UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT CO.	)	Docket No. 50-250-LA
	)	50-251-LA
(Turkey Point Nuclear Generating	)	
Units 3 and 4)	)	

NRC STAFF'S ANSWER TO THE CITY OF MIAMI'S MOTION TO REOPEN THE RECORD, PETITION FOR LEAVE TO INTERVENE, AND REQUEST TO PARTICIPATE AS A NON-PARTY INTERESTED LOCAL GOVERNMENT

Catherine E. Kanatas
Counsel for NRC Staff

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INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(i), 2.323(c), and the Atomic Safety and Licensing Board's ("Board's") Order (Clarifying Scope of Proposed Findings of Fact and Conclusions of Law and Amending Initial Scheduling Order) (Mar. 11, 2016) ("Order"),[1] the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby files its answer to the City of Miami's ("Miami" or "the City") Motion to Reopen the Record, Petition for Leave to Intervene, and Request to Participate as a Non-Party Interested Local Government ("Petition")[2] regarding Florida Power and Light Company's ("FPL") license amendment request ("LAR") to increase the ultimate heat sink ("UHS") temperature limit for Turkey Point Units 3 and 4 (collectively "Turkey Point").

As more fully set forth below, the Staff opposes the admission of the City of Miami's contentions because the City of Miami has not (1) established standing to intervene, (2)

[1] Agencywide Documents Access and Management System ("ADAMS") Accession No. ML16071A278.

[2] Petition by the City of Miami, Florida, for Leave to Intervene In a Hearing on Florida Power & Light Company's License Amendment Application for Turkey Point Units 3 & 4 Based on New Information, or, In the Alternative, to Participate as a Non-Party Interested Local Government in Any Reopened Proceedings & Motion to Reopen the Record ("Petition") (Apr. 6, 2016) (ADAMS Accession No. ML16097A605) ("Petition").

demonstrated that the contentions are timely under 10 C.F.R. § 2.309(c)(1)(i) – (iii), (3) met the Commission's contention admissibility requirements, or (4) met the Commission's reopening standards. Therefore, the Board should deny the Petition. The Board should also deny the City's request in the alternative to participate as a non-party interested local government. The City could have but chose not to request to participate in the January 2016 hearing held on CASE's similar concerns, the proceeding is now closed, and no other party sought to reopen the record. Therefore, the City's request in the alternative should be denied.

BACKGROUND

This proceeding's background has been fully briefed in several previous filings with the Board[3] and the Staff incorporates those descriptions here to avoid redundancy. As relevant here, the initial deadline for contentions was October 14, 2014.[4] Since that initial deadline, the admitted parties prepared pre-filed testimony and exhibits, provided witnesses for Board directed questioning, and filed proposed and reply findings of fact and conclusions of law on a single admitted contention related to groundwater filed by Citizens Allied for Safe Energy ("CASE"), a *pro se* intervenor.[5] On February 17, 2016, the Board closed the record in this proceeding.[6] On that same day, FPL notified the Board and parties about an Administrative order entered on February 15, 2016, in a State administrative proceeding ("February 15, 2016

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[3] *See, e.g.*, NRC Staff's Proposed Findings of Fact and Conclusions of Law Concerning Contention 1, at 2-19 (Mar. 28, 2016) (ADAMS Accession No. ML16088A429) ("Staff's Proposed Findings").

[4] Florida Power & Light Company; Turkey Point Nuclear Generating Units 3 and 4, 79 Fed. Reg. 47,689 (Aug. 14, 2014).

[5] *Florida Power & Light Co.* (Turkey Point Generating Plant, Units 3 and 4), LBP-15-13, 81 NRC 456, 476 (2015) ("LBP-15-13") (admitting a reformulated version of CASE's Contention 1). Statements of position were filed on November 10, 2015, a hearing was held in January 11-12, 2016, proposed findings of fact and conclusions of law were filed on March 28, 2016, and reply findings were filed by FPL and the Staff on April 12, 2016.

[6] *See* Order (Adopting Transcript Corrections and Closing Evidentiary Record) (Feb. 17, 2016) (ADAMS Accession No. ML16048A172).

State Order"). The Board took official notice of the February 15, 2016 State Order and requested additional briefing on that order.[7]

The Board issued an order on March 11, 2016 clarifying that

> a recent report by Miami-Dade County, alleging that the Turkey Point cooling canal system may be contributing to an increase in tritium levels in Biscayne Bay is not within the scope of the existing contention [CASE's Contention 1] and, therefore, should not be addressed in the parties' proposed findings of fact and conclusions of law. Rather, this issue may only come before us as [a] new contention.[8]

The "recent report" referenced in the Board's March 11, 2016 Order was a "Report on Recent Bay Water Quality Observations associated with Florida Power and Light Turkey Point Cooling Canal Systems Operations," that was published by Miami-Dade County on March 7, 2016 ("March 7, 2016 Miami-Dade County Study").[9] Because the Board's initial scheduling order ("ISO") did not provide procedures or establish deadlines for filing new or amended contentions, the Board's March 11, 2016 Order amended the ISO to establish such requirements. On April 6, 2016, the City of Miami filed its Petition based on a study by Dr. David A. Chin ("Chin Study"),[10] which was published as a draft for comment by Miami-Dade County on February 17, 2016.[11]

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[7] Order (Taking Official Notice and Ordering Briefing) (Feb. 26, 2016) (ADAMS Accession No. ML16057A339). The parties provided the requested briefing in their proposed findings of fact and conclusions of law.

[8] March 11, 2016 Order, at 1-2 (emphasis in original; internal citations omitted).

[9] *Id*. at 1 n.2. The report was the subject of local news articles. *Id*.

[10] The City of Miami included the Chin Study as Exhibit B to its Petition. Exhibit A of the Petition is Dr. Chin's declaration in support of the Petition. The Petition also includes an Exhibit C, which is one of the Staff's admitted non-public exhibits (Ex. NRC-044).

[11] Petition at Exhibit B.

DISCUSSION

I. The City of Miami Has Not Established Standing to Intervene in This License Amendment Proceeding

The City of Miami's Petition should be denied because the City has not established standing to intervene in this license amendment proceeding. A request for hearing or petition for leave to intervene must address the standing requirements in 10 C.F.R. § 2.309(d).[12] As discussed below, the City of Miami has not provided sufficient information to satisfy the standing requirements and, thus, the Petition should be denied.

A. The City Has Not Demonstrated That the Proximity Presumption Applies In This License Amendment Proceeding

The City of Miami claims that it has demonstrated standing based on the Commission's proximity presumption.[13] In particular, the City of Miami claims that because its boundaries extend to within 25 miles of the Turkey Point plant, it has established standing under the proximity presumption.[14] However, the City has not demonstrated that the proximity presumption applies in this license amendment proceeding.

The proximity presumption rests on an NRC finding that persons living close to a facility "face a realistic threat of harm" if a release of radioactive material from the facility were to occur.[15] This presumption is generally applied only in cases involving the construction or

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[12] 10 C.F.R. § 2.309(h) provides for certain instances where standing does not need to be demonstrated. Pursuant to 10 C.F.R. § 2.309(h)(2), if a proceeding pertains to a utilization facility located within the boundaries of a State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, no further demonstration of standing is required. However, the City of Miami recognizes that Turkey Point does not fall within its boundaries. Petition at 2. Thus, the City must demonstrate standing. 10 C.F.R. § 2.309(h)(2).

[13] Petition at 2-3.

[14] *Id.* at 3.

[15] *Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-17 (2009), *citing* LBP-09-4, 69 NRC 170, 182-83 (2009).

operation of a reactor, or major alterations to the facility.[16] The proximity presumption has only been acknowledged in license amendment proceedings when there is "an obvious potential for offsite consequences."[17] In licensing cases without such obvious potential for offsite consequences, a petitioner must allege some specific injury in fact.[18]

The City of Miami does not indicate that the UHS license amendments at issue here result in an obvious potential for offsite consequences. Instead, the City offers only general claims about supposed harms resulting from the operation of Turkey Point both before and after the UHS license amendments, without indicating how any harm or release is related to the UHS license amendments. For example, the City claims that following the extended power uprate ("EPU") and the UHS license amendments, there are potential harmful effects from "both routine and accidental releases of radioactive materials and other harmful effluents into local surface waters and groundwater."[19] However, the UHS license amendments did not change the operation of the reactor, its power output, or associated radioactive releases. Therefore, the City has not shown how the UHS license amendments are associated with any impact beyond that experienced by operation of the plant, much less an obvious potential for offsite consequences. Thus, the City has not demonstrated that the proximity presumption applies and must allege some specific injury in fact under the judicial concept of standing.[20]

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[16] *Florida Power & Light Co*. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989) (internal citations omitted) (discussing the clear implications for the offsite environment or potential for offsite consequences associated with these actions).

[17] *Id*. *See also Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 188, 191-92 (1999).

[18] *See Zion*, CLI-99-4, 49 NRC at 185, 188, 191-92 (1999).

[19] Petition at 1.

[20] See *Zion*, CLI-99-4, 49 NRC at 188, 191-92.

B. The City of Miami Has Not Demonstrated Standing Under the Judicial Concept of Standing

The City of Miami has not demonstrated standing under the judicial concept of standing. Under the judicial concept of standing, petitioners must demonstrate (1) an actual or threatened, concrete, and particularized injury ("injury-in-fact") that is (2) fairly traceable to the challenged action ("causation") and (3) likely to be redressed by a favorable decision ("redressability").[21]

The City of Miami acknowledges the judicial concept of standing[22] but makes only vague references to potential harm including: (1) harm from the continued operation of the plant from routine and accidental releases and (2) harm to "quality and quantity of water available to them for potable use, and to support natural ecosystems."[23] However, the City of Miami has not provided any support for its assertion that continued operation of the plant under the UHS license amendments would result in an increased likelihood of routine or accidental releases of radioactivity. As noted above, the UHS license amendments did not change the operation of the reactor, its power output, or associated radioactive releases. Therefore, the City has not shown how the UHS license amendment is associated with any impact beyond that experienced by operation of the plant.

Further, the City of Miami's claim regarding potable water is not supported by its Petition. The City of Miami asserts that its potable water originates from the "Floridan Aquifer."[24] However, the City of Miami has not indicated how operation of Turkey Point, Units 3 and 4, and the CCS would impact the Floridan Aquifer, in particular how it would migrate through the

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[21] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

[22] Petition at 2.

[23] *Id*. at 1-2.

[24] *Id*. at 15.

confining unit isolating the Floridan Aquifer.[25] The City of Miami's potable water would not be impacted by the operations of Turkey Point. Thus, the City of Miami cannot establish standing based on some harm to potable water use from the Floridan Aquifer.

Finally, the City of Miami does not indicate how water used to support natural ecosystems might be impacted by the UHS license amendments.[26] While the City of Miami may be concerned about any perceived impacts from the EPU, that licensing action and the Staff's environmental analyses related to the EPU are outside the scope of this proceeding and cannot establish standing in this proceeding.[27]

For these reasons, the City of Miami has not indicated that there is a particularized injury that is fairly traceable to the UHS license amendments that can be redressed in this forum. Therefore, the City of Miami has not demonstrated standing and the Board should deny the Petition.

II. The City of Miami's Petition Should Be Denied Because It Does Not Meet the 10 C.F.R. § 2.309(c) Requirements for Contentions Filed After the Initial Deadline

The City of Miami's Petition should also be denied because it does not meet the 10 C.F.R. § 2.309(c) requirements for contentions filed after the initial deadline. As discussed above, the deadline for filing initial contentions in the Turkey Point UHS license amendment proceeding was October 14, 2014.[28] The Board established that a new or amended contention filed after this deadline must satisfy the 10 C.F.R. § 2.309(c) requirements.[29] Section 2.309(c) provides that contentions filed after the deadline will not be entertained absent a determination

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[25] *See* Ex. FPL-001 at 19-20; Ex. FPL-022 at 14; Ex. NRC-001 at 24, 26; Hearing Transcript ("Tr.") at 431 (discussing the confining unit separating the Biscayne and Floridan Aquifers).

[26] Petition at 15.

[27] *Florida Power & Light Co*. (Turkey Point Nuclear Generating Units 3 and 4), CLI-15-25, 82 NRC __ (slip op. at 14) (Dec. 17, 2015) (ADAMS Accession No. ML15351A340).

[28] 79 Fed. Reg. at 47,689.

[29] March 11, 2016 Order at 3. *See id*. at 2 n.8.

by the presiding officer that the proponent of the contentions has demonstrated 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.[30]

The Board established that the deadline to file a new contention based on new information in this proceeding was thirty days from the date on which the information became publicly available.[31] The City of Miami asserts that its Petition was timely filed on April 6, 2016 because the Board "invited" any party seeking to admit a new contention based on the Chin Study to do so by April 6, 2016.[32] As an initial matter, the Board did not "invite" new contentions based on the Chin Study. Instead, the Board indicated that on March 7, 2016, Miami-Dade County published a study which claimed that there was an increase in tritium in Biscayne Bay resulting from alleged increases in water temperature and salinity, and that contentions based on this would be deemed timely if filed on or before April 6, 2016.[33] Notably, this study is not the Chin Study relied on by the Petition.

Moreover, as is evident from the Petition, the Chin Study has been publicly available for more than thirty days before the Petition was filed. Specifically, the Chin Study was published

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[30] 10 C.F.R. § 2.309(c)(1)(i)-(iii). *See* March 11, 2016 Order at 3 (providing that these requirements must be met). Instead of addressing these factors, the City addresses an eight-factor test that is no longer part of the Commission's regulations. Petition at 13-16.

[31] March 11, 2016 Order.

[32] Petition at 1. *See also id*. at 4, 17.

[33] March 11, 2016 Order at 4. This study is available at http://www.miamidade.gov/mayor/library/memos-and-reports/2016/03/03.07.16-Report-on-Recent-Biscayne-Bay-Water-Quality-Observations.pdf.

for public comment by Miami-Dade County on February 17, 2016.[34] Therefore, pursuant to the Board's revised scheduling order, the City of Miami should have filed its Petition no later than March 18, 2016. The City's failure to do so renders its Petition untimely under 10 C.F.R. § 2.309(c)(1)(iii).

Furthermore, the City of Miami does not demonstrate that the information in the Chin Study was previously unavailable, as required by 10 C.F.R. § 2.309(c)(1)(i). The City claims that the "scientific support for the City's contentions was not available until the publication of the Chin Study on March 7, 2016."[35] Yet, the City then states that it "has suspected many of the conclusions confirmed by the Chin Study for some time…."[36] Moreover, the City states that the Chin Study is based upon a review of historical data.[37] For example, the information used to construct the heat balance model in the Chin Study was available prior to the publication of the Chin Study. As the Commission has explained, a "petitioner or intervenor [cannot] delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention. To conclude otherwise would turn on its head the regulatory requirement that new contentions be based on 'information … *not previously available*.'"[38]

The City also does not indicate how the information in the Chin Study is materially different than information previously available as required by 10 C.F.R. § 2.309(c)(1)(ii). The

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[34] Petition, Ex. B, at 1. Notably, the report on the study completed by Dr. Chin was described as "preliminary" and as subject to change based on public comments received through the County's website. *See id*.

[35] Petition at 14.

[36] *Id*. *See id*. ("After the Chin Study was published, the City's suspicions that the hypersaline plume in the area of Turkey Point was emanating from the cooling canal system were scientifically confirmed.").

[37] *Id*. at 4, 8.

[38] *Northern States Power Co*. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010) (internal citations omitted); *see also* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46562, 46566 (Aug. 3, 2012).

City states that it feels "compelled to intervene in these proceedings" given the alleged "deleterious effects of the cooling canal system on the nearby ground and surface waters."[39] However, the City's assertions mirror the concerns CASE raised in October 2014. For example, CASE provided a number of exhibits in support of its assertions that: (1) there was a steady upward trend in CCS salinity prior to the EPU;[40] (2) the EPU was the cause of increased temperatures and salinity in the CCS, rather than low precipitation and an algae bloom;[41] and that (3) increases in tritium concentrations outside of the CCS (detected in 2011 and 2013) demonstrate that hypersaline water is migrating from the CCS.[42] Likewise, CASE argued that the 2013 EPU increased the amounts of tritium and salinity leaking from the canal,[43] that higher CCS temperatures increase the intrusion of saline water into the aquifer,[44] and that the UHS amendments will result in increased operating temperatures.[45] The City does not indicate how any of the information it relies on in the Chin Study for the same arguments is materially different than publicly available information CASE relied on, or that the Staff or FPL discussed in their responses to CASE's claims. Therefore, even assuming the City's contentions met each of

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[39] Petition at 15.

[40] [CASE's] Initial Statement of Position, Testimony, Affidavits and Exhibits (for January, 2015 Evidentiary Hearing), at 23 (Oct. 9, 2015) (ADAMS Accession Package No. ML15286A356) ("CASE's Statement of Position").

[41] [CASE's] Joint Rebuttal to NRC Staff's and FPL's Initial Statements of Position, Exhibit List and Exhibits, at 25, 28 (Dec. 1, 2015) (ADAMS Accession No. ML15335A340) ("CASE's Rebuttal Statement of Position").

[42] Ex. INT-002 at Slides 8-10; CASE's Statement of Position at 39; CASE's Rebuttal Statement of Position at 17, 26. Both CASE and the Staff also provided the same study concerning CCS water migrating into the Biscayne Aquifer that Miami provides as an exhibit in support of its petition. *See* Ex. INT-049; (Ex. NRC-044).

[43] [CASE's] Petition to Intervene and Request for a Hearing, at 8 (Oct. 14, 2014) (ADAMS Accession No. ML14290A510).

[44] CASE's Statement of Position at 20-21.

[45] *Id*. at 19-22.

the general contention admissibility requirements in 10 C.F.R. § 2.309(f)(1), the City's contentions should be denied.[46]

III. The City of Miami's Petition Should Be Denied Because It Does Not Proffer an Admissible Contention

The City of Miami's Petition should also be denied because it does not proffer a contention meeting the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).[47] Pursuant to § 2.309(f)(1), a contention is admissible if it:

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

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[46] March 11, 2016 Order at 3 (explaining that new contentions based on new information filed after the initial deadline must meet the timing requirements in 10 C.F.R. § 2.309(c)(1)(i)-(iii) and the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vi)).

[47] 10 C.F.R. § 2.309(a) (providing that a petitioner must submit at least one admissible contention that meets all the requirements of 10 C.F.R. § 2.309(f) to intervene in a licensing proceeding). *See* Board's March 11, 2016 Order at 3 ("In addition to satisfying the timing requirements of 10 C.F.R. § 2.309(c)(1)(i)–(iii), a new or amended contention filed by a party or participant to the proceeding must also meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)(i)–(vi).").

The Commission has emphasized that the 10 C.F.R. § 2.309(f)(1) contention admissibility requirements are "strict by design."[48] Failure to comply with any one of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for dismissing the proposed contention.[49]

However, none of the City's proffered contentions are admissible. The City makes two arguments that it claims support each of its contentions being within the scope of this proceeding. First, the City asserts that a Subpart G evidentiary hearing is warranted for each of its contentions.[50] However, the City does not indicate what this claim has to do with the scope of the proceeding. Further, the City provides no basis for this assertion. Section 2.700 provides that Subpart G hearing procedures apply only to certain enumerated types of proceedings. The Board conducted this proceeding under the informal hearing procedures in Subpart L and the City has not indicated why the Board should find that resolution of any of its contentions

> necessitates resolution of issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter.[51]

Second, the City argues that each of its contentions are within the scope of this proceeding because the "Board's March 11, 2016 order invited petitions to raise possible contentions with respect to the Chin Study."[52] But the Board's March 11, 2016 Order did not "invite" petitions to be filed or suggest that any contention filed would be within the scope of the UHS license amendment proceeding. Instead, the Board's March 11, 2016 Order established procedures for filing contentions after the initial filing deadline based on new information, as the

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[48] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station Unit 2), CLI-03-14, 58 NRC 207, 213 (2003).

[49] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999), *citing Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

[50] Petition at 6, 8, and 11-12.

[51] *Id*. at 4, 8, and 11-12 (citing 10 C.F.R. § 2.700).

[52] Petition at 4, 8, and 12.

Board's initial scheduling order did not do so. The Board's order specified that a late-filed contention must meet each of the 10 C.F.R. § 2.309(f)(1) requirements, among other things. Further, the Board's March 11, 2016 Order did not ask that petitions be filed based on the Chin Study; as noted above, the Board's March 11, 2016 Order did not reference the Chin Study. Thus, neither of these arguments support the City's view that its contentions are within the scope of the UHS license amendment proceeding. Moreover, as explained below, none of the City's contentions meet the remaining 10 C.F.R. § 2.309(f) requirements. Therefore, the contentions should be found inadmissible.

A. Proposed Contention 1 (Challenging the Premise of FPL's UHS LAR)

Contention 1 relates to the need for the UHS license amendments.[53] In particular, Contention 1 challenges the "premise" of FPL's UHS LAR and the Staff's related EA, as both assume that the UHS license amendments would allow for greater operational flexibility at Turkey Point.[54] The City asserts that the Chin Study shows that the EPU caused such a significant increase in baseline temperatures that increasing the "maximum allowable temperature of the canals" to 104º F would "allow very little operational flexibility."[55] The City claims that "in order to increase the operational flexibility, the maximum allowable UHS temperature would need to be increased to a higher temperature than 104°F, and the consequent environmental impacts of the higher maximum temperature assessed."[56] The City argues that because FPL did not submit such a request, "the operational flexibility of Units 3 and

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[53] *Id*. at 5 (noting that Contentions 1 and 3 "speak" to the need for the proposed action).

[54] *Id*. at 4. *See also id*. at 3 (stating that Contention 1 undermines the "premise" of the UHS LAR – namely, that FPL needed a license amendment to run the CCS at higher temperatures to have operational flexibility during periods of high air temperatures, and other environmental factors).

[55] *Id*. at 3.

[56] Petition at 6.

4 [is] in fact reduced to below pre-uprate conditions and the likelihood of a required cold shutdown (and reduced grid reliability) is increased."[57]

Contention 1 should be denied because it fails to raise a genuine dispute on a material issue within the scope of this proceeding. Under 10 C.F.R. § 50.90, if a licensee desires to amend its license, it may submit an LAR for the Staff's review. In doing its review, the NRC generally defers to an applicant's stated purpose "so long as that purpose is not so narrow as to eliminate alternatives."[58] In 2014, FPL submitted the UHS LAR to request a 4º F increase in the UHS technical specification ("TS") temperature limit. Thus, the scope of this proceeding is limited to that request, not a hypothetical request for a greater increase in the UHS TS temperature limit. While the City of Miami points to the Chin Study for the proposition that FPL should have asked for a greater temperature increase, there is no genuine dispute that raising the allowed inlet temperature from 100 ºF to 104 ºF provides additional operational flexibility because the plant is allowed to continuing operating when it otherwise would have been forced to shut down. Further, the City of Miami points to no requirement that FPL should have sought a license amendment allowing for an UHS TS limit of more than 104 ºF.

Likewise, Contention 1 does not raise a genuine material dispute with the environmental analysis performed for the UHS license amendments. The City argues that the "environmental impact of the uprate on the UHS as reported by the Chin Study has not been taken into account by the NRC in evaluating the [UHS license amendments]."[59] The City argues that the Chin Study shows that the EPU "significantly increased the heat loading on the UHS."[60] This is not in

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[57] *Id*.

[58] *South Carolina Elec. & Gas Co. & South Carolina Pub. Serv. Auth.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 110 (2009), *aff'd in part, rev'd in part* on other grounds in CLI-10-1.

[59] Petition at 6.

[60] *Id*.

dispute. The Staff's EPU EA, which was incorporated by reference into the UHS EA, assumed that the heat load would increase post-uprate.[61] The City also claims that "…the average intake temperature in the UHS has increased by 4.7 °F, which is more than the 4.0 °F increase in [the] maximum allowable temperature that has been permitted by the NRC."[62] As an initial matter, this claim is not accurate: the average temperature increase anticipated to result from the EPU and the increase in the allowable TS limit resulting from the UHS LAR are not one and the same. Even assuming *arguendo* that the claim was accurate, it is not relevant to the UHS license amendments; the UHS license amendments did not increase the plants' reactor coolant temperature or power level or the value of the plants' heat load discharged to the CCS. Instead, the UHS license amendments set a new maximum TS limit for the CCS, which allowed FPL greater operational flexibility to continue operating above the previous 100 °F TS limit. As the Board previously noted in considering CASE's contentions, a "violation of the TS limit for the CCS, whatever the cause of the temperature increase, requires a dual unit shutdown."[63]

Further, contrary to the City of Miami's claim, the Staff's UHS EA did not need to consider the environmental impacts of an UHS TS limit of greater than 104 °F; that was not the action proposed nor was it reasonable to expect a limit of 104 °F to be exceeded for any significant time because the plants would have to shut down if the temperature exceeded that value.[64] While the City of Miami asserts that the Chin Study "shows" that a higher limit is

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[61] And as explained at the hearing and in the Staff's filings, the heat load actually decreased post-EPU, with the retirement of Unit 2. The EPU licensing action and the sufficiency of the EPU EA is not at issue in this proceeding. *Turkey Point*, CLI-15-25, 82 NRC __ (slip op. at 13-14 and n.66).

[62] Petition at 6.

[63] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Unit 3 and 4), LBP-15-13, 81 NRC 456, 477 (2015). To the extent Contention 1 is seeking to challenge the exigent nature of the UHS amendments, such challenge is outside the scope of this proceeding. See *id.* (rejecting CASE's Contention 2, which challenged the exigent nature of the UHS LARs).

[64] *Pac. Gas & Elec. Co*. (Diablo Canyon Power Plant, Units 1 and 2) CLI-03-2, 57 NRC 19, 29 (Feb. 14, 2003) ("We have long declined to assume that licensees will refuse to meet their obligations under their licenses or our regulations").

needed to allow operational flexibility, these assertions do not raise a genuine dispute with the UHS LAR. For these reasons, Contention 1 does not raise a genuine material dispute with the UHS LAR or the Staff's UHS EA and should be denied.

B. Proposed Contention 2 (Challenging the Staff's Conclusion Regarding Impact to Groundwaters)

Contention 2 challenges the conclusion in the Staff's UHS EA that the UHS license amendments would have no significant impact to groundwater resources.[65] The City asserts that the Chin Study "demonstrates" that the May 2013 EPU resulted in increases in the amounts of saline and radioactive effluent that have been discharged from the canals into the area ground and surface waters.[66] The City of Miami claims that higher temperatures in the CCS would exacerbate the salinity intrusion into the Biscayne Aquifer.[67] The City also asserts that the UHS license amendments will result in even more elevated temperatures due to the increased allowable operating range.[68] Further, the City argues that the UHS amendments will "result in a significant increase in the amount of effluent emanating from the [CCS], and leaching into the nearby ground and surface waters."[69] Thus, the City claims Contention 2 "raises a disputed issue of material fact that necessitates an evidentiary hearing."[70]

Contention 2 is inadmissible because it is unsupported and does not raise a genuine dispute. First, the City of Miami points to no changes from the UHS license amendments that would cause the CCS temperatures to increase beyond the levels occurring just prior to the license amendments. Likewise, the City of Miami points to no changes from the UHS license

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[65] Petition at 7.

[66] *Id*.

[67] *Id*. at 8.

[68] *Id*. at 10.

[69] *Id*. at 9.

[70] *Id*. at 8.

amendments that would result in a significant increase in the amount of effluent emanating from the CCS. The City of Miami's assertions that the UHS license amendments will result in higher CCS temperatures are also unsupported.[71] The City states that if one assumes the rainfall rate does not change, then increased temperatures will result in increased salinity and increased discharge into the groundwater.[72] However, the City's analysis assumes higher temperatures in the CCS without providing any discussion, modeling, or support that merely changing the allowable inlet temperatures for continued operation would result in increased temperatures in the CCS. Because the City has not provided a supported challenge raising a genuine dispute with the conclusions in the Staff's UHS EA, Contention 2 should be denied.

Contention 2 also raises out-of-scope challenges. In particular, Contention 2 challenges the 2013 EPU. For example, the City appears to confuse and conflate the EPU and UHS license amendments by claiming that the EPU caused temperature increases in the CCS since 2013, and thus, the "effect of increased operational temperatures on evaporation rates has not been temporary as asserted by the NRC."[73] Challenges to the EPU licensing action or the environmental analysis supporting the EPU are outside the scope of this proceeding.[74] Moreover, the City's claim does not provide any support for its claim that an increase in the allowable intake temperature limit will result in increased temperatures in the CCS. For these reasons, Contention 2 should not be admitted.

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[71] Petition at 9-10.

[72] *Id*. at 10.

[73] *Id*. at 9.

[74] 79 Fed. Reg. 47,689 (providing opportunity to intervene in UHS LAR proceeding); *Turkey Point*, CLI-15-25, 82 NRC __ (slip op. at 13-14 and n.66) (stating that the EPU licensing action and previous environmental analyses, including the EPU EA, were not being revisited in this proceeding). Moreover, contrary to the City's claim, the Staff predicted permanent temperature increases of a few degrees in its review of the EPU. 77 Fed. Reg. 20,062.

C. Proposed Contention 3 (Challenging the Impact of Algae on the CCS' Performance)

Like Contention 1, Contention 3 is a challenge to the need for the UHS license amendments.[75] In particular, Contention 3 challenges FPL's and the Staff's conclusions that algae concentrations within the CCS impact the CCS' heat transfer capabilities.[76] Contention 3 claims that the recent algae concentrations within the CCS do not impact its heat transfer capabilities and reductions in algae concentration would not improve heat transfer capabilities.[77] The City claims that the Chin Study refutes FPL's claim that the algae impacts heat transfer capabilities.[78]

Contention 3 is inadmissible because it is unsupported and does not raise a genuine dispute with the LAR. Notably, the Chin Study actually contradicts the City's assertions regarding algae. In particular, the Chin Study acknowledges that increased heating in the CCS was caused, in part, by the increased algae concentration.[79] Thus, Dr. Chin agrees with the Staff's and FPL's conclusion that algae can and does contribute to increased heating and reduced heat transfer capabilities of the CCS. Therefore, these claims do not raise a genuine dispute with the UHS LAR. Likewise, the City's claims about the NRC preparing an environmental impact statement ("EIS") in light of the Chin Study are also unsupported and do not raise a genuine dispute with the UHS EA. The City does not provide any explanation of why changing FPL's and Staff's conclusions with respect to algae would materially change the Staff's ultimate environmental findings.[80]

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[75] Petition at 5.

[76] *Id*. at 11.

[77] *Id*.

[78] *Id*.

[79] *See, e.g.,* Petition, Ex. B, at 25.

[80] As noted above, to the extent the contention is challenging the Staff's treatment of the UHS license amendments as exigent, this is outside the scope of the proceeding. *Turkey Point*, LBP-15-13, 81 NRC 456 at 477.

Contention 3 is also inadmissible because its "purpose and need" claims do not raise a genuine material dispute. As explained in response to Contention 1, the NRC defers to the licensee with respect to the purpose and need for an amendment, unless the purpose is so narrowly defined that it prevents consideration of alternatives.

IV. The Petition Should Be Denied Because It Does Not Meet the Reopening Standards

The City's Petition should also be denied because it does not meet the reopening standards. As the Board's March 11, 2016 Order explained, a petitioner seeking to introduce a new contention in this proceeding, which was closed on February 17, 2016, must meet the reopening standards in addition to meeting the 10 C.F.R. § 2.309(c) standards for late-filed contentions and the general 10 C.F.R. § 2.309(f)(1) contention admissibility standards.[81] Section 2.326(a) of the Commission's regulations states that a motion to reopen will not be granted unless the following criteria are satisfied:

> a. The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
>
> b. The motion must address a significant safety or environmental issue; and
>
> c. The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.[82]

Additionally, one or more affidavits showing that the motion to reopen meets the above three criteria must accompany the motion.[83]

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[81] March 11, 2016 Order at 3. *See also Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009).

[82] Section 2.326(d) further provides that a motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the requirements in 10 C.F.R. § 2.309(c)(1)(i)-(iii) for contentions submitted after the original deadline for filing. As discussed *supra* at pgs. 7-11, the contentions do not satisfy the 10 C.F.R. § 2.309(c)(1)(i)-(iii) requirements.

[83] 10 C.F.R. § 2.326(b). Each affidavit must contain statements from competent individuals with knowledge of the facts alleged or experts in disciplines appropriate to the issues raised. *Id*.

For the reasons discussed below, the City does not meet the heavy burden of reopening the record in this proceeding.[84] Therefore, its motion to reopen should be denied.

A. The City of Miami's Contentions Are Untimely and Do Not Raise an Exceptionally Grave Issue

In its Motion to Reopen, the City moves to reopen the record in this proceeding based on its Petition and the arguments contained therein.[85] Under 10 C.F.R. § 2.326(a)(1), a motion to reopen "must be timely." The City argues that the Chin Study "constitutes new scientific data."[86] However, as discussed above, the Chin Study does not constitute "new" data under the Board's revised scheduling order, as it was publicly available more than thirty days before the motion to reopen and petition were filed (i.e., Miami-Dade County published it for public comment on February 17, 2016). Therefore, the Petition should have been filed no later than March 18, 2016, and it is untimely pursuant to the Board's revised scheduling order.

Further, the Motion to Reopen does not raise "an exceptionally grave issue."[87] The Commission "anticipates that this exception [to the timeliness requirement] will be granted rarely and only in truly extraordinary circumstances."[88] While the Commission has stated that "an untimely raised environmental issue could be 'exceptionally grave,' depending on the circumstances of the case and the facts presented,"[89] the City has not shown that there is exceptionally grave issue related to the UHS license amendments. Instead, the City has only

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[84] The Commission has held "[t]hat the burden of satisfying the reopening requirements is a heavy one [and that] proponents of a reopening motion bear the burden of meeting all of [these] requirements." *Oyster Creek,* CLI-09-7, 69 NRC at 287 (internal quotations omitted, alteration in original).

[85] Petition at 16.

[86] *Id*.

[87] *See* 10 C.F.R. § 2.326(a)(1) (providing an exception to its timeliness requirement).

[88] Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19536 (May 30, 1986) (Final Rule).

[89] *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 500-01 (2012).

made assertions related to the operation of the CCS and the EPU and claimed that a different license amendment should have been submitted. Therefore, the City of Miami's Motion to Reopen is untimely, and this untimeliness cannot be excused.

B. The City of Miami's Motion to Reopen Does Not Address a Significant Environmental Issue

Under 10 C.F.R. § 2.326(a)(2), a motion to reopen must address a significant safety or environmental issue. When a motion to reopen is untimely, the 10 C.F.R. § 2.326(a)(1) "exceptionally grave issue" test supplants the 10 C.F.R. § 2.326(a)(2) "significant safety or environmental issue" test.[90] As discussed above, the City's untimely arguments do not raise an "exceptionally grave" issue; therefore, the City of Miami does not meet the requirements of 10 C.F.R. § 2.326(a)(2).

Moreover, even if the City of Miami had filed its Motion to Reopen in a timely fashion, the motion still does not raise a significant environmental issue under 10 C.F.R. § 2.326(a)(2). For environmental issues, the Commission has found that the standard for showing significance to reopen a closed record is analogous to the standard for supplementing an EIS.[91] This standard is that the Staff must prepare a supplement to a final EIS if the Staff has not taken the action and: "(1) [t]here are substantial changes in the proposed action that are relevant to environmental concerns; or (2) [t]here are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."[92] Any

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[90] *Southern Nuclear Operating Co*. (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC at 225 n. 44 (*citing Pub. Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74, 78 (1988)).

[91] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19, 28-29 (2006).

[92] 10 C.F.R. § 51.92(a).

such new information must "paint a '*seriously* different picture of the environmental landscape.'"[93]

The City of Miami asserts that its Motion to Reopen raises a significant environmental issue because Contention 2 "challenges NRC's findings that there will be no significant resulting impacts on groundwater from the license amendment[s]."[94] As discussed above, Contention 2, repeats assertions central to CASE's admitted contention, which has been fully briefed before the Board with substantial prefiled and live testimony provided by witnesses. The City's Petition and Motion do not contribute information or raise issues significantly different than those raised by CASE's contention. Thus, the City's Motion to Reopen does not raise a significant environmental issue warranting reopening the record.

The City of Miami also asserts that its Motion to Reopen raises a significant environmental issue because Contentions 1 and 3 challenge whether the amendments would solve the potential for "cold shutdown" and "grid instability."[95] This is not a significant environmental issue; this is only the City of Miami questioning whether a different amendment should have been submitted. An NRC proceeding is focused on litigable claims on actual licensing actions. The City has not raised a significant environmental concern with the UHS license amendments. Therefore, these claims do not support reopening the record.

C. The City of Miami's Motion to Reopen Does Not Show that a Materially Different Result Would Be Likely Had the Chin Study Been Considered Initially

Under 10 C.F.R. § 2.326(a)(3), a motion to reopen "must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially." One Board has explained that, under this standard, "[t]he movant must

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[93] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC at 28 (quoting *Nat'l Comm. For the New River, Inc. v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis in original).

[94] Petition at 17.

[95] *Id*.

show that it is *likely* that the result would have been materially different, i.e., that it is more probable than not that [the movant] would have prevailed on the merits of the proposed new contention."[96] The Commission has made clear that the evidence provided in support of a motion to reopen must be sufficiently compelling to suggest a likelihood of materially affecting the ultimate results in the proceeding.[97]

The City of Miami has not demonstrated that a materially different result would have been likely in this proceeding had the Chin Study been considered initially. The City asserts that the Staff "would not have issued a [finding of no significant impact] if the Chin Study had been considered initially within the context of these proceedings."[98] However, the City's contentions do not demonstrate that the UHS license amendments have had any impact on the groundwater, much less a significant impact on the groundwater warranting an EIS. Likewise, the City of Miami has not indicated how the Chin Study undermines the analysis in the EA such that the Staff's analysis would have been materially different in light of the information.[99] Further, the issues raised in Contentions 1 and 3 are not material to the findings the Staff must make. Therefore, these contentions could not have led to a materially different result. Even if those issues were material, the City of Miami's Petition and Motion do not demonstrate that FPL should have filed a license amendment requesting an even higher UHS limit or that the UHS LAR did not result in greater operational flexibility. Instead, the City's Petition reflects a

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[96] *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 549 (2010) (emphasis in original).

[97] *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 498 (2012).

[98] Petition at 17.

[99] *See Blue Ridge Environmental Defense League v. NRC*, 716 F.3d 183, 199 (D.C. Cir. 2013) (citing *Mass. v. NRC*, 708 F.3d 63, 76-77 (1st Cir. 2013) for the proposition that a petitioner's "mere pointing to a piece of information and speculating that the results of the [environmental risk analysis] may be different was not sufficient to meet" the Commission's reopening standards).

misunderstanding of operational flexibility and the authorization granted by the UHS license amendments.

For these reasons, the City of Miami's Motion to Reopen does not satisfy the reopening standards and should be denied.

V. The Board Should Deny the City's Request to Participate as an Interested Party

Finally, the Board should deny the City's request, made in the alternative, that it be allowed to participate as an interested non-party local government pursuant to 10 C.F.R. § 2.315(c).[100] Under 10 C.F.R. § 2.315(c), the presiding officer will afford an interested local governmental body that has not been admitted as a party under § 2.309 a reasonable opportunity to participate in a hearing. The participation of any local governmental body "shall be limited to unresolved issues and contentions, and issues and contentions that are raised after the…local governmental body… becomes a participant." *Id*. Each local governmental body "shall, in its request to participate in a hearing, designate a single representative for the hearing." *Id*. The representative must, among other things, "identify those contentions on which they will participate in advance of any hearing held." *Id*.

In this proceeding, a hearing was held on January 11 – 12, 2016. Given that the City's concerns were similar to CASE's concerns, the City could have requested that the Board afford it an opportunity to participate in the hearing or submit a limited appearance statement. As the Petition explains, the City's concerns related to the CCS and groundwater existed before the Chin Study so there was no need for the City to wait to make its 10 C.F.R. § 2.315(c) request. At this time, the City's request is premised on the proceeding "being reopened on the motion of another party."[101] However, no other party filed a motion to reopen the proceeding. Further, the

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[100] Petition at 19.

[101] *Id*.

City has not shown that another hearing is warranted based on the Chin Study or its proposed contentions. Therefore, the City's request in the alternative should be denied.[102]

CONCLUSION

The City of Miami's Petition should be denied because the City has not demonstrated standing in the UHS license amendment proceeding, did not meet the 10 C.F.R. § 2.309(c) requirements for contentions filed after the initial deadline, did not submit an admissible contention, and did not meet the reopening standards. The Board should also deny the City's alternative request to participate as an interested non-party local government pursuant to 10 C.F.R. § 2.315(c) as a hearing has already been held on issues similar to those raised by the City and no other party sought to reopen the record in this proceeding.

Respectfully submitted,

Signed (electronically) by

_____

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-16 F3
Washington, DC 20555-0001
Telephone: (301) 287-9203
E-mail: catherine.kanatas@nrc.gov
Date of Signature: May 2, 2016

[102] Although the City's request to appear as an interested local government appears to be moot because no other petitioners sought to reopen the record, the Staff would not oppose the City of Miami being granted non-party interested local government status for the remaining portion of CASE's admitted Contention 1, assuming that granting the City this status would not alter or otherwise change the proceeding's schedule. If the City were granted status as an interested local government, it would be confined to filing a petition for review or responding to a petition for review with respect to any Board order issued in the now-closed proceeding CASE participated in. 10 C.F.R. § 2.315(c).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT CO.	)	Docket No. 50-250-LA
	)	50-251-LA
(Turkey Point Nuclear Generating	)	
Units 3 and 4)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO THE CITY OF MIAMI'S MOTION TO REOPEN THE RECORD, PETITION FOR LEAVE TO INTERVENE, AND REQUEST TO PARTICIPATE AS A NON-PARTY INTERESTED LOCAL GOVERNMENT," dated May 2, 2016, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 2nd day of May, 2016.

/Signed (electronically) by/
Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-16 F3
Washington, DC 20555-0001
Telephone: (301) 287-9203
E-mail: catherine.kanatas@nrc.gov
Date of Signature: May 2, 2016