UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250-SLR and 50-251-SLR
FLORIDA POWER & LIGHT COMPANY	)	ASLBP No. 18-957-01-SLR-BD01
(Turkey Point Nuclear Generating Units 3 and 4)	)	September 4, 2018

APPLICANT'S OPPOSITION TO ALBERT GOMEZ'S PETITION TO INTERVENE

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I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(i)(1) and the Atomic Safety and Licensing Board's ("ASLB" or "Board") August 15, 2018 Order,[1] Florida Power & Light Company ("FPL") hereby timely files its Answer opposing the "Proposed Petition to Intervene and for Hearing Under 10 C.F.R. § 2.206" ("Petition") sent by Mr. Albert Gomez ("Petitioner") via e-mail to the Nuclear Regulatory Commission ("NRC") on August 2, 2018.[2] The Petition purports to raise a number of putative "contentions" concerning FPL's subsequent license renewal ("SLR") application ("SLRA") for Turkey Point Nuclear Generating Units 3 & 4 ("Turkey Point").

As explained further below, FPL respectfully submits that the Board should reject the Petition as procedurally deficient on its face, given Petitioner's patent failure to comply with the electronic filing, timeliness, and substantive pleading requirements specified in the hearing notice for this proceeding and in NRC regulations. Moreover, closer scrutiny of the Petition confirms that Mr. Gomez—even when granted some procedural latitude as a *pro se* petitioner—

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1 *Fla. Power & Light Co.* (Turkey Point Units 3 & 4), Board Order (Clarifying Briefing Schedule Regarding Gomez Petition) (Aug. 15, 2018) (unpublished) (ML18227A249).

2 Proposed Petition to Intervene and for Hearing Under 10 C.F.R. § 2.206 for Docket ID # NRC-2018-0074 (Aug. 2, 2018) (ML18219A900) ("Petition").

has failed to establish standing to intervene in this proceeding under 10 C.F.R. § 2.309(d), and to proffer an admissible contention under 10 C.F.R. § 2.309(f)(1). Accordingly, the Board should deny the Petition in its entirety.

II. PROCEDURAL HISTORY

FPL filed its SLRA with the NRC on January 30, 2018, to renew the Turkey Point operating licenses for an additional 20-year period.[3] On April 10, 2018, FPL submitted Revision 1 of the SLRA.[4] As part of the SLRA and as required by 10 C.F.R. Part 51, FPL also submitted an Environmental Report ("ER") that considers the potential environmental impacts of the requested subsequent license extension.[5] On May 2, 2018, the NRC published a notice in the *Federal Register* docketing the Turkey Point SLRA and providing an opportunity for interested persons to request a hearing on the SLRA by July 2, 2018.[6] The Acting Secretary of the Commission subsequently extended the hearing request deadline to August 1, 2018, for all

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3 *See* Letter from M. Nazar, FPL, to NRC Document Control Desk, Turkey Point Units 3 and 4 Subsequent License Renewal Application (Jan. 30, 2018) (ML18037A824).

4 *See* Letter from W. Maher, FPL, to NRC Document Control Desk, Turkey Point Units 3 and 4 Subsequent License Renewal Application – Revision 1 (Apr. 10, 2018) (ML18113A134) (part of package ML18113A132). Revision 1 of the SLRA incorporates changes identified in SLRA supplements filed by FPL on February 9, 2018 (ML18044A653), February 16, 2018 (ML18053A123), and March 1, 2018 (ML18072A224). The public version of SLRA Revision 1 is available at ML18113A146.

5 *See* SLRA Appendix E, Applicant's Environmental Report – Subsequent Operating License Renewal Stage (Jan. 2018) (ML18113A145) ("ER"). FPL submitted a supplement to the January 2018 ER on April 10, 2018 that augments discussion contained in Section 4.5.3.4 concerning the effects of groundwater withdrawals for cooling canal system salinity reduction (*i.e.*, freshening) and hypersaline plume capture purposes. *See* L-2018-086, Letter from W. Maher, FPL, to NRC Document Control Desk, Appendix E Environmental Report Supplemental Information (Apr. 10, 2018) (ML18102A521). Collectively, the January 2018 ER and the April 2018 supplement constitute the "ER."

6 *See* Florida Power & Light Company; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; License Renewal Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene, 83 Fed. Reg. 19,304 (May 2, 2018) ("Hearing Notice").

interested persons.[7] Two petitions to intervene were filed on August 1, 2018, to which FPL timely responded on August 27, 2018.[8]

Mr. Gomez sent his Petition to a Senior Project Manager in the NRC's Office of Nuclear Reactor Regulation on August 2, 2018.[9] That Senior Project Manager forwarded the Petition to Hearing.Docket@nrc.gov.[10] Mr. Gomez thus did not timely file his Petition via the NRC's Electronic Information Exchange ("EIE"), as explicitly required by NRC regulations and the Hearing Notice.[11] Nor did he serve FPL with the Petition. In fact, FPL was not even notified of the Petition until August 9, 2018, when the Secretary of the Commission ("Secretary") issued a memorandum to the ASLB Panel stating that the NRC had received Mr. Gomez's Petition via email on August 2, 2018.[12] The Secretary referred Mr. Gomez's Petition to the ASLB Panel pursuant to 10 C.F.R. § 2.346(i), and also served the referral on the parties and participants to this proceeding.[13]

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7 Order (June 29, 2018).

8 *See* Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 1, 2018) (ML18213A418) ("FOE/NRDC/MW Petition"); Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018) (ML18213A529) ("SACE Petition"); Applicant's Answer Opposing Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 27, 2018); Applicant's Answer Opposing Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene" (Aug. 27, 2018) (ML18239A449) ("FPL Answer to SACE Petition").

9 *See* E-mail from Albert Gomez to Lois James, "Re: Please Resubmit your Petition to Intervene in the Subsequent License Renewal of Turkey Point Nuclear Generating Units 3 and 4" (Aug. 2, 2018) (attached to the Petition (ML18219A900)).

10 *See* E-mail from Lois James, NRC, to NRC Hearing Docket (Hearing.Docket@nrc.gov), "FW: Re: Please Resubmit your Petition to Intervene in the Subsequent License Renewal of Turkey Point Nuclear Generating Units 3 and 4" (Aug. 2, 2018) (attached to the Petition (ML18219A900)).

11 *See* Hearing Notice, 83 Fed. Reg. at 19,305; 10 C.F.R. § 2.302(a), (g)(1).

12 *See* Memorandum from Annette L. Vietti-Cook, Secretary of the Commission, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel (Aug. 9, 2018) ("SECY Referral Memorandum") (ML18221A265).

13 *See id.* at 1. The Secretary referred the entire Petition to the ASLB Panel, except for section IV(3), in which Mr. Gomez requested an extension to submit formal environmental scoping comments. SECY Referral Memorandum at 1. That portion of the Petition was referred to the Office of the Executive Director for Operations for appropriate action (*see id.*), and is not addressed further here.

On August 15, 2018, the Board issued an Order setting a September 4, 2018 deadline for the filing of answers to the Petition, and a September 11, 2018 deadline for the filing of any reply by Mr. Gomez. Pursuant to the Board's Order and 10 C.F.R. § 2.309(i)(1), FPL timely files this Answer opposing the Petition.

III. THE PETITION SHOULD BE REJECTED AS A MATTER OF LAW

A. The Petition Should Be Rejected as Procedurally-Defective and Insufficient on Its Face

The Board should reject the Petition because it is demonstrably flawed on its face. Namely, Petitioner has failed to make even a cursory showing of compliance with the applicable requirements in the NRC's Rules of Practice.[14] Indeed, the Petition disregards or ignores key requirements set forth in both the Hearing Notice and 10 C.F.R. Part 2.[15]

As a threshold procedural matter, Mr. Gomez failed to file the Petition in a timely manner and in accordance with the NRC's mandatory E-Filing procedures. The Hearing Notice makes clear that "[a]ll documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition) . . . *must* be filed in accordance with the NRC's E-Filing rule."[16] To facilitate compliance with the "procedural requirements of E-

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[14] *Cf. Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 34, 38 (2006) (denying a motion to reopen the record because "[o]n its face, the Motion . . . does not satisfy [the reopening] criteria; indeed, it does not even attempt to do so," and the Commission will not consider restarting proceedings "based on a pleading that is defective on its face").

[15] FPL recognizes that *pro se* petitioners like Mr. Gomez are granted "some latitude." *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC __, __ (Apr. 12, 2018) (slip op. at 10). As such, they are not held to the "same standards of clarity and precision to which a lawyer might reasonably be expected to adhere." *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015). That latitude, however, has limits. As the Commission recently noted, "[f]airness to all involved in NRC's adjudicatory procedures requires that *every* participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations." *Seabrook*, CLI-18-4, 87 NRC at __, __ (slip op. at 10 n.49) (citation omitted; emphasis added). Moreover, contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will need to defend. *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 n.53 (2015). As discussed herein, Petitioner has not come close to meeting any of the threshold procedural requirements for being admitted as a party to this proceeding.

[16] Hearing Notice, 83 Fed. Reg. at 19,305 (emphasis added).

Filing," the Hearing Notice directed prospective hearing participants to contact the Office of the Secretary at least 10 days prior to the filing deadline to request a digital identification (ID) certificate, and to advise the Secretary that the participant will be submitting a request or other adjudicatory document.[17] The Hearing Notice states unequivocally that "[t]o be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date."[18]

Mr. Gomez failed to meet either of these basic requirements, despite being given three months to prepare and file his Petition, as well as detailed instructions on how to: (1) complete the E-Filing process, (2) seek any necessary assistance from the NRC's Electronic Filing Help Desk, and (3) seek an exemption from the E-Filing requirements in accordance with 10 C.F.R. § 2.302(g).[19] Based on the e-mail correspondence attached to the SECY Referral Memorandum, it appears that Mr. Gomez did not seek assistance from SECY in filing his Petition via the EIE system (as required by the Hearing Notice) until August 2, 2018, *after* the filing deadline.[20] FPL does not dispute Mr. Gomez's representations that he experienced technical difficulties when attempting to file his Petition via the EIE system. However, it respectfully submits that he had ample time and opportunity to address any such difficulties, particularly in light of the express instructions and guidance provided in the Hearing Notice—prior to the August 1 deadline.[21]

Additionally, Petitioner's failure to make even a facial showing of compliance with the standing and contention admissibility requirements in 10 C.F.R. § 2.309 warrants rejection of the

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17 *Id.*

18 *Id.* at 19,306.

19 *See id.* at 19,305-06.

20 *See* Enclosure to SECY Referral Memorandum.

21 *See generally* Hearing Notice, 83 Fed. Reg. at 19,304 *et seq.*

Petition. Significantly, the Petition does not contain a single reference to Section 2.309. (Indeed, the title of the Petition references 10 C.F.R. § 2.206.) Nor does it reflect any deliberate or focused attempt by Petitioner to explain why he has standing to intervene under Section 2.309(d), or how any of his proposed "contentions" satisfy the admissibility criteria in Section 2.309(f)(1)(i)-(vi). Again, the Hearing Notice is explicit with regard to the need for *all* petitioners to affirmatively address these fundamental pleading requirements.[22] Mr. Gomez's failure to do so compels dismissal of the Petition.[23]

For the foregoing reasons, the Board should reject the Petition as being procedurally deficient on its face.

B. Petitioner Has Failed to Establish Standing to Intervene

Putting aside the above-discussed procedural defects, Mr. Gomez fails to demonstrate that he has standing to intervene in this proceeding, in contravention of 10 C.F.R. § 2.309(d). For this reason alone, he cannot be admitted as a party to the proceeding.

1. NRC Legal Standards and Precedent Governing Standing

Under NRC regulations, the Commission or a licensing board will grant a request for hearing only if the petitioner meets the standing requirements of 10 C.F.R. § 2.309(d) and submits at least one admissible contention pursuant to 10 C.F.R. § 2.309(f). With regard to standing, Section 2.309(d)(1) provides that a petitioner's hearing request must contain:

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22 *See id.* at 19,305.

23 As the Commission has noted, its hearing rules are intended "to ensure that NRC hearings 'serve the purpose for which they are intended: to adjudicate *genuine, substantive safety and environmental issues* placed in contention by *qualified* intervenors.'" *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)) (emphasis added). *See also FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 416 (2012) ("Our strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing.").

(i) The name, address and telephone number of the requestor or petitioner;

(ii) The nature of the requestor's/petitioner's right under the [Atomic Energy Act of 1954, as amended ("AEA")] to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.[24]

In addition to fulfilling the general standing requirements of 10 C.F.R. § 2.309(d)(1), a petitioner "must demonstrate that it has an interest that may be affected by the proceeding."[25] The Commission applies contemporaneous judicial concepts of standing to evaluate whether the petitioner has demonstrated the requisite interest.[26] To that end, "a petitioner must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision."[27]

The injury claimed by the petitioner must be actual or threatened and both concrete and particularized.[28] In proceedings involving construction permits and initial operating licenses for nuclear power plants, the Commission has recognized a "proximity presumption" in favor of standing for persons who have "frequent contacts" within a 50-mile radius of a nuclear power plant.[29] However, "[p]etitioners bear the burden of providing sufficient relevant, specific

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24 10 C.F.R. § 2.309(d)(1)(i)-(iv).

25 *See Turkey Point*, CLI-15-25, 82 NRC at 394.

26 *See id.*; *see also 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 (2009).

27 *Turkey Point*, CLI-15-25, 82 NRC at 394; *Sequoyah Fuels Corp. & General Atomics* (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 71 (1994); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

28 *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 250 (2001); *see also Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 71 (stating that "standing has been denied when the threat of injury is too speculative").

29 *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010) (quoting *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005)).

information, whether by good faith estimate or otherwise, to establish the basis for their standing claims," including whether the proximity presumption should apply.[30]

2. The Petition Lacks Sufficient Information to Establish Standing

Significantly, Mr. Gomez does not reference 10 C.F.R. § 2.309(d)(1) or even acknowledge the need to demonstrate standing in his Petition. This is despite the fact that the Hearing Notice explicitly directs petitioners to "specifically explain the reasons why intervention should be permitted with particular reference to the [] general requirements for standing" in Section 2.309(d)(1).[31] As a result, the Board and other hearing participants are tasked with searching for any information in the Petition that might be pertinent to Mr. Gomez's standing to intervene vis-à-vis the requirements of Section 2.309(d)(1)—but that is not our burden.

That burden properly belongs to Mr. Gomez, and he has failed to meet it here. The Petition, as submitted by Mr. Gomez to the NRC on August 2, 2018, fails to directly address the requirements of Section 2.309(d)(1)(i)-(iv). With regard to the first criterion in Section 2.309(d)(1)(i), the Petition indicates that Mr. Gomez is a U.S. citizen and resident of Miami. Although it provides a zip code (33133), the Petition itself does not list a home or business address or a telephone number for Petitioner, as required by regulation and Commission precedent.[32] Based on the Certificate of Service attached to the Board's August 15, 2018 Order

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30 *S. Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 and 4), LBP-10-1, 71 NRC 165, 178 (2010) (citing *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999) (noting that petitioners who fail to provide specific information regarding proximity or frequency of contacts only complicate matters for themselves)).

31 Hearing Notice, 83 Fed. Reg. at 19,305.

32 *See* 10 C.F.R. § 2.309(d)(1)(i); *Palisades*, CLI-07-18, 65 NRC at 413 ("Although [local school and hospital organizations] suggest geographic proximity as a basis for a presumption of harm in support of standing, they fail to provide any individual addresses as required by 10 C.F.R. § 2.309(d)(1) and do not specify their respective distances to the . . . facility" (footnote omitted)). The Hearing Notice requests participants not to include personal privacy information, "*unless an NRC regulation or other law requires submission of such information*," and notes, "[f]or example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site." Hearing Notice, 83 Fed. Reg. at 19,306 (emphasis added).

(Clarifying Briefing Schedule Regarding Gomez Petition), it appears that Mr. Gomez may reside at 3566 Vista Court, Miami, FL 33133.[33] If that address is a correct and current residential address, then it appears that Petitioner's home is within 30-40 miles of the Turkey Point site.

FPL recognizes that other licensing boards have applied the so-called "proximity presumption" in reactor license renewal proceedings, whereby it is presumed that a petitioner has standing to intervene if the petitioner lives within approximately 50 miles of the facility in question.[34] However, the decisions of those boards are not binding on this Board and, quite importantly, "[t]he Commission has not explicitly held that the 50-mile proximity presumption applies in reactor license renewal proceedings" like this one.[35] Regardless, the fact that Mr. Gomez provided his address in a separate non-adjudicatory filing should not be grounds for standing where, as noted above, the Petition is demonstrably insufficient on its face and Petitioner has eschewed his pleading burden.[36] In short, Petitioner never mentions standing, Section 2.309(d)(1), or the relevant requirements in that regulation, despite the Hearing Notice's

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[33] FPL has reviewed the Turkey Point docket in ADAMS. The only other place in which the 3566 Vista Court address appears is on the cover sheet ("Submitter Information" section) to Mr. Gomez's June 21, 2018 submittal of comments (ML18177A193) on the SLRA. The August 2, 2018 Petition does not include a cover sheet or otherwise provide Petitioner's physical address.

[34] *See*, *e.g.*, *Exelon Generation Co.* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539, 546-48 (2012); *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-12-10, 75 NRC 633, 637-38 (2012).

[35] *Entergy Nuclear Operations, Inc.* (River Bend Station, Unit 1), LBP-18-1, 87 NRC __, __ (Jan. 8, 2018) (slip op. at 4). The *River Bend* license renewal board nevertheless concluded that "the Commission has 'implicitly endorsed' applying the 50-mile proximity presumption in reactor license renewal proceedings" by virtue of its "favorable reference" in a footnote in CLI-09-20 to a 2001 board decision (LBP-01-6) that applied the proximity presumption in the initial *Turkey Point* license renewal proceeding. *Id.* (citing *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15; *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)). Notably, the Commission has twice declined to directly consider, as a legal matter, whether the 50-mile proximity presumption applies in reactor license renewal proceedings. *See Turkey Point*, CLI-01-17, 54 NRC at 26 n.20; *Oconee*, CLI-99-11, 49 NRC at 333 n.2. Thus, the referenced footnote in CLI-09-20 (footnote 15) is appropriately viewed as dictum.

[36] *Cf. NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 75 (2017) (citing *Exelon Generation Co., LLC, & PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005)) ("The petitioner has the burden to show that the proximity presumption should apply.").

instruction that he "specifically explain" the basis for his standing "with particular reference to" those requirements.[37] Further, while Petitioner states that he is involved in certain business and civic activities,[38] he makes no attempt to describe the specific nature and extent of his property, financial or other interest in this proceeding, and the possible effect of this proceeding's outcome on that interest.[39] The Board and other hearing participants are simply left in the dark regarding these critical pieces of information.[40]

As the Commission has stated, "[a]t the heart of the standing inquiry is whether the petitioner has 'alleged such a personal stake in the outcome of the controversy' as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues."[41] As another board aptly explained, albeit in the context of a license transfer proceeding, a petitioner's failure to provide the required information in its petition precludes that determination:

> Petitioners' failure to satisfy the procedural requirements of section 2.309(d)(1) also creates substantive challenges for the Board in evaluating Petitioners' standing. For example, if Petitioners' brief reference to residency within 50 miles of [the plant(s) of concern] is intended to trigger the proximity presumption, then Petitioners' failure to provide physical addresses precludes the Board from evaluating the proximity presumption's potential applicability.

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37 The Board, moreover, "must determine, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in paragraph (d)(1) of [Section 2.309]." 10 C.F.R. § 2.309(d)(1).

38 Petition at 1. Specifically, in addition to stating that he is a "homeowner" and "business owner," Mr. Gomez states that he is a "sitting City of Miami Sea Level Rise Committee member, manufacturing and technology expert supporting many industries including the power industry, ecological activist and conservationist, resilience leader and advisor in South Florida." *Id.*

39 *See* 10 C.F.R. § 2.309(d)(1)(ii)-(iv).

40 Given its silence on the issue of standing, Mr. Gomez's Petition contrasts sharply with the SACE and FOE/NRDC/MW Petitions, wherein those organizational petitioners affirmatively pled their standing to intervene (in a representative capacity) and submitted supporting declarations from individual members. *See* SACE Petition at 2-3; NRDC/FOE Petition at 1-13. In their standing declarations, the individual members provided their physical addresses (including approximate distances from the Turkey Point site) and explained how they have specific interests that may be affected by the outcome of this proceeding. *See*, *e.g.*, Declaration of Dan Kipnis (June 19, 2018) (Attach. 1 to SACE Petition); Declaration of Anne Hemingway Feuer (June 29, 2018) (Attach. B to FOE/NRDC/MW Petition).

41 *Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 71 (citing *Duke Power Co. v. Carolina Envt'l Study Group, Inc.*, 438 U.S. 59, 72 (1978) and quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

> *Similarly, Petitioners' failure to identify their interests in this proceeding or the possible effect of any decision on their interests* prevents the Board from evaluating any possible ["actual or threatened injury"] to the [Petitioners]. Petitioners therefore fail to demonstrate how any of their interests may be affected and redressed by this proceeding.[42]

Accordingly, the Board should dismiss the Petition due to Mr. Gomez's clear failure to plead or provide sufficient information to establish standing to intervene in this proceeding.[43]

C. Petitioner Has Failed to Proffer an Admissible Contention

Given the Petition's many procedural defects and Mr. Gomez's failure to demonstrate standing, the Board need not address the admissibility of his proposed contentions in order to deny the Petition.[44] In any event, as explained below, the Petition also fails to meet the NRC's contention admissibility criteria, even accounting for Mr. Gomez's status as a *pro se* petitioner.

1. NRC Legal Standards for Contention Admissibility

Under 10 C.F.R. § 2.309(f)(1), a hearing request "must set forth with particularity the contentions sought to be raised." In particular, Section 2.309(f)(1) requires that a petitioner:

(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 is within the scope of the proceeding;

(iv) Demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;

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[42] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Unit No. 3 & James A. Fitzpatrick Nuclear Plant), LBP-16-14, 84 NRC 444, 449-50 (2016) (internal footnotes and citations omitted; emphasis added).

[43] If the Board decides to consider the admissibility of Petitioner's proposed "contentions," and determines that none of them is admissible, then it need not address the issue of Petitioner's standing to intervene. *See PPL Susquehanna*, *LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 503 n.19 (2015) ("Because [the petitioner's] contentions all fall far short of our contention admissibility standards, we need not address his standing to intervene.").

[44] *See Indian Point/Fitzpatrick*, LBP-16-14, 84 NRC at 451 ("Here, given Petitioners' failure to even attempt to demonstrate compliance with those requirements, we need do no more than dismiss the Petition for lack of standing.").

(v) Provide a concise statement of the alleged facts or expert opinions, including references to the specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[45]

Failure to comply with any one of these six admissibility requirements is grounds for rejecting a proposed contention.[46] These requirements are "strict by design."[47] The rules were "toughened . . . in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'"[48] The six criteria are intended to "focus litigation on concrete issues and result in a clearer and more focused record for decision."[49] The Commission "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing"—as demonstrated by compliance with all six contention admissibility requirements.[50]

The petitioner alone bears the burden to meet the standards of contention admissibility.[51] Thus, where a petitioner neglects to provide the requisite support for its contentions, the Board

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45 *See also Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017). A "material issue" is one that would "make a difference in the outcome of the licensing proceeding." *Oconee*, CLI-99-11, 49 NRC at 333-34. The petitioner must demonstrate that the subject matter of the contention would impact the grant or denial of a pending license application. *See Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 62 (2008).

46 *See* Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *see also PFS*, CLI-99-10, 49 NRC at 325.

47 *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

48 *Id.* (citing *Oconee*, CLI-99-11, 49 NRC at 334).

49 Changes to Adjudicatory Process, 69 Fed. Reg. at 2202; *see also Indian Point*, LBP-08-13, 68 NRC at 61.

50 Changes to Adjudicatory Process, 69 Fed. Reg. at 2202.

51 *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 325, 329 (2015) ("[I]t is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission"); *Fermi*, CLI-15-18, 82 NRC at 149 ("[T]he Board may not substitute its own support for a contention.").

may not cure the deficiency by supplying the information that is lacking or making factual assumptions that favor the petitioner to fill the gap.[52] A contention that merely states a conclusion, without reasonably explaining why the application is inadequate, cannot provide a basis for the contention.[53] Although "[a] board may consider the readily apparent legal implications of a *pro se* petitioner's arguments, even if not expressly stated in the petition, that "authority is limited in that the petitioner—not the board—must provide the information required to satisfy [the] contention admissibility standards."[54]

2. All of Petitioner's Proposed "Contentions" Are Inadmissible Under the NRC's Strict Contention Admissibility Criteria

As noted above, Petitioner does not acknowledge the Commission's contention admissibility requirements in his Petition, much less set forth any contention with particularity vis-à-vis Section 2.309(f)(1)'s six distinct criteria. Indeed, while Petitioner generally refers to "contentions," he never identifies a single contention by name or by a sufficiently clear numerical designation. Instead, in Section IV of the Petition, he presents a series of paragraphs (numbered 1 through 10) and associated subparagraphs (*e.g.*, 4a, 4b). The first four paragraphs (1, 1a, 2, and 2a) of Section IV concern requests for extensions of time to file intervention petitions and public comments, and thus present no substantive issues. The remaining paragraphs present Petitioner's putative contentions, but not in a consistently logical, sequential, or readily-comprehensible fashion.

For example, Petitioner makes overlapping assertions regarding an alleged "poisonous and highly saline plume" in paragraphs 4, 4a, 6a, and 8, and assertions related to sea level rise

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[52] *See Palisades*, CLI-15-23, 82 NRC at 329; *Fermi*, CLI-15-18, 82 NRC at 149; *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991).

[53] *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006).

[54] *Seabrook*, CLI-18-4, 87 NRC at __ (slip op. at 10-11) (citations omitted).

projections in paragraphs 7, 7a, 10, and 10a of Section IV. The end result is a series of fragmented claims in which Petitioner also conflates different license applications (*i.e.*, the Turkey Point Units 6 and 7 combined license application and the Units 3 and 4 SLRA), different regulatory requirements (*i.e.*, 10 C.F.R. Parts 52 and 54), and different substantive concerns (*i.e.*, safety versus environmental). To borrow the Commission's words, the petition is "not a model of clarity or organization."[55]

For these reasons, the Board would be well justified in "declin[ing] to undertake the task of creating 'contentions' out of [Petitioner's] various conclusory and unsupported objections, and then determining whether the 'contentions' [it] ha[s] created satisfy the contention admissibility requirements."[56] That task properly belongs to the Petitioner—not to the Board—a point recently underscored by the Commission in another proceeding.[57]

Nevertheless, to fully respond to the Petition, FPL attempts to identify, and address the admissibility of, Petitioner's "contentions" below. As best FPL can discern, Petitioner attempts to raise six discrete topics in Section IV of the Petition:

1. Metal fatigue (Sections IV.3 and 3a);

2. Clean-up of groundwater "pollution" from the Turkey Point cooling canal system ("CCS") (Sections IV.4, 4a, 4b, 6a, 8, and 8a);

3. Wind and solar power as replacement power alternatives to Turkey Point (Sections IV.5 and 5a);

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55 *Seabrook*, CLI-18-4, 87 NRC at __ (slip op. at 13).

56 *See Indian Point/Fitzpatrick*, LBP-16-14, 84 NRC at 451.

57 *See Seabrook*, CLI-18-4, 87 NRC at __ (slip op. at 11) (citing *Fermi*, CLI-15-18, 82 NRC at 145-46; *Crow Butte Res., Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 (2009)) ("[T]he petitioner—not the board—must provide the information required to satisfy our contention admissibility standards."). *See also Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998) (noting that although "a board may appropriately view a petitioner's support for its contention in a light that is favorable to the petitioner, . . . the board cannot do so by ignoring the [contention admissibility] requirements" and emphasizing that "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions").

4. Effects of a purported future power uprate at Turkey Point (Sections IV.6 and 6a);

5. Effects of current sea-level rise projections (Sections IV.7, 7a, 10, and 10a); and

6. Use of reclaimed wastewater for CCS salinity reduction purposes (Sections IV.9 and 9a).[58]

For purposes of this Answer, FPL treats these six issues as Petitioner's proposed "contentions." As explained below, none of these "contentions" meets the admissibility requirements of 10 C.F.R. § 2.309(f)(1).

a. Proposed Contention 1 (Alleged Need for "Metallurgical Analysis") Is Inadmissible Under 10 C.F.R. § 2.309(f)(1)(i), (ii), (v) and (vi)

In Sections IV.3 and 3a of the Petition, Mr. Gomez appears to argue that before FPL can receive subsequent renewed operating licenses, it must complete a "metallurgical analysis" to verify "metallurgical embrittlement" and the "structural integrity of critical operating members such as the reactor vessel," and subject that analysis to review by a "third party certified metallurgical analysis firm."[59] Mr. Gomez makes a passing reference to 10 C.F.R. § 54.21, and quotes language (albeit without any citation) from Section X.M1 (Fatigue Monitoring) of the NRC's "Generic Aging Lessons Learned for Subsequent License Renewal (GALL-SLR) Report."[60] Based on these references, FPL infers that Mr. Gomez's concerns relate to the issues of embrittlement and cumulative metal fatigue damage for reactor coolant system components (an aging management issue addressed under 10 C.F.R. Part 54).[61]

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[58] As noted above, the first four paragraphs (1, 1a, 2, and 2a) of Section IV of the Petition concern requests for extensions of time to file intervention petitions and public comments and are not addressed herein.

[59] Petition at 2-3.

[60] *Id.* at 3. *See* "Generic Aging Lessons Learned for Subsequent License Renewal (GALL-SLR) Report," NUREG-2191, vol. 2 at X.M1-1 (July 2017) (ML17187A204).

[61] Metal fatigue is an age-related degradation mechanism caused by cyclic stressing of a component.

This proposed contention is inadmissible because Petitioner fails to: (1) state with sufficient specificity the nature and foundation of his concern, (2) provide adequate factual or documentary support for his claim, and (3) identify the specific portion(s) of the SLRA Petitioner believes is deficient. Importantly, Petitioner makes no attempt to identify—and directly controvert—the relevant portions of the SLRA, as all petitioners are required to do.[62]

Had Petitioner done so, he would have discovered that Section 4.2 of the SLRA addresses the issue of reactor vessel embrittlement, and Section 4.3 of the SLRA addresses the issue of cumulative fatigue damage for reactor coolant system components, in full accordance with the NRC's Part 54 regulations and related agency guidance. By way of background, plant evaluations involving embrittlement or time-dependent fatigue or cyclical loading parameters may be time-limited aging analyses ("TLAAs"), as defined in 10 C.F.R. § 54.3. TLAAs are required to be evaluated in accordance with 10 C.F.R. § 54.21(c)(1). SLRA Sections 4.2 and 4.3 document FPL's evaluations on these topics in accordance with that regulation. Petitioner makes no reference to, much less challenges, the relevant SLRA discussion or evaluations.

In view of the above, the proposed contention must be rejected for failure to comply with 10 C.F.R. § 2.309(f)(1)(i), (ii), (v) and (vi).

b. Proposed Contention 2 (Clean-up of "Pollution" from the Cooling Canal System) Is Inadmissible Under 10 C.F.R. § 2.309(f)(1)(i)-(vi)

In multiple sections of the Petition (see Sections IV.4, 4a, 4b, 6a, 8, and 8a), Petitioner alleges that the "unlined cooling canals [of the CCS] are leaking a host of caustic poisonous chemicals and highly saline waste water into our water supply, already affecting wells and

[62] *See S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 21-22 (2010); *Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992), *vacated as moot*, CLI-93-10, 37 NRC 192 (1993).

contaminating our aquifer."[63] Petitioner further asserts that the "clean up regime" approved by State and County regulatory authorities has been "reviewed by several outside scientific bodies and institutions and has shown to be unsatisfactory and non-efficacious for the desired results."[64] Petitioner requests that the SLRA be "withheld and withdrawn" until the current clean-up of the plume is completed and all relevant information related to the clean-up is submitted.[65]

Putting aside the factual inaccuracies in Petitioner's assertions,[66] this proposed contention is inadmissible because it is unduly vague and speculative, lacks any factual support, and raises issues that are beyond the scope of this proceeding and immaterial to the NRC Staff's required findings on the SLRA.[67] First, Petitioner fails to explain what he means by "a host of caustic poisonous chemicals" or the "clean up regime." Petitioner does not identify any specific chemicals of concern, or provide any evidence that such (unidentified) chemicals are "leaking" from the CCS into the underlying aquifer and adversely affecting the "water supply." Nor does petitioner indicate what aspect of FPL's "clean up regime" is purportedly "non-efficacious" or show, through specific alleged facts or documents, why that is the case. In short, Petitioner's vague claims are entirely unsubstantiated.

In addition, Petitioner raises issues that are outside the scope of this NRC license renewal proceeding. FPL operates the CCS as a State of Florida Industrial Waste Water ("IWW") facility under National Pollutant Discharge Elimination System ("NPDES")/IWW Permit No.

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63 Petition at 3. *See also id.* at 5 (referring to alleged water quality threats posed by an "increasing plume").

64 *Id.*

65 *Id.*

66 As explained in FPL's Answer to the SACE Petition, FPL is operating in full compliance with its State and local permits; FPL's state-approved groundwater remediation efforts are progressing as planned; and FPL has implemented an extensive environmental monitoring program as well as CCS thermal efficiency and nutrient management plans. *See* FPL Answer to SACE Petition at 15-22 & Attach. 1.

67 *See* 10 C.F.R. 2.309(f)(1)(iii), (iv).

FL0001562, a combined permit that the Florida Department of Environmental Protection ("FDEP") has issued pursuant to the federal NPDES program (as delegated by the EPA to Florida) and the Florida IWW permitting program.[68] FPL's compliance with that permit, and any related mitigation or remediation actions being implemented by FPL in response to State and County directives, are outside of the NRC's jurisdiction over radiological health and safety matters.[69] Finally, Petitioner provides no indication that he is challenging any aspect of FPL's ER, as prepared in accordance with NEPA and the NRC Part 51 regulations.[70]

Based on the above-listed deficiencies, this proposed contention must be summarily rejected for failure to comply with any of the six requirements in 10 C.F.R. § 2.309(f)(1)(i)-(vi).

c. Proposed Contention 3 (Alleged Failure to Consider Solar and Wind Power as Replacement Power Alternatives) Is Inadmissible Under 10 C.F.R. § 2.309(f)(1)(v) and (vi)

Sections IV.5 and 5a of the Petition suggest that FPL has improperly excluded consideration of solar and wind power from its analysis of replacement power alternatives for Turkey Point Units 3 and 4.[71] This proposed contention is inadmissible because it lacks adequate factual support and fails to directly controvert the ER, which, contrary to Petitioner's claim, *does* consider solar and wind power as potential alternative energy sources.[72]

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68 ER at 2-8, 3-88, 9-16.

69 *See*, *e.g.*, *Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 377 (2007) ("Section 511(c)(2) of the [CWA] precludes us from either second-guessing the conclusions in NPDES permits or imposing our own effluent limitations—thermal or otherwise."); GEIS, vol. 1 at 3-84 (noting that the "NRC cannot impose mitigation measures that are not related to public health and safety from radiological hazards or common defense and security").

70 Petitioner makes no reference to radionuclides in the proposed contention or suggests that applicable NRC regulatory limits have been exceeded. Thus, if Petitioner's reference to "poisonous chemicals" is intended to encompass radionuclides, then the contention still must be rejected for lack of specificity and adequate support. *See* 10 C.F.R. § 2.309(f)(1)(ii), (v).

71 *See* Petition at 4.

72 *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).

Specifically, ER Section 7.2.2.2.1 ("Wind") considers wind power, and explains that because of the large impacts associated with offshore wind power development and operations and wind having a low capacity factor, wind energy is not considered a reasonable alternative for replacement of Turkey Point Units 3 and 4 generation.[73] ER Section 7.2.2.2.9 discusses solar power, including solar photovoltaic, concentrated solar power, and energy storage systems.[74] It concludes that a discrete solar generation alternative is not a reasonable alternative for the replacement of Turkey Point Units 3 and 4 electrical generation output.[75]

Finally, Section 7.2.2.2.9 explains that a discrete solar alternative does not provide large amounts of energy that would be reliably available at system peak hours, and that it would entail potentially-significant environmental impacts due to the large land disturbances necessary for this scale of solar power installation.[76] However, in ER Section 7.2.1.3, FPL considered, as a reasonable alternative to Turkey Point's baseload generation, a combination of alternatives comprising a natural gas-fired combined cycle plant and four 75-MWe solar photovoltaic facilities with an estimated 26 percent capacity factor given their intermittent generation.[77] Petitioner overlooks—and certainly does not challenge—any of this relevant ER discussion.

For the foregoing reasons, the proposed contention must be rejected for failure to comply with 10 C.F.R. § 2.309(f)(1)(v) and (vi).

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73 *See* ER at 7-6 to 7-7.

74 *See id.* at 7-9 to 7-10.

75 *See id.* at 7-10.

76 *Id.*

77 *See id.* at 7-4.

d. Proposed Contention 4 (Adverse Effects of Purported Future Power Uprate) Is Inadmissible Under 10 C.F.R. § 2.309(f)(1)(ii)-(vi)

Sections IV.6 and 6a of the Petition raise concerns related to a purported future power uprate at Turkey Point.[78] Petitioner states that during an NRC public meeting held in Homestead, Florida, FPL representatives conveyed the company's intention to seek authorization for another power uprate.[79] Such an uprate, Petitioner contends, could "further expand[] the poisonous and high salinity plume" and "put[] the public in danger by operating Turkey Point Nuclear Plant, Units 3 & 4 beyond safe operating temperatures."[80]

This proposed contention is inadmissible in multiple respects. First, it raises issues that are not within the scope of this proceeding or material to the NRC Staff's required license renewal findings. A power uprate is a matter related to current plant operations and governed by the requirements of 10 C.F.R. Part 50—not Part 54's license renewal requirements.[81] Petitioner, moreover, identifies no portion of the SLRA or ER that discusses the purported future uprate.

Additionally, Petitioner's claims are based on speculation, and thus lack any factual basis or support. Contrary to Petitioner's belief, FPL has no current plans for another power uprate at Turkey Point. The meeting to which Petitioner alludes was a May 31, 2018 public scoping meeting for the NRC Staff's environmental review of the Turkey Point SLRA. During the meeting, the Turkey Point Plant General Manager stated: "We currently have plans to do another upgrade over this year and into the spring of next year that will increase the output roughly 40

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78 *See* Petition at 4-5.

79 *See id*. at 4.

80 *Id.* at 4-5.

81 Any future power uprate at Turkey Point, assuming FPL were to request one, would be subject to separate NRC review and approval under 10 C.F.R. Part 50, and to a separate hearing opportunity if the uprate required any associated license amendments.

megawatts, which equals another 26,000 homes here in Dade County."[82] The referenced "upgrade" is the planned installation of new low-pressure turbines in the Turkey Point power conversion system that will result in a greater net electrical output—not a power uprate requiring NRC approval. The installation of new low-pressure turbines will have no negative effect on plant discharge temperatures or CCS salinity levels, as mistakenly alleged by Petitioner.

Based on the above, the proposed contention must be rejected for failure to comply with 10 C.F.R. § 2.309(f)(1)(ii)-(vi).

e. Proposed Contention 5 (Safety Implications of Alleged Failure to Account for Current Sea-Level Rise Projections) Is Inadmissible Under 10 C.F.R. § 2.309(f)(1)(iii)-(vi)

Petitioner raises issues related to future sea level rises in Sections IV.7, 7a, 10, and 10a of the Petition.[83] Although Petitioner makes a brief reference to the GEIS (and to 10 C.F.R. Part 52 regulations and the Turkey Point Units 6 & 7 combined license application),[84] his concerns appear to be safety-related and focused on the adequacy of the Turkey Point Units 3 and 4 current licensing bases. Specifically, Petitioner states that "NRC may not be incorporating the latest government authorized sea level rise projections and how that impacts its high level waste and spent fuel onsite storage."[85] Petitioner further asserts that the SLRA should be withdrawn "due to the contradictions with stated federal and local guidelines, sea level rise projections and

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82 U.S. Nuclear Regulatory Commission, Official Transcript of Proceedings, "Public Scoping Meeting for the Environmental Review of the Subsequent License Renewal Application for Turkey Point Nuclear Plants Units 3 and 4 - Session 1," Tr. at 29:23 to 30:3 (Mr. Brian Stamp) (May 31, 2018) (ML18176A399).

83 *See* Petition at 5-7.

84 *See id.* at 5-6. The block quote that references the GEIS in Section IV.7 (page 5) of the Petition appears to be a combination of statements taken from the FSEIS (NUREG-1437, Supp. 5) for the first Turkey Point license renewal application. To the extent Petitioner may be attempting to raise an environmental claim concerning the onsite storage of spent nuclear fuel, whether during the SLR period or beyond, the NRC has addressed those issues generically, such that they are outside the scope of this proceeding. *See* 10 C.F.R. pt. 50, subpt. A, app. B, tbl. B-1 ("Onsite storage of spent nuclear fuel"); 10 C.F.R. § 51.23 ("Environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor").

85 Petition at 5.

nuclear safety recommendations within the POANHI - Process for Ongoing Assessment of Natural Hazard Information – SECY-15-0137 part of the Post-Fukushima Near-Term Task Force Recommendations 2.2(R2.2)."[86]

Petitioner's proposed contention is inadmissible for several reasons. Specifically, insofar as Petitioner alleges that rising sea levels pose a potential threat to safe plant operation, including spent fuel storage, he is raising a Part 50 (*i.e.*, current licensing basis) safety issue that is unrelated to aging management—the sole focus of the NRC's Part 54 license renewal regulations. Thus, Petitioner's concerns are outside the scope of this proceeding and immaterial to the NRC's license renewal findings. Further, any challenges to the NRC regulations' treatment of sea level rise or the NRC Staff's consideration of sea level rise during review of the SLRA likewise are outside the scope of this proceeding.[87] Petitioner also fails to identify any portion of the SLRA or ER that is inadequate, and thus does not establish a genuine material dispute with either document. As a result, the proposed contention must be rejected for failure to comply with 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

f. Proposed Contention 6 (Alleged Negative Impacts of Possible Use of Reclaimed Wastewater in the CCS) Is Inadmissible Under 10 C.F.R. § 2.309(f)(1)(i)-(vi)

Sections IV.9 and 9a of the Petition state that FPL currently is engaged in discussions with Miami-Dade County concerning the possible use of reclaimed wastewater as an additional source of cooling and CCS freshening water at Turkey Point.[88] Petitioner posits that use of

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[86] *Id.* at 6. Petitioner states in Section IV.10 (page 6) of the Petition that FPL "utilizes a 1' sea level rise projection through 2100" in the SLRA, but provides no citation. The SLRA, in fact, contains no such statement or assumption.

[87] *See* 10 C.F.R. § 2.335; *see also AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476 (2008).

[88] *See* Petition at 6.

reclaimed wastewater somehow could "negatively impact" Miami-Dade County's Consent Agreement with FPL, lead to a "water demand" conflict, and "further threaten[] our bay or drinking and agricultural water supply."[89] This proposed contention is inadmissible because it lacks sufficient specificity and basis, raises issues that are outside the scope of this proceeding and immaterial to the Staff's required findings on the SLRA, lacks any factual or legal foundation, and fails to raise a genuine material dispute by directly controverting some aspect of the SLRA or ER.

First, the nature of Petitioner's specific concern and the basis therefor are unclear. It is not apparent why the assumed use of reclaimed wastewater in the CCS would "negatively impact" either the FDEP Consent Order or the Miami-Dade County Consent Agreement. Petitioner states that "FPL is also require [sic] to take any excess ground water to cool the canals," and that "[t]his conflict based on the open nature of the cooling canals systems creates a critical unknown to continued safe operations of the plant."[90] These statements are confusing at best, and certainly shed no light on the precise nature of Petitioner's concern regarding the postulated use of reclaimed wastewater in the Turkey Point CCS.

Second, there is no firm expectation or assumption in the SLRA or ER that Turkey Point Units 3 and 4 will use reclaimed wastewater during the SLR period. As FPL recently explained in response to an NRC Staff request for additional information ("RAI"), FPL and Miami-Dade County ("County") have agreed to investigate the *potential* to create a tertiary wastewater treatment facility that could provide up to 60 million gallons per day of reclaimed wastewater for

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89 *Id.*

90 *Id.*

use at the Turkey Point site.[91] Discussions to date are preliminary and non-binding, and further efforts are needed to evaluate the economic and technical feasibility of the project. Thus, there currently is no agreement concerning project funding, facility location or design, water treatment standards, schedule for construction or operation, or uses of the treated wastewater. To proceed with the project, FPL and the County would need to negotiate and approve a separate project agreement, and pursue all necessary permits, approvals, and licenses. As such, FPL has not improperly excluded any relevant and material discussion from its ER in violation of NEPA or Part 51, given the lack of any specific and concrete proposal to use reclaimed water in the CCS.[92]

In view of the above, this proposed contention must be rejected for failure to comply with any of the six requirements in 10 C.F.R. § 2.309(f)(1)(i)-(vi).

* * *

In conclusion, to the extent the Petition may be read or construed to contain the six proposed "contentions" identified by FPL above, none of the six contentions meets the NRC's strict contention admissibility criteria in 10 C.F.R. § 2.309(f)(1), which, as noted above, Petitioner entirely fails to address in his Petition. Accordingly, the Petition should be denied.

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91 *See* Letter from W. Maher, FPL, to NRC Document Control Desk (FPL Letter L-2018-136), "Turkey Point Units 3 and 4 Subsequent License Renewal Application – Environmental Report Requests for Additional Information (RAI) Responses," attachments 7 & 48 (Aug. 8, 2018).

92 *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002) ("[T]o bring NEPA into play, a possible future action must at least constitute a 'proposal' pending before the agency (*i.e.*, ripeness), and must be in some way interrelated with the action that the agency is actively considering (*i.e.*, nexus)."); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 & n.20 (1976) (holding that NEPA "does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the [environmental] impact statement on proposed actions.").

IV. CONCLUSION

For the foregoing reasons, the Petition is procedurally deficient on its face. Petitioner, in any case, has not established standing to intervene or submitted any admissible contention in this Turkey Point SLR proceeding. Accordingly, the Board should deny the Petition in its entirety.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 4th day of September 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250-SLR and 50-251-SLR
FLORIDA POWER & LIGHT COMPANY	)	ASLBP No. 18-957-01-SLR-BD01
(Turkey Point Nuclear Generating Units 3 and 4)	)	September 4, 2018

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Applicant's Opposition to Albert Gomez's Petition to Intervene" was served upon the following persons by Electronic Information Exchange (the NRC's E-Filing System) and by electronic mail as indicated by an asterisk (*), in the above-captioned docket.

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
E. Roy Hawkens, Chairman
Sue Abreu, Administrative Judge
Michael F. Kennedy, Administrative Judge

U.S. Nuclear Regulatory Commission
Office of the General Counsel
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