LBP-17-02

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 January 13, 2017

MEMORANDUM AND ORDER
(Denying CASE's Petition to Intervene and Request for a Hearing)

Citizens Allied for Safe Energy, Inc. (CASE) petitions to intervene in this proceeding involving the application of Florida Power & Light Company (FPL) for combined licenses (COLs) for two new nuclear power reactors, Units 6 and 7, at the FPL Turkey Point facility near Homestead, Florida. See [CASE] Petition to Intervene and Request for Hearing in Opposition to the Final Report EIS Granting COLs for Turkey Point Units 6 & 7 (Nov. 28, 2016) [hereinafter CASE Petition]. CASE proffers four contentions challenging the adequacy of the NRC Staff's Final Environmental Impact Statement (FEIS).[1] For the reasons discussed below, we conclude that CASE has standing, but that each of its contentions is either untimely, inadmissible, or both. We therefore deny CASE's petition.

[1] See Division of New Reactor Licensing, Office of New Reactors, Environmental Impact Statement for [COLs] for Turkey Point Nuclear Plant Units 6 and 7 Final Report, NUREG-2176 (Oct. 2016) (ADAMS Accession Nos. ML16300A104, ML16300A137, ML16301A018, and ML16300A312) [hereinafter FEIS].

I. BACKGROUND

Although CASE is not currently a party to this proceeding, it has a lengthy history of involvement in the case since this Board's establishment in 2010. CASE first sought to intervene following the issuance of a June 2010 notice of hearing and opportunity to petition to intervene. See 75 Fed. Reg. 34,777 (June 18, 2010). The notice of hearing also prompted the filing of two other intervention petitions: (1) a joint petition from Southern Alliance for Clean Energy, the National Parks Conservation Association, Mark Oncavage, and Dan Kipnis (collectively, Joint Intervenors); and (2) a petition from the Village of Pinecrest, Florida. See LBP-11-06, 73 NRC 149, 164–65 (2011).

In February 2011, this Board granted two of the three petitions, admitting CASE's Contentions 6 and 7 and Joint Intervenors' Contention 2.1. See LBP-11-06, 73 NRC at 251–52.[2] In March 2012, after dismissing CASE's Contention 6 as moot[3] and granting FPL's motion for summary disposition of CASE's Contention 7,[4] we denied CASE's motions to admit two new contentions and dismissed CASE as a party to this proceeding. See LBP-12-07, 75 NRC 503, 520 (2012).

In July 2012, CASE again petitioned to intervene, seeking leave to file a new contention concerning temporary storage and ultimate disposal of nuclear waste at Turkey Point Units 6 and 7. See Licensing Board Order (Denying Waste Confidence Contention Motions and Dismissing CASE) at 2 (Sept. 10, 2014) (unpublished). Following the Commission's adoption of

---

[2] 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 LBP-11-06, 73 NRC at 251–52.

[3] 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).

[4] See Licensing Board Memorandum and Order (Granting FPL's Motion for Summary Disposition of CASE Contention 7) at 14 (Feb. 28, 2012) (unpublished).

the Continued Storage Rule and accompanying Generic Environmental Impact Statement, this Board denied CASE's petition. See id. at 3.

In February 2015, the NRC Staff published the Draft Environmental Impact Statement (DEIS) for Turkey Point Units 6 and 7.[5] CASE filed another petition to intervene seeking to challenge the DEIS, but in June 2015, this Board denied CASE's petition. See Licensing Board Memorandum and Order (Denying CASE's Petition to Intervene) at 17 (June 25, 2015) (unpublished) [hereinafter Licensing Board June 25, 2015 Order].[6]

This brings us to the status of this proceeding when we received CASE's November 28, 2016 petition; namely, (1) Joint Intervenors' Contention 2.1, as amended and reformulated, is the sole contention pending before us, see LBP-16-03, 83 NRC 169, 185–86 (2016); (2) a hearing is scheduled to be held in May 2017 to create an evidentiary record for the purpose of resolving Contention 2.1, see Licensing Board Order (Amending Final Scheduling Order) (Nov. 15, 2016) (unpublished); and (3) the Village of Pinecrest and the City of Miami are participating as interested local governmental bodies. See supra notes 2 and 6.

In its new petition, CASE proffers four contentions alleging deficiencies in the October 2016 FEIS. See CASE Petition at 4.

On December 19, 2016, FPL and the NRC Staff filed answers arguing that CASE's petition should be denied because (1) CASE fails to demonstrate standing as required by 10 C.F.R. § 2.309(a); (2) CASE's contentions fail to satisfy the timeliness standard in 10 C.F.R. § 2.309(c)(1); and (3) CASE's contentions fail to satisfy the admissibility standards in 10 C.F.R.

---

[5] See Division of New Reactor Licensing, Office of New Reactors, Environmental Impact Statement for [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].

[6] The City of Miami also filed a petition that alleged deficiencies in the DEIS. In June 2015, this Board denied Miami's request to intervene, but we granted its request to participate as an interested local governmental body. See LBP-15-19, 81 NRC 815, 828 (2015).

§ 2.309(f)(1). See [FPL's] Answer Opposing [CASE's] Petition to Intervene and Request for Hearing Regarding the [FEIS] for Turkey Point 6 & 7 at 13–61 (Dec. 19, 2016) [hereinafter FPL Answer]; NRC Staff Answer to [CASE] Petition to Intervene and Request for Hearing in Opposition to the [FEIS] Granting COLs for Turkey Point Units 6 & 7 at 11–41 (Dec. 19, 2016) [hereinafter NRC Staff Answer].

CASE declined to file a reply.

II. CASE SATISFIES STANDING REQUIREMENTS

To participate in an NRC licensing proceeding, a petitioner must establish standing. See 10 C.F.R. § 2.309(a). CASE previously established standing as a party in this proceeding, see LBP-11-06, 73 NRC at 226–27, but this Board subsequently dismissed CASE for failure to maintain a live contention. See LBP-12-07, 75 NRC at 520. Section 2.309(c)(4) nonetheless states that "[i]f a party or participant has already satisfied the requirements for standing under paragraph (d) of this section in the same proceeding in which the new or amended contentions are filed, it does not need to do so again." 10 C.F.R. § 2.309(c)(4) (emphasis added). Section 2.4 defines "participant" as "an individual or organization (including a governmental entity) that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by [the Board]." 10 C.F.R. § 2.4. Thus, although CASE is no longer a party in this proceeding, its latest petition to intervene makes it a "participant," as defined in section 2.4, and therefore subject to section 2.309(c)(4). Because CASE previously established standing in this proceeding, it "does not need to do so again." 10 C.F.R. § 2.309(c)(4).

Despite the clear language in 10 C.F.R. § 2.309(c)(4), the NRC Staff and FPL argue that CASE must make a fresh demonstration of standing, because its circumstances may have changed since it last demonstrated standing. See NRC Staff Answer at 7 (citing PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-07, 71 NRC 133, 138 (2010); Crow Butte Res., Inc. (In Situ Leach Facility, Crawford, Neb.), CLI-09-09, 69 NRC 331, 343 (2009)); FPL Answer at 14–15 (discussing Tex. Utils. Elec. Co. (Comanche Peak Steam Elec. Station, Unit 2), CLI-

93-04, 37 NRC 156, 162–63 (1993)). Although this is a cogent argument, we decline to adopt it because it flies in the face of the plain language of section 2.309(c)(4). Moreover, the cases cited by the NRC Staff and FPL all predate the governing language in section 2.309(c)(4), which was added in 2012. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,582–83 (Aug. 3, 2012).[7]

Even if CASE had to make a fresh showing of standing, we would still conclude that CASE satisfies standing requirements.[8] A petitioner's standing is generally determined by applying contemporaneous concepts of judicial standing. See, e.g., Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993). However, the Commission recognizes a "proximity presumption" in certain proceedings, including COL applications, for petitioners living within 50 miles of the facility at issue, which effectively dispenses with the need to make an affirmative showing of injury, causation, and redressability. See, e.g., Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915–16 (2009).

When an organization, such as CASE, seeks to intervene on behalf of its members, it can establish representational standing by showing that (1) at least one member would otherwise have standing to sue in his or her own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief

---

[7] When CASE filed a hearing request in 2015 to challenge the DEIS, we required it to make a fresh demonstration of standing because (1) it had been dismissed as a party three years earlier; and (2) guided by the Commission's rationale in Bell Bend, CLI-10-07, 71 NRC at 138, we concluded that the burden was on CASE to show that its circumstances had not changed and that it still had standing. See Licensing Board June 25, 2015 Order at 3 n.17. But our analysis in that order did not take into account section 2.309(c)(4), which makes clear that because CASE "has already satisfied the requirements for standing" in this proceeding, "it does not need to do so again." 10 C.F.R. § 2.309(c)(4).

[8] In conducting our standing analysis, we are mindful that CASE is a pro se litigant and, accordingly, we hold it to "less rigid pleading standards, so that parties with a clear—but imperfectly stated—interest in the proceedings are not excluded." U.S. Army Installation Command (Schofield Barracks, Oahu, Haw.), CLI-10-20, 72 NRC 185, 192 (2010).

requested requires an individual member to participate in the organization's lawsuit. See Private Fuel Storage, LLC (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). The Commission also requires an organization to demonstrate that the member who would have standing to sue in his or her own right has explicitly authorized the organization to represent the member's interests. See id.

We conclude that CASE satisfies the requirements for representational standing under the proximity presumption. A member submitted a declaration in support of CASE's petition attesting that (1) he lives within 16 miles of Turkey Point; and (2) he authorizes CASE to represent his interests. See Walter Harris Declaration (Nov. 25, 2016). CASE and its member express the jointly shared concern that the construction and operation of Turkey Point Units 6 and 7 will impair the environment, including local groundwater and surface waters. See id.; CASE Petition at 3–38. Finally, neither CASE's proffered contentions nor the relief sought requires an individual member to participate in this proceeding. CASE has thus, once again, established representational standing to intervene in this proceeding.

III. CASE FAILS TO PROFFER AN ADMISSIBLE CONTENTION

A. Legal Standards for Contention Admissibility

To participate in an NRC licensing proceeding, in addition to demonstrating standing, a petitioner must also proffer at least one timely and admissible contention. See 10 C.F.R. § 2.309(a). We therefore must determine whether CASE's four proffered contentions satisfy (1) the timeliness standard in 10 C.F.R. § 2.309(c)(1); and (2) the contention admissibility standard in 10 C.F.R. § 2.309(f)(1). Failure to satisfy either standard requires the Board to reject a proffered contention.

Regarding timeliness, and as relevant here, when a COL application is docketed, a petitioner seeking to raise contentions under the National Environmental Policy Act (NEPA) must base them on the applicant's environmental report (ER), see 10 C.F.R. § 2.309(f)(2), and the deadline for filing the petition is typically 60 days after the notice of hearing and opportunity

to intervene is published in the Federal Register. See id. § 2.309(b). After the deadline for filing contentions based on the ER has passed, a petitioner seeking to file an environmental-related contention must show good cause for its belated filing by showing that

> (i) The information upon which the filing is based was not previously available;
>
> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.[9]

Id. § 2.309(c)(1); see also id. § 2.309(f)(2).

In addition to satisfying the three-prong good cause standard for a belated hearing request, a petitioner must show that at least one of the newly proffered contentions satisfies the six-factor admissibility standard in section 2.309(f)(1), which requires the petitioner to

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (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;
>
> (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

---

[9] As relevant here, pursuant to this Board's Initial Scheduling Order, petitioners were required to file new contentions within 30 days of the date when the new and material information on which new contentions could be based became available. See Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) at 8 (Mar. 30, 2011) (unpublished). This Board subsequently issued an order directing that petitioners seeking leave to file new contentions based on the FEIS must file such contentions within 25 days of the FEIS's issuance. See Licensing Board Memorandum and Order (Prehearing Conference Call Summary, Case Management Directive, and Scheduling Order) at 3 (Oct. 5, 2016) (unpublished).

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 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). This standard is "strict by design," Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), and a licensing board must reject a contention that does not meet all six criteria. See USEC, Inc. (Am. Centrifuge Plant), CLI-06-09, 63 NRC 433, 437 (2006).

B. Contention Admissibility Analysis

1. Contention 1 is Not Admissible

CASE frames Contention 1 as follows:

The use of reclaimed waste water for the cooling towers was not fully evaluated and is unlikely due to the high cost of removing nitrogen and phosphorus and the eventual unavailability of reclaimed waste water.

CASE Petition at 8. In Contention 1, CASE alleges that the FEIS inadequately considers factors that would prevent FPL from utilizing reclaimed wastewater from the Miami-Dade Water and Sewer Department (MDWASD) as a source of cooling water for Turkey Point Units 6 and 7. See id. at 8–12.

By way of background, during normal operations of proposed Units 6 and 7, FPL intends to dissipate waste heat by mechanical draft cooling towers. See FEIS at xxxii, 3-31. Two sources of makeup cooling water will be available for the towers: (1) the primary source is the reclaimed wastewater from MDWASD that will be conveyed via pipelines to the Turkey Point site, where it will receive additional treatment from an on-site water-treatment facility; and (2) the secondary source is from four radial collector wells (RCWs) designed to withdraw seawater from under Biscayne Bay, and which will only be used when reclaimed wastewater from MDWASD is

inadequate in quantity or quality to meet the needs of the cooling system. See, e.g., id. at xxxii, 2-24, 3-2, 3-8 to 3-9, 5-68. According to the FEIS, the four RCWs will be installed between 25 and 40 feet beneath the bed of Biscayne Bay and will be located on the northeastern boundary of the Turkey Point site. See id. at 3-9, 4-81. The Florida Department of Environmental Protection (FDEP) has limited FPL's use of the RCWs to a maximum of 60 days per year. See id. at 2-24, 5-9.

In Contention 1, CASE claims that it is likely that FPL will be unable to use the reclaimed wastewater from MDWASD as its primary source of cooling water due to (1) the high cost of FPL's plan to construct and operate an on-site reclaimed water-treatment facility to further treat the water from MDWASD; and (2) projected sea level rise. See CASE Petition at 8–9. Regarding costs, CASE alleges that "the estimated cost of building a plant to treat reclaimed wastewater from the [MDWASD facility] is, currently, $400 million dollars" and that, ultimately, the cost to build and operate such a facility will be cost prohibitive. Id. at 8. With respect to sea level rise, CASE contends that FPL will ultimately be forced to abandon its plan to use reclaimed wastewater from the MDWASD facility because rising sea levels will cause that facility to be inundated by seawater by 2050. See id. at 8–9. According to CASE, if FPL is unable to use reclaimed wastewater as planned due to prohibitively high costs or sea level rise, FPL would need to obtain permission from FDEP to increase its RCW use beyond the current 60-day limit. See id. at 12. CASE asserts that this increased use of the RCWs would negatively impact the Biscayne Aquifer. See id. at 11–12. CASE also posits that, unless the additional operating time for the RCWs is guaranteed, "it might not be possible to build the reactors at all." Id. at 12. CASE argues that the FEIS is deficient because it does not adequately consider the above possibilities.

FPL and the NRC Staff argue that Contention 1 is not admissible. See FPL Answer at 16–25; NRC Staff Answer at 13–21. We agree.

a. First, CASE has not met its burden of showing why Contention 1 should not be rejected as inexcusably late. As explained supra Part III.A, a petition to intervene that is filed after the deadline for proffering contentions based on the ER "will not be entertained absent a determination by the [licensing board] that a participant has demonstrated good cause." 10 C.F.R. § 2.309(c)(1). To demonstrate "good cause," CASE is required to show that (1) the information on which Contention 1 is based was not previously available; (2) the previously unavailable information is materially different from information that was previously available; and (3) the filing has been submitted on a timely basis. See id.

CASE's petition fails even to cite section 2.309(c)(1), much less endeavor to show that Contention 1 satisfies the three-prong "good cause" standard. This failure alone provides a basis to reject Contention 1. See Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-06-21, 64 NRC 30, 34 (2006) (a petitioner's "failure to comply with our pleading requirements for late filings constitutes sufficient grounds for rejecting its [petition]").[10]

In any event, we conclude that CASE fails to satisfy the "good cause" standard in section 2.309(c)(1) because Contention 1 is not based on materially different information from that which was previously available. In its 2009 ER, FPL discussed its plan to use reclaimed wastewater from MDWASD as well as from four RCWs in the Biscayne Bay for its nonsafety-related circulating water system cooling.[11] CASE thus could have made its claims related to the

[10] This outcome is not changed by the fact that CASE is a pro se litigant. Such litigants "are still expected to comply with our procedural rules." S.C. Elec. and Gas Co. (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 NRC 1, 6 (2010). CASE certainly cannot claim a lack of familiarity with the procedural requirements of 10 C.F.R. § 2.309(c)(1) given that two of the three contentions it proffered in its April 2015 petition challenging the DEIS were rejected for failing to comply with this very provision. See Licensing Board June 25, 2015 Order at 8, 11–12. We nevertheless consider infra in text whether Contention 1 satisfies the "good cause" standard, and we conclude that it does not.

[11] FPL, Turkey Point Units 6 & 7, COL Application, Environmental Report at 2.3-2 (rev. 0 July 2009) (ADAMS Accession No. ML091870926) [hereinafter ER]. The DEIS, issued in February 2015, also discussed FPL's planned use of reclaimed wastewater from MDWASD as its primary source for nonsafety-related circulating water system cooling, and water from the four RCWs when that wastewater is not available. See DEIS at 2-26, 5-53 to 5-54. CASE's sole citation to

feasibility of using reclaimed wastewater for cooling purposes in its 2010 petition to intervene. CASE presents nothing to suggest that new and materially different information has emerged since then to support the filing of a new contention now. We therefore reject Contention 1 as inexcusably late.[12]

b. Even if CASE had shown good cause for its belated filing of Contention 1, we would deem it to be inadmissible pursuant to 10 C.F.R. § 2.309(f)(1). First, CASE does not provide any documentary or expert opinion to support its cursory assertion that FPL's reclaimed water-treatment facility will be so prohibitively expensive to construct and maintain as to cause FPL to rely exclusively on RCW water for cooling. See CASE Petition at 8. CASE's failure to provide supporting information mandates rejection of this aspect of Contention 1 pursuant to section 2.309(f)(1)(v).[13]

Regarding its inundation argument, CASE fails to acknowledge or challenge the sea level rise discussion in the FEIS. See, e.g., FEIS at I-3, I-6, I-8, I-16 to I-17. Indeed, the FEIS expressly considers the potential impact of sea level rise on the MDWASD facility, observing

---

the FEIS in support of Contention 1, see CASE Petition at 12 (quoting FEIS at 5-68), is a quote that appears nearly verbatim in the DEIS. See DEIS at 5-53 to 5-54.

[12] Notably, in their 2010 petitions, both CASE and Joint Intervenors raised contentions regarding the impact of sea level rise on proposed Units 6 and 7, which were rejected as inadmissible. See LBP-11-06, 73 NRC at 215–17, 235–37. CASE fails to show that its current assertions regarding sea level rise are based on new information that is materially different from that which was previously available.

Additionally, in 2010, Joint Intervenors raised contentions regarding reclaimed wastewater and RCW usage that bear substantial similarities to CASE's newly proffered Contention 1. More precisely, in 2010, Joint Intervenors argued that (1) the ER insufficiently considered whether reclaimed wastewater from MDWASD will be adequate to serve as the primary source of cooling water for Units 6 and 7; and (2) the ER insufficiently considered the impact of RCW usage on the environment. See LBP-11-06, 73 NRC at 173–86. These contentions were rejected as inadmissible. See id. CASE fails to show that its current assertions regarding reclaimed wastewater and RCW usage are based on new information that is materially different from that which was previously available.

[13] Although CASE mentions the "high cost of removing nitrogen and phosphorus," CASE Petition at 8, it provides no support regarding the actual costs associated with removing those, or any other constituents, from the reclaimed wastewater.

that a "substantial increase in sea level rise . . . could impact the [MDWASD] treatment plant" and cause Miami Dade County to "adapt some of its wastewater treatment infrastructure." Id. at I-6. The FEIS concludes, however, that adaptations, if required, would be foreseeable and non-problematic in light of "the abundance of wastewater in this region" and "the critical public health role of these facilities." Id. CASE's failure to reference these portions of the FEIS or take issue with them renders the inundation aspect of Contention 1 inadmissible for failing to show a genuine dispute on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi).[14]

2. Contention 2 is Not Admissible

CASE frames Contention 2 as follows:

> The probable heavy use of water from the [Biscayne Aquifer][15] using radial collector wells has not been fully evaluated and could result in catastrophic drainage of actual and near freshwater from the [Biscayne Aquifer] required to abate saltwater intrusion and for human use.

CASE Petition at 12. Contention 2 alleges that the FEIS's reliance on groundwater modeling performed by FPL and the U.S. Geological Survey (USGS) is misplaced because the FEIS acknowledges that aspects of these models are uncertain and, accordingly, they cannot accurately predict the environmental impacts caused by the operation of the RCWs on the

---

[14] CASE also ignores the extensive sea level rise analysis in the NRC Staff's safety review documents. See, e.g., Division of New Reactor Licensing, Office of New Reactors, Final Safety Evaluation Report for [COLs] for Turkey Point Nuclear Plant Units 6 and 7, Ch. 2: Site Characteristics, at 2-119 to 2-121, 2-176 to 2-180, 2-229 (Nov. 2016) (ADAMS Accession No. ML16264A045) [hereinafter FSER]; Division of New Reactor Licensing, Office of New Reactors, Advanced Safety Evaluation for Turkey Point Units 6 and 7 Combined License Application, Chapter 2: Site Characteristics, at 2-120 to 2-122 (July 14, 2016) (Accession No. ML15096A254); see also FEIS at I-16 (stating that the NRC Staff's Advanced Safety Analysis Report evaluated the effect of sea level rise on Units 6 and 7).

[15] Although Contention 2 states that the "heavy use of water from the Upper Floridan Aquifer" has not been fully evaluated and could adversely impact the "Upper Floridan Aquifer," CASE Petition at 12, CASE's arguments in support of Contention 2 discuss the possible impacts on the Biscayne Aquifer, not the Upper Floridan Aquifer. In addition, the FEIS makes clear that FPL plans to install four RCWs in the Biscayne Aquifer, not in the Upper Floridan Aquifer. See FEIS at 2-24. Accordingly, we consider Contention 2 to frame a concern about FPL's planned use of RCWs in the Biscayne Aquifer, not in the Upper Floridan Aquifer.

Biscayne Aquifer. See id. at 13–15. CASE asserts that, as a result of this deficiency in the FEIS, FPL's plans to pump millions of gallons of water a day from the Biscayne Aquifer with these RCWs could exacerbate saltwater intrusion in the surrounding area. See id. at 15.

FPL and the NRC Staff argue that Contention 2 is not admissible. See FPL Answer at 26–31; NRC Staff Answer at 21–27. We agree.

a. First, CASE fails to address whether "good cause" exists for its belated filing of Contention 2, as required by 10 C.F.R. § 2.309(c)(1). This failure alone constitutes sufficient grounds for rejecting the contention. See supra note 10 and accompanying text.

Moreover, we conclude that Contention 2 does not satisfy the "good cause" standard of section 2.309(c)(1) because it is not based on new information that is materially different from that which was previously available. Contention 2 alleges a deficiency in the FEIS analysis due to uncertainties in the FPL and USGS modeling. See CASE Petition at 13–14. But the detailed summary of these modeling efforts that CASE challenges also appeared in the DEIS. Compare FEIS, App. G, at G-28 to G-31 with DEIS, App. G, at G-28 to G-31. Indeed, all of the FEIS excerpts cited by CASE in support of Contention 2, see CASE Petition at 12–14, appear verbatim in the DEIS. See DEIS, App. G, at G-28 to G-30.[16]

Because Contention 2 is not based on any new and materially different information regarding uncertainties with the FPL and USGS modeling from that which was available when the DEIS was issued in February 2015, or earlier, we reject it as inexcusably late.[17]

---

[16] CASE's argument with respect to FPL's groundwater modeling effort is especially untimely given that FPL's groundwater model was included as part of the 2009 ER. See ER at 5.2-8 to 5.2-9. In fact, in 2015, the Board rejected a similar contention proffered by the City of Miami as untimely because the proposed contention focused "solely on FPL's base case groundwater model, which had been available for years as part of FPL's initial application." LBP-15-19, 81 NRC at 826; see also LBP-11-06, 73 NRC at 173–86 (rejecting as inadmissible contentions advanced by Joint Intervenors alleging that the ER inadequately addressed environmental impacts of the RCWs on the Biscayne Aquifer and the Biscayne Bay ecosystem).

[17] The FEIS also considered a third modeling analysis performed by the NRC Staff that was completed after the DEIS's publication. See FEIS, App. G, at G-26, G-46 to G-48. CASE's arguments advancing Contention 2 do not rely on that analysis. Even if CASE had relied on the

b. Even if CASE had shown good cause for its belated filing of Contention 2, we would reject it as inadmissible because CASE does not demonstrate a genuine dispute with the FEIS, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Contrary to CASE's assertion, see CASE Petition at 15, the FEIS does not ignore uncertainties in the FPL and USGS modeling. The FEIS acknowledges that "complete knowledge of the hydrologic system associated with the RCWs is not now available, and that uncertainties therefore remain in the impact analysis." FEIS at 5-16. The FEIS proceeds to identify the modeling uncertainties as follows:

> The sources of uncertainty in the RCW analysis include heterogeneity in subsurface parameters, lack of experience with RCW systems in carbonate strata, and uncertainty in the potential need for using the backup water supply. Uncertainties in the future site environment include freshening of the [industrial wastewater facility] cooling canals, remediation of the subsurface hypersaline plume, and the magnitude and rate of future sea-level rise.

Id. at 5-18. Accordingly, the FEIS states that the NRC Staff's analysis "does not rely solely on the output of any numerical model," id., and that the "results from both the USGS model and the FPL groundwater model were only used qualitatively by the review team to understand potential impacts." Id. at 5-17. In performing its analysis, the NRC Staff considered the USGS and FPL modeling results within the construct of the following factors to conclude that the impact of RCW pumping on the Biscayne Aquifer would be minor: (1) the review team's knowledge of the geographic layout of the RCW field, id.; (2) the state of Florida's monitoring and mitigation requirements, id.; (3) the fact that FPL would only be allowed to pump water from the RCWs for a maximum of 60 days a year, id.; and (4) the NRC Staff's independent groundwater modeling of the interaction between the planned RCWs and the existing hypersaline plume underneath

---

NRC Staff's modeling (which it does not), and even if that modeling were deemed to be new and materially different information (which CASE does not argue), Contention 2 would not satisfy the admissibility standard of section 2.309(f)(1)(vi). See infra Part III.B.2.b.

the cooling canals servicing other units at Turkey Point. Id. at 5-15 to 5-18, 5-36 to 5-37; see also id., App. G, G-46 to G-48.

In its discussion of Contention 2, CASE fails to point to a specific deficiency in the FEIS beyond a conclusory assertion that the FEIS's analysis of the effect of RCW pumping on the Biscayne Aquifer is "uncertain" and therefore deficient. See CASE Petition at 13–15. Such a nebulous attack fails to raise a genuine dispute regarding a material issue of fact or law, as is required by 10 C.F.R. § 2.309(f)(1)(vi). Contention 2 is therefore not admissible.

3. Contention 3 is Not Admissible

CASE frames Contention 3 as follows:

> The impact of injecting toxic chemicals and liquid radwaste laden water from the reactors directly into the Boulder Zone was not fully evaluated in the EIS.

CASE Petition at 16. In Contention 3, CASE alleges that the wastewater injected into the Boulder Zone will migrate beyond the Boulder Zone in all directions. See id. at 17. Citing a section of the FEIS that evaluates the confinement characteristics of the Boulder Zone, CASE asserts that the NRC Staff did not adequately consider this topic in its review of Turkey Point Units 6 and 7. See id. at 20–21 (citing FEIS at 5-21 to 5-29).

CASE also expresses concern about the composition of the wastewater from Turkey Points Units 6 and 7 and the impact of that wastewater on the environment. According to CASE, "[by] not fully evaluating the implications of toxic chemicals and even low levels of tritium, cesium, and strontium 90 which will be introduced in the Boulder Zone, the [FEIS] reaches dangerous and unsupported conclusions." CASE Petition at 26. CASE opines that the contaminated wastewater might migrate beyond the Boulder Zone and adversely affect the groundwater and the Atlantic Ocean. See id. at 30.

FPL and the NRC Staff argue that Contention 3 is not admissible. See FPL Answer at 31–45; NRC Staff Answer at 28–35. We agree.

First, CASE fails to address whether "good cause" existed for its belated filing of Contention 3, as required by 10 C.F.R. § 2.309(c)(1). This failure alone constitutes sufficient grounds for rejecting the contention. See supra note 10 and accompanying text.

Moreover, Contention 3 does not satisfy the "good cause" standard of section 2.309(c)(1) because it is not based on new information that is materially different from that which was previously available. Basically, Contention 3 asserts that the FEIS fails to consider adequately whether the contaminated wastewater injected into the Boulder Zone from Units 6 and 7 will migrate beyond the Boulder Zone, thereby adversely impacting the environment. This assertion is substantially similar to Contention 2.1, which is pending before this Board and was originally submitted in 2010 by Joint Intervenors. See LBP-11-06, 73 NRC at 251–52. As currently formulated, Contention 2.1 alleges that the NRC Staff erred in concluding that the environmental impacts from FPL's deep injection wells will be "small," because certain contaminants in the wastewater may migrate from the Boulder Zone to the Upper Floridan Aquifer and adversely impact the groundwater. See LBP-16-03, 83 NRC at 186.

That CASE's newly proffered contention is substantially similar to the contention filed with this Board in 2010 is a persuasive indicator that Contention 3 is untimely. That Contention 3 is not grounded on any new information that is materially different from that which was previously available leads dispositively to the conclusion that Contention 3 is inexcusably late and must, therefore, be rejected pursuant to 10 C.F.R. § 2.309(c)(1).[18]

[18] CASE's proposed Contention 3 differs from (and exceeds the scope of) Joint Intervenors' Contention 2.1 insofar that it asserts that the wastewater (1) contains radioactive contaminants; and (2) might migrate to the Atlantic Ocean. But these differences do not provide a basis for satisfying the "good cause" standard because CASE fails to show that its arguments are grounded on new information that is materially different from that which was previously available.

4. Contention 4 is Not Admissible

CASE frames Contention 4 as follows:

> NEPA was not fully honored in spirit or letter by the NRC Staff which approved measures harmful to the environment.

CASE Petition at 31. CASE argues in Contention 4 that the FEIS violates NEPA in several respects. First, CASE alleges that the FEIS improperly relies on computer modeling, rather than on field research or studies, for conducting environmental analyses. See id. at 32. Second, CASE argues that the NRC Staff's failure to evaluate alternative energy sources "including solar, wind, and geothermal energy is a major shortcoming" of the FEIS. Id. at 36; see also id. at 33–37.

FPL and the NRC Staff argue that Contention 4 is not admissible. See FPL Answer at 45–61; NRC Staff Answer at 35–41. We agree.

a. First, CASE fails to address whether "good cause" exists for its belated filing of Contention 4, as required by 10 C.F.R. § 2.309(c)(1). This failure alone constitutes sufficient grounds for rejecting the contention. See supra note 10 and accompanying text.

Moreover, Contention 4 does not satisfy the "good cause" standard in section 2.309(c)(1) because it is not based on new information that is materially different from that which was previously available in the DEIS. With regard to CASE's argument concerning the FEIS's improper reliance on computer modeling in lieu of field research or studies, CASE appears to be challenging the FPL and USGS computer modeling for the RCWs. See CASE Petition at 32. But there is no reason that CASE could not have raised such concerns earlier, in particular when the DEIS issued in February 2015, because, as discussed supra Part III.B.2.a, the DEIS contained the same detailed summary of the FPL and USGS modeling that appears in the FEIS. CASE cannot justify raising this untimely claim now.

CASE's assertion that the NRC Staff's evaluation of energy alternatives in the FEIS is insufficient is also untimely, because the Staff's evaluation of energy alternatives in the FEIS is

neither new nor materially different from that which was presented in the DEIS. DEIS section 9.2 discusses potential environmental impacts associated with alternatives to construction of a new baseload nuclear power plant. More specifically, DEIS sections 9.2.3.2, 9.2.3.3, and 9.2.3.5 discuss, respectively, the potential for wind power, solar power, and geothermal energy—the three alternative energy sources explicitly mentioned by CASE, see CASE Petition at 36—to replace the electricity to be produced by Units 6 and 7. The discussion of these three alternatives in the DEIS is substantively unchanged in the FEIS. See FEIS at 9-23 to 9-25, 9-26. Accordingly, any concerns CASE has with respect to the NRC Staff's consideration of energy alternatives could, and should, have been raised following publication of the DEIS. We therefore reject Contention 4 as inexcusably late pursuant to 10 C.F.R. § 2.309(c)(1).[19]

b. Contention 4 must also be rejected because it fails to satisfy the admissibility standard in section 2.309(f)(1). To the extent Contention 4 is based on concerns about the insufficiency of computer modeling, see CASE Petition at 32, the allegations are vague and ill-defined. Such imprecision in a contention renders it inadmissible pursuant to the specificity requirement in section 2.309(f)(1)(i). Moreover, CASE's claim in Contention 4 that the computer modeling must be supplemented with additional field research or studies, see id., is unsupported by fact or expert opinion, which renders the contention inadmissible pursuant to section 2.309(f)(1)(v). Finally, CASE errs in making the categorical assertion that "[n]o field research or studies specifically related to this monumental project were reported" in the FEIS. Id. Numerous field studies are reported in section 11 of the FEIS. See FPL Answer, Attach. A (listing examples of the field studies). Because this aspect of Contention 4 is based on an

[19] To the extent that Contention 4 is grounded on a claim that the NRC Staff violated NEPA by condoning the use of deep injection wells for the disposal of contaminated wastewater, see CASE Petition at 33, 38, that argument is unjustifiably late for the reasons discussed supra Part III.B.3.a.

erroneous factual predicate, it is inadmissible pursuant to section 2.309(f)(1)(vi) for failure to show that a genuine dispute exists on a material issue of law or fact.

CASE also claims in Contention 4 that the FEIS inadequately examines the feasibility of alternative energy sources. See CASE Petition at 34–37. This claim fails to acknowledge that the FEIS includes a comprehensive analysis of a number of alternative energy technologies, including wind, solar, geothermal, and hydropower. See FEIS 9-22 to 9-30. This aspect of Contention 4 must therefore be rejected because (1) it is unsupported by fact or expert opinion, rendering it inadmissible pursuant to section 2.309(f)(1)(v); and (2) it fails to raise a genuine dispute on a material issue of fact or law, rendering it inadmissible pursuant to section 2.309(f)(1)(vi).[20]

[20] To the extent that Contention 4 suggests that the NRC Staff exhibited improper bias in favor of nuclear energy in reviewing these alternative sources of energy, see CASE Petition at 34, it is inadmissible because (1) it is outside the scope of this proceeding pursuant to section 2.309(f)(1)(iii); (2) it is unsupported by fact or expert opinion pursuant to section 2.309(f)(1)(v); and (3) it fails to demonstrate a genuine dispute with the FEIS pursuant to section 2.309(f)(1)(vi).

IV. CONCLUSION

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

CASE may file an appeal of this Memorandum and Order within 25 days of service of this order. Any party opposing the appeal may file a brief in opposition within 25 days after service of the appeal. See 10 C.F.R. § 2.311(b).

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
January 13, 2017

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 **MEMORANDUM AND ORDER (Denying CASE's Petition to Intervene and Request for a Hearing) (LBP-17-02)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
ocaamail@nrc.gov

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

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 Hawkens
Administrative Judge, Chair
roy.hawkens@nrc.gov

Dr. Michael F. Kennedy
Administrative Judge
michael.kennedy@nrc.gov

Dr. William C. Burnett
Administrative Judge
william.burnett2@nrc.gov

Jennifer E. Scro, Law Clerk
Jennifer.Scro@nrc.gov

Kimberly Hsu, Law Clerk
kimberly.hsu@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001

Sara Kirkwood, Esq.
sara.kirkwood@nrc.gov
Patrick Moulding, Esq.
patrick.moulding@nrc.gov
Michael Spencer, Esq.
michael.spencer@nrc.gov
Robert Weisman, Esq.
robert.weisman@nrc.gov
Christina England, Esq.
christina.england@nrc.gov
Anthony C. Wilson, Esq.
anthony.wilson@nrc.gov
Olivia J. Mikula
Olivia.Mikula@nrc.gov

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

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408
Nextera Energy Resources
William Blair, Esq.
william.blair@fpl.com

Florida Power & Light Company
801 Pennsylvania Ave. NW Suite 220
Washington, DC 20004
Steven C. Hamrick, Esq.
steven.hamrick@fpl.com

Pillsbury, Winthrop, Shaw, Pittman, LLP
1200 Seventeenth Street, N.W.
Washington, DC 20036-3006
Michael G. Lepre, Esq.
michael.lepre@pillsburylaw.com
John H. O'Neill, Esq.
john.oneill@pillsburylaw.com
David R. Lewis, Esq.
david.lewis@pillsburylaw.com
Timothy J. V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Anne Leidich, Esq.
ann.leidich@pillsburylaw.com

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
Jason Totoiu, Esq.
jason@evergladeslaw.org

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
Mindy Goldstein, Esq.
magolds@emory.edu

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

Matthew Haber, Esq,, Assistant City Attorney
Kerri McNulty, Esq.
Xavier Alban, Esq.
The City of Miami
444 SW 2nd Avenue
Miami, FL 33130
mshaber@miamigov.com
Klmcnulty@miamigov.com
xealban@miamigov.com

Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, FL 33176
Barry White
bwtamia@bellsouth.net

[Original signed by Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of January 2017