

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 JOINT  
INTERVENORS’ CONTENTION 2.1 AS MOOT**

Pursuant to 10 C.F.R. § 2.323(a), Applicant Florida Power & Light Company (“FPL”) hereby moves to dismiss as moot Contention 2.1 submitted by intervenors Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (“Joint Intervenors”).

As admitted by the Atomic Safety and Licensing Board herein (“Board”), Contention 2.1 asserts:

[T]he ER [Environmental Report] fails to analyze and discuss the potential impacts on groundwater quality of injecting into the Floridan Aquifer via underground injection wells heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene, which have been found in injection wells in Florida but are not listed in FPL’s ER as wastewater constituent chemicals.

Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC \_\_\_, slip op. at 36 (Feb. 28, 2011) (“LBP-11-06”).

FPL moves this Board to dismiss Joint Intervenors’ Contention 2.1 because FPL has amended the ER to include the information whose omission was the basis for the Contention, and

the potential environmental impact of the injection of the listed chemicals into the Floridan Aquifer has been confirmed to be negligible.

## **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). Among others, the Joint Intervenors filed a timely petition to intervene. Joint Petitioners’ Petition for Intervention (Aug. 17, 2010) (“Petition”). In their Petition, Joint Intervenors raised nine proposed contentions, some comprising several subparts, all challenging various aspects of the Environmental Report included as part of the Application (“Turkey Point ER”).

In LBP-11-06, the Board found that the Joint Intervenors had standing to participate in this proceeding and admitted for litigation a portion of their proposed Contention 2. The Board rejected the remaining contentions tendered in the Petition. LBP-11-06 at 10-84.

Contention 2 broadly asserts that the Turkey Point ER “fails to adequately address the direct, indirect, and cumulative impacts of the reclaimed wastewater system on groundwater, air, surface water, wetlands, and CERP.” Petition at 26. The Contention is broken into three subparts, Contentions 2.1 through 2.3. The Board rejected subparts 2 and 3, but admitted a limited version of Contention 2.1 for adjudication. The version admitted by the Board claimed that all six of the chemicals had been omitted from consideration in the analysis of the impact of their injection via deepwater wells into the Boulder zone of the aquifer beneath the Turkey Point Units.

## DISCUSSION

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

Where “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)). 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., LLC* (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 discussed below, Contention 2.1 has been rendered moot by the submission of the third amendment to the Application. This Board should, therefore, dismiss the Contention.

II. TWO OF THE SIX CHEMICALS THAT ARE THE SUBJECT OF CONTENTION 2.1 WERE INCLUDED IN THE ORIGINAL VERSION OF THE ER AND THEIR ENVIRONMENTAL IMPACT WAS PART OF THE ANALYSIS IN THE ER

Contention 2.1 asserts that “selenium” and “thallium” are among the chemicals allegedly missing from the Table 3.6.2 of the ER so that the environmental impact of their release into the aquifer via the deep injection wells were not assessed. *See* Petition at 28; LBP-11-06 at 36. Joint Intervenors’ assertion is, however, patently erroneous. Table 3.6.2 of the ER has always included both selenium and thallium, *see* Attachment 1 hereto, which is a copy of Table 3.6.2 as was included in the original ER filed with the Application.<sup>1</sup> With respect to those elements and the remaining chemicals listed in Table 3.6.2, the analysis contained in Section 5.2.3.2.4 of the original version of the ER concluded:

Tables 3.6-2 and 3.6-3 summarize the expected water quality of the effluent discharged to the deep injection wells based on the reclaimed water and radial collector well cooling water makeup options, respectively.

As discussed in Subsection 5.2.1.1.9, the impacts from hydrologic alterations in the USDW [underground source of drinking water] resulting from the use of

the deep injection wells would be SMALL. The potential impacts to water quality of the USDW would also be SMALL if there are no hydrologic impacts to the

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<sup>1</sup> Table 3.6.2 indicates that the estimated concentration of released selenium, set forth fifteen lines from the end of Table, is 0.0359 mg/L; the estimated concentration of released thallium, as entered two lines from the end of the Table 3.6.2, is 0.00620 mg/L.

USDW. Within the Boulder Zone, groundwater quality impact from operations would be SMALL.

ER, Rev. 0, Section 5.2.3.2.4 at 5.2-25. Thus, Contention 2.1 must be dismissed as to the releases of selenium and thallium, since the deficiency it alleges in the ER does not in fact exist: the elements are included in the Table 3.6.2, and the impact of their release is judged to be SMALL.

III. THE RELEASES OF THE REMAINING FOUR CHEMICALS, WHOSE OMISSION FROM THE ER WAS CITED IN CONTENTION 2.1, HAVE NOW BEEN EXPRESSLY INCLUDED AND THEIR INCLUSION DOES NOT CHANGE THE CONCLUSIONS IN THE ER

In Revision 3 to the Application, filed on December 16, 2011, FPL modified Table 3.6.2 to add the estimated concentrations of the releases of four chemicals: heptachlor (0.000023 mg/L); ethylbenzene (0.001045 mg/L); toluene (0.00174 mg/L); and tetrachloroethylene (0.00359 mg/L) that were not originally included in the ER. *See* Attachment 2. Revision 3 to the ER makes a change to the text of Section 5.2.3.2.4 to explicitly reference Table 3.6.2 “as amended in ER Rev. 3.” *See* Attachment 3. The ER’s conclusions as to the environmental impact of the chemicals discharged to the deep injection wells (SMALL) have not been modified. *Id.*

Thus, the alleged omission in the Application raised in Contention 2.1 with respect to the discharge of these four chemicals to the deep injection wells 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 Joint Intervenors' Contention 2.1 was either non-existent to start with, or has been rendered moot by the additional information provided in Revision 3 of the ER. Accordingly, Contention 2.1 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, SACE has declined to withdraw Contention 2.1 and has indicated that it will oppose the Motion.<sup>2</sup>

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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<sup>2</sup> Both SACE 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.

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Counsel for FLORIDA POWER & LIGHT COMPANY

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing “Florida Power & Light Company’s Motion To Dismiss Joint Intervenors’ Contention 2.1 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 3<sup>rd</sup> day of January, 2012.

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/Signed electronically by Matias F. Travieso-Diaz/

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