January 3, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS CASE CONTENTION 6 AS MOOT

Pursuant to 10 C.F.R. § 2.323(a), Applicant Florida Power & Light Company ("FPL") hereby moves to dismiss as moot Contention 6 submitted by intervenor Citizens Allied for Safe Energy, Inc. ("CASE"), which challenges FPL's consideration of the environmental impacts of Class B and C low-level radioactive waste ("LLW" or "LLRW") in its Environmental Report ("ER").

As admitted by the Atomic Safety and Licensing Board ("Board"), Contention 6 asserts:

> Because there currently is no access to an offsite LLRW disposal facility for proposed Units 6 and 7, and because it is reasonably foreseeable that LLRW generated by normal operations will need to be stored at the proposed site for longer than the two-year period contemplated in FPL's ER, the analysis in the ER is inadequate because it fails to address environmental impacts in the event the applicant will need to manage Class B and Class C LLRW on the Turkey Point site for a more extended period of time.

Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC __, slip op. at 104 (Feb. 28, 2011) ("LBP-11-06"). The Board identified this as a "contention of omission." *Id*. at 107.

FPL moves this Board to dismiss CASE Contention 6 because FPL has amended the ER to include the information, the omission of which was the basis for the Contention.

BACKGROUND

In June 2009, FPL submitted an application (the "Application") for a combined license ("COL") for two AP1000 pressurized water nuclear reactors to be located adjacent to the existing Turkey Point power plants, Units 1 through 5, at the Turkey Point site near Homestead, Florida. The proposed nuclear reactors would be known as Turkey Point Units 6 and 7 (the "Turkey Point Units"). On September 4, 2009, the NRC staff ("Staff") accepted the Application for docketing. *See* 74 Fed. Reg. 51,621 (Oct. 7, 2009).

On June 14, 2010, the NRC issued a Notice of Hearing and Opportunity to Petition for Leave to Intervene, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. 75 Fed. Reg. 34,777 (June 18, 2010). CASE filed a Petition to Intervene and Request for a Hearing on August 17, 2010 and a revised petition ("Revised Petition") on August 20, 2010. In its Revised Petition, CASE raised eight proposed contentions challenging various aspects of the COL Application.

In LBP-11-06, the Board found that CASE had standing to participate in this proceeding and admitted for litigation a portion of their proposed Contentions 6 and 7, each involving Class B and C LLW. The Board rejected the remaining contentions tendered in CASE's Petition. LBP-11-06, at 85-113.

DISCUSSION

I. WHEN AN APPLICANT CURES AN ALLEGED OMISSION IN THE APPLICATION, WHERE THE OMISSION SERVED AS THE BASIS FOR A CONTENTION, THE CONTENTION IS RENDERED MOOT

The Commission's case law is clear that "[w]here "a contention is 'superseded by the subsequent issuance of licensing-related documents'…the contention must be disposed of or modified." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002) (citing *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983). Additionally, where "a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot." *McGuire*, 56 NRC at 383 (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-26, 54 NRC 199, 207-09 (2001); LBP-01-23, 54 NRC 163, 171-72 (2001); LBP-02-2, 55 NRC 20, 29-30 (2002)); *see also AmerGen Energy Co., LL*C (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006); *Entergy Nuclear Vermont Yankee* (Vermont Yankee Nuclear Power Station), LBP-05-24, 62 NRC 429, 431-32 (2005); *Dominion Virginia Power* (North Anna Power Station, Unit 3) Order (Dismissing Contention 1 as Moot) (slip op. at 3-4) (Aug. 19, 2009), ADAMS Accession No. ML092310462.

As explained below, Contention 6 has been rendered moot by the submission of the third revision to the Application. This Board should, therefore, dismiss the Contention.

II. THE IMPACTS OF THE TEMPORARY ONSITE STORAGE OF LLW, THE OMISSION OF WHICH FROM THE ER WAS ALLEGED IN CONTENTION 6, HAVE NOW BEEN EXPRESSLY INCLUDED AND THEIR INCLUSION DOES NOT CHANGE THE CONCLUSIONS IN THE ER

In Revision 3 to the Application, filed with the NRC on December 16, 2011, FPL modified section 11.4 of its Final Safety Analysis Report ("FSAR") to add a contingency plan for the storage of Class B and C LLW. Consequently, FPL also modified sections 3.5.3 and 5.7.1.6 of its ER to address the potential environmental effects of this contingency plan, if implemented. *See* Attachments 1 and 2.

Specifically, FPL's revised ER explains that, "[i]f necessary, FPL would take measures to reduce the generation of Class B and C LLW, such as reducing the service run length of resin beds or mixing spent resins to limit radioactivity concentrations." ER § 5.7.1.6 at 5-7-7. The revised ER further explains that as minimized, the "volume of generated waste would still be bounded by the estimates in Table S-3, and the environmental impacts would likewise be bounded by those shown in Table S-3." *Id.* Going further, the ER states that "[i]f needed, FPL would also construct additional temporary storage facilities onsite for Class B and C LLW. Such facilities would be designed and operated to meet the guidance in Appendix 11.4-A of the Standard Review Plan, NUREG-0800." *Id.*; *see also* ER § 3.5.3.1 at 3.5-15. The revised ER also discusses that the impacts of constructing this type of facility on environmental resources (e.g., land use and aquatic and terrestrial biota) would be small. *Id.* Finally, the revised ER demonstrates that the radiological impacts from this type of LLW storage facility would be small. *Id.*

Thus, the omission in the Application raised in Contention 6 with respect to the potential need for longer term management of Class B and C LLW at Turkey Point Units 6 and 7 has been cured by the addition of the missing information, and the Contention has thereby been rendered moot.

CONCLUSION

As demonstrated above, the alleged deficiency in the Application raised by CASE Contention 6 has been rendered moot by the additional information provided in Revision 3 of the ER. Accordingly, Contention 6 must be dismissed.

CERTIFICATION

In accordance with 10 C.F.R. § 2.323(b), counsel for FPL has made a sincere effort to contact the other parties in this proceeding to resolve the issue raised in this motion but has not been successful. In particular, CASE has indicated that it will oppose the Motion.[1]

Respectfully submitted,

/Signed electronically by Steven Hamrick/

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[1] Both CASE and the NRC Staff have agreed not to oppose the motion on the grounds of timeliness if it is filed on January 3, 2012, in order to accommodate holiday schedules.

ATTACHMENT 1

3.5.2.2.2 Release Points

Airborne effluents will normally be released through the plant vent or the turbine building vent. The plant vent will provide the release path for containment venting releases, auxiliary building ventilation releases, annex building releases, radwaste building releases, and WGS discharge. The turbine building vents will provide the release path for the condenser air removal system, gland seal condenser exhaust and the turbine building ventilation releases.

3.5.2.3 Doses

The calculated maximum individual and population doses for normal plant operation are addressed in Section 5.4.

3.5.2.4 Cost Benefit Analysis of Population Doses

The site-specific cost-benefit analysis regarding population doses due to gaseous effluents during normal plant operation is addressed in FSAR Subsection 11.3.3.4. This FSAR subsection applies to the cost-benefit analysis for each unit. The dollar/person millirem reduction is included in the calculation for the cost-benefit analysis in the FSAR subsection.

3.5.3 SOLID RADIOACTIVE WASTE MANAGEMENT SYSTEM

Solid radioactive wastes will be produced in multiple ways at a nuclear power station. The waste could be either dry or wet solids, and the source could be an operational activity or maintenance function.

The solid radioactive waste management system will collect, process, and package solid radioactive wastes generated as a result of normal plant operation, including anticipated operational occurrences. The system will be designed to have sufficient capacity, based on normal waste generation rates, to ensure that maintenance or repair of the equipment does not impact power generation.

Operating procedures would encourage plant operators to segregate wastes to keep mixed wastes at a minimum. However, the waste handling system will be designed to allow handling and disposal of mixed waste, if it is created, as described below.

For each unit, the solid waste management system will be designed to collect and accumulate spent ion exchange resins and deep bed filtration media, spent filter cartridges, dry active wastes, and mixed wastes generated as a result of normal plant operation, including anticipated operational occurrences. The system will be located in the auxiliary and radwaste buildings. Processing and packaging of wastes will be by mobile systems in the auxiliary building truck bay and in the mobile systems facility part of the radwaste building. The packaged waste will be stored in the auxiliary and radwaste buildings until it is shipped offsite to a licensed disposal facility.

The use of mobile systems for the processing functions will permit the use of the latest technology and avoid the equipment obsolescence problems experienced with installed radwaste processing equipment. The most appropriate and efficient systems could be used as they become available.

This system will not handle large, radioactive waste materials such as core components or radioactive process wastes from the plant's secondary cycle. However, the volumes and activities of the secondary cycle wastes are provided in this subsection.

3.5.3.1 System Description

The waste management system will include the spent resin system. The flows of wastes through the solid waste management system are shown in DCD Figure 11.4-1. The radioactivity of influents to the system will depend on reactor coolant activities and the decontamination factors of the processes in the CVS, spent fuel cooling system, and the liquid waste processing system.

The parameters used to calculate the estimated activity of the influents to the solid waste management system are listed in DCD Table 11.4-1. The AP1000 design has sufficient radwaste storage capacity to accommodate the maximum generation rate.

The radioactivity of the dry active waste would be expected to normally range from 0.1 curies per year to 8 curies per year with a maximum of about 16 curies per year. This waste will include spent HVAC filters, compressible trash, noncompressible components, mixed wastes, and solidified chemical wastes. These activities will be produced by relatively long-lived radionuclides (such as Cr-51, Fe-55, Co-58, Co-60, Nb-95, Cs-134 and Cs-137), and therefore, radioactivity decay during processing and storage will be minimal. These activities apply to the waste as generated and to the waste as shipped.

The estimated expected and maximum annual quantities of waste influents by source and form are listed in DCD Table 11.4-1 with disposal volumes. The annual radwaste influent rates are derived by multiplying the average influent rate (e.g., volume per month, volume per refueling cycle) by 1 year of time. The annual disposal rate is determined by applying the radwaste packaging efficiency to the annual influent rate. The influent volumes are conservatively based on an 18-month refueling cycle. Annual quantities based on a 24-month refueling cycle will be less than those for an 18-month cycle.

All radwaste that is packaged and stored will be shipped offsite for disposal. The AP1000 design does not include provisions for permanent storage of radwaste. Radwaste will be stored ready for shipment. Shipped volumes of radwaste for disposal are estimated in DCD Table 11.4-1 from the estimated expected or maximum influent volumes by making adjustments for volume reduction processing and the expected container filling efficiencies. For drum compaction, the overall volume reduction factor, including packaging efficiency, is 3.6. For box compaction, the overall volume reduction factor is 5.4. These adjustments result in a packaged internal waste volume for each waste source, and the number of containers required to hold this volume is based on the container's internal volume. The disposal volume is based on the number of containers and the external (disposal) volume of the containers.

The disposal volumes of wet and dry wastes are approximately 547 and 1417 cubic feet/year, respectively as shown in DCD Table 11.4-1. The wet wastes shipping volumes include 510 cubic feet/year of spent ion exchange resins and deep bed filter activated carbon, approximately 20 cubic feet/year of volume reduced liquid chemical wastes and 17 cubic feet/year of mixed liquid wastes. The spent resins and activated carbon will be initially stored in the spent resin storage tanks located in the truck bay of the auxiliary building. When a sufficient quantity has accumulated, the resin will be sluiced into high-integrity containers in anticipation of transport for offsite disposal. Liquid chemical wastes will be reduced in volume and packaged into drums (20 cubic feet/year) and will be stored in the packaged waste storage room of the radwaste building. The estimated mixed liquid wastes will fill less than three drums per year (about 17 cubic feet/year) and will be stored on containment pallets in the waste accumulation room of the radwaste building until shipped offsite for processing.

The two spent resin storage tanks (275 cubic feet usable, each) and one high-integrity container in the spent resin waste container fill station at the west end of the truck bay of the auxiliary building will provide more than a year of spent resin storage at the expected rate, and several months of storage at the maximum generation rate. The expected radwaste generation rate is based on the following assumptions:

- All ion exchange resin beds are disposed of and replaced every refueling cycle
- The WGS activated carbon guard bed is replaced every refueling cycle
- The WGS delay beds are replaced every 10 years
- All wet filters are replaced every refueling cycle
- Rates of compactible and non-compactible radwaste, chemical waste, and mixed wastes are estimated using historical operating plant data

The maximum radwaste generation rate is based on:

- The ion exchange resin beds are disposed of based on operation with 0.25 percent fuel defects

- The WGS activated carbon guard bed is replaced twice every refueling cycle
- The WGS delay beds are replaced every 5 years
- All wet filters are replaced based upon operation with 0.25 percent fuel defects
- Expected rates of compactible and noncompactible radwaste, chemical waste, and mixed wastes are increased by about 50 percent
- Primary to secondary system leakage contaminates the condensate polishing system and blowdown system resins and membranes, and are replaced

The dry solid radwaste will include approximately 1383 cubic feet/year of compactible and non-compactible waste packed into about 14 boxes (90 cubic feet each) and about 10 drums per year. Drums will be used for higher activity compactible and noncompactible wastes. Compactible waste will include HVAC exhaust filter, ground sheets, boot covers, hairnets, etc. Noncompactible waste will include about 60 cubic feet/year of dry activated carbon and other solids such as broken tools and wood. Solid mixed wastes will occupy 7.5 cubic feet/year (one drum). The low activity spent filter cartridges may be compacted to about 3 cubic feet/year and will be stored in the packaged waste storage room. Compaction will be performed by mobile equipment or offsite. The volume of high activity filter cartridges will be about 22.5 cubic feet/year and will be stored in portable processing or storage casks in the truck bay of the auxiliary building.

The total volume of radwaste to be stored in the radwaste building packaged waste storage room will be 1417 cubic feet/year at the expected rate and 2544 cubic feet/year at the maximum rate. The compactible and noncompactible dry wastes, packaged in drums or steel boxes, will be stored with the mixed liquid and mixed solid, volume reduced liquid chemical wastes, and the lower activity filter cartridges. The quantities of liquid radwaste stored in the packaged waste storage room of the radwaste building will consist of approximately 20 cubic feet of chemical waste and approximately 17 cubic feet of mixed liquid waste. The useful storage volume in the packaged waste storage room will be approximately 3900 cubic feet (10 feet deep, 30 feet long, and 13 feet high), which will accommodate more than one full offsite waste shipment using a tractor trailer truck. The packaged waste storage room will provide storage for more than 2 years at the expected rate of generation and more than a year at the maximum rate of generation. One four-drum containment pallet will provide more than 8 months of storage capacity for the liquid mixed wastes and the volume reduced liquid chemical wastes at the expected rate of generation and more than 4 months at the maximum rate.

FPL expects that, consistent with its current commercial agreements, a third-party contractor will process, store, own, and ultimately dispose of low-level waste generated as a result of operations. Activities associated with the transportation, processing, and ultimate disposal of low-level waste are expected to comply with all applicable laws and regulations in order to assure the public's health and safety. In particular, the third-party contractor would conduct its operations consistent with NRC regulations (e.g., 10 CFR Part 20), which will assure that the radiological impacts from these activities would be small. Lastly, environmental impacts resulting from management of low-level wastes are expected to be bounded by he NRC's findings in 10 CFR 51.51 (b).

If needed, FPL would construct additional waste storage facilities onsite. Such facilities would be designed and operated pursuant to the guidance in Appendix 11.4-A of the Standard Review Plan, NUREG-0800.

A conservative estimate of solid wet waste includes blowdown material based on continuous operation of the steam generator blowdown purification system, with leakage from the primary to secondary system. The volume of radioactively contaminated material from this source is estimated to be 540 cubic feet/year. Although included here for conservatism, this volume of contaminated resin will be removed from the plant within the contaminated electrodeionization unit and not stored as wet waste.

The condensate polishing system will include mixed bed ion exchanger vessels for purification of the condensate as described in DCD Section 10.4.6. If the resins become radioactive, the resins would be transferred from the condensate polishing vessel directly to a temporary processing unit or to the temporary processing unit via the spent resin tank. The processing unit, located outside of the turbine building, would dewater and process the resins as required for offsite disposal. Radioactive condensate polishing resin would have very low activity. It would be packaged in containers as permitted by U.S. DOT regulations. After packaging, the resins may be stored in the radwaste building. Based on a typical condensate polishing system operation of 30 days per refueling cycle with leakage from the primary system to the secondary system, the volume of radioactively contaminated resin is estimated to be 206 cubic feet/year (one 309-cubic-foot bed per refueling cycle).

The parameters used to calculate the activities of the steam generator blowdown solid waste and condensate polishing resins are given in DCD Table 11.4-1. Based on the above volumes, the disposal volume is estimated to be 939 cubic feet/year.

DCD Tables 11.4-4 and 11.4-8 list the expected principal radionuclides in primary wastes and secondary wastes, respectively. These values represent the radionuclide content in these wastes as shipped.

The spent fuel storage facility is located in the auxiliary building fuel handling area and will house pools that provide storage space for the irradiated fuel. Each unit will have a separate pool with capacity for 889 fuel assemblies. All portions of the spent fuel transfer operation will be completed underwater and the waterways will be deep enough to maintain adequate shielding above the fuel. The spent fuel pools will have access to a cask-loading pit for loading the spent fuel assemblies into transportation casks. The fuel-handling building will also house equipment for the decontamination of the shipping cask before it leaves the building. The DOE is responsible for the acceptance of title, subsequent transportation, and disposal of spent fuel in accordance with the Nuclear Waste Policy Act of 1982, as amended. FPL has executed a standard spent nuclear fuel disposal contract with DOE for Units 6 & 7.

Section 3.5 References

WEC 2008. Westinghouse Electric Company, LLC*. AP1000 Design Control Document*, Document No. APP-GW-GL-700, Tier 2 Material, Rev. 17, September 22, 2008.

ATTACHMENT 2

the gastrointestinal tract and kidney doses, the total body 100-year dose commitment from Tc-99 was estimated to be 260 person-rem for two AP1000s. This value was derived by scaling the 100-year dose commitment (person-rem per year) for Tc-99 for the reference reactor specified in NUREG-1437 to two AP1000s.

To be conservative, radiation protection experts assume that any amount of radiation may pose some risk of cancer, or a severe hereditary effect, and that higher radiation exposures create higher risks. Therefore, a linear, no-threshold dose response relationship is used to describe the relationship between radiation dose and detrimental effects. Based on this model, risk to the public from radiation exposure can be estimated using the nominal probability coefficient (730 fatal cancers, nonfatal cancers, or severe hereditary effects per 1E06 person-rem) from the International Commission on Radiological Protection Publication 60 (ICRP 1991). This coefficient was multiplied by the sum of the estimated whole-body population doses (from gaseous effluents, liquid effluents, Rn-222, and Tc-99) described above for two AP1000s to estimate that the U.S. population could incur a total of 3.1 fatal cancers, nonfatal cancers, or severe hereditary effects from the annual fuel cycle for two AP1000s. This risk would be small compared to the number of fatal cancers, nonfatal cancers and severe hereditary effects that are estimated to occur in the U.S. population annually from exposure to natural sources of radiation using the same risk estimation methods.

Based on these analyses, the environmental impacts of radioactive effluents from the fuel cycle will be SMALL and will not warrant mitigation.

5.7.1.6 Radioactive Waste

The quantities of radioactive waste (low-level, high-level, and transuranic wastes) associated with fuel cycle processes are presented in Table S-3 (Table 5.7-1). For low-level waste disposal, the NRC notes in 10 CFR 51.51(b) that there will be no significant radioactive releases to the environment. For high-level and transuranic wastes, the NRC notes that these wastes are to be disposed of at a federal repository, such as the candidate repository at Yucca Mountain, Nevada. No release to the environment is expected to be associated with such disposal because it was assumed that all of the gaseous and volatile radionuclides contained in the spent fuel are released to the atmosphere before disposal of the waste.

There is some uncertainty associated with the high-level waste and spent fuel disposal component of the fuel cycle. The regulatory limits for offsite releases of radionuclides for the current candidate repository site were set in September 2008 using a two-tiered approach. The radiation dose for the first 10,000 years has been set to 15 mrem/yr. The radiation dose for the period between 10,000 and 1 million years was set to 100 mrem/yr (Federal Register 73,61256 Oct 2008). These standards would result in doses that are consistent with the 100 mrem /yr or less dose defined in NUREG-1437. Therefore, it is reasonable to conclude that the offsite radiological impacts of spent fuel and high-level waste disposal would not be significant enough to preclude construction of new units at Turkey Point.

If necessary, FPL would take measures to reduce the generation of Class B and C LLW, such as reducing the service run length of resin beds or mixing spent resins to limit radioactivity concentrations. The volume of generated waste would still be bounded by the estimates in Table S-3, and the environmental impacts would likewise be bounded by those shown in Table S-3 (U.S. NRC 2011).

If needed, FPL would also construct additional temporary storage facilities onsite for Class B and C LLW. Such facilities would be designed and operated to meet the guidance in Appendix 11.4-A of the Standard Review Plan, NUREG-0800.

NRC's regulations (10 CFR 50.59) allow licensees operating nuclear power plants to make facility changes, including the construction and operation of certain additional onsite LLW storage facilities, without seeking approval from the NRC, provided licensees evaluate the safety and environmental impacts of such facilities before constructing the facilities. The 10 CFR 50.59 evaluations must be made available to NRC inspectors. Using this regulatory approach, a number of nuclear power plant licensees have constructed and operate such facilities in the United States. Typically, these additional facilities are constructed near the power block inside the security fence on land that has already been disturbed during initial plant construction (U.S. NRC 2011). Therefore, the impacts of constructing the facilities on environmental resources (e.g., land use and aquatic and terrestrial biota) would be SMALL.

All of the NRC (10 CFR Part 20) and EPA (40 CFR Part 190) dose limitations would apply to the additional onsite LLW storage facilities, both for public and occupational radiation exposure. The radiological environmental monitoring programs around nuclear power plants that operate additional onsite LLW facilities show that the increase in radiation dose at the site boundary is not significant; the radiation doses continue to be below 25 mrem/yr, the dose limit of 40 CFR Part 190 (U. S. NRC 2010). The NRC has concluded that doses to members of the public that do not exceed NRC and EPA regulatory limits are SMALL (U.S. NRC 2011). In addition, the NRC in NUREG-1437 assessed the impacts of LLW storage onsite at currently operating nuclear power plants and concluded that the radiation doses to offsite individuals from interim LLW storage are insignificant. The types and amounts of LLW generated by the proposed reactors at Units 6&7 would be similar to those generated by currently operating nuclear power plants and the construction and operation of any additional onsite LLW storage facilities would be similar to the construction and operation of the currently operating facilities. Therefore, the impacts of constructing and operating additional onsite LLW storage facilities would be SMALL.

For the reasons stated above, the environmental impacts of radioactive waste disposal would be SMALL and would not warrant mitigation.

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NUCLEAR REGULATORY COMMISSION

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(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light Company's Motion To Dismiss CASE Contention 6 as Moot" were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 3rd day of January, 2012.

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