

May 8, 2015

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**FLORIDA POWER & LIGHT COMPANY’S ANSWER OPPOSING CITY OF MIAMI’S
PETITION TO INTERVENE IN A HEARING ON FLORIDA POWER & LIGHT
COMPANY’S COMBINED CONSTRUCTION AND OPERATING LICENSE
APPLICATION FOR TURKEY POINTS UNITS 6 & 7**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Applicant Florida Power & Light Company (“FPL”) hereby answers the Petition by the City of Miami, Florida, For Leave to Intervene in a Hearing on Florida Power & Light Company’s Combined Construction and Operating License Application for Turkey Point Units 6 & 7, or in the Alternative, Participate as a Non-Party Local Government” (“Petition”) filed on April 13, 2015 by the City of Miami (“Miami” or “the City”) in the combined license (“COL”) proceeding for the proposed Turkey Point Units 6 & 7. FPL opposes admission of the three contentions proffered by the City of Miami because none of them are timely and none of them have even a modicum of support demonstrating any genuine material dispute. Although ostensibly challenging the draft Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Units 6 and 7, NUREG-2176 (February 2015) (the “DEIS”), the City of Miami makes no attempt to show that any of its proposed contentions are based on new information, and it is clear that each contention could have been raised previously. Indeed, the City of Miami’s first proposed contention has already been raised in this proceeding.

The City of Miami also makes no attempt to support its contentions with expert testimony, references to other sources or documents, or other information demonstrating any genuine material dispute.

Because none of the City of Miami's contentions are admissible, FPL also opposes the City's request to intervene as a party. FPL does not oppose the City of Miami's request to participate as an interested local governmental body pursuant to 10 C.F.R. § 2.315(c), but the City of Miami must take proceeding, and the sole remaining contention, as it stands.

II. PROCEDURAL BACKGROUND

FPL submitted an application to the NRC for a COL for Turkey Point Units 6 and 7 ("Application") on June 30, 2009, including an Environmental Report ("ER"), as required under the NRC's regulations implementing the National Environmental Policy Act ("NEPA"). FPL has submitted several revisions to the Application since the initial filing. The current version of the ER is Revision 6. All of the revisions are available on the NRC's website.¹

On August 17, 2010, interested groups submitted petitions to intervene, including Joint Intervenors Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association, in the Turkey Point COL proceeding. The Board admitted for litigation a portion of Joint Intervenors' proposed Contention 2, hereinafter designated as Contention 2.1. *Florida Power & Light Co. (Turkey Points Units 6 and 7)*, LBP-11-6, 73 N.R.C. 149, 187 (Feb. 28, 2011). As originally admitted, Joint Intervenors' Contention 2.1 alleged that the ER failed to analyze and discuss the potential impacts on groundwater quality of injecting into the Floridan Aquifer via underground injection wells heptachlor, ethylbenzene, toluene,

¹ See Combined License Application Documents for Turkey Point Units 6 and 7, Application, available at <http://www.nrc.gov/reactors/new-reactors/col/turkey-point/documents.html#application>.

selenium, thallium, and tetrachloroethylene. *Id.* at 190. After FPL revised the ER to include estimated concentrations for each of these chemicals, the Board permitted Joint Intervenors to amend Contention 2.1 to allege:

The ER is deficient in concluding that the environmental impacts from FPL's proposed deep injection wells will be "small" because the ER fails to identify the source of data of the chemical concentrations in ER Rev. 3 Table 3.6-2 for ethylbenzene, heptachlor, tetrachloroethylene, and toluene. Such information is necessary to ensure the accuracy and reliability of those concentrations, so it might be reasonably concluded that those chemicals will not adversely impact the groundwater migrating from the Boulder Zone to the Upper Floridan Aquifer.

Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 6 and 8), LBP-12-9, 75 N.R.C. 615, 629 (2012). The City of Miami's proposed Contention 1 is essentially the same as this 2012 version of Joint Intervenors Contention 2.1, except that it refers to the DEIS rather than the ER.

Subsequently, in response to a Motion for Summary Disposition of Amended Contention 2.1 identifying the source of the data used in ER Rev. 3 Table 3.6-2 as data provided in the Miami-Dade Water and Sewer Department ("MDWASD"), South District Wastewater Treatment Plant ("SDWWTP") annual reports for the years 2007 through 2011, describing a bounding analysis of the impacts of these chemicals should they migrate, and requesting dismissal of Contention 2.1,² the Board ruled that FPL had cured the omission alleged in the Contention and reformulated Contention 2.1 to allege that:

The ER is deficient in concluding that the environmental impacts from FPL's proposed deep injection wells will be "small" because the chemical concentrations in ER Rev. 3 Table 3.6-2 for ethylbenzene, heptachlor, tetrachloroethylene, and toluene may be inaccurate and unreliable. Accurate and reliable calculations of the concentrations of those chemicals in the wastewater

² Florida Power & Light Company's Motion for Summary Disposition of Joint Intervenors' Amended Contention 2.1 (July 19, 2012).

are necessary so it might reasonably be concluded that those chemicals will not adversely migrate from the Boulder Zone to the Upper Floridan Aquifer.

Memorandum and Order (Granting In Part and Denying in Part Motion for Summary Disposition of Amended Contention 2.1) (Aug. 30, 2012) at 2-3 (“August 30, 2012 Memorandum and Order”). This is the sole contention remaining for hearing in this proceeding.

III. APPLICABLE LEGAL STANDARDS FOR CONTENTIONS FILED AFTER THE INITIAL DEADLINE AND ADMISSIBLE CONTENTIONS

The NRC does not look with favor on amended or new contentions filed after the initial filing. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 638 (2004). As the Commission has repeatedly stressed,

our contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners “who must examine the publicly available material and set forth their claims and the support for their claims at the outset.” There simply would be “no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements” and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding. Our expanding adjudicatory docket makes it critically important that parties comply with our pleading requirements and that the Board enforce those requirements.

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009) (footnotes omitted).

Accordingly, the Commission’s rules of practice require that “[c]ontentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner.” 10 C.F.R. § 2.309(f)(2). With respect to NEPA-related issues, contentions are to be based on the applicant’s environmental report. *Id.* New or amended environmental contentions may be filed after the initial filing deadline – for example, based on a draft or final NRC environmental impact

statement – only “if the contention complies with the requirements in paragraph (c) of this section.” *Id.* 10 C.F.R. 2.309(c)(1), in turn, requires that the contention “not be entertained” absent a demonstration of good cause 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.

10 C.F.R. § 2.309(c)(1)(i)-(iii).

In short, new or amended contentions – even when ostensibly based on recently issued NRC environmental review documents – “must be *based on new facts* not previously available.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 N.R.C. 479, 493 n.70 (2012). *See also DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-01, 81 N.R.C. ___, slip op. at 7, 8 (Jan. 13, 2015) (“our rules of practice require contentions to be raised at the earliest possible opportunity. . . . Our rules of practice require a material difference between the information on which the contention is based and the information that was previously available – for example a difference between the environmental report or the draft EIS”). Indeed, when promulgating the recently revised Section 2.309(c)(1), the Commission explained that, “in most cases where the NRC compiles or uses previously available information in a new document, *the previously available information cannot be used as the basis for a new or amended contention filed after the deadline.*” Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012) (emphasis added). This means, for example, that information in a draft environmental impact statement cannot form

the basis for a timely new contention when that substantially the same information was previously found in an applicant's environmental report or was otherwise previously available.

Further, as the proponent of an order admitting the proposed contention, CASE has the burden of demonstrating that it meets the good cause standards in 10 C.F.R. § 2.309(c)(1). 10 C.F.R. § 2.325. 10 C.F.R. § 2.309(c)(1) requires that the “*participant has demonstrated good cause*” by showing that the standards are met (emphasis added). The failure to comply with these pleading requirements constitutes sufficient grounds for rejecting the petition. *Florida Power & Light Company* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, *et al.*), CLI-06-21, 64 N.R.C. 30, 2006; *Florida Power & Light Company* (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 N.R.C. 167, 175-76 (2014)(“we do not consider hearing requests after the deadline in Section 2.309(b) has passed absent a determination that the petitioner has demonstrated good cause”).

In addition, new or amended contentions, including those based on NRC environmental review documents, must meet the admissibility standards that apply to all contentions under 10 C.F.R. § 2.309(f)(1):

- (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 to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under 10 CFR 52.103, provide 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)(i)-(vi). These standards also are enforced rigorously. "If any one . . . is not met, a contention must be rejected." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) ("These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements." (footnotes omitted)). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. *Palo Verde*, CLI-91-12, 34 N.R.C. at 155; *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 260 (2009) (the contention admissibility rules "require the petitioner (*not the board*) to supply all of the required elements for a valid intervention petition" (emphasis added) (footnote omitted)).

Under these standards, a petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff'd in part*, CLI-95-12, 42 N.R.C. 191 (1995). Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf." *Id.*, citing *Palo Verde*, CLI-91-12, 34 N.R.C. 149. *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (a "bald assertion that a matter

ought to be considered or that a factual dispute exists . . . is not sufficient”; rather, “a petitioner must provide documents or other factual information or expert opinion” to support a contention’s “proffered bases”).

Further, 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 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001) (citation omitted). In particular, this explanation must demonstrate that the contention is “material” to the NRC’s findings and that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. §§ 2.309(f)(1)(iv), (vi). The Commission has defined a “material” issue as meaning one where “resolution of the dispute *would make a difference in the outcome* of the licensing proceeding.” 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added).

As the Commission has observed, this threshold requirement is consistent with judicial decisions, such as *Connecticut Bankers Association v. Board of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980), which held that:

[A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an “inquiry in depth” is appropriate.

651 F.2d at 251; *see also Baltimore Gas & Electric Co.*, (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41, *motion to vacate denied*, CLI-98-15, 48 N.R.C. 45, 56 (1998) (“It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions”). A contention, therefore, is not to be admitted “where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which

might produce relevant supporting facts.” 54 Fed. Reg. at 33,171.³ As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

Therefore, under the Rules of Practice, a statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention. *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), *review declined*, CLI-94-2, 39 N.R.C. 91 (1994). Similarly, a mere reference to documents does not provide an adequate basis for a contention. *Calvert Cliffs*, CLI-98-25, 48 N.R.C. at 348.

Rather, the NRC’s pleading standards require a petitioner to read the pertinent portions of the license application, including the safety analysis report and the ER, 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 N.R.C. at 358. If the petitioner does not believe these materials address a relevant issue, the petitioner is “to explain why the application is deficient.” 54 Fed. Reg. at 33,170; *Palo Verde*, CLI-91-12, 34 N.R.C. at 156. A contention that does not directly controvert a position taken by the applicant in the license application is subject to dismissal. *See Texas Utilities Electric Co.* (Comanche Peak Steam

³ *See also Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 N.R.C. 1041 (1983) (“[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a. of the [Atomic Energy] Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.”).

Electric Station, Unit 2), LBP-92-37, 36 N.R.C. 370, 384 (1992), *appeal dismissed*, CLI-93-10, 37 N.R.C. 192, *stay denied*, CLI-93-11, 37 N.R.C. 251 (1993). Furthermore, an allegation that some aspect of a license application is “inadequate” or “unacceptable” does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990).

IV. CITY OF MIAMI’S CONTENTIONS ARE NOT TIMELY OR ADMISSIBLE

A. Proposed Contention 1 is Untimely and Inadmissible

Proposed Contention 1 – which alleges that draft EIS is deficient in concluding that the environmental impacts from FPL’s proposed deep injection wells will be “small” because the draft EIS fails to identify the source data of the chemical concentrations in draft EIS Table 3-5 for ethylbenzene, heptachlor, tetrachloroethylene, and toluene (Petition at 6) – must be rejected because it is untimely and fails to meet the Commission’s standards of admissibility. As discussed below, Miami makes no demonstration that this contention is based on new information, and as this same contention was previously raised by Joint Intervenors, it obviously is not.

1. Proposed Contention 1 is Untimely

Contention 1 must be rejected because the City of Miami makes no demonstration that the contention is based on information that is materially different from that previously available. The City’s failure to even address the standards in 10 C.F.R. § 2.309(c)(1) requires, by itself, that the Contention be dismissed.

Further, on its face, City of Miami’s proposed Contention 1 is not based on new or materially different information, as it essentially copies verbatim the version of Joint

Intervenors' Contention 2.1 as amended in May 2012. The only distinction is that Miami's contention refers to the DEIS rather than the ER, but this difference does not make the contention timely.⁴ As the Commission's rules at 10 C.F.R. § 2.309(f)(2) make clear, participants may file new contentions based on a draft environmental impact statement only "if the contention complies with the requirements in a paragraph (c)" of Section 2.309, which requires a showing that the filing is based on information that was not previously available. These rules "require a material difference between the information on which the contention is based and the information that was previously available – for example a difference between the environmental report and the draft EIS. . . ." *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 3), CLI-15-01, 81 N.R.C. ___, slip op. at 8 (Jan. 13, 2015).

Furthermore, none of the bases on which the City of Miami relies constitute new or materially different information. City of Miami asserts (inaccurately, as will be discussed later) that "the draft EIS simply mentions, without evaluating, the potential for upward migration of injectate and infiltration of contaminants into the Lower Floridan Aquifer." Petition at 6-7. The City then acknowledges that "[l]ike the ER, ...the draft EIS presumes that the Boulder Zone of the Lower Floridan Aquifer in southern Florida is isolated from the overlying Upper Floridan Aquifer by thick confining units." *Id.* at 7. Rather than demonstrating that its contention is based on new or materially different information than previously available, the City of Miami acknowledges that the DEIS is "like the ER." Moreover, the City's criticism of the ER and DEIS appears copied almost verbatim from Joint Intervenors' original Petition. *See* Petition for Intervention (Aug. 17, 2010) ("Jt. Int. Petition") at 27 ("The ER presumes that the Boulder Zone

⁴ This is a distinction without a difference because, after issuance of an EIS, contentions originally raised on the basis of an ER are appropriately deemed challenges to the EIS. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 N.R.C. 77, 84 (1998).

of the Lower Floridan Aquifer in southern Florida is isolated from the overlying Upper Floridan Aquifer by thick confining units”).

The City’s additional claims similarly appear copied almost verbatim from Joint Intervenors’ original Petition. The City asserts that the DEIS “fails to analyze the fate and transport of the injected effluent into the Boulder Zone, and fails to assess health and environmental risks associated with the liquid effluent pathway.” Petition at 7. Joint Intervenors’ Petition likewise stated that “the ER fails to analyze the fate and transport of the injected effluent into the Boulder Zone, and fails to assess health and environmental risks associated with the liquid effluent pathway.” Jt. Int. Petition at 27. The City states that “[m]onitoring of other injection operations in South Florida has shown that the Boulder Zone provides less confinement in certain areas than originally thought.” Petition at 7. Joint Intervenors’ Petition stated that “[m]onitoring of municipal injection operations has shown that the Boulder Zone in some areas of South Florida provides less confinement than originally thought. Jt. Int. Petition at 27. The City alleges that “[l]ike the ER previously submitted by FPL, the EIS fails to identify the total amount of each chemical constituent of the effluent. Hence, it is not possible to discern exactly what is in the effluent, and in what amount.” Petition at 7. These statements not only acknowledge that there is no difference from the ER, but are again taken almost verbatim from the Joint Intervenors’ original Petition. Jt. Int. Petition at 28 (“the ER . . . fails to identify the total amount of each chemical constituent of the effluent. There is, simply, no way to tell from the ER exactly what is in the effluent, and in what amount”).

The City of Miami claims that DEIS Table 3-5, identifying the expected constituents and concentrations discharged to deep-injection wells, “only cites to prior FPL documents which are

not accessible because they are password protected.” Petition at 7. While the hyperlinks at the end of Table 3-5 link to a Pacific Northwest National Laboratory site that is not accessible, the referenced sources (“FPL 2-14-TN4058 and FPL 2012-TN263) are identified in Chapter 11 of the DEIS (at page 11-49 and 11-45) with ADAMS Accession numbers as: (1) the Turkey Point ER, Rev. 6 (ADAMS Accession No. ML14342A011); and (2) FPL’s response to an NRC Request for Additional Information, dated March 7, 2012 (ADAMS Accession No. ML12074A041 – added to ADAMS on Mar. 22, 2012). Further, while all citations in the DEIS are to the most recent revision of the ER, DEIS Table 3-5 is in fact identical to ER Table 3.6-2 as included in Revision 3 to the ER available since January 2012 (*see* ADAMS Accession No. ML11362A163). The City of Miami is aware of ER Table 3.6-2 because it cites it. *See* Petition at 8.

The City of Miami concludes its discussion of Contention 1 with the assertion that “this analysis is based on an unsubstantiated assumption that no vertical migration of effluents from the Boulder Zone will occur,” and “[a]s a result, the draft EIS fails to adequately discuss or analyze the potential environmental impacts of migration of chemical and radioactive effluent from the Lower Floridan Aquifer into USDWs or Biscayne Bay.” Petition at 8. Even this conclusion is lifted nearly verbatim from Joint Intervenors’ original Petition. Compare Jt. Int. Pet. at 30. In sum, every one of the City of Miami’s statements regarding Contention 1 is taken from allegations made several years ago. There is not one jot of new information supporting the contention.

2. Proposed Contention 1 is Inadmissible

In addition to being untimely, the City of Miami’s Contention 1 must be rejected because it does not satisfy the admissibility standard in 10 C.F.R. § 2.309(f)(1). At the outset, the sole

assertion in the Contention – that the draft EIS fails to identify the source data of the chemical concentrations in draft EIS Table 3-5 for ethylbenzene, heptachlor, tetrachloroethylene, and toluene – is the portion of Joint Intervenor’s Contention 2.1 that was previously dismissed as moot after the sources of the data were identified. *See* August 30, 2012 Memorandum and Order at 10. The City of Miami does not offer any rationale or support for challenging the previously identified of the source data or for resurrecting this already dismissed claim.

Further, the City of Miami does not provide any basis to suggest that concentrations of the chemicals in DEIS Table 3-5 (taken from ER Table 3.6-2) are inaccurate or unreliable. There is not a single statement in City’s Petition asserting that these concentrations are wrong or unreliable, or providing any reason for disputing them. There are no alleged facts or expert opinion, or references to specific sources or documents, supporting any claim concerning the accuracy or reliability of the concentrations in DEIS Table 3-5, as required by 10 C.F.R. § 2.309(f)(1)(v). There is no information demonstrating a genuine dispute with DEIS Table 3-5, as is required 10 C.F.R. § 2.309(f)(1)(vi). There is no “basis” advanced for any challenge to the concentrations, as required by 10 C.F.R. § 2.309(f)(1)(ii). The City does not provide any alternative data, or any information regarding the impact of higher concentrations, and thus does not make any showing that any dispute regarding the data is material, as required by 10 C.F.R. § 2.309(f)(1)(iii) and 10 C.F.R. § 2.309(f)(1)(vi). In sum, Contention 1 is entirely unsupported.

Finally, the City’s assertion that “the draft EIS simply mentions, without evaluating, the potential for upward migration of injectate and infiltration of contaminants into the Lower Floridan Aquifer” (Petition at 6-7) ignores and fails to dispute the discussion in the DEIS of the performance assessment modeling performed by FPL and the NRC’s confirmatory calculations of potential upward migration of injectate from the Boulder Zone of the Lower Floridan Aquifer.

See DEIS at § G.3.3, Confirmatory Calculations of Potential Upward Migration of Injectate from the Boulder Zone of the Lower Floridan Aquifer. The City does not identify any error in this analysis. That analysis indicates that, under conservative assumptions that would tend to maximize the migration of effluent, the injectate would move less than 300 feet upwards into the middle confining unit over a 100 year period. *Id.* at G-47. The City does not provide any basis or support for disputing this conclusion.

B. Proposed Contention 2 is Untimely and Inadmissible

Proposed Contention 2 – which alleges that draft EIS is deficient because its evaluation of the operation of the radial collector wells (“RCW”) does not preclude the possibility that the radial collector wells will change the plume dynamics of the Industrial Wastewater Facility (“IWF”)/Cooling Canal contaminant plume (Petition at 8) – should be rejected because it is inexcusably untimely. 10 C.F.R. § 2.309(c)(1). In addition, Contention 2 should be rejected because it raises issues outside the scope of this proceeding, is inadequately supported, and fails to raise a dispute on a genuine issue of material law or fact. 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

1. Proposed Contention 2 is Untimely

The Board must reject proposed Contention 2 as inexcusably untimely. Miami makes no demonstration that the Contention is based on information that is materially different from that previously available. Miami’s failure to even address the standards in 10 C.F.R. § 2.309(c)(1) requires, by itself, that the contention be dismissed.

Further, the ER (and several of its prior revisions) contained ample discussion of the expected influence RCW operation will have on the hypersaline plume originating from the industrial wastewater facility cooling canals, which the City could have challenged years ago.

ER Revision 3, Section 5.2.3.1.2, Radial Collector Wells (December 16, 2011), discusses the expectation that the hypersaline water originating from the canals will be drawn towards the radial collector wells underneath Biscayne Bay, but will have minimal impact on the salinity of the Bay:

Operation of radial collector wells installed beneath Biscayne Bay would not impact the water quality of the bay. Although recharge would occur from the bay, it is estimated to be a small percentage of natural freshwater recharge. Additionally, although 1.9 percent of recharge (2.4 MGD) is predicted to originate from the cooling canals of the industrial wastewater facility, which are hypersaline, *this recharge water drawn towards the radial collector wells will remain at depth within the aquifer due to the placement of the radial collector well laterals below the seabed and due to the higher density of this hypersaline water relative to seawater.* Effects on salinity of the bay, based on the predicted amount of withdrawal versus the natural recharge, would be minimal.

ER (Rev. 3) at 5.2-22 (emphasis added). The ER also found that potential impacts to ground water from the hypersaline plume would be minimal, because operation of the RCWs would draw the plume away from potable water supplies towards non-potable groundwater:

As discussed above, *any hypersaline water drawn into the aquifer from the cooling canals would not impact potable water supplies,* which are further inland, due to the presence of brackish, non-potable water near the coast. Therefore, impacts to groundwater quality as a result of radial collector well operations would be SMALL and not require mitigation.

ER (Rev. 3) Section 5.2.3.2.3 (at 5.2-24) (emphasis added). Each ER revision since has contained essentially the same information. *See, e.g.,* ER (Rev. 6) at 5.2-22, 5.2-24. In light of these explicit statements in the ER concerning the expected impacts on the hypersaline plume by operation of the RCWs, Miami should have raised any related concerns long ago.

Further, the discussion following Contention 2 on pages 8 -10 of the Petition is lifted nearly verbatim from a "Statement of Issue" provided to the NRC over four years ago by Miami-

Dade County,⁵ and therefore obviously is not new or based on the DEIS. For the same reason, the few references to data in this discussion are not new. The water quality data collected during the Aquifer Performance Test Program, to which the City refers (Petition at 8), was performed “in April/May 2009” (*id.*). This data was presented in the Turkey Point Exploratory Drilling and Aquifer Performance Test Program (August 19, 2009), which has been available on ADAMS since March 29, 2011 (ADAMS Accession No. ML110820053), but was also available to the agencies that reviewed FPL’s Site Certification Application (which included the City of Miami⁶). For example, the South Florida Water Management District posed questions related to the levels observed in Monitoring Well MW-5 in January 2010.⁷ While the City does not provide enough information to identify the specific “tracer data from Uprate Monitoring” to which it refers (Petition at 9), it obviously refers to data predating the 2011 Statement of Issue.⁸

The City has added two references to the DEIS in the discussion that it has cribbed from the 2011 Statement of Issue, but both pertain to FPL’s previously available modeling, and not to

⁵ See Statement of Issue, attached to Message from C. Grossenbacher to A. Kugler (Feb. 18, 2011) (ADAMS Accession No. ML110610054). This message and attachments were placed as one document in ADAMS on April 7, 2011. The Statement of Issue is on the last three pages of the document in ADAMS. On page 8 of the Petition, the first sentence following Contention 2 is a slight rewording of a sentence near the middle of the first full paragraph on the second page of the Statement of Issue. The second sentence following Contention 2 is derived from the next sentence in the Statement of Issue (the portion before the asterisk), with the rest of the first paragraph following Contention 2 taken nearly verbatim from the footnote. The second paragraph following Contention 2, on page 9 of the Petition, is taken nearly verbatim from the remainder of the first full paragraph on the second page of the Statement of Issue. The last paragraph discussing Contention 2 is derived from the last paragraph in the Statement of Issue.

⁶ See Turkey Point Units 6 & 7: Completeness Responses (Oct. 2009) at i (identifying City of Miami) (available at ADAMS Accession No. ML14336A331).

⁷ See Letter from J. Golden, SFWMD, to M. Halpin, Florida DEP, Second Completeness Review at 8-9, 18 (Jan. 6, 2010), attached to FPL Site Certification Application, Second Round Completeness Responses (July 2010) (ADAMS Accession No. ML14336A333).

⁸ The FPL Turkey Point Annual Monitoring Report for Units 3 and 4 Uprate Project – Aug. 2011, which provides the monitoring data from June 1, 2010 to May 31, 2011, is available on ADAMS (ADAMS Accession No. ML14223A017). It has also been available for years at http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/fpl_turkey_pt_2011_monitoring_rpt.pdf. The link to this data was provided in a response to an NRC Request for Additional Information in 2012. Letter from W. Maher to NRC, Response to NRC Request for Additional Information Letter 122103 (Amy 12, 2012), Att. 7 at 2 (ADAMS Accession No. ML12143A357).

anything new or materially different in the DEIS. First, the City asserts that “[t]he evaluation of radial collector wells *presented by the draft EIS* is not adequate to address any of the above concerns, nor is it able to assess the combined effects of the existing operations and the Uprate and Units 6 and 7 projects.” Petition at 9. Here, the City has just taken a sentence from the 2011 Statement of Issue and changed the reference from “FPL’s current modeling effort” to the “evaluation . . . presented in the draft EIS.”⁹

Second, the City refers to Appendix G of the DEIS (without any specific citation) as indicating that “the current groundwater model” is inadequate because “a multi density hydrologic model with coupled surface and groundwater” is required to examine certain issues regarding the effect on the plume. Petition at 10. Despite the lack of citation, it is evident that the City is again referring to FPL’s ground-water model, which has been available for years.¹⁰ From the initial submittal of the COL application on June 30, 2009, Appendix 2CC of the FSAR has described FPL’s model and specifically states that FPL’s model is a “constant density” model,¹¹ explaining that, for the localized areas of interest, the pressure influences of density variation are insignificant relative to the hydraulic gradient imposed by the pumping. FSAR (Rev. 0), App. 2CC, at § 3.3.5; FSAR (Rev. 6), App. 2CC at § 3.3.3.¹² Further, the assertion that

⁹ Compare Statement of Issue (first sentence of last paragraph, stating: “FPL’s current modeling effort in support of the radial collector wells is not adequate to evaluate any of the above concerns, nor is it able to simulate the combined effects of the existing operations and the proposed Uprate and Units 6 and 7 projects,”) (emphasis added).

¹⁰ The City cannot be referring to the additional USGS groundwater modeling commissioned by the NRC Staff because the model commissioned by the Staff is a coupled surface-water/groundwater model that considers both density effects and the surface water/groundwater interface. See DEIS at G-26, G-31 to G-32.

¹¹ This has been explicit since the Application was filed. See FSAR (Rev. 0), App. 2CC at 2CC-7 (“The model is a steady state, constant-density, three-dimensional representation of the Biscayne aquifer. . .”).

¹² The description in the FSAR also indicates that the interaction between surface water and groundwater is simulated by including in the model the Biscayne Bay, the cooling water canals, and certain other canals in the vicinity of the site (FSAR (Rev. 0), App. 2CC, at 2CC-7; FSAR (Rev. 6), App. 2CC, at 2CC-10), and that cooling

a multi density model that couples surface water and groundwater is needed is taken from the 2011 Statement of Issue (last sentence), and therefore is not new. In Scoping comments in August 2010 (which Joint Intervenors submitted as an exhibit in October 2010), the National Park Service also commented: “The constant density assumption cannot adequately determine the effects of the hypersaline plume eastern migration and by salinity impacts due to the operation of the RCWs and dewatering activities. . . . A coupled surface water and groundwater hydrologic model . . . is necessary to fully evaluate all of the associated impacts to Biscayne Bay.”¹³ While the GEIS refers to these uncertainties in FPL’s model (DEIS at G-29), these observations are no different than those made in 2010 and 2011. Further, that the NRC Staff has addressed the comments raised during the Scoping process, as it committed to do,¹⁴ does not make the prior comments new, particularly when the City has entirely ignored the independent modeling commissioned by the NRC Staff directly addressing these comments, as discussed further below.

2. Proposed Contention 2 is Inadmissible

Independent from the contention’s untimeliness, the Board must reject Miami’s proposed Contention 2 out of hand because it impermissibly seeks to impose requirements on FPL through the NRC Staff’s National Environmental Policy Act (“NEPA”) review, and is therefore outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii). The Contention, as stated, purports to

water canals are modeled by the “River Package” of the model that was used. FSAR (Rev. 0), App. 2CC at 2CC-23; FSAR (Rev. 6), App. 2CC, at 2CC-30.

¹³ Letter from M. Lewis and D. Kimball to NRC, Turkey Point Units 6 and 7 License Application Review Scoping Comments (Aug. 16, 2010) at 12 (ADAMS Accession No. ML102740617), included as Exhibit 1 to Joint Petitioners’ Reply to FPL Answer Opposing Petition to Intervene and NRC Staff Answer to Petition for Intervention (Oct. 1, 2010). Similar observations were made in Miami Dade’s comments on the SCA, previously submitted as Exhibit 3 to Joint Intervenors’ Petition. Jt. Int. Petition, Exhibit 3 at 8-9.

¹⁴ Environmental Impact Statement Scoping Process, Summary Report, Turkey Point Units 6 and 7 Combined Licenses, Miami-Dade County, Florida (Nov. 2010) (ADAMS Accession No. ML103130612), at 69 (“Scoping Summary Report”).

challenge the DEIS because its evaluation “does not preclude the possibility that the [RCWs] will change the plume dynamics of the Industrial Wastewater Facility/Cooling Canal contaminant plume.” Petition at 8. In other words, Miami seeks to impose substantive requirements through the NRC Staff’s NEPA obligations. NEPA, however, is a procedural statute, requiring that the NRC Staff take a hard look at potential environmental impacts and requires no substantive outcome. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 n.16 (1989) (“Because NEPA imposes no substantive requirement that mitigation measures actually be taken, it should not be read to require agencies to obtain an assurance that third parties will implement particular measures); *Entergy Nuclear Operations, Inc.* (Indian Point Units 2 and 3), CLI-11-14, 74 N.R.C. 801, 813 (2011) (“we note that NEPA is a procedural statute – although it requires a ‘hard look’ at mitigation measures, it does not, in and of itself, provide the statutory basis for their implementation”) (citing *Robertson*, 490 U.S. at 353 n.16). Under this longstanding precedent, the NRC Staff’s NEPA review cannot result in requiring FPL or any other third party to take any action to “preclude the possibility” that operation of the RCWs will influence the hypersaline plume originating from the IWF cooling canals.

Indeed, far from precluding potential impacts on the hypersaline plume from RCW operation, the DEIS explicitly describes them. And Miami’s remaining assertions fail to provide sufficient information – or any information at all – genuinely disputing the detailed environmental analyses contained in the DEIS.

DEIS Section 5.2 and Appendix G summarize the separate water modeling performed by FPL and the U.S. Geologic Survey (“USGS”) to evaluate the effects of RCW operation. This discussion specifically addresses how RCW operation is predicted to influence the hypersaline plume that originates from the IWF cooling canals:

Changes in the IWF Hypersaline Plume

If it becomes necessary to use the backup water supply, RCW pumping of saline groundwater from Biscayne aquifer beneath Biscayne Bay, could also affect movement of the hypersaline groundwater plume from the IWF cooling canals (described in Section 2.3.1.2). Under current conditions, most of the hypersaline water leaking from the cooling canals into the underlying groundwater system flows eastward beneath Biscayne Bay and likely mixes with bay water. The movement of this water in the subsurface is affected by tidal fluctuations that reverse the flow direction and by the complex mixing pattern of the ground waters with differing densities (Hughes et al. 2010-TN1545). Some hypersaline groundwater may move westward, although the interceptor ditch located on the west side of the IWF is operated to prevent inland movement of hypersaline groundwater (FPL 2014-TN4058). Pumping from the RCWs would increase the hydraulic gradient to the northwest. Both the FPL and USGS groundwater models (Appendix G) predict that some hypersaline water from the cooling canals would be drawn into the RCWs during extended periods of pumping. The increased gradient during RCW pumping would likely increase the flow velocity of hypersaline water eastward under Biscayne Bay and may change the area affected by the hypersaline plume.

DEIS at 5-15.

The City's reference to the need for a multi-density hydrological model with coupled surface and groundwater presents no genuine dispute with this discussion in the DEIS because the City's comments do not pertain to or dispute the independent USGS modeling commissioned by the Staff. As discussed in the DEIS, "[t]he model used by the USGS is a sub-model of an existing regional scale (Miami-Dade County) *coupled surface-water/groundwater model*. . . ." DEIS at G-26 (emphasis added). "The USGS model *explicitly considered density effects* on the flow within and between the groundwater and surface-water systems." *Id.* at G-31 (emphasis added). The DEIS presents the results of this independent modeling on pages G-35 to G-45, and includes figures showing the effects on groundwater salinity. *Id.* G-37. The hypersaline plume is indicated by the red zones. *See id.* at G-35. The DEIS also discusses the effects predicted by this independent analysis on Biscayne Bay salinity. DEIS at G-40 to G-45. The City of Miami ignores all of this information. The City does not identify any error in the NRC's independent

modeling or in its results. Thus, Contention 2 is not supported by any information demonstrating a genuine dispute with the DEIS.

Miami's assertion that the DEIS is not able "to assess the combined effects of the existing operations and the Uprate and the Units 6 and 7 projects" (Petition at 9) similarly ignores and fails to dispute information in the DEIS. At the outset, it should be recognized that there is no uprate "project." The uprate was approved in 2012 and is now part of the existing units' operation. Further, other than the statements regarding uncertainties in FPL's model, which raise no issue because they do not challenge the independent USGS modeling presented in the DEIS, the City never explains why the DEIS is not able to assess combined effects. Obviously, the predicted effect on the hypersaline plume presented in the DEIS is just such a combined effect.

In any event, the City entirely ignores the cumulative impacts discussion in DEIS Chapter 7, which considers that "[h]ypersaline water in the IWF cooling canals interacts with groundwater in the Biscayne aquifer;" "changes to the operation of the IWF such as the recently implemented power uprate for Turkey Point Units 3 and 4;" and "the proposed freshening of the IWF cooling canals by adding water pumped from the Upper Floridan aquifer" – all of which "may have cumulative impacts on groundwater quality of the Biscayne aquifer." DEIS at 7-15. Indeed, the cumulative impacts discussion considers that "the uprate resulted in temperature and salinity increases within portions of the cooling-canal system, as expected," and that "[a]dding additional brackish water from the Upper Floridan aquifer would likely reduce the temperature, salinity, and concentration of other constituents in the IWF water; which would result in lower concentrations in water seeping into the underlying aquifer," and that "if a project is implemented to freshen the IWF water, potential impacts on the Biscayne aquifer would be

reduced compared to the existing impacts.” *Id.* Miami nowhere acknowledges, let alone challenges, this discussion.

Proposed Contention 2 is also inadmissible because it is inadequately supported. 10 C.F.R. § 2.309(f)(1)(v). Miami offers nothing but bare assertions in support of its contention. Further, while FPL has been able to identify the source as the 2011 Statement of Issue, even if that document had been cited (which it was not), it would not have provided the requisite support. It is not clear what individual authored the Statement, what expertise the author possesses, what command the author had of the facts, or whether the concerns expressed at the time had sufficient foundation or have any continuing validity.¹⁵ Many of the assertions that the City has lifted appear conjecture. *See, e.g.*, Petition at 9 (“[I]f operation of the radial collector wells does change the hypersaline plume dynamics,” there “would likely” be changes as to how contaminants are distributed in the area.” “[I]f more of the plume were to be captured by the IWF, this would result in the transport of additional salts and other plume constituents back onto the Model Lands landscape via the cooling canal system.”¹⁶) Even qualifications and knowledge of the author had been established, bare assertions and speculation, even from an expert, is not sufficient to support a contention. *Entergy Nuclear Generation Company* (Pilgrim Nuclear Power Station), CLI-12-15, 75 N.R.C. 704, 714 (2012) (“At the threshold contention

¹⁵ For example, the allegation that “tracer data from the Uprate Monitoring indicate some of the plume water does reach the bay benthos” (Petition at 9) is not supported. There has been no identification of saltwater affecting the “benthos,” which means the sea floor community. As explained in the DEIS, “groundwater quality in the Biscayne aquifer has also recently been assessed to support FPL’s Units 3 and 4 Uprate Monitoring Project (FPL 2012-TN3439). The objective of the Uprate Monitoring Project is to better understand the interaction of the cooling canals with Biscayne aquifer and Biscayne Bay. Both tritium and TDS concentrations were found to be elevated in the Biscayne aquifer beneath the cooling canals *and in groundwater below the bay adjacent to the cooling canals*. DEIS at 2-68 (emphasis added). As previously noted, the Report on the Uprate Monitoring Project, on which this statement in the DEIS is based, has been available for years. *See supra* note 8.

¹⁶ These vague claims are hard to comprehend. FPL, the NRC Staff, and the Board should not have to try to make any sense out of them.

admissibility stage . . . ‘[b]are assertions and speculation,’ even by an expert, are insufficient to trigger a full adjudicatory proceeding”), citing *Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 N.R.C. 658, 674 (2008). *See also Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 N.R.C. 195, 203 (2003) (“A petitioner’s issue will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation’”) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 N.R.C. 193, 208 (2000)).

For all of the foregoing reasons, the Board must reject proposed Contention 2.

C. Proposed Contention 3 is Untimely and Inadmissible

The City of Miami’s proposed Contention 3 – which challenges discussion of the base case model’s prediction that 1.9 percent of the water extracted by the RCW would come from the IWF, alleging that this discussion does not address what percentage of water would come from under the IWF – must be rejected because it inexcusably untimely. Furthermore, proposed Contention 3 does not meet the NRC’s strict admissibility criteria, as it is entirely speculative and unsupported.

1. The City of Miami’s Proposed Contention 3 is Inexcusably Untimely

Once more, Miami makes no demonstration that the Contention is based on information that is materially different from that previously available. Miami’s failure to even address the standards in 10 C.F.R. § 2.309(c)(1) requires, by itself, that the Contention be dismissed.

Further, Contention 3 relates to “FPL’s base case model” (*see* Petition at 10),¹⁷ which has been described in Appendix 2CC of the FSAR from its initial filing. The results of this model – predicting that 1.9 percent of the water extracted by the RCW would come from the IWF and providing a sensitivity analysis cutting the vertical conductivity in half – were provided in a Table 11 of the report on the Groundwater Model Development and Analysis, Unit 6 & 7 Dewatering and Radial Collector Well Simulations (Rev. 1, Feb. 2011) (ADAMS Accession No. ML110610724) submitted to the NRC in 2011.¹⁸ These results were incorporated into Revision 3 of the ER (Dec. 16, 2011) at 5.2-9, 5.2-10, and 5.2-22 and into Revision 3 of the FSAR (Dec. 16, 2011) at Table 2CC-211.¹⁹ Thus, the modeling and results that the City now seeks to challenge have been available for years.

Moreover, none of the City’s statements challenging FPL’s modeling are new. The City asserts in the Contention that, due to differences in vertical and horizontal transmissivity, it can be assumed that a greater quantify of water would come from under the IWF, including the hypersaline plume, than from the surface waters in the IWF. Petition at 10. During the Scoping process, comments were received questioning the homogeneous representation of the aquifer system and use of a 1 to 1 ratio between horizontal and vertical hydraulic conductivity. Scoping Summary Report at 66, 68. In response to similar comments during the review of FPL’s Site Certification Application, FPL subsequently revised its model so that the vertical anisotropy of

¹⁷ The statement on page G-28 of the DEIS quoted in Contention 3 (Petition at 10) is from the DEIS Section entitled Summary of FPL Modeling.

¹⁸ Letter from W. Maher to NRC, Submittal of Groundwater Model Development and Analysis: Unit 6 & 7 Dewatering and Radial Collector Well Simulations (Feb. 28, 2011) (ADAMS Accession No. ML110610723).

¹⁹ The percentage originating from the cooling canals was subsequently revised very slightly upward to 2.0 percent in Revision 4 to the ER (Dec. 14, 2012) and in Table 2CC-211 of Revision 4 to FSAR (Dec. 14, 2012). This was the result of a revision to FPL’s groundwater model correcting perimeter general head boundary conductance values. Letter from W. Maher to NRC, Groundwater Flow Model Revision 6 (Oct. 17, 2012) (ADAMS Accession No. ML12297A284).

the hydrostratigraphic units represented in the model range from 8:1 to 15:1.²⁰ These changes were reflected in Revision 3 to the FSAR in December 2011.²¹ Thus, the initial questions concerning anisotropy and FPL's responses have been known and available for years.

The City's quotation of the DEIS concerning the limitations on modeling intermittent RCW operation arising from the steady state nature of FPL's model and assumption of constant density fluids (Petition at 11) is likewise information that has been long available. FPL's use of a steady state model has been explicit in the application from its initial filing. *See* FSAR (Rev. 0), App. 2CC, at 2CC-7 ("The model is a steady-state, constant density, three-dimensional representation of the Biscayne aquifer. . . ."). Comments during the scoping process in 2010 questioned the use of a steady state simulation.²² FPL responded to similar comments during agency review of FPL's Site Certification Application, and observed that the steady state model produced an environmentally conservative assessment of potential impacts.²³ This explanation was added to description of the Groundwater Model Development and Analysis in Appendix 2CC in Revision 3 to the FSAR, stating that "[s]imulating the radial collector wells on a steady state basis provides the maximum drawdown from the wells and is therefore a conservative approach." FSAR (Rev.3, Dec. 2011) at 2CC-36. As previously discussed with regard to

²⁰ Site Certification Application, 4th Round Completeness Responses (Feb. 2011), Responses to Miami Dade County Comments at 68; Responses to SFWMD Comments at 8 (ADAMS Accession No. ML14336A334). The City of Miami was a party to the SCA proceeding and a participant in the completeness reviews. *See supra* note 6.

²¹ *Compare* FSAR (Rev. 2), App. 2CC at § 3.3.4 *with* FSAR (Rev. 3, Dec. 2011), App. 2CC at §§ 3.1.1.3. and 3.3.6.

²² Scoping Summary Report at 66, 68.

²³ *See* Fourth Round Completeness Responses, *supra* note 20, responses to Miami Dade county comments at 67-68; responses to SFWMD comments at 4-5. For original comments *see* Letter to M. Halpin, SFWMD, Second Completeness Review (Jan. 6, 2010) at 3-4 and Miami Dade County Second Completeness Comments at 14-15, both of which are attached to Site Certification Application, 2nd Round Completeness Responses, Part B (Jul. 2010) (ADAMS Accession No. ML14336A333).

Contention 2, concern with the constant density assumption was also identified during Scoping comments in 2010.²⁴ Thus, the Staff's discussion of these issues is nothing new.

Consequently, the City of Miami has had ample opportunity to identify issues with the FPL's groundwater modeling prior to the issuance of the DEIS. As the Commission explained, "in most cases where the NRC compiles or uses previously available information in a new document, *the previously available information cannot be used as the basis for a new or amended contention filed after the deadline.*" 77 Fed. Reg. at 46,566 (emphasis added). This is one of those cases where the intervenor is simply citing to previously available information that the NRC Staff addressed in the DEIS and cannot form the basis of a timely contention.

2. The City of Miami's Proposed Contention 3 is Inadmissible

The City of Miami's proposed Contention 3 must also be rejected because, by limiting its criticism to the FPL model and totally ignoring the independent USGS analysis commissioned and analyzed by the NRC Staff, the City has failed to show that there is any genuine dispute, as required by 10 C.F.R. § 2.309(f)(iv), or any material issue, as required by 10 C.F.R. § 2.309(f)(1)(iv). The USGS model considered (1) continuous pumping; (2) 90-day pumping during the annual dry period; and (3) alternating periods of 30 days pumping and 90-days no pumping. DEIS at G-34.²⁵ Thus, it specifically considered intermittent pumping in modeling the effects of RCW operation on Biscayne Bay salinity. In addition, it included sensitivity analyses that examined the effect of decreasing vertical conductivity by an order of magnitude.²⁶ As previously discussed, the USGS model also explicitly considers density effects. DEIS at G-31.

²⁴ See *supra* note 13.

²⁵ The results of the USGS analysis were previously documented in a 2014 report, Estimated Effects of Proposed Radial Collector Pumpage Near Turkey Point Nuclear Facility, available on ADAMS (Accession No. ML14345A290).

²⁶ *Id.* at 10, 12.

Thus, the City's speculation that the higher density of the plume under the IWF might cause the RCWs to pull in a greater amount of freshwater from the northwest than predicted by FPL's modeling is immaterial. Because City of Miami "fails to acknowledge" this independent analysis "much less raise a specific challenge" to it, proposed Contention 3 is also inadmissible for failure to demonstrate a genuine dispute with the DEIS, contrary to 10 C.F.R. § 2.309(f)(1)(vi). *See Turkey Point*, LBP-11-6, 73 N.R.C. at 209.

Moreover, based on the independent USGS modeling, the DEIS concludes that the "continuous-pumping and 90-day-pumping scenarios" were the most conservative of the three pumping scenarios." DEIS at G-34. Thus, the USGS analysis shows that FPL's ground water modeling, which did not include intermittent operation of the RCWs, was indeed a conservative model for evaluating environmental impacts – not an inadequate model. The City provides no basis to assume otherwise. In addition, the City never provides any explanation of why it would be significant if more water is drawn from the cooling canals rather than from the hypersaline plume under the IWF. The City does not identify any difference between the hypersaline water in the canals and the hypersaline plume emanating from them. And obviously, any water that is being pulled from the canals from operation of the RCWs would be moving into, and traveling through, the underlying aquifer. Even if the water did emanate from the plume rather than the canals, the only apparent difference would be that the water would flow to the radial collector wells at a greater depth in the aquifer and would be even less likely to interact with the surface waters of the bay. The City of Miami relies on the possibility hypothesized in the DEIS (before being addressed by the USGS analysis) that "intermittent operation could result in an increase of hypersaline flow into the aquifer beneath the bay that could migrate into the bay when the RCW is not operating." Petition at 11. Neither the City of Miami, nor the DEIS, identify how heavy

hypersaline water would defy gravity and rise up into the bay without the RCW pumps operating. It is true that FPL's steady-state, constant density model, could not model this hypothesis and show that hypersaline water does not contravene the laws of gravity. As already explained, however, the USGS model explicitly considers density effects and modeled intermittent operation of the RCWs. DEIS at G-31, G-34.

The City of Miami's Contention 3 must also be rejected because it is entirely unsupported and speculative. The City of Miami asserts that "it is vital the EIS address the percentage of water that would come from underneath the IWF." Petition at 11. However, this conclusion is based on nothing more than a series of assumptions, rather than facts or expert opinions. Furthermore, proposed Contention 3 does not provide any references to specific sources or documents that support its position, as required by 10 C.F.R. § 2.309(f)(1)(v). Proposed Contention 3 states that "it can be *assumed* that a greater quantity of water would come from deeper ground waters under the IWF, including the hypersaline plume, than from the surface waters in the IWF" (Petition at 11 (emphases added)), but it provides no documentary support or expert opinion for this assertion. Proposed Contention 3 also "[a]ssum[es] that the denser hypersaline water under the IWF is more resistant to transit than surrounding water fresh water," and "[l]ikewise, the hypersaline water underneath the IWF, which has nearly twice the salinity of the bay water, *may* also prove problematic for cooling the reactors." *Id.* (emphasis added). NRC contention admissibility requirements provide that "alleged facts" or "expert opinions" must be provided together with references and documents on which the petitioner intends to rely. Here, the City of Miami has not alleged facts. Instead, it has alleged "assumptions" and has not provided any documentary support for them. A petitioner has an obligation to provide technical analyses and expert opinion or other information showing why its basis supports its contention.

Georgia Tech Research Reactor, LBP-95-6, 41 N.R.C. at 305. The City of Miami has not met its obligation. Therefore, proposed Contention 3 must be dismissed.

Finally, under the doctrine of collateral estoppel, the City of Miami should be precluded from relitigating issues in this proceeding that have already been thoroughly vetted in the Florida Site Certification proceeding. *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 N.R.C. 1, 27 (1978) (“where another agency has acted ‘in a judicial capacity and resolve[d] disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate,’ we will not hesitate to give *res judicata* or collateral estoppel effect to its findings ‘to enforce repose.’”) (citations omitted). Collateral estoppel applies (1) if the issue in the prior adjudication is the same as that in the subsequent case; (2) that issue was actually litigated in the prior action; (3) the judgment in the case is final and entered by a court of competent jurisdiction; (4) the determination of that issue was necessary to the outcome of the first action; and (5) the party to which the estoppel is to be applied must have been a party, or in privity with a party, that litigated the issue in the prior proceeding. *In re Geisen*, CLI-10-23, 72 N.R.C. 210 (2010); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-02-20, 56 N.R.C. 169, 181-82 (2002).

In parallel with NRC’s review of the COL Application, the State of Florida completed an extensive review of FPL’s Site Certification Application, including numerous rounds of “completeness questions.” See e.g., *supra* notes 20 and 23. The City of Miami was a participant in the eight week hearing before an Administrative Law Judge (“ALJ”).²⁷

²⁷ Final Order on Certification, In Re Florida Power and Light Company Turkey Points Units 6 & 7 Power Plant Siting Application No. PA 03-45A3. State of Florida Siting Board, OGC Case No. 09-3107, Division of Administrative Hearings, Cos No. 09-03575 at 2 (May 19, 2014)(Available at ADAMS Accession No. ML14345A291) (“Siting Board Order”).

On December 5, 2013, the ALJ issued a Recommended Order with extensive findings of fact and conclusions of law, which the Florida Siting Board adopted on May 19, 2014.²⁸ The issues raised by the City of Miami in proposed Contention 3 – the impacts of the operation of the radial collector wells, including impact on salinity levels, and FPL’s groundwater modeling of these impacts – were thoroughly reviewed during these proceedings with the ALJ concluding:

71. Construction and operation of the radial collector wells will not adversely impact the ambient water quality of Biscayne Bay, including the Biscayne Bay Aquatic Preserve and BNP.

72. Construction and operation of the radial collector wells will not cause saltwater intrusion into areas where saltwater is not already present.

73. FPL conducted extensive simulation modeling of the potential salinity impact to Biscayne Bay from operation of the radial collector wells using a regional hydrodynamic model. The model used a bounding approach, simulating operation of the radial collector wells at drawdown rates both below and well above the design flow rate as sensitivity analyses. At the design flow rate, the model predicted that any changes to salinity in Biscayne Bay caused by operation of the radial collector wells would be immeasurable and imperceptible. Even at a simulated rate of 850 mgd, or nearly seven times the design flow rate of the radial collector wells, the predicted change in salinity in Biscayne Bay would be very slight. Operation of the radial collector wells will not adversely impact salinity levels in Biscayne Bay.

Siting Board Order at Exhibit A p. 37. The State of Florida Siting Board issued a Final Order adopting the ALJ’s Recommended Order. Siting Board Order at 223.²⁹ The ALJ’s findings with respect to FPL’s modeling of the impacts of the radial collector wells was necessary to the outcome of the Site Certification proceeding because FPL was seeking a “public easement on

²⁸ Siting Board Order at 1.

²⁹ The Florida Siting Board Order has been appealed by Miami-Dade County, City of South Miami, Village of Pinecrest, and City of Miami to the State of Florida’s Third District Court of Appeal. *See e.g.* Initial Brief of Appellant, City of South Miami, Miami-Dade County, et al. v. Florida Power & Light Co., et al., No. 3D14-1467 (Fla. App. 3d Dist. Jan. 23, 2015). None of the appellants challenge the Siting Board’s findings regarding groundwater modeling. *Id.* *See also*, Initial Brief of Appellant, Miami-Dade County, Miami-Dade County, et al. v. Florida Power & Light Co., et al., No. 3D14-1467 (Fla. App. 3d Dist. Jan. 23, 2015); Initial Brief of Appellant, Village of Pinecrest, Miami-Dade County v. Florida Power & Light Co., et al., No. 3D14-1467 (Fla. App. 3d Dist. Jan. 23, 2015).

sovereign submerged lands in the Biscayne Bay Aquatic Preserve for a series of radial collector well laterals beneath the bottom of Biscayne Bay.” Siting Board Order at Exhibit A p. 6. The City of Miami participated in all aspects of this proceeding and had ample opportunity to have its issues aired. Therefore, it should be precluded from raising issues with FPL’s groundwater modeling again in this proceeding.

V. CONCLUSION

None of the City of Miami’s proposed contentions is timely raised. While proposed Contention 1 in part mirrors the currently admitted Contention 2.1, the City of Miami has not timely raised this Contention and may not be admitted as an intervenor based on this Contention. The City of Miami can participate as a non-party local government, but it must take the proceeding and Contention 2.1 as it exists. Proposed Contentions 2 and 3 are both untimely and inadmissible.

Respectfully submitted,

/Signed electronically by David R. Lewis/

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May 8, 2015

**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)	
(Combined License Application))	ASLBP No. 10-903-02-COL
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Florida Power & Light Company's Answer Opposing City of Miami's Petition to Intervene in a Hearing on Florida Power & Light Company's Combined Construction and Operating License Application for Turkey Points Units 6 & 7 have been served through the E-Filing system on the participants in the above-captioned proceeding, this 8th day of May, 2015.

/Signed electronically by David R. Lewis/

David R. Lewis