February 27, 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 ANSWER TO CASE'S MOTION FOR LEAVE TO FILE A NEW CONTENTION AND NEW CONTENTION 10

Pursuant to 10 C.F.R. § 2.309(h) and in accordance with the Atomic Safety and Licensing Board's ("Board") Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contention 2.1 and CASE's Contention 6 as Moot) of January 26, 2012 ("Dismissal Order"), Applicant Florida Power & Light Company ("FPL") hereby responds to and opposes the motion submitted by Citizens Allied for Safe Energy, Inc. ("CASE") seeking admission of a new Contention ("Contention 10") in this proceeding.[1]

Contention 10 challenges the revision of FPL's environmental report ("ER") for Turkey Point Units 6 and 7 to address the environmental impacts of FPL's contingent plans for onsite storage of low-level radioactive waste ("LLW"), which FPL described in its December 16, 2011 third revision of its Combined License ("COL") Application ("COLA" or "Application"). Contention 10 alleges:

[1] Motion to File a New Contention in Response to New Information (dated February 10, 2012) ("CASE Motion").

> Florida Power and Light has provided a plan for the storage of low-level radioactive waste (LLW*) from the two proposed AP1000 reactors for Turkey Point 6 & 7. This new information, made available to CASE on January 3, 2012 when FPL filed Revision 3 to its FPL COL for Turkey Point 6 & 7, reveals that the applicant's plan is in adequate [*sic*] as described in (ii) below. The environmental impact of total site inundation and any resultantant [*sic*] run off, on stored large radioactive components, on buried radioactive soil, and on radioactive sludge from steam generators are all inadequately resolved.
>
> In FPL's January 3rd fling a new section on page 5.7-7 describes the scope of FPL's new plans for coping with the extended on-site storage of LLW as pointed out in CASE's Contention 9 filed on February 3, 2011, essential factors requiring additional environmental impact analysis are missing.

Contention 10 at (unnumbered) 1.

The vast majority of the claims that CASE raises in support of admission of Contention 10 are either not timely or irrelevant, or both. The one timely claim raised by CASE is a rehash of claims made by CASE and rejected by the Board in original Contention 6, and does not meet the standards in 10 C.F.R. § 2.309(f)(1) for the admission of contentions in Commission proceedings. Therefore, Contention 10 must be rejected and the CASE Motion denied.

BACKGROUND

In June, 2009, FPL submitted its Application for a COL for two Westinghouse 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 "Units 6 and 7"). The COLA incorporates by reference the information in the AP1000 Design Control Document ("DCD") codified by regulation (10 C.F.R. Part 52, App. D, § III.A)

up through the recently approved amendment to Revision 19.[2] On September 4, 2009, the NRC staff ("Staff") accepted the Application for docketing. *See* 74 Fed. Reg. 51,621 (Oct. 7, 2009).

FPL's COLA, as originally filed, stated that FPL had signed a letter of intent with Studsvik, Inc., a licensed LLW treatment facility in Erwin, Tennessee to enter into negotiations for a contract under which Studsvik would accept and process, as well as take responsibility for storage and disposal of LLW produced by Turkey Point Units 6 and 7. COLA Rev. 0, FSAR at 11.4-2. 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. One of the contentions raised by CASE, Contention 6, argued that, with the closure of the Barnwell facility in South Carolina to out-of-compact LLW, it is reasonably foreseeable that FPL will not have off-site storage or disposal capacity for LLW generated by Units 6 and 7. Revised Petition at 39.

On February 28, 2011, the Board issued an order admitting, *inter alia*, CASE Contention 6. *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-11-06, 71 NRC __ (2011) ("LBP-11-06"). As admitted, CASE Contention 6 read as follows:

> 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.

LBP-11-06, slip op. at 104. The Board's decision also rejected several other CASE contentions, including CASE Contention 5, which alleged that FPL failed to consider

[2] Final Rule, AP1000 Design Certification Amendment, 76 Fed. Reg. 82,079 (Dec. 30, 2011).

"any scientifically valid projection for sea level rise through this century and beyond." *Id*. at 97.

On December 16, 2011, FPL submitted to the NRC Revision 3 of its COLA ("COLA Rev. 3"). *See* Letter from M. Nazar to NRC Document Control Desk, "Submittal of the Annual Update of the COL Application - Revision 3" (Dec. 16, 2011). (ADAMS Accession No. ML11361A102). In COLA Rev. 3, FPL modified section 11.4 of its Final Safety Analysis Report ("FSAR") to add a contingency plan for the onsite storage of Class B and C LLW in the event offsite storage of such waste is unavailable. 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.

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*. The ER goes on to state 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 addresses the impacts of constructing this type of facility on environmental resources (e.g., land use and aquatic and terrestrial biota) and concludes they would be small. *Id*. Finally, the

revised ER demonstrates that the radiological impacts from the contingent onsite deployment of LLW storage facilities would be small. *Id*.

Following the submittal of COLA Rev. 3, FPL sought the dismissal of CASE Contention 6 as moot. FPL Motion to Dismiss CASE Contention 6 as Moot (January 3, 2012) ("FPL Motion"). The Board dismissed the contention, but allowed CASE 15 days to file a new contention challenging the revision to FPL's ER. Dismissal Order at 6. CASE filed Contention 10 in response to the Board's Order.

ARGUMENT

Contention 10 is not admissible because it raises nontimely claims and claims that are not related to the recent ER revision. The one timely claim asserted in the contention does not satisfy the NRC's strict contention admissibility requirements.

I. FOUR OF THE FIVE CLAIMS RAISED IN CASE CONTENTION 10 ARE NOT TIMELY AND/OR ARE UNRELATED TO FPL'S RECENT ENVIRONMENTAL REPORT REVISION

In its Order dismissing Contention 6, the Board afforded CASE an opportunity to file a new contention challenging the adequacy of the newly revised portions of FPL's ER. Dismissal Order, slip op. at 6. The Dismissal Order stressed, however, that "the scope of any newly proffered contention is strictly limited to challenging the adequacy of the measures taken by FPL in curing the omission in CASE's Contention 6." *Id* at n. 13.

CASE's new Contention 10 ignores the Board's directive. It only mentions the recent ER revisions in passing and raises issues that lie outside the limited scope described in the Board's Dismissal Order and are in many cases nontimely. Four of the Contention's five claims (labeled "bases" by CASE) are totally unrelated to FPL's ER

revision, and in most cases could have been raised in CASE's Revised Petition in 2010.[3] Claims based upon information that was available prior to the recent COLA revision are not timely and must address the Commission's requirements for nontimely contentions in 10 C.F.R. § 2.309(c).[4] CASE fails to address or satisfy those requirements.

Contention 10 is said to be based on new information contained in the ER revisions of COLA Rev. 3. Contention 10 at 1. However, while CASE asserts that its Contention is timely because it was submitted within the time period provided by the Board's Dismissal Order (Motion at 3-4), it is not sufficient to meet a filing deadline to demonstrate timeliness. Rather, a proponent of a new contention must show that it could not have raised its contention earlier.[5] "[T]he unavailability of [a] document does not

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[3] CASE offers five "bases" in support of Contention 10: (1) "[t]he impact on stored LLW of catastrophic conditions with total site inundation"; (2) "[t]he storage and disposal of highly radioactive large components such as failed steam generators"; (3) "[t]he affect of the inundation on buried radioactive soil"; (4) "[l]iquid pathways analysis not provided"; and (5) "[i]naccurate statement regarding LLW which can go to Clive, Utah." Contention 10 at (unnumbered 1-6). As will be seen, all but the first of these claims are nontimely.

[4] NRC regulations establish three requirements that must be met in order for an amended or new contention to be deemed timely:

> (i) The information upon which the amended or new contention is based was not previously available;
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2).

[5] The Initial Scheduling Order in this proceeding provided additional instructions to parties wishing to raise additional contentions based upon allegedly new information;

> A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a nontimely new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the explanation for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). A motion and proposed new or amended contention as specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the motion

constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner." *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1043 (1983). An intervenor cannot establish the timeliness of a new contention when the information on which the contention is based was publicly available for some time prior to the filing of the contention. *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 21 (1986). Notably, the discussion of Contention 10's claims does not contain a single reference to the new information in COLA Rev. 3.[6] Instead, CASE repeatedly refers to a number of very old sources of information that are unrelated to FPL's ER. As a result, these claims are not timely, and must be rejected.

A. THE FAILED STEAM GENERATOR CLAIM IS NONTIMELY AND IRRELEVANT

CASE claims that there is "a rash of defective steam generators in the USA" among "Westinghouse style reactors." Contention 10 at 3-4. CASE seems to assume that the steam generators for Turkey Point Units 6 and 7 will need replacement and the failed steam generators will be left onsite, where they will be subject to "inundation or to catastrophic wether [*sic*] conditions." *See id*. at 5. This claim is immaterial in two

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> should cover the three criteria of section 2.309(f)(2) and the eight criteria of section 2.309(c)(1) (as well as the six criteria of section 2.309(f)(1)).

Initial Scheduling Order at 8 (emphasis in original); Memorandum and Order (Denying CASE's Motion to Admit Newly Proffered Contentions), LBP-11-15, 73 NRC ___ (June 29, 2011) ("LBP-11-15"), slip op. at 3-5.

[6] In LBP-11-06, the Board admitted original Contention 6, which alleged that FPL's ER improperly "fail[ed] to address the environmental impacts in the event FPL will need to manage [Class B and Class C] LLRW on the Turkey Point site [beyond the two year period currently contemplated in the ER]." LBP-11-06, 73 NRC at __ (slip op. at 107). The new information in COLA Rev. 3 describes the contingency plan for long-term storage of Class B and Class C LLW onsite. CASE's claims have nothing to do with the storage of Class B and Class C LLW.

respects: (1) CASE's claim refers to previous generation pressurized water reactors and unrelated CANDU reactors, not the AP1000 models, and (2) steam generators are not discussed in the ER revision. In addition, this claim is impermissibly late. Steam generators have always been an integral part of the AP1000 design. They are not new. The industry's history of steam generator replacements has been public knowledge for decades, as CASE's support for this claim includes a 1995 Department of Energy report, a 2005 Bechtel report,[7] and a 2010 report from a Canadian public interest group. Contention 10 at 3-4. None of these sources provides "new" information as required under 10 C.F.R. § 2.309(f)(2). In addition, nowhere in COLA Rev. 3 does FPL describe a plan to store failed steam generators onsite.[8] Thus, CASE's claim regarding the onsite storage of failed steam generators does not address the new information provided in COLA Rev. 3, is not timely, and fails to demonstrate the existence of a genuine dispute with the Application. 10 C.F.R. §§ 2.309(c); 2.309(f)(1)(vi).

B. THE CONTAMINATED SOIL CLAIM IS IRRELEVANT AND NONTIMELY

Next, CASE argues that "[c]ontaminated radioactive soil buried as LLW at Turkey Point from past, present or future operations could become a problem if and when permanent or temporary inundation occurs or if the soil is disturbed due to severe climatic conditions." Contention 10 at 5-6. In support of this claim, CASE cites to a 1982 newspaper article describing the onsite burial of soil contaminated by a spill of radioactive water. *Id*. at 6. However, nothing in COLA Rev. 3 (or previous COLA

[7] *See* Attachment 3 to CASE Contention 10, Reference 2, "Steam Generator Replacements, Bechtel Power Corporation, Frederick, Maryland, 2005."

[8] CASE also cites a report of the Canadian Coalition for Nuclear Responsibility, and argues that steam generators should be characterized as greater-than-class-C waste ("GTCC") waste. Contention 10 at 4. If CASE is correct, then the issue of waste from steam generators is inadmissible, as the Board has held in that GTCC is beyond the scope of this proceeding. (LBP-11-06 at 104 n.109).

revisions) discloses plans to bury radioactive waste onsite. This claim, based on a thirty-year old newspaper article, is not timely, is totally unrelated to FPL's contingent plan for onsite storage of LLW, and fails to demonstrate the existence of a genuine dispute with the Application. 10 C.F.R. §§ 2.309(c); 2.309(f)(1)(vi).

C. THE CLAIM REGARDING LIQUID PATHWAY ANALYSIS IS IRRELEVANT

CASE challenges FPL's ER by arguing that it should include the effects of inundation of the contingent LLW storage facilities in its liquid pathways analysis. CASE Contention 10 at 6. CASE argues that inundation by rising seas is a scenario which should have been examined. *Id*. CASE asserts that, "[w]ithout the inclusion of these potential situations in the ER analysis, it is not possible to have confidence in the doses to the public reported by FPL." *Id*.

CASE misunderstands the purpose of the liquid pathways analysis. Section 5.4.1.1 of the ER includes an analysis of the impacts from radioactive liquid discharges due to normal and off-normal operation. The impacts of these releases to the population were determined by identifying pathways that could yield the highest radiological doses for a given receptor, the maximally exposed individual. ER at 5.4-1.

In CASE's postulated scenario, LLW in the contingent LLW storage facilities is washed inland and out to sea by an elevated storm surge. Contention 10 at 2, 6. But CASE does not provide any information to show that LLW might be swept so far offsite as to affect drinking water supplies, or that anyone would drink or irrigate crops with contaminated saltwater. More importantly, CASE fails to show (or even allege) that its postulated scenarios would not be bounded by FPL's existing liquid pathways analysis. This claim is thus contrary to 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

D. CASE'S REFERENCE TO THE ALLEGEDLY INCORRECT STATEMENT IN THE ER AS TO WHAT KIND OF WASTE MAY BE SENT TO CLIVE, UTAH IS NONTIMELY AND IRRELEVANT

CASE cites to a discussion in section 5.11.7 of the ER in which FPL states that the Clive, Utah LLW disposal facility "accepts low-level and mixed radioactive wastes." Contention 10 at 6-7 (citing ER Rev. 3 at 5.11-10). CASE argues that this statement "is only partially true" because the Clive facility only accepts Class A LLW and does not accept Class B and C LLW. CASE, however, misrepresents this portion of the cumulative impacts analysis, which does not assert that the Clive facility will accept Class B and C LLW.[9]

In any event, this statement has been included in the ER since the initial version was submitted on June 30, 2009, and should have been challenged in CASE's Revised Petition. *See* ER Rev. 0 at 5.11-11. Moreover, CASE does not address what the significance of this alleged misstatement would be on the decision whether to grant the COLA, or whether its dispute with the statement is material to the licensing of Turkey Point Units 6 and 7.

Once again, this argument is not timely, lacks materiality, and fails to demonstrate the existence of a genuine dispute with the Application. 10 C.F.R. §§ 2.309(c); 2.309(f)(1)(iv) and (vi).

[9] CASE seems to use this ER excerpt to argue that FPL misrepresented the current availability of offsite disposal capacity. *See* Contention 10 at 7. This is simply not true. The COLA acknowledges the lack of a current disposal facility for Class B and C waste. *See* ER, Rev. 3 at 5.7-7 ("If needed, FPL would also construct additional temporary storage facilities onsite for Class B and C LLW"). ER section 5.11, challenged by CASE, presents FPL's cumulative impacts analysis and properly reflects the fact that LLW generated by Units 6 & 7 will ultimately be disposed of in a permitted disposal facility "such as a facility in Clive, Utah." ER, Rev. 3 at 5.11-11. FPL made no claim that the Clive facility could accept all of the waste; it merely (and properly) identified the fact that there would ultimately be a need to dispose of LLW generated by Units 6 & 7 and that environmental impacts would be incurred at the disposal site, wherever it may be.

II. THE INUNDATION CLAIM IN CONTENTION 10 IS INADMISSIBLE

A contention based on the recent revisions to FPL's ER, in which FPL identified the contingent plan for onsite LLW storage and discussed the environmental impacts of the construction and operation of such a facility, must allege some deficiency in the contingent plan. Dismissal Order at 6. CASE does not identify any particular deficiency with the contingent plan, other than to allege that it fails to address the environmental impacts that would result if the contingent LLW storage facilities were inundated by a storm surge. CASE alleges: "[t]he ER at 5.4.2 Radiation Doses to the Public . . . fails to include any consideration of radioactive waste being washed inland by a storm surge, or alternately sucked out into the Bay." Contention 10 at 2. CASE's argument that FPL's ER revision failed to address the potential inundation of the contingent LLW storage facilities, while timely, fails to support an admissible contention.

A. CONTENTION ADMISSIBILITY REQUIREMENTS

The Commission set forth strict contentions admissibility requirements in 10 C.F.R. § 2.309(f)(1). Of particular relevance here, a contention must provide adequate factual allegations or expert opinion to support its assertions, must demonstrate that the issue it raises is material, and must demonstrate that the material issue it raises presents a genuine dispute with the application. *Id*. Contention 10 fails to comply with any of these criteria.

First, each contention must "[p]rovide a concise statement of the alleged facts or expert opinions which support [the 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 petitioner] intends to rely to support its position in the issue." 10 C.F.R. § 2.309(f)(1)(v). A petitioner's failure to present the factual information or

expert opinions necessary to support its contention adequately requires that the contention be rejected. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996); *Arizona Public Service Co*. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

Second, a petitioner must 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." 10 C.F.R. § 2.309(f)(1)(iv). Admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 359-60 (2001). The Commission has defined a "material" issue as one where "resolution of the dispute *would make a difference in the outcome* of the licensing proceeding." Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989).

Finally, each contention must "provide sufficient information to show that a genuine dispute exists with the applicant . . . on a material issue of law or fact." 10 C.F.R. § 2.309(f)(1)(vi). The NRC's pleading standards require a petitioner to read the pertinent portions of the COL application and supporting documents, including the FSAR, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,171; *Millstone*, CLI-01-24, 54 NRC at 358. Petitioners must make specific reference to the relevant facility documentation; a contention should be rejected if it inaccurately describes an applicant's proposed actions or ignores or misstates the content of the licensing documents. *See,*

e.g., Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2076 (1982); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1804 (1982); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1504-05 (1982).

B. CASE DOES NOT PROVIDE ADEQUATE FACTS OR EXPERT OPINION TO SUPPORT ITS INUNDATION CLAIM

CASE refers to the sea level rise projection it espouses as though it were an established fact, sufficient in itself to demonstrate that inundation of the Turkey Point site is likely. CASE's discussion of sea level rise is, however, limited to a citation to a working group document that projects a one-foot rise in sea level sometime between 2040 and 2070, with a two foot rise possible by 2060.[10] Because it is not accompanied by an expert projection of anticipated inundation levels, CASE cannot demonstrate the existence of a genuine dispute with the Application based upon sea level rise flooding.

In addition, just as important as the flood level in any flooding evaluation is the elevation of the affected buildings and their foundations, including the elevation of the contingent LLW storage facilities. Contention 10 does not address this side of the equation at all, except for its unsupported assertion that it would not be feasible to elevate a contingent LLW storage facility above the flood level.[11] Contention 10 at 2.

[10] The Working Group also notes that the average rate of rise of sea level at the Key West tidal station from 1913-1999 was 0.88 inches/decade. Contention 10 at 2. This is consistent with the analysis in FPL's FSAR, which accounts for sea level rise of 1 foot per century. FSAR at 2.4.5-5.

[11] FPL's FSAR states the contingent LLW storage facility would be built onsite. COLA Rev. 3, FSAR at 11.4-3. And FPL's Revised LLW Management Plan commits to follow the guidance in NUREG-0800, which, recommends that the facility be located within the protected area. NUREG-0800 at 11.4-27. The Units 6 & 7 plant area will be built up to higher elevations from the adjacent grade and is surrounded by a retaining wall structure with the top of the wall elevation varying from 20 feet to 21.5 feet NAVD 88.

Accordingly, CASE fails to provide an allegation of fact or expert opinion to support its position regarding the likelihood FPL's contingent LLW storage facility would be inundated.

C. CASE FAILS TO DEMONSTRATE THAT THE POTENTIAL INUNDATION OF THE CONTINGENT LLW FACILITIES PRESENTS A MATERIAL ISSUE

CASE also fails to show that the potential inundation of the contingent LLW storage facilities is a material issue, in that it would make a difference in the outcome of the proceeding. 10 C.F.R. § 2.309(f)(1)(iv). First, CASE fails to provide information to demonstrate that the inundation of FPL's contingent LLW storage facilities would be reasonably foreseeable. In rejecting a similar claim in the original CASE Contention 6, this Board explained:

> First, regarding Contention 6's concern with FPL's failure to consider the impact of projected sea level rise, storm surge, and site inundations that could result in the dispersal of LLRW off the Turkey Point site (CASE Rev. Pet. at 40-41), we conclude CASE fails to explain why such a scenario is plausible, much less reasonably foreseeable. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002) (ER need only consider environmental impacts that are "reasonably foreseeable").

LBP-11-06 at 102. In fact, Contention 10 presents much the same argument that was rejected by the Board in LBP-11-06. The only difference at this point is that FPL has presented a contingent plan to store LLW onsite. But that new information does not somehow render the catastrophic flooding of an onsite LLW facility reasonably foreseeable. CASE must present some evidence that FPL would be likely to build such a facility without providing it with adequate flood protection.

FSAR at 2.4.10-1. The plant area final elevation is designed such that the elevations of floor entrances and openings of all safety-related structures are at 26 feet NAVD 88. FSAR at 2.4.10-1.

The FSAR revisions in COLA Rev. 3 make clear that FPL would not build an onsite LLW storage facility without consideration of sea level rise or storm surge. As explained in the COLA Rev. 3, the LLW storage facility would be licensed and constructed in accordance with NUREG-0800, which calls for a flood protection analysis to assure radiological consequences do not exceed a small portion of regulatory limits. *See* COLA Rev. 3, FSAR at 11.4-3; ER at 3.5-15.

NUREG-0800 states that licensees must provide safety and environmental evaluations for onsite LLW storage facilities, which will account for flooding:

> *Before implementing any additional onsite storage capacity, licensees should conduct substantial safety review and environmental assessments to assure adequate public health and safety protections and minimal environmental impact.* The acceptance criteria and performance objectives of any proposed storage facility or area will need to meet minimal requirements in design, operations, safety considerations, policy considerations, and compliance with other applicable Federal, State, and local regulations governing any other toxic or hazardous properties of radioactive wastes . . .
>
> *Facility design and operation should assure that radiological consequences of design basis events (e.g., fire, tornado, seismic occurrence, and flood) do not exceed a small fraction (10 percent) of 10 CFR Part 100 dose limits (i.e., no more than a few sieverts whole body dose).*

NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A at 11.4-25 (emphases added). CASE ignores this portion of the Application and acts as if no safety or environmental review would be performed prior to the construction of the contingent LLW storage facilities. By failing to address the safety and environmental evaluations that will be performed prior to construction and operation of an onsite LLW storage facility, CASE fails to demonstrate the existence of a genuine dispute with the

Application and fails to show that the flooding of that facility is a material issue. 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

Second, Contention 10 fails to articulate any reason why increased sea-level rise and resulting enhanced storm surges would make any difference to the analysis of environmental impacts of potential onsite LLW storage in the ER. The Board reached a similar conclusion in rejecting CASE's original sea level rise contention:

> Moreover, even assuming the accuracy of [CASE's expert's] predictions regarding sea level rise, CASE fails to articulate why such a rise would make a difference to any specific aspect of FPL's evaluation of population trends, future power needs, nuclear safety, nuclear cooling systems, and nuclear accidents. CASE thus fails to demonstrate why its broad and unsupported assertions regarding the implications of sea level rise (CASE Rev. Pet. at 35) would be material to the NRC's analysis of the COLA, contrary to 10 C.F.R. § 2.309(f)(1)(iv).

LBP-11-06 at 99. Just as with its original Contention 6, CASE has failed to show "why its broad and unsupported assertions regarding the implications of sea level rise would be material to the NRC's analysis of the COLA, contrary to 10 C.F.R. § 2.309(f)(1)(iv)." *Id*.

CONCLUSION

For all of the foregoing reasons, CASE's Motion should be denied and Contention 10 should be rejected.

Respectfully Submitted,

/Signed electronically by Steven Hamrick/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light Company's Answer to CASE's Motion for Leave to File A New Contention And New Contention 10" were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 27th day of February, 2012.

Administrative Judge
E. Roy Hawkens, Esq., Chair
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