and 7 that could supply this quantity of water is Biscayne Bay, which is a National Park and has been designated as an aquatic preserve."[65] For this reason, the DEIS determines that once-through cooling designs are not a feasible alternative.[66] CASE fails to address the above discussion, much less raise a discrete challenge to any particular aspect of it. Instead, CASE simply alleges generally that the DEIS's "search for and evaluation of reasonable alternative[s] was not genuine and exhaustive."[67] In the absence of a more specific identification by CASE of

[63] See DEIS at 9-250.

[64] DEIS at 9-250.

[65] DEIS at 9-250.

[66] DEIS at 9-250. The DEIS also states that the "large intake flows [required for once-through cooling] would result in impingement and entrainment losses" and that, "[b]ased on recent changes to implementation plans to meet Section 316(b) of the Clean Water Act . . . , the review team has determined that once-through cooling systems for new nuclear reactors are unlikely to be permitted in the future, except in rare and unique situations." Id. CASE's failure to acknowledge and address this discussion in the DEIS, standing alone, renders Contention 2 inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi).

[67] Petition at 22.

allegedly deficient portions of the DEIS, we conclude that Contention 2 fails to demonstrate a genuine dispute with the DEIS.[68]

C. Contention 3

> Current political and economic influence over regulatory agencies and giving two power companies energy monopolies in Florida might put the State in violation of the Atomic Energy Act of 1954, as Amended in NUREG-0980.[69]

1. CASE's Position on Contention 3

Contention 3 alleges that the State of Florida has violated the AEA by neglecting its responsibilities as an agreement state under section 274 of the AEA.[70] CASE claims that the decision-making of Florida state officials has been corrupted by money and politics, citing to media reports on (1) allegations of corruption in the Florida Public Service Commission; (2) the inability of the solar power industry to succeed in the face of established electric utilities; and (3) the Florida Department of Environmental Protection's ban on use of the terms "climate change" and "global warming" in official communications.[71] According to CASE, improper influence wielded by entrenched interests has led to a situation where "[d]ecisions regarding the operation of nuclear reactors and their environmental impact might be made in favor of the State's political leaders' bias or the operator when they should be made in favor of the environment and the citizens of Florida."[72]

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[68] We note, moreover, that CASE's attack on the adequacy of DEIS's consideration of alternative heat-dissipation systems ignores the DEIS's discussion of (1) natural draft cooling towers; (2) fan-assisted natural draft cooling towers; (3) a cooling pond; (4) spray ponds; (5) dry cooling towers; (6) a combination wet/dry cooling-tower system; and (7) mechanical draft towers with plume abatement. See DEIS at 9-249 to 9-252.

[69] Petition at 26.

[70] Petition at 27.

[71] Petition at 28-33.

[72] Petition at 33.

2. Board Ruling on Contention 3

Contention 3 does not advance a specific litigable challenge to anything in the DEIS. Rather, CASE relies upon news reports to question the integrity of the political structure in Florida and to challenge its trustworthiness to consider FPL's COL application for Turkey Point Units 6 and 7 in an unbiased manner. This Board denies admission of Contention 3 because CASE fails to (1) raise an issue within the scope of this proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii); (2) raise an issue material to the findings the NRC Staff must make, as required by 10 C.F.R. § 2.309(f)(1)(iv); or (3) demonstrate a genuine dispute with FPL's application or the NRC's documents reviewing that application, as required by 10 C.F.R. § 2.309(f)(1)(vi).

First, CASE appears to be under the erroneous impression that the NRC delegated to Florida the authority to review FPL's COL application, opining that the NRC "cannot just delegate authority without monitoring its use or misuse."[73] Although Florida has assumed the regulation of certain material licenses as an agreement state pursuant to section 274 of the AEA,[74] both the AEA and the agreement between Florida and the NRC explicitly state that "the Commission shall retain authority and responsibility with respect to regulation of . . . the construction and operation of any production or utilization facility."[75] The NRC thus retains plenary authority and responsibility regarding the licensing of proposed Turkey Point Units 6 and 7. To the extent that Contention 3 is grounded on the misguided premise that Florida is responsible for reviewing and granting FPL's COL request, it raises concerns that are unrelated to the licensing of Turkey Point Units 6 and 7 and, accordingly, is outside the scope of this proceeding pursuant to section 2.309(f)(1)(iii).

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[73] Petition at 27.

[74] Agreement Between the Atomic Energy Commission and the State of Florida, 29 Fed. Reg. 9,463 (July 10, 1964).

[75] AEA, 42 U.S.C. § 2021(b), (c)(1); see also 29 Fed. Reg. at 9,463.

Second, the concerns raised in Contention 3 regarding the putative lack of integrity within the state political structure are not relevant to, much less material to, the findings the NRC Staff must make pursuant to the AEA and its implementing regulations. Contention 3 is thus inadmissible pursuant to section 2.309(f)(1)(iv).[76]

Finally, Contention 3 does not challenge the DEIS. Although CASE asserts generally that the NRC Staff's consideration of environmental impacts in the DEIS is "cursory, perfunctory and biased,"[77] the petition does not allege any specific inadequacy in the NRC Staff's analysis. In the absence of a more precise allegation of inadequacy, we conclude that Contention 3 fails to demonstrate a genuine dispute with the application as required by section 2.309(f)(1)(vi).

[76] CASE's allegations regarding state political matters are simply irrelevant to whether FPL's COL application complies with statutory and regulatory standards relating to safety, health, and the environment.

[77] Petition at 11a.

V. Conclusion

For the foregoing reasons, this Board denies CASE's petition to intervene.

CASE may file an appeal of this Memorandum and Order within twenty-five (25) days of service of this decision by filing a notice of appeal and an accompanying supporting brief pursuant to 10 C.F.R. § 2.311(b). Any party opposing an appeal may file a brief in opposition. All briefs must conform to the requirements of 10 C.F.R. § 2.341(c)(3).

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
June 25, 2015

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 (Denying CASE's Petition to Intervene)** have been served upon the following persons by Electronic Information Exchange, and by electronic mail as indicated by an asterisk.

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[Original signed by Brian Newell]
Office of the Secretary of the Commission

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