

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
FLORIDA POWER & LIGHT COMPANY)	Docket No. 50-250
)	Docket No. 50-251
(Turkey Point Nuclear Generating Station, Unit Nos. 3 and 4))	
)	January 15, 2019
)	
(Subsequent License Renewal Application))	

**PETITIONERS' MOTION FOR LEAVE TO RESPOND TO APPLICANT'S RESPONSE
TO THE NRC STAFF'S CLARIFICATION REGARDING THE ADMISSIBILITY OF
PROPOSED COOLING TOWER CONTENTIONS**

Pursuant to 10 C.F.R. § 2.323(a), Friends of the Earth, Inc., Natural Resources Defense Council, Inc., Miami Waterkeeper, Inc., and Southern Alliance for Clean Energy ("SACE") (collectively, "Petitioners") file this joint motion for leave to respond to Florida Power & Light Company's ("Applicant's" or "FPL's") Response to the NRC Staff's Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions (filed Jan. 7, 2018) ("Applicant's Response").¹ Necessity and fairness require an opportunity for Petitioners to respond to new arguments made in Applicant's Response, as explained below and in the proposed Response attached hereto.²

¹ Applicant's Response to the NRC Staff's Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions (Jan. 7, 2018) (ML19007A311) ("Applicant's Response").

² Petitioners' Response to Applicant's New Arguments on the Admissibility of Petitioners' Cooling Tower Contentions (attached hereto).

DISCUSSION

The Commission has explained that “extra filings” such as surreplies, while not explicitly permitted by NRC regulations, may be considered on a case-by-case basis “where necessity or fairness dictates.”³ Here, necessity and fairness weigh in favor of providing Petitioners an opportunity to respond new arguments in Applicant’s Response because: (1) FPL makes a number of arguments that materially differ from arguments asserted in its prior filings, (2) Petitioners have not had an opportunity to respond to these arguments, and (3) Petitioners’ response is necessary for a complete record. Petitioners seek leave to file a response that is narrowly tailored to address only those issues that FPL raised for the first time in its January 7, 2019 filing, including mischaracterizations of the record.

In Applicant’s Response, FPL makes a number of new arguments regarding the admissibility of Joint Petitioners’ Contention 1-E and SACE Contention 2 (Alternative Cooling Systems). Among other new arguments, FPL claims for the first time that NEPA requires consideration of a cooling towers alternative “only if: (1) there is a ‘reasonably likely,’ otherwise-unmitigated impact not bounded by the existing mitigation discussion, and (2) cooling towers would be a proportional response to that otherwise-unmitigated impact.”⁴ This new FPL-proposed test differs in material respects from those raised in FPL’s earlier filings, and Petitioners should be afforded an opportunity to respond to it. Petitioners seek leave to respond to additional new arguments asserted in Applicant’s Response, as detailed in the attached

³ *U.S. Dep’t of Energy* (High-Level Waste Repository), CLI-08-12, 67 N.R.C. 386, 393 (2008).

⁴ Applicant’s Response at 5 (internal footnotes and case citations omitted).

proposed Response.

Accordingly, Petitioners respectfully request the Board grant leave to file Petitioners' proposed Response to Applicant's Response to the NRC Staff's Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions, attached hereto.

Respectfully submitted,

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Filed this 15th day of January, 2019

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CERTIFICATE OF CONSULTATION

Pursuant to 10 C.F.R. § 2.323(b), Counsel for Southern Alliance for Clean Energy, Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (collectively “Petitioners”) certify that under they contacted Florida Power & Light Company (“FPL”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff in a sincere effort to obtain their consent to the relief requested in this Motion. Counsel for FPL and NRC Staff represented that they oppose Petitioners’ Motion for Leave to Respond to Applicant’s Response and indicated that FPL and NRC Staff intend to file a response to the motion.

/Signed (electronically) by/
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January 15, 2019

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “*Motion for Leave to Respond to Applicant’s Response to the NRC Staff’s Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions*” was served upon the Electronic Information Exchange (“EIE,” the NRC’s E-Filing System), in the above-captioned docket, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/Signed (electronically) by/
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January 15, 2019