UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns

In the Matter of FLORIDA POWER & LIGHT CO. (Turkey Point Nuclear Generating Units 6 and 7)	Docket Nos. 52-040-COL 52-041-COL

CLI-17-12

MEMORANDUM AND ORDER

The City of South Miami appeals the Atomic Safety and Licensing Board's ruling on its petition to intervene challenging the combined construction and operating license application of Florida Power & Light Company (FPL) for two AP1000 nuclear reactors, Turkey Point Nuclear Generating Units 6 and 7.[1] For the reasons discussed below, we affirm the Board's decision.

I. BACKGROUND

FPL submitted the combined license application for Turkey Point Units 6 and 7 in 2009. The application included a statement of financial qualifications, as required by 10 C.F.R. § 50.33(f)(1).[2] About a year later, the NRC staff published a notice of hearing and opportunity to

[1] *Notice of Appeal* (Aug. 25, 2017); *An Appeal from an Order of the Atomic Safety Licensing Board: Initial Brief of Appellant, City of South Miami* (Aug. 25, 2017) (Appeal); *see* LBP-17-6, 86 NRC __ (July 31, 2017) (slip op.).

[2] *See* Florida Power & Light Company, "Turkey Point Units 6 & 7 COL Application, Part 1 – General and Financial Information," rev. 0 (June 30, 2009), at 4-6 (ADAMS accession

petition for leave to intervene.[3] In response, several hearing requests were filed. The Board granted the joint hearing request of Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association and admitted Contention 2.1.[4] The Board ultimately held an evidentiary hearing on Contention 2.1 in May 2017.[5] Thereafter, the Board found that the Staff demonstrated that the environmental impacts from FPL's proposed deep injection wells will be "small" because "the wastewater is unlikely to migrate to the Upper Floridan Aquifer" and "even if it did, the concentration of [potential contaminants] would be below the applicable [U.S.] Environmental Protection Agency (EPA) primary" standards for drinking water.[6]

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no. ML091870846). FPL submitted the most recent version of the application's financial information in August 2016. Florida Power & Light Company, "Turkey Point Units 6 & 7 COL Application, Part 1 – General and Financial Information," rev. 8 (Aug. 26, 2016), at 4-5 (ML16250A266) (Application).

[3] Florida Power & Light Company, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity to Petition for Leave to Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 75 Fed. Reg. 34,777 (June 18, 2010).

[4] LBP-11-6, 73 NRC 149, 171-72, 188-94 (2011). The Village of Pinecrest and the City of Miami participated in the proceeding as interested local governments. *Id.* at 251; LBP-15-19, 81 NRC 815, 828 (2015). Contention 2.1 (as amended and reformulated) challenged the Final Environmental Impact Statement's conclusion that environmental impacts from FPL's proposed deep injection wells will be "small" because the concentrations of four chemicals in the wastewater injections may adversely impact the groundwater should they migrate from the Boulder Zone to the Upper Floridan Aquifer. LBP-17-5, 86 NRC __, __ (July 10, 2017) (slip op. at 3).

[5] LBP-17-5, 86 NRC at __ (slip op. at 14).

[6] *Id.* at __ (slip op. at 3). This decision was not appealed. Several other intervention petitions were resolved without hearings over the course of the contested proceeding. *See* LBP-17-2, 85 NRC 14 (2017); LBP-15-19, 81 NRC at 815, *review denied*, CLI-16-1, 83 NRC 1 (2016); LBP-12-7, 75 NRC 503 (2012).

Shortly before the evidentiary hearing, in April 2017, three Florida municipalities—the Cities of Miami and South Miami and the Village of Pinecrest—filed a petition to intervene.[7] The three municipalities claimed that, in light of Westinghouse Electric Company's March 2017 bankruptcy filing, FPL's combined license application no longer demonstrates that FPL is financially qualified to cover the construction and fuel cycle costs for Units 6 and 7, as required by 10 C.F.R. § 50.33(f)(1).[8] Further, the municipalities claimed that they established good cause for submitting a new contention after the deadline for filing initial intervention petitions, based on Westinghouse's bankruptcy filing a month prior.[9] Both FPL and the Staff opposed the petition for failure to articulate an admissible contention; FPL also objected on the ground that the municipalities did not meet the good cause standard for late filing.[10] The three municipalities filed a reply to FPL's and the Staff's answers, which included the affidavit of Mark W. Crisp, P.E.[11] The Staff filed a response to the reply, and FPL moved to strike portions of the reply,

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[7] *Petition 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 and File a New Contention* (Apr. 18, 2017) (Petition).

[8] *Id.* at 7-12.

[9] *Id.* at 12. On March 29, 2017, Westinghouse sought Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. LBP-17-6, 86 NRC at __ (slip op. at 5) (citing Petition (attaching [Westinghouse] Voluntary Petition for Non-Individual Filing for Bankruptcy (Mar. 29, 2017))).

[10] *Florida Power & Light Company's Answer Opposing City of Miami, Village of Pinecrest, and City of South Miami's Petition to Intervene and Request for Hearing Regarding the Combined Construction and Operating License Application for Turkey Point Units 6 & 7* (May 15, 2017), at 13-17 (FPL Answer to Petition); *NRC Staff Answer to Petition for Leave to Intervene and New Contention* (May 15, 2017) (Staff Answer to Petition).

[11] *Petitioners' Reply to NRC Staff and FPL's Answers to Petition for Leave to Intervene in a Hearing on Florida Power & Light Company's Combined Construction and Operating License*

including the Crisp Affidavit.[12] Following oral argument, the Board denied the municipalities' request for hearing. The Board struck the Crisp Affidavit and found that, although the municipalities had demonstrated standing to intervene, their proposed contention, while timely submitted, was not admissible.[13] With all matters before it resolved, the Board terminated the contested proceeding.[14]

South Miami now appeals the Board's decision.[15] FPL and the Staff oppose the appeal.[16]

Application for Turkey Point Units 6 & 7 and File a New Contention (May 22, 2017) (Reply) (attaching *Affidavit of Mark W. Crisp, P.E.* (May 22, 2017) (Crisp Affidavit)).

[12] *NRC Staff's Unopposed Motion for Leave to File a Response to New Arguments Raised in Petitioners' Reply* (June 1, 2017). The Staff argued in its response that the municipalities "made new arguments and requests beyond the scope of the Petition, the NRC Answer, and the FPL Answer" and specifically objected to certain requests for relief articulated by the municipalities that are not at issue here. *NRC Staff's Response to New Arguments Raised in Petitioners' Reply* (June 1, 2017), at 2. The Board granted the motion. Order (Granting NRC Staff's Unopposed Motion) (June 6, 2017) (unpublished); *Florida Power & Light Company's Motion to Strike Portions of Petitioners' Reply and Affidavit of Mark W. Crisp* (June 1, 2017).

[13] LBP-17-6, 86 NRC at __ (slip op. at 6-12).

[14] *Id.* at __ (slip op. at 17).

[15] The City of Miami and Village of Pinecrest did not join South Miami's appeal.

South Miami inadvertently filed two copies of its Notice of Appeal, instead of one copy each of its notice of appeal and initial brief, on August 25, 2017, the day its appeal was due. *See Motion for an Extension of Time to File Brief* (Sept. 20, 2017). On the next business day (Monday, August 28), the Office of the Secretary advised South Miami of the error, and South Miami filed its initial brief the same day. We grant South Miami's (belated) motion and regard the appeal as timely filed.

[16] *Florida Power & Light Company's Brief in Opposition to the City of South Miami's Appeal of LBP-17-06* (Sept. 19, 2017), at 1 (FPL Brief); *NRC Staff Answer to the City of South Miami's Appeal of LBP-17-06* (Sept. 19, 2017), at 2 (Staff Brief).

II. DISCUSSION

A. Standard of Review

Ordinarily, an appeal of a decision wholly denying a request for hearing lies as a matter of right under 10 C.F.R. § 2.311(c).[17] But as the intervention petition here came late in the proceeding and was the last matter decided by the Board, South Miami's appeal arguably could be treated either as an appeal under section 2.311 or a petition for review under section 2.341.[18] Review under section 2.341 is discretionary; we will grant petitions for review of decisions of a presiding officer, "giving due weight to the existence of a substantial question" for review.[19] Given that a denial of an intervention petition is usually subject to an appeal as of right, considerations of fairness lead us to apply section 2.311 in this instance.

Unless an appeal demonstrates an error of law or abuse of discretion, we generally defer to the Board on contention admissibility rulings.[20] Recitation of an appellant's prior positions in a proceeding or statement of general disagreement with a decision's result is not sufficient; the appellant must point out the errors in the Board's decision.[21] As discussed below,

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[17] 10 C.F.R. § 2.311(c). That provision provides for an interlocutory appeal as of right on the question whether the petition should have been granted.

[18] The Board instructed the litigants that they may file appeals under section 2.311(b), FPL applies the criteria of section 2.341 in its response, and the Staff applies section 2.311 but notes that it "considered whether [section] 2.341 could also arguably apply." LBP-17-6, 86 NRC __ (slip op. at 17); FPL Brief at 7-8; Staff Brief at 6 n.35.

[19] 10 C.F.R. § 2.341(b)(4)(i)-(v).

[20] *See, e.g.*, *Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-17-2, 85 NRC 33, 40 (2017); *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-9, 83 NRC 472, 482 (2016); *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 13-14 (2014). South Miami's standing is not at issue.

[21] *See, e.g.*, *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503-04 (2007); *Texas Utilities*

we find that South Miami has failed to identify any error of law or abuse of discretion by the Board. We therefore affirm the Board's decision.

B. South Miami's Financial Qualifications Contention

To be admissible, a contention must satisfy the six-factor standard in section 2.309(f)(1). A petitioner must

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (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;
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> (v) Provide a concise statement of the alleged facts or expert opinions that support the petitioner's position on the issue and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and
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> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[22]

Contentions cannot be based on speculation but must have "some reasonably specific factual or legal basis."[23] Our rules thus require a petitioner to state the asserted facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the

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Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-10, 37 NRC 192, 198 (1993) (citing *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-92-3, 35 NRC 63, 67 (1992)).

[22] 10 C.F.R. § 2.309(f)(1)(i)-(vi).

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

contention at hearing.[24]

With respect to financial qualification, our rules require a combined license applicant that is an electric utility, such as FPL, to submit information demonstrating that it either possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs.[25] An applicant that is an established organization, such as FPL, should provide (1) an estimate of construction costs, (2) the source of construction funds, and (3) the applicant's financial statements.[26]

The proposed contention claimed that "[t]he FSER [Final Safety Evaluation Report] is deficient in concluding that FPL has demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs and FPL has failed to indicate source(s) of funds to cover these costs."[27] In considering the admissibility of the contention, the Board determined that the municipalities relied on two principal arguments. First, the municipalities claimed that Westinghouse's

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[24] 10 C.F.R. § 2.309(f)(1)(v).

[25] *Id.* § 50.33(f). A combined license applicant that does not qualify as an electric utility must also demonstrate that it is financially qualified to operate the units. *Id.*

[26] *Id.* pt. 50, app. C, I.A; *see id.* pt. 50, app. C ("[E]stablished organizations . . . will normally have a history of operating experience and be able to submit financial statements reflecting the financial results of past operations."); *id.*, pt. 50, app. C, I.A.2 ("The application should include a brief statement of the applicant's general financial plan for financing the cost of the facility, identifying the source or sources upon which the applicant relies for the necessary construction funds.").

[27] Petition at 7. Notwithstanding the reference to the FSER, the Board treated the contention as a challenge to FPL's showing of financial qualification in its combined license application because "it is clear that [the municipalities] are challenging whether FPL is entitled to a [combined license], not whether the NRC Staff's safety review of the [combined license] application was adequate." LBP-17-6, 86 NRC at __ (slip op. at 11 n.10).

bankruptcy threatens FPL's ability to recover construction costs under state processes, thereby challenging whether FPL is financially qualified to cover construction costs.[28] Second, the municipalities argued that the bankruptcy makes it difficult for FPL to secure external funding for construction costs, thereby also calling into question FPL's financial qualifications.[29] The Board found the proposed contention inadmissible "because, contrary to 10 C.F.R. § 2.309(f)(1)(vi), neither of the arguments underlying the contention raises a genuine dispute on a material issue of law or fact."[30]

As to the first issue, the Board reasoned that whether FPL will recover construction costs from Florida does not raise a genuine dispute on a material issue because FPL does not rely upon cost recovery under Florida law to demonstrate that it is financially qualified under the regulations.[31] The Board explained that the municipalities' argument is based on an incorrect interpretation of the combined license application.[32] The Board observed that the application identifies the sources of long-term construction funding for Units 6 and 7 as a mixture of internally generated cash and external funding, consistent with the standards in 10 C.F.R. Part 50, Appendix C.[33] This discussion, the Board noted, "does not identify cost recovery from Florida as a source of construction cost funding for purposes of demonstrating financial

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[28] LBP-17-6, 86 NRC at __ (slip op. at 12) (citing Petition at 10-11).

[29] *Id.* (citing Petition at 11-12).

[30] *Id.*

[31] *Id.* at __ (slip op. at 12-13).

[32] *Id.* at __ (slip op. at 13).

[33] *Id.*; *see* Application § 1.3 at 5.

qualification."[34] The combined license application does state that FPL intends to recover construction costs in accordance with state law, but the Board differentiated cost *recovery* from cost *funding*.[35] And the Board concluded that, because FPL does not rely on cost recovery as a source of construction funding, the contention did not controvert the application's statements regarding sources of construction funding.[36] Therefore, the municipalities' claim that FPL will not be able to recover construction costs is not material to FPL's financial qualification under 10 C.F.R. § 50.33(f)(1).[37]

With respect to the second argument—that Westinghouse's bankruptcy may jeopardize FPL's ability to secure external funding—the Board likewise determined that the municipalities had not raised a genuine dispute on a material issue. As support for this argument, the municipalities submitted a newspaper article stating that Westinghouse will not construct new

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[34] LBP-17-6, 86 NRC at __ (slip op. at 13-14).

[35] *Id.* FPL explained that cost recovery is discussed in the application as "sort of a defense-in depth . . . an additional reason why we're financially qualified, but it's not a source of funding." Tr. at 951-52; *see also id.* at 921 (Judge Hawkens distinguishing "between covering the outlay for construction [cost funding] versus recovering the outlay for construction [cost recovery]"); *id.* at 966 (Judge Kennedy stating that the cost recovery information in the application is "just an abundance of information"). The Board observed that regardless of the statement in the FSER that FPL plans to recover construction costs pursuant to state law, the Staff made its financial qualifications decision without regard to the potential cost recovery from Florida. LBP-17-6, 86 NRC at __ (slip op. at 14 n.13) (citations omitted). The Board instead noted that "as the FSER concludes, 'both FPL and NextEra Energy have sufficient financing capacity to fund this project from . . . internally generated operating cash flows, commercial paper and bank facilities, and long-term debt and equity capital markets.'" *Id.* (citations omitted).

[36] LBP-17-6, 86 NRC at __ (slip op. at 14).

[37] *Id.*

nuclear reactors in the United States.[38] The municipalities asserted that since there is currently no entity retained or available to build the proposed reactors, it will be harder for FPL to secure external funding.[39] While acknowledging that Westinghouse's bankruptcy may "impact some external funders' decisions to finance the project," the Board found that "the mere allegation that external funding might be impacted is insufficient to raise a genuine dispute as to whether FPL is financially qualified to construct Units 6 and 7."[40] The Board observed that the municipalities did not offer any "direct support—by factual affidavits, expert declarations, or documentary evidence—for their assertion that Westinghouse's bankruptcy will necessarily jeopardize FPL's external sources of funding."[41] As such, the Board found that the municipalities did not provide adequate support to cast doubt on the reasonableness of FPL's financing plan or its ability to implement that plan and that their speculative claim that Westinghouse's bankruptcy will jeopardize external funding sources did not raise a genuine dispute on a material issue of law or fact.[42]

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[38] *Id.* at __ (slip op. at 15) (citing Petition (attaching Russell Gold and Takashi Mochizuki, *Toshiba to Exit Nuclear Construction Business*, WALL ST. J., Jan. 31, 2017, http://www.wsj.com/articles/toshiba-to-exit-nuclear-construction-business-1485887107)).

[39] *Id.* (citing Petition at 11).

[40] *Id.* at __ (slip op. at 15).

[41] *Id.* at __ (slip op. at 16).

[42] *Id.* The Board also highlighted that the reasonable assurance standard associated with the financial qualification showing does not require "'a demonstration of near certainty that an applicant will never be pressed for funds in the course of construction,'" but instead requires only that an applicant "'have a reasonable financing plan in the light of relevant circumstances.'" *Id.* at __ (slip op. at 15) (quoting *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 18 (1978)); *see Seabrook*, CLI-78-1, 7 NRC at 21 ("Anticipated difficulties in raising funds are relevant to the reasonable assurance determination, but a

On appeal, South Miami claims that the Board first erred by finding that FPL did not rely on cost recovery as part of its financial qualifications.[43] South Miami submits that FPL considered cost recovery "significant enough" to include in its combined license application, and therefore cost recovery cannot be disregarded.[44] And South Miami adds that the Staff "believed that cost recovery was relevant and material to FPL's ability to fund the construction," based on language in the Staff's FSER that stated FPL will recover the cost of constructing the facility under state law.[45] But this argument merely repeats the municipalities' arguments below without challenging the Board's decision with any particularity and therefore provides insufficient ground for overturning the Board's decision. The record reflects that the Board considered FPL's use of cost recovery in its application and concluded that "FPL does not purport to rely on cost recovery from Florida as a source of construction funding."[46] Rather, the Board concluded that FPL intends to seek cost recovery as reimbursement for the funds it expends—in other words, FPL will obtain construction funds from other (internal and external) sources and request reimbursement through the state rate recovery process.[47] The litigants do not dispute that the

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showing of some potential difficulty would not necessarily preclude that determination, all other relevant factors being taken into account.").

[43] Appeal at 7.

[44] *Id.* at 9.

[45] *Id.* at 10. The Board examined the FSER language and concluded that, "[a]lthough the FSER is not at issue here, . . . its conclusion that FPL's financial qualification is independent of FPL's ability to recover construction costs from Florida undercuts [the municipalities'] argument that FPL's [combined license] application relies on cost recovery as part of its financial qualification statement." LBP-17-6, 86 NRC at __ (slip op. at 14 n.13).

[46] LBP-17-6, 86 NRC at __ (slip op. at 14).

[47] *Id.* at __ (slip op. at 13-14).

combined license application references both cost recovery and cost funding. But South Miami does not address the Board's explanation of the difference between cost recovery and cost funding or otherwise explain how the Board's decision was in error.

In its appeal, South Miami further claims that the dissolution of FPL's "nuclear reactor construction agreements" with Westinghouse will negatively impact FPL's financing.[48] It appears that South Miami is referring to the Reservation Agreement between Westinghouse and FPL, under which Westinghouse reserved space for the manufacture of certain "long lead time" components for Turkey Point Units 6 and 7.[49] The Reservation Agreement did not guarantee the purchase and sale of the components, let alone construction of the reactors. Because the Agreement did not purport to guarantee construction in the first instance, termination of the Agreement could not remove a guarantee of construction; therefore, as the Staff noted, the Agreement did not figure into the financial qualifications review.[50]

Additionally, South Miami argues that the Board erred in finding that Westinghouse's bankruptcy has not, by itself, raised "legitimate doubt as to whether FPL can obtain external funding."[51] In this vein, South Miami reiterates its assertion that, because FPL has no agreements currently in place for the construction of Units 6 and 7, FPL will be unable to

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[48] Appeal at 9.

[49] *See* FPL Answer to Petition at 14 (citing the Reservation Agreement, which was attached to the Petition as part of the Letter from Kerry B. Hanahan, Westinghouse, to Kelly Shaw, FPL, "Reservation Agreement for Manufacture of Long Lead Time Forgings" (May 16, 2008)).

[50] *See* Staff Answer to Petition at 18.

[51] Appeal at 13.

recover any costs for the construction of the units through the state ratemaking process.[52] In short, South Miami contends that Westinghouse's bankruptcy has made it impracticable for FPL to recover construction costs through the state ratemaking process, which takes away one of FPL's major sources of construction funding.[53] These arguments do not address the Board's determination that the proposed contention, which raised fundamentally speculative concerns about the effects of the Westinghouse bankruptcy, lacks factual or expert support sufficient to establish a genuine dispute with FPL's combined license application.[54] Instead, South Miami repeats the unsupported assertions that the municipalities made below. But as the Board

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[52] *Id.* at 11-12. South Miami argues that the Florida Public Service Commission (FPSC) requires FPL to demonstrate that its expenditures for Turkey Point Units 6 and 7 are reasonable and prudent and that the project remains feasible. *Id.* at 12. South Miami notes that because FPL requested to defer the filing of a feasibility analysis, the FPSC has not made a recent determination on the reasonableness of the project's costs or the project's feasibility. Without such a finding, FPL cannot recover its costs via rates. *Id.* at 12-13. Though the economic feasibility analysis before the FPSC is outside the scope of the NRC's combined license review, we observe that the process is ongoing. In July 2016, the FPSC granted FPL's motion to defer consideration of its cost recovery request. Order No. PSC-16-0266-PCO-EI, issued on July 12, 2016, in Docket 160009-EI, *In re: Nuclear cost recovery clause* (http://www.psc.state.fl.us/library/filings/2016/04478-2016/04478-2016.pdf). The order stated that FPL plans to file a long-term feasibility analysis in the 2017 nuclear cost recovery proceeding docket. *Id.* at 2.

[53] Appeal at 12-13. South Miami also cites reports that Westinghouse will no longer construct any new reactors in the United States. *Id.* at 13.

[54] South Miami raises a new argument on appeal—that FPL's parent company, NextEra Energy, Inc., disclosed in a Securities and Exchange Commission filing that FPL, as an electric utility subject to the jurisdiction of the FPSC, "is engaged in a risky business with no clear cut revenue stream." *Id.* at 6, 14 (citing NextEra Energy Capital Holdings, Inc., Prospectus Supplement, Filed Pursuant to Rule 424(b)(2) (Apr. 26, 2017)). This statement, which was "identical to information available in previous prospectuses," pertained to FPL's business as a general matter, not just its nuclear business. Staff Brief at 8. We decline to consider a new argument raised for the first time on appeal. *See, e.g.*, *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 458 (2006) (stating that absent extreme circumstances, the Commission will not consider new arguments or new evidence on appeal).

noted, mere speculation that Westinghouse's bankruptcy *might* impair FPL's ability to secure external funding does not call into question the reasonableness of FPL's financing plan and does not raise a genuine dispute with the application.[55] South Miami's recycled arguments on appeal do not demonstrate an error of law or abuse of discretion in the Board's decision.

Finally, South Miami challenges the Board's exclusion of the Crisp Affidavit that the municipalities submitted with their reply.[56] The Board excluded the affidavit "because it improperly 'attempt[ed] to backstop elemental deficiencies in [the] original petition to intervene.'"[57] The Board observed that a petitioner need not present all of the documentary support that will be used at the hearing at the contention pleading stage. If the original contention lacked adequate support, however, "a petitioner cannot remediate the deficiency by introducing in the reply documents that were available to it during the time frame for initially filing contentions."[58] South Miami has not explained why the Crisp Affidavit could not have accompanied the municipalities' original hearing request.[59] Instead, South Miami contends that the Board erred when it excluded the Crisp Affidavit because it should have been allowed "as a

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[55] LBP-17-6, 86 NRC at __ (slip op. at 15-16).

[56] Appeal at 7.

[57] LBP-17-6, 86 NRC at __ (slip op. at 6) (quoting *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 (2008) (internal quotation marks omitted)).

[58] *Id.* at __ (slip op. at 7) (quoting *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)).

[59] *See id*.; *see also DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 147 (2015) ("For any new arguments or new support for a contention, a petitioner must, among other things, explain why it could not have raised the argument or introduced the factual support earlier."); *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004), *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004)).

legitimate amplification of the new contention."[60] South Miami does not, however, dispute with any specificity the Board's ruling, and it has therefore not demonstrated error of law or abuse of discretion on the part of the Board.[61]

Nevertheless, we have reviewed the Crisp Affidavit and find that the affidavit, even had it been considered by the Board in its entirety, would not have made the contention admissible. The municipalities offered the Crisp Affidavit to support the proposition that "[t]here is a nexus between Westinghouse's bankruptcy and FPL's financial qualifications, because the bankruptcy and its precipitating events[ ] completely change the landscape of FPL's ability to recover before the FPSC."[62] Mr. Crisp's statements, which pertain to the Reservation Agreement, FPL's general ability to contract for construction of the proposed facility, and the effect on FPL of cost increases and schedule delays associated with two other nuclear power plants, amount to additional speculation about the possible impacts of the Westinghouse bankruptcy on FPL. Mr. Crisp does not assert that FPL will not be able to secure external funding, but rather he opines that the outcome of the construction of Turkey Point is unknown and the Westinghouse bankruptcy complicates investors' inquiry into the viability of the project.[63] This viewpoint is

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[60] Appeal at 15-16.

[61] *See Shieldalloy*, CLI-07-20, 65 NRC at 503.

[62] Reply at 7 (citing Crisp Affidavit). The municipalities later argued that the Crisp Affidavit amplified issues such as "the ability of FPL to provide reasonable assurances that it can obtain funding and to construct these units through advanced nuclear cost recovery or from external funding sources." *Petitioners' Response to FPL's Motion to Strike Portions of Petitioners' Reply and Affidavit of Mark W. Crisp* (June 12, 2017), at 6.

[63] Crisp Affidavit ¶¶ 20, 26, 28. Mr. Crisp questioned whether "construction can proceed to a successful conclusion," in light of several issues, the most significant of which is "FPL's ability to secure funding for two new units in light of the effect of bankruptcy on Wall Street's confidence to provide debt funding." *Id.* ¶ 20. Mr. Crisp also opined that "the financial

fundamentally speculative. And furthermore, considered with the municipalities' other filings, Mr. Crisp's statements do not introduce a genuine dispute with the application. Therefore, even taking into account the affidavit, the contention remains inadmissible.

In sum, South Miami repeats the arguments it made to support contention admissibility and the inclusion of the Crisp Affidavit but does not offer any specific criticisms of the Board decision, or even engage the Board's discussion of the municipalities' arguments. South Miami has pointed to no grounds on which to disturb the Board decision.[64] Because South Miami has not provided sufficient support to establish a link between the Westinghouse bankruptcy and the financial qualifications information specified in FPL's combined license application, it has not articulated an admissible contention for hearing.[65]

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markets[']' appetite to fund bonds and at what interest rate to cover FPL's construction of Turkey Point Units 6 & 7" should be reexamined. *Id.* ¶ 26.

[64] The Board rejected FPL's argument that the contention was not timely filed. LBP-17-6, 86 NRC at __ (slip op. at 8-10). FPL again raises the timeliness argument in response to South Miami's appeal. FPL Brief at 14-17. We need not reach the timeliness argument in view of our decision that the Board did not err in finding the contention otherwise inadmissible.

[65] As of the date of this order, we are scheduled to hold the uncontested hearing on the Turkey Point combined license application on December 12, 2017. Florida Power and Light Company; Turkey Point, Units 6 and 7; Combined License Application; Revised Notice of Hearing, 82 Fed. Reg. 47,044 (Oct. 10, 2017). That hearing provides us with an opportunity to review the sufficiency of the Staff's safety and environmental analyses. The adequacy of the Staff's evaluation of FPL's financial qualification is part of that review.

III. CONCLUSION

For the foregoing reasons, we *affirm* the Board's decision in LBP-17-6.

IT IS SO ORDERED.

For the Commission

NRC Seal

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of December, 2017.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 52-040 and 52-041-COL
(Juno Beach, Florida)	)	
	)	
(Turkey Point, Units 6 & 7)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the **COMMISSION MEMORANDUM AND ORDER (CLI-17-12)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara Sola]
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Dated at Rockville, Maryland,
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