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)	)	July 19, 2019

FLORIDA POWER & LIGHT COMPANY'S ANSWER OPPOSING INTERVENORS' MOTION TO MIGRATE OR AMEND CONTENTIONS 1-E AND 5-E AND TO ADMIT NEW CONTENTIONS 6-E, 7-E, 8-E, AND 9-E

Steven Hamrick, Esq.
Florida Power & Light Company
801 Pennsylvania Ave., N.W. Suite 220
Washington, D.C. 20004
Phone: 202-349-3496
E-mail: steven.hamrick@fpl.com

Paul M. Bessette, Esq.
Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave, N.W.
Washington, D.C. 20004
Phone: 202-739-5796
E-mail: paul.bessette@morganlewis.com
E-mail: ryan.lighty@morganlewis.com

Martin J. O'Neill, Esq.
Morgan, Lewis & Bockius LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
Phone: 713-890-5710
E-mail: martin.o'neill@morganlewis.com

Counsel for Florida Power & Light Company

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

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)	)	July 19, 2019

FLORIDA POWER & LIGHT COMPANY'S ANSWER OPPOSING INTERVENORS' MOTION TO MIGRATE OR AMEND CONTENTIONS 1-E AND 5-E AND TO ADMIT NEW CONTENTIONS 6-E, 7-E, 8-E, AND 9-E

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(i)(1) and the Atomic Safety and Licensing Board's ("Board") Revised Scheduling Order,[1] Florida Power & Light Company ("FPL") hereby timely files its Answer opposing the Motion to migrate or amend two previously-admitted contentions and admit four new contentions filed on June 24, 2019 (and amended on June 28) by Natural Resources Defense Council, Friends of the Earth, and Miami Waterkeeper ("Intervenors").[2] Intervenors seek the migration or amendment of Contentions 1-E and 5-E, and the admission of new Contentions 6-E, 7-E, 8-E, and 9-E, purportedly in response to the U.S. Nuclear Regulatory Commission ("NRC") Staff's Draft Supplemental Environmental Impact Statement ("DSEIS") for FPL's subsequent license renewal ("SLR") application for Turkey Point Nuclear Generating Units

[1] ASLB Order (Granting in Part Intervenors' Joint Motion for Partial Reconsideration of Initial Scheduling Order) at 3 (Apr. 2, 2019) (unpublished) (ML19092A386) ("Revised Scheduling Order").

[2] Natural Resources Defense Council's, Friends of the Earth's, and Miami Waterkeeper's Amended Motion to Migrate Contentions & Admit New Contentions in Response to NRC Staff's Supplemental Draft Environmental Impact Statement (June 24, 2019) (ML19179A316) ("Motion"). Intervenors filed their original Motion on June 24, 2019, but filed errata (ML19179A313) and amended the original motion incorporating the corrections. All references to Intervenors' Motion in this answer are to the amended version of the Motion filed on June 28, 2019.

3 and 4 ("Turkey Point").[3] Specifically, they claim that "[t]he migrated or amended contentions simply assert that the DSEIS fails either to address or to address adequately previously-identified omissions contained in the Applicant's Environmental Report," and that the proposed new contentions are "based on information that was previously unavailable and which remain unaddressed in the DSEIS."[4]

As explained below, Contentions 1-E and 5-E should not be "migrated" as challenges to the DSEIS because they have been dismissed as moot by the Board.[5] With regard to Amended Contentions 1-Eb and 5-Eb and new Contentions 6-E, 7-E, 8-E, and 9-E, Intervenors have failed to meet the timeliness standards for amended and new contentions in 10 C.F.R. § 2.309(c)(1)(i)-(iii). Moreover, even if they had satisfied those standards, Intervenors have not met the standards for an admissible contention set forth in 10 C.F.R. § 2.309(f)(1). Therefore, the Board should reject Intervenors' Motion in its entirety and terminate this proceeding.

II. PROCEDURAL HISTORY

On January 30, 2018, FPL submitted its application to the NRC seeking to renew the Turkey Point operating licenses for an additional 20-year period.[6] On May 2, 2018, the NRC published a notice in the *Federal Register* docketing the Turkey Point SLR application and providing an opportunity for interested persons to request a hearing.[7] On August 1, 2018,

---

3 NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 5, Second Renewal, Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, Draft Report for Comment" (Mar. 2019) (ML19078A330).

4 Motion at 2.

5 *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contentions 1-E and 5-E as Moot), LBP-19-6, 90 NRC __ (slip op.) (July 8, 2019) (ML19189A252).

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

7 *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).

Intervenors filed their Petition to Intervene in this SLR proceeding, requesting a hearing, and proposing five contentions, each of the latter challenging various aspects of the Environmental Report ("ER") included as part of the SLR application.[8]

In LBP-19-3, issued on March 7, 2019, the Board found that Intervenors had standing to participate in this proceeding, and admitted portions of two of their proposed contentions: 1-E and 5-E.[9] FPL appealed LBP-19-3 pursuant to 10 C.F.R. § 2.311, arguing, in part, that the Board erred in admitting Contentions 1-E and 5-E.[10]

On April 3, 2019, the NRC Staff informed the Board and parties that it had issued the DSEIS, which evaluates the environmental impacts of the SLR and alternatives thereto, including "an alternative cooling water system to mitigate the potential impacts associated with the continued use of the existing cooling canal system."[11] In the associated notice of availability, the NRC established a May 20, 2019, deadline for the submission of public comments on the DSEIS. FPL and Intervenors, among numerous other stakeholders, submitted comments on the DSEIS.[12]

FPL subsequently filed separate Motions to Dismiss Contentions 1-E and 5-E as moot because the information alleged by those contentions to be missing from the ER is provided in the

---

8 Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 1, 2018) (ML18213A418) ("Petition to Intervene").

9 *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC __ (slip op. at 42-44, 51-53, 63) (Mar. 7, 2019) (ML19067A003).

10 *See* Florida Power & Light Company's Notice of Appeal of LBP-19-3 (Apr. 1, 2019).

11 DSEIS at iii.

12 *See* Letter from W. Maher, Senor Licensing Director, FPL, to NRC, "Re: Florida Power & Light Company Comments Regarding the Turkey Point Generating Unit Nos. 3 and 4 Subsequent License Renewal Draft Supplement 5 to Generic Environmental Impact Statement (May 20, 2019) (ML19141A047); Letter from Intervenors Counsel to NRC, "Re: Comments of Natural Resources Defense Council, Friends of the Earth, and Miami Waterkeeper on the Draft Supplemental Environmental Impact Statement for Turkey Point Nuclear Generating Units Nos. 3 and 4 (NUREG–1437, Supplement 5, Second Renewal, draft) (Docket ID NRC-2018-0101)" (May 20, 2019) (ML19141A253).

DSEIS.[13] The Board granted FPL's Motions on July 8, 2019, in LBP-19-6, concluding that "the new information in the DSEIS has cured the omissions identified in the two contentions."[14]

Intervenors filed the instant Motion on June 24, 2019, in accordance with the schedule established by the Board's Revised Scheduling Order.[15] The Motion seeks to amend or "migrate" Intervenors' earlier-admitted contentions (1E and 5-E), and to admit four new contentions (6-E, 7-E, 8-E, and 9-E) in response to the DSEIS. In support of their Motion, Intervenors submitted three reports (by James Fourqurean, William Nuttle, and E.J. Wexler),[16] as well as a petition for a "limited waiver" of certain Part 51 regulations pursuant to 10 C.F.R. 2.335(b).[17] On June 28, 2019, Intervenors filed errata to their Motion, along with revised versions of the Motion, Wexler Report, and Nuttle Report addressing the identified errors.

III. CONTENTIONS 1-E AND 5-E MAY NOT BE MIGRATED AS CHALLENGES TO THE DSEIS BECAUSE THE BOARD DISMISSED THEM AS MOOT IN LBP-19-6

Intervenors' request that the Board "migrate" Contentions 1-E and 5-E as challenges to the DSEIS (as an alternative to amending those contentions) must be rejected in light of the Board's ruling in LBP-19-6. In the intervening time since Intervenors' Motion, the Board dismissed both

---

[13] FPL's Motion to Dismiss Joint Petitioners' Contention 1-E as Moot (May 20, 2019) (ML19140A355); FPL's Motion to Dismiss Joint Petitioners' Contention 5-E as Moot (May 20, 2019) (ML19140A356). The Staff filed a combined answer supporting FPL's motions. *See* NRC Staff's Answer to FPL's Motions to Dismiss (June 10, 2019) (ML19161A252).

[14] *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-6, 90 NRC __ (slip op. at 1) (July 8, 2019). The Board's decision in LBP-19-6 has mooted FPL's pending appeal of LBP-19-3. *See* FPL's Notice Regarding Dismissal of Contentions (July 15, 2019) (ML19196A337).

[15] *See* Revised Scheduling Order at 3.

[16] *See* Expert Report of James Fourqurean, Ph.D. (June 24, 2019) ("Fourqurean Report"); Expert Report of William Nuttle, Ph.D., PEng (Ontario) (June 23, 2019) (as amended on June 28, 2019) (ML19179A315) ("Nuttle Report"); Declaration and Expert Report of E.J. Wexler in Support of the Friends of the Earth, Natural Resources Defense Counsel & Miami Waterkeeper (June 24, 2019) (ML19179A314) ("Wexler Report").

[17] *See* Natural Resources Defense Council's, Friends of the Earth's, and Miami Waterkeeper's Petition for Waiver of 10 C.F.R. §§ 51.53(c)(3) and 51.71(d) and 10 C.F.R. Part 51, Subpart A, Appendix B (June 24, 2019) ("Waiver Petition"). FPL is filing a separate answer to Intervenors' Waiver Petition. For the reasons set forth therein, the Board should deny the Waiver Petition because Intervenors have not made a *prima facie* showing that a waiver of any Part 51 regulation is warranted under 10 C.F.R. § 2.335(b). *See* Florida Power & Light Company's Answer to Intervenors' Petition for Waiver of Certain 10 C.F.R. Part 51 Regulations (July 19, 2019) ("FPL Answer to Intervenors' Petition for Waiver").

contentions as moot on the basis that new information in the DSEIS has cured the omissions identified in the contentions.[18] The Board noted that if Intervenors wish to challenge the adequacy of the Staff's analysis in the DSEIS, then they must timely file a new contention that addresses the factors in 10 C.F.R. § 2.309(f)(1).[19]

IV. AMENDED CONTENTIONS 1-Eb AND 5-Eb ARE UNTIMELY AND INADMISSIBLE

For the reasons set forth below, the Board should reject Amended Contentions 1-Eb and 5-Eb because they are not timely filed as required by 10 C.F.R. § 2.309(c)(1), and are inadmissible under 10 C.F.R. § 2.309(f)(1).

A. Amended Contention 1-Eb Should Be Rejected As Untimely Under 10 C.F.R. § 2.309(c)(1) and Inadmissible Under 10 C.F.R. § 2.309(f)(1)

1. Summary of Amended Contention 1-Eb

Amended Contention 1-Eb, as proffered by Intervenors, alleges that:

> The DSEIS fails to analyze adequately mechanical draft cooling towers as a reasonable alternative that could mitigate adverse impacts of the cooling canal system in connection with the license renewal of Turkey Point Units 3 and 4.[20]

Intervenors broadly assert that the DSEIS fails to satisfy NEPA and NRC requirements to "explore vigorously benefits and costs of a reasonable alternative available for reducing or avoiding adverse environmental effects" of SLR.[21] They claim that, although the DSEIS analyzes the adverse impacts of cooling towers, it is "devoid" of any substantive discussion of the environmental benefits of the alternative; *i.e.*, the adverse impacts of SLR that "the alternative could reduce or

---

18 *See Turkey Point*, LBP-19-6, slip op. at 1, 6-7, 9-10.

19 *See id.* at 10-11 & n.18 (citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002)).

20 Motion at 8.

21 *Id.* at 11.

avoid, as required by 10 C.F.R. § 51.71(d)."[22] More specifically, Intervenors assert that the DSEIS does not adequately consider: (1) potentially reduced adverse impacts to threatened, endangered, and protected species and essential fish habitat, and (2) potentially reduced "groundwater use conflicts" that purportedly would result from the installation and use of cooling towers at Turkey Point.[23]

With regard to the first issue, Intervenors, citing the U.S. Fish and Wildlife Service's ("USFWS") June 2017 Biological Opinion for the Turkey Point Units 6 and 7 combined operating license ("COL") project, assert that increased temperature and salinity in the cooling canals have "changed the aquatic resources" in the cooling canal system ("CCS") and "resulted in decreased nesting and fewer American crocodiles observed in the cooling canals."[24] They suggest that "ceasing operation of the [CCS] as a heat sink and replacing it with cooling towers, while keeping the canals in place, could protect existing species habitat."[25]

With regard to the second issue, Intervenors argue that "replacing the heat sink function of the cooling canals with cooling towers" could eliminate "an original substantial factor in the hypersalinity that created a host of adverse impacts."[26] They assert that "the DSEIS only analyzes adding more brackish water to the [CCS] from the Florida aquifer and attempting to withdraw the hypersaline plume through wells," and these "subpar mitigation plans" will not be successful and

---

22 *Id.*

23 *Id.* at 12, 14. Notably, unlike the Board's ruling admitting original Contention 1-E, Amended Contention 1-E makes *no* reference to "critical seagrass habitat." *Compare* LBP-19-3, slip op. at 44, 63 n.82 (referring to "the adverse impact of continued CCS operations on the threatened American crocodile and its critical seagrass habitat) *with* Motion at 8-17 (making no specific references to "critical seagrass habitat").

24 Motion at 12-13 (quoting USFWS, Biological Opinion for Combined License for Turkey Point Nuclear Plant, Units 6 and 7 at 20 (June 23, 2017) at 20 (ML17177A673) ("June 2017 Biological Opinion")).

25 *Id.* at 13.

26 *Id.* at 16.

"will exacerbate groundwater use conflict[s]."[27] Intervenors further criticize the Staff for "not analyz[ing] how ending the heat contribution of Turkey Point Units 3 and 4 to the cooling canals could freshen the water and reduce the groundwater impacts faster."[28]

2. The Commission's Three-Factor "Good Cause" Standard for Amended and New Contentions

Given that the initial deadline for filing contentions in this proceeding has passed, petitioners seeking to amend their original contentions or proffer new ones must meet the "good cause" standard in 10 C.F.R. § 2.309(c)(1). Under that regulation, "good cause" exists only if the petitioner can show: (i) the information upon which the amended or new contention is based was not previously available; (ii) the information upon which the filing is based is *materially different* from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.[29]

The Commission does not look favorably upon amended or new environmental contentions made after the initial filing deadline.[30] Although such contentions are, in essence, challenges to the Staff's compliance with NEPA, they must be raised, if possible, in response to an applicant's ER.[31] Otherwise, petitioners "risk the possibility that there will not be a *material* difference

---

27 *Id.* at 15.

28 *Id.* at 16.

29 10 C.F.R. § 2.309(c)(1)(i)-(iii) (emphasis added). In LBP-19-6, this Board stated that "in compliance with the governing Scheduling Order, Joint Intervenors have timely proffered new contentions based on the DSEIS, including new contentions alleging that the curative information in the DSEIS has given rise to contentions of adequacy." LBP-19-6, slip op. at 11. FPL notes that Intervenors' filing of amended/new contentions in accordance with the Revised Scheduling Order does not, by itself, establish that those contentions are timely. Intervenors must demonstrate "good cause" by satisfying *all* three factors in Section 2.309(c)(1)(i)-(iii). *See also* 10 C.F.R. § 2.309(f)(2) (noting that new or amended environmental contentions based on a draft EIS must comply with the requirements in 10 C.F.R. § 2.309(c)); *Holtec Int'l* (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC __ (slip op. at 23) (May 7, 2019).

30 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 272 (2009).

31 *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-1, 81 NRC 1, 7 (2015).

between the application and the Staff's review documents, thus rendering any newly proposed contention on previously available information impermissibly late."[32]

The good cause standard serves "as a check to prevent petitioners from filing new contentions based on new information that is insignificantly different from previously available information."[33] "Previously available information that is newly acquired by the petitioner does not constitute good cause, as 'new and amended contentions must be *based on new facts* not previously available.'"[34] Similarly, "previously available information that is newly interpreted by the petitioner does not constitute good cause to file a new contention."[35] Importantly, the NRC's compilation or use of previously-available information in a new document does not *ipso facto* provide the basis for a new or amended contention under Section 2.309(c).[36] As the Commission noted in promulgating that regulation, "in *most* cases where the NRC compiles or uses previously available information in a new document, the previously available information *cannot* be used as the basis for a new or amended contention filed after the deadline."[37]

---

[32] *Id.* (emphasis added). The term "materially," as used in Section 2.309(c)(1)(ii), "describes the type or degree of difference between the new information and previously available information that a petitioner must establish, and it is synonymous with, for example, 'significantly,' 'considerably,' or 'importantly.'" *Fla. Power & Light Co.* (Turkey Point Units 6 and 7), LBP-17-6, 86 NRC 37, 48 (2017) (citations omitted). In the NEPA context, "a participant may file a contention based on a *significant difference* between the environmental report and the draft or final NRC NEPA document if the participant files a timely contention after the NRC NEPA document's issuance and the contention is based on new information that is materially different from previously available information." Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule, 77 Fed. Reg. 46,552, 46,567 (Aug. 3, 2012) (emphasis added).

[33] *Turkey Point*, LBP-17-6, 86 NRC at 48 n.9.

[34] *Holtec Int'l*, LBP-19-4, slip op. at 23-24 (citing *Kan. Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 886 (1984) and quoting *Entergy Nuclear Generation Co*. (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 493 n.70 (2012) (emphasis in original)); *see also Fermi*, CLI-15-1, 81 NRC at 7 (requiring "a material difference between the information on which the contention is based and the information that was previously available—for example, a difference between the [ER] and the draft EIS").

[35] *Holtec Int'l*, LBP-19-4, slip op. at 87 (citing *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-5, 31 NRC 73, 79 (1990) (finding no "good cause" existed for late-filed safety concerns when petitioner "had yet to put the pieces of [the] safety puzzle together" despite previous availability of the information)).

[36] *See* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. at 46,566-67.

[37] *Id.* at 46,566 (emphasis added). Related to this point, Intervenors quote LBP-13-9 for the proposition that while "intervenors must respond to new information when it first becomes available, they need not do so until the information is actually used by the NRC Staff to form its conclusions on impacts in the DSEIS." Motion at 35, 38 (quoting

3. Amended Contention 1-Eb Is Not Timely Filed Insofar As It Only Seeks to Renew the Same "Groundwater Use Conflicts" Argument That Intervenors Raised in Original Contention 1-E and That This Board Rejected in LBP-19-3

FPL does not view Amended Contention 1-Eb as untimely insofar as it seeks to challenge "curative information" found in the DSEIS's discussion of the potential impacts of the cooling tower mitigation alternative with respect to special status species and habitats.[38] However, FPL objects to Amended Contention 1-Eb as untimely insofar as it relates to the issue of groundwater use conflicts, because it merely repackages arguments made by Intervenors in their Petition to Intervene.[39] As proffered in August 2018, Contention 1-E similarly alleged that the ER "does not consider cooling towers as an alternative that would reduce adverse impacts related . . . [g]roundwater use conflicts."[40] Intervenors argued—as they do again now—that "[b]ecause the stress on groundwater resources originates from operation of the [CCS] as the *ultimate heat sink* for Units 3 and 4, . . . [t]he cooling tower alternative is certain to remediate the impacts of continued operation."[41] The Board rejected those arguments as inadequately pled and unsupported challenges to the ER's "discussion of the environmental impacts of continued CCS operation."[42]

Given that Contention 1-E and Amended Contention 1-Eb are nearly identical in this respect, the latter is not based on new and materially different information. Intervenors' cursory

---

Powertech USA, Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37, 93 (2013)). Intervenors, however, take that statement out of context. In *Powertech,* the information at issue was a revised inventory of air particulate emissions data submitted by the applicant to the Staff. The data were not used in any air dispersion modeling until the Staff conducted such modeling and described it in DSEIS—it was that new analysis that served as the basis for the petitioner's new contention. Under Intervenors' incorrect, overly broad reading of *Powertech*, any information used in the DSEIS could be deemed new and materially different—a result that clearly contravenes the purpose of Section 2.309(c)(1), it regulatory history, and Commission precedent construing that regulation.

38 *Turkey Point*, LBP-19-6, slip op. at 11 (noting that Intervenors can file "new contentions alleging that the curative information in the DSEIS has given rise to contentions of adequacy").

39 *Compare* Petition to Intervene at 19, 26-28 *with* Motion at 14-16.

40 Petition to Intervene at 19 (emphasis added).

41 *Id.* at 26-27. *See* Motion at 16 ("By replacing the heat sink function of the cooling canals with cooling towers, an original substantial factor in the hypersalinity that created a host of adverse impacts could be eliminated.").

42 *See Turkey* Point, LBP-19-3, slip op. at 44 n.63.

references to the DSEIS in Amended Contention 1E-b do not provide good cause for Intervenors' belated repackaging of previous, rejected arguments.[43] Therefore, as it relates to groundwater use conflicts, Amended Contention 1-Eb should be rejected as untimely under Section 2.309(c)(1)(i) and (ii). As discussed in Section IV.A.4, *infra*, Amended Contention 1E-b also is inadmissible because it fails to satisfy the NRC's requirements in Section 2.309(f)(1).

4. Amended Contention 1-Eb Also Should Be Rejected As Inadmissible Under 10 C.F.R. § 2.309(f)(1)(v) and (vi) Because It Lacks Adequate Support and Fails to Raise a Genuine Dispute with the DSEIS on a Material Issue

a. Intervenors Have Failed to Satisfy the Commission's Six-Factor Contention Admissibility Standard

For an amended or new contention to be admissible, it also must satisfy the six-factor admissibility standard in 10 C.F.R. § 2.309(f)(1).[44] As demonstrated below, Amended Contention 1E-b fails to meet all of the following criteria, which require that an admissible contention:

(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;

(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]

---

[43] *See Turkey Point*, LBP-17-6, 86 NRC at 48 n.8 (noting that petitioners are not permitted "to use old information repackaged in a new document as a basis for a new contention").

[44] *See Turkey Point*, LBP-19-6, slip op. at 11 n.18 ("[T]o challenge the adequacy of the new information, an intervenor must timely file a new contention that addresses the factors in 10 C.F.R. § 2.309(f)(1).").

[45] *See also Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017).

In addition, pursuant to 10 C.F.R. § 2.335, a contention that challenges an NRC rule or regulation will be rejected unless the petitioner makes an appropriate *prima facie* showing supporting a rule waiver before the Board, which then must certify the waiver request to the Commission.[46]

The Commission's contention-admissibility standard is "strict by design."[47] The failure to comply with any of the admissibility requirements "renders a contention inadmissible."[48] The petitioner alone bears the burden to meet the standard for contention admissibility.[49] Intervenors here have failed to meet that burden, as fully demonstrated below.

b. Intervenors' Arguments Contravene Settled NEPA Principles and Thus Fail to Establish A Genuine Material Dispute with the DSEIS

Contrary to Intervenors' claim, the DSEIS discusses mechanical draft cooling towers as a mitigation alternative at length, and in a manner that complies fully with NEPA. As a threshold matter, Amended Contention 1-Eb relies on flawed legal arguments that contravene settled NEPA law. For example, Intervenors state that, "[u]nlike for all the other alternatives examined . . . the DSEIS fails to analyze how the cooling tower alternative compares to the proposed action."[50] But they identify no statutory provision or regulation that requires the NRC Staff to undertake such a comparison in the DSEIS—and none exists.

---

46 *See Turkey Point*, LBP-19-3, slip op. at 8; 10 C.F.R. § 2.335(b). As explained in FPL's concurrently-filed answer to Intervenors' Waiver Petition, Intervenors have failed to meet the standards in 10 C.F.R. 2.335(b) for the waiver of any regulations in 10 C.F.R. Part 51. *See generally* FPL Answer to Intervenors' Petition for Waiver; note 17, *supra*.

47 *AmerGen Energy Co*. (Oyster Creek Nuclear Generation Station), CLI-06-24, 64 NRC 111, 118 (2006).

48 *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016).

49 *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."); *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 149 (2015) ("[T]he Board may not substitute its own support for a contention.").

50 Motion at 11 (citing DSEIS at 2-20 to 2-21).

Intervenors overlook the important distinction between the requirement to consider "alternatives for reducing adverse impacts,"[51] commonly called *mitigation measures*, and the broader mandate to consider "[a]lternatives to the proposed action,"[52] commonly called *project alternatives* (in this case, replacement power alternatives). Insofar as Intervenors assert that the DSEIS must consider cooling towers in the context of alternatives to the proposed action (because they purportedly are within a "range of reasonable alternatives"), their argument fails. Cooling towers do not produce power and, thus, cannot be considered an alternative to the proposed action—SLR for Turkey Point Units 3 and 4.

To the extent Intervenors argue that the DSEIS must contain a substantially more detailed or "vigorous" analysis of the cooling tower alternative, they again misconstrue applicable NEPA requirements. The duty to consider mitigation measures is not explicitly mandated by NEPA and required in all cases.[53] Rather, the Supreme Court has interpreted NEPA to include an implicit duty to discuss mitigation measures *only to the extent necessary* to provide a complete picture of the impacts of the project.[54] That duty is "tempered by a practical rule of reason."[55] Thus, in its seminal *Methow Valley* decision, the Court held that mitigation measures only need to be "discussed in sufficient detail to ensure that *environmental consequences have been fairly*

---

51 10 C.F.R. § 51.53(c)(3)(iii); *see also* 10 C.F.R. § 51.45(c) (requiring consideration of "alternatives available for reducing or avoiding adverse environmental effects").

52 *Id.* § 51.45(b)(3).

53 *See* 42 U.S.C. § 4321 *et seq*.

54 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353, 359 (1989).

55 *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-16-7, 83 NRC 293, 326 (2016) (citation omitted).

evaluated."[56] It follows that "[u]nder basic NEPA principles, it is reasonable to tailor the degree of mitigation analysis to the significance of the impact to be mitigated."[57]

Further, contrary to Intervenors' claim, NEPA does not "impose[] requirements on the NRC to ensure environmental protection."[58] It is well-established that "NEPA itself does not mandate particular results, but simply prescribes the necessary process" by which agencies evaluate and inform the public of the environmental impacts of a proposed action.[59] As such, NEPA does not empower the NRC to require specific mitigation measures, especially when such measures—including cooling water systems—are within the jurisdiction of other agencies.[60]

The NRC Staff's DSEIS fully comports with these NEPA requirements and principles. As the Board noted in LBP-19-6, "the DSEIS expressly considers mechanical draft cooling towers as an alternative to the CCS, as well as the capacity of cooling towers to reduce adverse impacts on the American crocodile and its habitat."[61] The DSEIS evaluates the environmental consequences

---

[56] *Methow Valley*, 490 U.S. at 352 (emphasis added). Thus, where there are no significant impacts on the environment, NEPA does not impose a duty to discuss mitigation measures for such impacts. *See Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd*, 535 U.S. 1 (2002); *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1526 (10th Cir. 1992). The Court also held that there is no substantive requirement that a complete mitigation plan be actually formulated, finalized, adopted, or legally enforceable. *Methow Valley*, 490 U.S. at 352.

[57] *Indian Point*, CLI-16-7, 83 NRC at 323 n.156. *See also* Regulatory Guide 4.2, Supp. 1, Rev. 1, "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications" at 8, 13 (June 2013) (ML13067A354) (noting that "[m]itigation alternatives should be considered in proportion to the significance of the impact," and that an applicant may provide a "brief description" of alternatives considered that would reduce or avoid adverse effects).

[58] Motion at 17, 43.

[59] *Methow Valley*, 490 U.S. at 350 (citing *Stryker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-28 (1980) and *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 558 (1978)).

[60] The NRC's authority does not extend to requiring operating nuclear plants to replace or modify their cooling systems to reduce impacts. *See* Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Main Report (Final Report), NUREG-1437, Rev. 1, vol. 2, app. A at A-220 (June 2013) (ML13107A023) ("GEIS"). Thus, the NRC does not make decisions or recommendations in its NEPA documents regarding changes to nuclear power plant cooling systems to mitigate adverse impacts under the jurisdiction of State or other Federal agencies. *See id.*, vol. 1 at 1-9.

[61] *Turkey Point*, LBP-19-6, slip op. at 6-7 (citing and describing Staff discussion on page 4-68 of the DSEIS). Under the cooling towers alternative evaluated by the Staff, Turkey Point Units 3 and 4 would each use three closed-cycle, wet-cooling towers to dissipate heat from the reactor cooling water systems. *See* DSEIS at 2-13. The primary source of cooling water is assumed to be reclaimed wastewater. *See id.* All liquid discharges from the Turkey Point facility, including storm water, would continue to flow into the CCS. *See id.* at 4-35. In addition, Unit 5, an operating fossil-fueled unit that uses cooling towers (*see id.* at 3-8), would continue to discharge cooling tower blowdowns to the CCS.

of the mechanical draft cooling towers alternative with respect to each resource area that would be affected, including water resources, terrestrial and aquatic resources, and special status species and habitats.[62] Table 2-2 of the DSEIS summarizes the impact of the mechanical draft cooling towers alternative on the different resource areas.[63]

Thus, the NRC has evaluated the cooling tower mitigation alternative in a manner that is commensurate with the underlying impacts being considered, and that has allowed it to fairly evaluate the impacts of the proposed action. As demonstrated further below, Intervenors have provided no information to suggest that the NRC Staff's evaluation in the DSEIS is in any way deficient under NEPA's rule of reason.[64]

c. Intervenors' Claim That the NRC Staff Has Not Adequately Considered the "Environmental Benefits" of the Cooling Tower Mitigation Alternative Is Factually Unsupported

Intervenors' claim that the DSEIS does not adequately consider the possible benefits of the cooling tower alternative is factually unfounded.[65] Although the DSEIS does not contain a section devoted specifically to the possible "environmental benefits" of cooling tower use at Turkey Point, it discusses that subject in sufficient detail for NEPA purposes. Namely, the DSEIS explains that

---

See id. at 4-35. CCS water would continue to be circulated through retired fossil-fueled Units 1 and 2; however, this circulation would not add heat to the CCS. *See id.* at 3-8, 4-35.

62 *See* DSEIS § 4.5.7 (impact on surface water and groundwater resources); *id.* § 4.6.7 (impact on terrestrial resources); *id.* § 4.7.7 (impact on aquatic resources); *id.* § 4.8.3.4 (impact on special status species and habitats).

63 *See id.* at 2-22 to 2-23 (Tbl. 2-2). Table 2-2 includes impacts to special status species and habitats as well as groundwater resources—the two areas of focus in Amended Contention 1-Eb.

64 *See Turkey Point*, LBP-19-6, slip op. at 7 (noting that "the DSEIS now considers mechanical draft cooling towers as a reasonable alternative to the CCS").

65 The DSEIS discusses the impacts of continued use of the CCS at Turkey Point Units 3 and 4 on special status species and habitats by incorporating by reference the Staff's 2018 Biological Assessment for the proposed action. DSEIS at 4-60 (incorporating by reference Biological Assessment for the Turkey Point Nuclear Generating Unit Nos. 3 and 4 Proposed Subsequent License Renewal (Dec. 2018) (ML18353A835) ("Biological Assessment"). Specifically, the Staff's Biological Assessment evaluates the potential impacts to 15 federally-listed endangered or threatened species (including the six species cited by Intervenors on page 13 of their Motion), and to the designated critical habitats of two of those species (the American crocodile and the West Indian manatee). *See* Biological Assessment at 36.

discontinuing use of the CCS (*i.e.*, under the no-action alternative or due to the use of cooling towers) for Units 3 and 4 would cause less heat to be discharged to the system, potentially making conditions less saline and more favorable for birds and wildlife, including certain special status species like the American crocodile.[66] It also notes that discontinued use of the CCS likely would not affect the marine environments of Biscayne Bay, Card Sound, or the Atlantic Ocean and, consequently, there likely would be no effects on federally-listed species or critical habitats under the National Marine Fisheries Service's ("NMFS") jurisdiction or on "Essential Fish Habitat."[67]

The DSEIS explains that FPL still would be required to take the CCS restorative actions mandated by the 2016 Consent Order with the State of Florida,[68] and the 2015 Consent Agreement with Miami-Dade County,[69] which require FPL to, *inter alia*, decrease the salinity in the CCS, develop a nutrient management plan for the CCS, and restore seagrass within portions of the CCS.[70] The DSEIS further notes that future changes in conditions may require reinitiated consultations between the NRC and the USFWS, which would ensure that the operation of the CCS is not likely to jeopardize the continued existence of the American crocodile or other affected special species.[71]

---

66 *See* DSEIS at 4-47, 4-57, 4-68. FPL notes that Intervenors' reference to "dangerously high temperatures" in the CCS in "the recent past" (Motion at 13) is entirely unsubstantiated and overlooks relevant discussion in the DSEIS concerning historical CCS temperatures, factors affecting those temperature, applicable NRC temperature limits, FPL actions to lower temperatures, and FPL's FDEP-required thermal efficiency plan. *See* DSEIS at 3-44 to 3-46.

67 *Id.* at 4-68.

68 *See Fla. Dep't of Envtl. Prot. v. FPL*, OGC File No. 16-02441, Consent Order (June 20, 2016) (ML16216A216) ("Consent Order").

69 *See Miami-Dade County, Dep't of Regulatory and Econ. Res., Division of Envtl. Res. Mgmt. v. FPL*, Consent Agreement (Oct. 7, 2015) (ML15286A366) ("Consent Agreement").

70 *See* DSEIS at 3-44 to 3-53, 3-69 to 3-73, 3-99, 4-120. FPL would continue CCS restoration activities, as described in Section 3.5 ("Water Resources") of the DSEIS. *Id.* at 4-59 to 4-60. The State of Florida requires these activities under FPL's Nutrient Management Plan, which, the DSEIS notes, "is independent of subsequent license renewal." *Id.* at 4-59. The CCS would continue to operate during shutdown, as described in Section 4.5.2.1 of the DSEIS. Accordingly, the DSEIS concludes that "the CCS would likely continue to provide habitat for ESA-listed species." *Id.* at 4-68.

71 *See id.* at 4-68, 4-70.

Intervenors provide no credible, adequately-supported information or analysis to support the vague claim that replacing the CCS with cooling towers "could" yield "environmental benefits" beyond what already are discussed in the DSEIS.[72] They refer generally to Section IV.B of their Motion in support of Amended Contention 1-Eb. However, they fail to identify the specific documents discussed in Section IV.B to which they are referring, or how those documents support their claims. Thus, they fail to comply with 10 C.F.R. § 2.309(f)(1)(v).[73]

Those documents, in any case, offer no such support. For example, Intervenors make repeated references to reduced heat contributions from Units 3 and 4 as a result of cooling tower usage, but they fail to explain how reduced heat loads alone will address CCS salinity-related concerns. Indeed, they acknowledge the need for "an adequate effort to freshen the canals."[74] In this regard, they fail to provide *any* support for the premise that underlies the contention—*i.e.*, that cooling towers would be more effective in addressing CCS-related impacts on groundwater resources and listed species than the freshening, hypersaline plume recovery, and other mitigation actions that FPL is required to implement under the Consent Order and Consent Agreement.

Instead, Intervenors simply *assume* that the installation and use of cooling towers will serve as an environmental panacea that avoids or substantially lessens adverse impacts to special status species and their habitats and seek more discussion of those purported benefits. However, they fail to fully acknowledge the potential adverse impacts of cooling tower construction and operation discussed in the DSEIS. As the DSEIS explains, construction of cooling towers could result in the permanent loss or impairment of sensitive aquatic habitats and could affect ecosystem

---

72 *See* Motion at 11-14.

73 *See USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) ("references to articles or correspondence, without 'explanation or analysis' of their relevance, [do] not provide an adequate basis for admitting [a] contention").

74 Motion at 13.

function and connectivity.[75] Also, reduced flow to the CCS as a result of using cooling towers for Units 3 and 4 could lead to stagnant conditions and lower habitat quality for Endangered Species Act ("ESA")-listed species.[76]

Finally, insofar as Intervenors do refer to a specific document on pages 12 to 13 of the Motion—*i.e.*, the USFWS's June 2017 Biological Opinion—they selectively quote from that document, and ignore statements that undermine their argument. Notably, they omit the last sentence of the paragraph from which they quote in their Motion. It states: "FPL is currently taking steps to improve water quality and habitat for crocodiles in the CCS, which appears to be working to some extent; the Service is awaiting an official report."[77] Also, Appendix B to the June 2017 Biological Opinion acknowledges that: "FPL is working with the Service to address the adverse conditions in the CCS and return the CCS to high quality nesting habitat for crocodiles. Current efforts seem to be effective and the water quality appears to be improving as of spring 2017."[78] As submitted to the NRC in April 2019, FPL's most recent annual report on its American crocodile monitoring activities indicates that this positive trend has continued:

> With the environmental improvements taking place within the Turkey Point CCS, the American crocodiles had 14 successful nests and 225 hatchlings were released at Turkey Point in and around the CCS. The number of hatchlings in 2018 has doubled since FPL began efforts to improve the health of the canal system.[79]

Thus, the June 2017 Biological Opinion does not support Intervenors' claim of "decreased nesting and fewer American crocodiles."

---

[75] *See* DSEIS at 4-60.

[76] *See id.* at 4-47, 4-57, 4-68.

[77] June 2017 Biological Opinion at 20.

[78] *Id.*, App. B, "Status of Species/Critical Habitat – American Crocodile (*Crocodylus acutus*)" at 5 (pdf page 268 of 350).

[79] FPL, "2018 Annual American Crocodile Report" at 11 (Jan. 2019) (ML19095B530).

In conclusion, Intervenors fail to support their claim in Amended Contention 1-Eb that the DSEIS does not adequately analyze mechanical draft cooling towers as a reasonable alternative that could mitigate adverse CCS-related impacts on special status species or their habitats.

d. Intervenors' Claim that the NRC Staff Has Not Adequately Analyzed the Potential Benefits of the Cooling Tower Mitigation Alternative on Groundwater Use Conflicts Also Lacks Support

Intervenors similarly fail to support their cursory claims in Amended Contention 1-Eb regarding the potential for cooling towers to reduce groundwater use conflicts. Section 3.5.2.3 of the DSEIS contains detailed information concerning groundwater usage and related regulatory approvals at Turkey Point, including: (1) FPL's withdrawals from the Upper Floridan Aquifer for freshening of the CCS, (2) operation of a recovery well system and related underground injection well to extract and dispose of hypersaline groundwater from the Biscayne Aquifer, (3) operation of Biscayne Aquifer marine wells to supplement CCS freshening, and (4) operation of Upper Floridan Aquifer saline production wells for various onsite uses.[80] Section 4.5.1.2 of the DSEIS discusses potential groundwater use conflicts associated with those uses.[81] Based on its detailed evaluation, the Staff concludes that the potential for groundwater use conflicts from FPL's groundwater withdrawals would be SMALL for the Biscayne aquifer and MODERATE for the Upper Floridan aquifer during the SLR term.[82]

Section 4.5.2.2 (No-Action Alternative—Groundwater Resources) of the DSEIS specifically discusses the scenario in which FPL ceases use of the CCS for cooling water purposes. It explains that doing so would reduce thermal discharges as well as discharges of cooling water and other effluents from the plant's cooling water system to the CCS, thereby potentially reducing

[80] *See generally* DSEIS at 3-79 to 3-84.

[81] *See generally id.* at 4-28 to 4-33.

[82] *See id.* at 4-33.

the amount of water used to support freshening activities.[83] The DSEIS further explains that some use of water by FPL for salinity management in the CCS would continue, possibly at a reduced rate, in accordance with the provisions of the 2015 Consent Agreement and the 2016 Consent Order.[84] DSEIS Section 4.5.7.2 (Cooling Water System Alternative—Groundwater Resources) accordingly concludes that groundwater demands for CCS freshening would decrease over time "commensurate with the reduction in thermal discharge to the CCS from Turkey Point Units 3 and 4," but that some groundwater use likely would continue into the future.[85]

Intervenors note that the DSEIS does not discuss "how significant this change would be," and that "an analysis of the change to the [CCS] and groundwater use conflict if cooling towers were built should have been conducted."[86] However, FPL has not proposed—and the FDEP has not recommended—that mechanical draft cooling towers be installed at Turkey Point Units 3 and 4. NEPA "does not call for certainty or precision, but an *estimate* of anticipated (not unduly speculative) impacts."[87] As such, it does not require the NRC to speculate about the specific location, configuration, design, and operational parameters of cooling towers that have not been required by the FDEP or installed by FPL.[88] Further, "NEPA does not mandate that an agency undertake studies to obtain information that is not already available,"[89] or to "wait until inchoate

---

83 *See id.* at 4-36.

84 *See id.*

85 *Id.* at 4-42.

86 Motion at 16.

87 *La. Energy Servs., L.P.* (Nat'l Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005); *see also La. Energy Servs., L.P.* (Claiborne Enrichment Ctr.), CLI-98-3, 47 NRC 77, 103 (1998) ("NEPA gives agencies broad discretion to keep their inquiries within appropriate and manageable boundaries.").

88 *Cf. Turkey Point*, LBP-19-6, slip op. at 6-7 (noting "the Staff's explanation that a more precise forecast [of the capacity of cooling towers to reduce adverse impacts on the American crocodile and its habitat] is not possible because it would depend on factual information that is not currently available").

89 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-16-18, 84 NRC 167, 173 (2016).

information matures into something that [possibly] might affect [its] review."[90] In Sections 4.5.2.2 and 4.5.7.2 of the DSEIS, the Staff has reasonably addressed the issue of groundwater use conflicts based on the best information available at this time, and acknowledged the uncertainty associated with any future cooling tower system design.[91] NEPA requires no more.

* * *

In summary, for all the reasons discussed above, the Board should reject Amended Contention 1-Eb because it fails to comply with the timeliness requirements of 10 C.F.R. § 2.309(c)(1)(i)-(ii) and the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(v)-(vi).

B. Amended Contention 5-Eb Should Be Rejected As Inadmissible Under 10 C.F.R. § 2.309(f)(1)

1. Summary of Amended Contention 5-Eb

Amended Contention 5-Eb asserts that:

> The DSEIS is deficient in its analysis of the potential impacts of ammonia releases during the renewal period on threatened and endangered species and their critical habitat.[92]

Intervenors claim that the DSEIS "acknowledges that Miami-Dade County has offered evidence that Turkey Point is a key source of the ammonia and is responsible for the violations of water quality standards."[93] However, they assert that the DSEIS fails to comply with NEPA because it "gives inadequate consideration to how the ammonia released will impact threatened or

---

[90] *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 726 (2012) (internal quotation marks and citation omitted).

[91] *See Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391-92 (2012) (citations omitted) ("NEPA requires that [the NRC] conduct [its] environmental review with the best information available today."); *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 377 (D.C. Cir.), *cert. denied*, 454 U.S. 1092 (1981) ("So long as the environmental impact statement identifies areas of uncertainty, the agency has fulfilled its mission under NEPA.").

[92] Motion at 20.

[93] *Id.* at 23.

endangered species, or otherwise harm important plant and animal habitats."[94] Intervenors contend that individualized, species-specific analyses of ammonia-related impacts is vital, and that the DSEIS generally lacks such analyses.[95]

2. Amended Contention 5-Eb Should Be Rejected As Inadmissible Under 10 C.F.R. § 2.309(f)(1)(v) and (vi) Because It Lacks Adequate Support and Fails to Raise a Genuine Dispute with the DSEIS on a Material Issue

Amended Contention 5-Eb is inadmissible under 10 C.F.R. § 2.309(f)(1)(v) and (vi) because, like Contention 1-Eb, it lacks adequate factual support and fails to directly controvert relevant discussion in the DSEIS. Intervenors assert that the DSEIS does not adequately evaluate how ammonia purportedly resulting from the continued operation of Turkey Point Units 3 and 4 will impact threatened and endangered species.[96] That claim has no foundation in fact.

As an initial matter, the DSEIS notes that ammonia concentrations within the CCS are all below (on average, by an order of magnitude) the Miami-Dade County water quality standard for ammonia (0.5 mg/L), and that FPL's monitoring program has not detected evidence in the surrounding marsh and mangroves areas of any CCS-related ammonia impacts on soil pore water quality.[97] It further notes that "no readily apparent impacts of ammonia, other nutrients, and salinity on surface water quality in canals adjacent to the Turkey Point site, from the CCS via the groundwater pathway, have been detected."[98] The DSEIS also notes that there are no discernible effects from CCS-derived ammonia on Biscayne Bay or Card Sound water qualities.[99] Thus, the

---

94 *Id.* at 22. Unlike original Contention 5-E, which the Board admitted as a contention of omission challenging the ER's "failure to recognize Turkey Point as a source of ammonia in freshwater wetlands surrounding the site" (LBP-19-3, slip op. at 52-53), Amended Contention 5-Eb makes no reference to wetlands. *See* Motion at 21-25.

95 *See id.* at 23.

96 *See id.* at 21-22.

97 *See* DSEIS at 3-42, 3-53.

98 *Id.* at 3-53.

99 *Id.* at 3-52.

DSEIS does *not*, as Intervenors wrongly claim, "acknowledge[] that Miami-Dade County has offered evidence that Turkey Point is a key source of the ammonia and is responsible for the violations of water quality standards."[100] Intervenors do not directly contest the foregoing DSEIS findings or conclusions in their amended contention, or explain with the requisite specificity how any of the "new information" they purport to offer supports any contrary findings or conclusions.

In short, there is no evidence that CCS is a source of ammonia in concentrations that could have any adverse effects on wildlife, including endangered and threatened species. Intervenors appear to argue that the NRC must address potential ammonia impacts to all species that may be present in the site vicinity—not just those that might reasonably be exposed to elevated ammonia in the limited areas where it has been detected—without identifying a plausible exposure pathway. That argument has no legal basis in NEPA or NRC regulations. Thus, Amended Contention 5-Eb fails to meet the requirements in 10 C.F.R. § 2.309(f)(1)(v) and (vi).

The DSEIS, in any case, discusses the potential effects of elevated ammonia levels on aquatic organisms.[101] By way of background, the DSEIS discusses threatened and endangered species and critical habitat under the USFWS's jurisdiction via its summary and incorporation by reference of the NRC's Biological Assessment.[102] Based on the Biological Assessment, the DSEIS concludes that Turkey Point SLR is likely to adversely affect the American crocodile and the eastern indigo snake, and may result in adverse modification to the American crocodile's designated critical habitat.[103] It further notes that SLR is not likely to adversely modify designated critical habitat for the West Indian manatee, and would have no adverse effects on Essential Fish

---

100 Motion at 23.

101 *See* DSEIS at 4-65 to 4-67.

102 *See id.* at 3-110 to 3-111, 4-60 to 4-62 (incorporating by reference the Biological Assessment).

103 *See id.* at 2-23 (Table 2-2, Note (a)), 4-6 (Table 4-2, Note (c)).

Habitat.[104] Finally, the DSEIS concludes that SLR is not likely to adversely affect the other thirteen federally-listed species under USFWS jurisdiction that may occur in the action area.[105] The DSEIS also provides specific analyses of the potential impacts of SLR on five federally-listed species (and their associated habitats) under NMFS jurisdiction, including the endangered smalltooth sawfish and four species of threatened or endangered sea turtles.[106]

Section 4.8 ("Special Status Species and Habitats") of the DSEIS describes the foregoing NRC Staff analyses and related conclusions as they apply to ESA-listed species and habitats, and explicitly discusses ammonia-related issues. Among other things, Section 4.8 of the DSEIS:

- Explains why ammonia in the CCS would not affect surface water quality through the groundwater pathway in a way that would affect these species;
- Discusses the potential pathway by which ammonia from the CCS could reach these species;
- Describes FPL's monitoring of the CCS and surrounding waterbodies for ammonia;
- Notes that FPL has identified no evidence of ecological impacts on surrounding areas from ammonia originating in the CCS;
- Discusses the MDC-DERM's requirement that FPL develop and implement a nutrient management plan and other requirements of the Consent Order and Consent Agreement; and
- Explains the potential effects of elevated ammonia levels on species.[107]

---

104 *See id.*

105 *See id.*

106 *See id*. No federally-listed endangered or threatened species under the NMFS's jurisdiction occur on the Turkey Point site itself. *See id.* at 3-111 to 3-112, 4-62. The five federally-listed species under the NMFS's jurisdiction may occur in Biscayne Bay adjacent to the Turkey Point site. *See id.* The NRC Staff did not prepare a separate biological assessment for species under the NMFS's jurisdiction due to the limited number of listed species and the minimal potential effects on these species. *See id.*, app. C at C-2.

107 *See generally id.* at 4-64 to 4-67.

The DSEIS concludes that "water quality effects from the continued operation of Turkey Point would result in *insignificant* impacts on these [special status] species" listed by the USFWS.[108] It further concludes that the proposed SLR is not likely to adversely affect the five NMFS-listed species, and notes that no other NMFS-listed, proposed, or candidate species or proposed or designated critical habitats occur in the action area.[109]

To the extent Intervenors attempt to dispute specific portions of the DSEIS, their arguments lack support and overlook relevant information. They principally assert that the DSEIS and Biological Assessment do not consider the impacts of ammonia discharges on all of the USFWS and NMFS-listed species, and that the latter disproportionately discusses impacts to the West Indian manatee.[110] In fact, they claim "the DSEIS fails to consider the impacts of ammonia discharges on all but one threatened and endangered species and important habitat."[111]

Intervenors' arguments are factually unfounded and ignore relevant discussion in the DSEIS and Biological Assessment. As the DSEIS explains, FPL monitors the CCS, Biscayne Bay, Card Sound, and other nearby waterbodies for ammonia, nitrogen, and phosphorus, among other nutrients and parameters.[112] Additionally, FPL conducts ecological monitoring semi-annually in Biscayne Bay and mangrove areas and quarterly in marsh areas.[113] The measured ammonia levels in the CCS are very low—below the County water quality standard.[114] FPL's monitoring program has not detected evidence in the surrounding marsh and mangroves areas of

---

108 *Id.* at 4-66 to 4-67 (emphasis added).

109 *Id.*, app. C at C-3.

110 *See* Motion at 23-24.

111 *Id.* at 23.

112 *See* DSEIS at 4-65.

113 *See id.*

114 *See id.* at 3-42.

any impacts of ammonia from the CCS, and no changes in Biscayne Bay water quality trends that are related to the CCS.[115] Intervenors do not explain why species inhabiting any these areas could be adversely impacted by ammonia in light of the aforementioned water quality and ecological monitoring results, and provide no evidence indicating that such adverse impacts have occurred.

The DSEIS notes that the detection of elevated ammonia levels has been limited to bottom samples in localized areas such as stagnant or dead-end canals.[116] As the Biological Assessment explains, the West Indian manatee has been observed in the canals, although the canals do not serve as preferred habitat for manatees.[117] Thus, the Biological Assessment logically focused its discussion of ammonia-related impacts on the manatee—not on other listed species with no potential for exposure to elevated ammonia levels.[118] Accordingly, Intervenors' claim that the Staff's analysis of potential ammonia impacts to listed species is "spotty" or "inadequate" is incorrect.

Finally, the DSEIS discussion of ammonia-related impacts to listed species and habitats is not limited solely to the manatee. Section 4.8.1.1 also discusses potential impacts of exposure to elevated ammonia levels to sea turtles and smalltooth sawfish. It concludes that continued operation of Turkey Point Units 3 and 4 would not have significant water-quality-related impacts on these species, including impacts stemming from exposures to ammonia.[119]

---

[115] *See id.* at 4-65. *See also id.* at 4-22 (noting that "discernable effects from CCS derived temperature, ammonia, nutrients, and salinity on Biscayne Bay or Card Sound water qualities has not been detected").

[116] *See id.* at 3-50 to 3-51, 4-22; *see also* Biological Assessment at 61.

[117] *See* Biological Assessment at 2, 48, 56, 59, 61.

[118] The Biological Assessment concludes that due to the very low likelihood that manatees will be exposed to ammonia in the canals, and the expected short durations of any such exposures, "any effects on manatees would be insignificant or discountable." *Id.* at 61.

[119] *See* DSEIS at 4-65 to 4-67.

In view of the above, Intervenors have provided no information or bases to suggest that the DSEIS's assessment of ammonia-related impacts on federally-listed species is inadequate under NEPA. Indeed, they ignore the relevant, detailed discussion presented in the DSEIS and Biological Assessment, despite their obligation under Section 2.309(f) to challenge "specific portions" of those documents "with particularity."[120] Thus, Amended Contention 5-Eb fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi) and should be rejected by the Board.

V. INTERVENORS' NEW CONTENTIONS ARE UNTIMELY AND INADMISSIBLE

In Section IV.D of their Motion, Intervenors proffer four new contentions (6-E, 7-E, and 8-E, and 9-E). They claim to base those four new contentions on purportedly "new information" described in Sections IV.B and IV.C of their Motion.[121] However, Intervenors do not demonstrate good cause for any of their new contentions, as required by 10 C.F.R. § 2.309(c)(1). In short, they fail to show that they have provided any information that is: (1) genuinely new, (2) materially different from previously-available information, and (3) actually relied upon by Intervenors as material support for their proposed new contentions. Therefore, each contention should be rejected on that ground alone.

Even assuming *arguendo* that Intervenors had satisfied the good cause standard in 10 C.F.R. § 2.309(c)(1), none of their four contentions meets the contention admissibility standards in 10 C.F.R. § 2.309(f)(1). As fully demonstrated below, the new contentions raise

---

[120] 10 C.F.R. § 2.309(f)(1); *see also Crowe Butte Res., Inc.* (Marsland Expansion Area), LBP-18-3, 88 NRC __ (slip op. at 30) (July 20, 2018) (rejecting contention as inadmissible under 10 C.F.R. § 2.309(f)(1) because the petitioner did not challenge "any specific portion" of the NRC Staff's NEPA document or "any data set, any modeling or methodology, any technology used, or any conclusion" in the document that petitioner deemed inadequate).

[121] In Section IV.B of their Motion, Intervenors identify the following three categories of purported new information: (1) a September 17, 2018 Petition for Administrative Hearing filed by Miami-Dade County with the FDEP challenging the FDEP's issuance of an Everglades Mitigation Bank Phase II Permit Modification to FPL; (2) three reports issued by FPL in October and December 2018; (3) and three reports/opinions prepared by individuals who previously submitted very similar reports on behalf of former intervenor Southern Alliance for Clean Energy ("SACE"). *See* Motion at 20-31. In Section IV.C of their Motion, Intervenors attempt to demonstrate good cause for their reliance on these documents under 10 C.F.R. § 2.309(c)(1). *See* Motion at 31-40.

issues that are outside the scope of the proceeding, lack adequate support, and fail to show that a genuine dispute exists with the DSEIS on a material issue of law or fact, contrary to Section 2.309(f)(1)(iii)–(vi). Thus, each contention should be rejected for this additional reason.

A. Contention 6-E Should Be Rejected As Untimely Under 10 C.F.R. § 2.309(c)(1) and Inadmissible Under 10 C.F.R. § 2.309(f)(1)

1. Summary of Contention 6-E

Contention 6-E asserts that the DSEIS fails to take the requisite "hard look" at the impacts of SLR on "surface waters via the groundwater pathway."[122] Intervenors dispute the NRC Staff's conclusion in Section 4.5.1.1 of the DSEIS that the CCS's impacts on adjacent surface water bodies via the groundwater pathway during the SLR term would be SMALL.[123] They contend that the Staff incorrectly "presumes that compliance with the FDEP Consent Order and the Miami-Dade Consent Agreement will effectively manage salinity conditions in the [CCS] and therefore prevent adverse impacts on adjacent surface water bodies."[124] Intervenors claim that the Staff relies on "unreliable" numerical modeling and "unsupported assertions by Applicant's modelers that more favorable climatic conditions will resolve the problem."[125]

2. Contention 6-E Is Not Timely Filed Under 10 C.F.R. § 2.309(c)(1) Because It Is Not Based on Any New and Materially Different Information

Intervenors fail to establish good cause for their new contention because they do not explain, with any specificity, how the issues raised therein are actually based on new and materially different information. They provide scant, generalized cross-references to Section IV.B of their Motion, and vaguely claim to "offer evidence and expert opinions that Applicant's

---

[122] Motion at 40.

[123] *Id.*

[124] *Id.* at 43.

[125] *Id.* at 43-44.

ongoing efforts to manage salinity issues are not reaching and will not reach required target salinity levels or effectively remediate the hypersaline plume."[126] Intervenors also claim that the Fourqurean Report shows that groundwater-related impacts on Biscayne Bay water quality are impacting seagrass communities, and that continued CCS operation "is likely to violate narrative water quality standards."[127]

Such nebulous assertions do not suffice to establish the existence of any new and materially different information that could provide good cause for admission of Contention 6-E (or any of the other new contentions), and Contention 6-E should be rejected on this ground alone.[128] Regardless, as discussed below, the reports and other documents identified in Section IV.B of the Motion do not provide any new information that is materially different than that available to Intervenors when they filed contentions based on the ER.

a. The 2018 FPL Reports Cited by Intervenors Do Not Constitute New and Materially Different Information

In Section IV.B.2 of their Motion, Intervenors cite three FPL reports issued in late-2018: (1) the "Turkey Point Cooling Canal System Baseline CSEM Report" (Oct. 2018), (2) the "FPL Recovery Well System Startup Report" (Oct. 5, 2018), and (3) the "2018 Annual Turkey Point Power Plant Remediation/Restoration Report" (Dec. 2018).[129] In addition to the fact that the reports were issued more than six months ago and are not new, Intervenors further fail to explain how the reports provide good cause for any of their new contentions under Section 2.309(c)(1).

---

126 *Id.* at 44.

127 *Id.*

128 *Cf. Crow Butte Res.*, LBP-18-3, slip op. at 30 ("While [petitioner] says the final [Environmental Assessment] is inadequate based on its 'evidence,' the Board can find no citation to any specific fact or expert opinion that supports its contention.").

129 *See* Motion at 27, 36-38. As their issue dates reflect, all three of the FPL reports were issued more than six months ago. Moreover, FPL made them immediately available at that time to State and County regulators. In this respect, they are by no means new.

First, they refer only vaguely to "newly available data" in the reports.[130] They do not identify or describe the specific data on which they purport to rely, or even cite to specific pages in the referenced reports. As a result, they provide no basis whatsoever for determining whether the reports contain *any* new and materially different information that could support their claims.

Second, Intervenors do not appear to rely on any data in those reports. Rather, they rely on their own misrepresentations of the contents of those reports. For instance, Intervenors claim that "[t]hese reports are materially different than information previously available in the [ER]," but do not describe the FPL reports or explain why that is the case.[131] At most, they claim that the reports show that FPL is "not achieving the anticipated results regarding mitigation of the hypersaline plume and salinity management in the cooling canal system."[132]

However, their claim is factually unfounded, as the reports indicate that FPL's mitigation efforts are progressing as planned. For example, the "2018 Annual Turkey Point Power Plant Remediation/Restoration Report" notes that "FPL continues to make progress in implementing the measures and achieving the objectives outlined in the [Consent Agreement] and [Consent Order]."[133] Those measures include freshening, groundwater salinity remediation and containment, remnant external canal restoration, managing CCS nutrient impacts on groundwater and surface water resources outside the CCS boundaries, monitoring, and reporting.[134]

---

130 *Id.* at 27.

131 *Id.* at 36.

132 *Id.* at 27. Intervenors cite language on page 3-39 of the DSEIS to the effect that "more favorable climatic conditions . . . should help to reduce CCS water salinities to 34 PSU." That language in no way suggests that the ongoing mitigation measures are ineffective.

133 2018 Annual Turkey Point Power Plant Remediation/Restoration Report at 1.

134 *See id.*

Intervenors' misreading or inaccurate characterization of this and other FPL reports cannot support the admission of their proposed new contentions.[135]

b. The Wexler Report Contains No New and Materially Different Information

Insofar as Intervenors refer to numeric groundwater modeling and climactic conditions in Contention 6-E, they touch on issues that are discussed in the Wexler Report—though they never establish any clear and specific nexus between the contention and the report. That burden belongs to Intervenors, not the Board.[136] The Wexler Report principally discusses groundwater modeling studies performed by FPL contractor Tetra Tech from 2014 through 2017.[137] As such, the studies hardly constitute new and materially different information, especially given Mr. Wexler's previous involvement in this proceeding and in the recent Clean Water Act case in federal district court on behalf of SACE.

In his report, Mr. Wexler generally claims to identify "other limitations in the Tetra Tech analyses and the reliability of the model predictions," and opines that "freshening of the CCS will be difficult to achieve with the volumes of water currently being used and the locations selected for adding the water."[138] Even taking Mr. Wexler's statements at face value, Intervenors fail to explain how they constitute new and materially different information. In any case, Mr. Wexler's report appears to be based on the premise that the NRC Staff has relied on flawed groundwater

---

135 *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996) (stating that any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to licensing board scrutiny, "both for what it does and does not show").

136 *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001) (citing *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)) ("[A] licensing board is not free to supply missing information or draw factual inferences on the petitioner's behalf.").

137 *See generally* Wexler Report.

138 *Id.* at 1.

models, and that FPL did not meet a salinity "target" of 35 PSU.[139] As explained in Section V.A.4, *infra*, those premises are factually flawed and based on a misreading of the DSEIS—not on the availability of any new and materially different information. Indeed, the DSEIS discussion on which Intervenors and Mr. Wexler focus is based on FPL documents that have been publicly available since 2017—they are not new.[140] Additionally, insofar as Intervenors claim that FPL will not be able to reduce annual average salinity of the CCS to the level (34 PSU) and within the time frame (four years from the start of freshening) specified in the Consent Order based on current FDEP and MDC-DERM-approved mitigation activities, they could have made that same argument last year based on the contents of the ER.[141] Thus, their arguments clearly are untimely.

c. The Fourqurean Report Contains No New and Materially Different Information

Contention 6-E cites the Fourqurean Report for the proposition that CCS operation is adversely affecting Biscayne Bay water quality and seagrass communities.[142] Review of the report, which "updates" Dr. Fourqurean's May 14, 2018, report on behalf of SACE, reveals that it contains no new and materially different information. Indeed, the eight "opinions" presented on pages 2 through 8 of the Fourqurean Report and repeated on pages 29 through 31 of the Motion are identical to those contained in the report prepared by Dr. Fourqurean in May 2018 for SACE.[143] Clearly, they are not new.

The "updated" Fourqurean Report briefly discusses the DSEIS, but presents no new and materially different information or analysis. Dr. Fourqurean repeats previously-conveyed views

---

139 *Id.* at 2, 4.

140 *See* Motion at 27, 37, 38, 41, 44 (citing DSEIS at 3-49); DSEIS at 3-49 (citing FPL 2017a and FPL 2017b).

141 *See*, *e.g.* ER at 3-93 to 3-95.

142 Motion at 44.

143 *Compare* Fourqurean Report *with* Report of J.W. Fourqurean, Ph.D (Miami) (May 14, 2018) ("May 14, 2018 Fourqurean Report") (Attachment 8 to Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018)).

regarding alleged links between CCS operation and high phosphorus levels, algal blooms, and stressed seagrass communities in Biscayne Bay—none of which is adequately supported.[144] Intervenors do not explain how *any* of his observations constitute new and materially different information, or why they could not have raised such concerns based on the ER.

In fact, relying on the May 14, 2018, report prepared by Dr. Fourqurean, another intervenor, SACE, asserted in its petition to intervene that "[t]he environmental effects of nutrient [including phosphorus] seepage from the CCS into Biscayne Bay are significant, because Biscayne Bay is a 'low-nutrient' or 'nutrient-limited' ecosystem."[145] It further claimed that phosphorus from CCS "will continue to degrade the ecosystem and cause an imbalance and change the nature of the surrounding marine environment."[146] Plainly, Intervenors are attempting to revive arguments made by SACE at the beginning of this proceeding and that are now moot given SACE's withdrawal from the proceeding. Thus, they fail to provide good cause for their belated submittal of a purported "new" contention raising those same concerns.

c. The Nuttle Report and September 17, 2018, Miami-Dade County Petition for Hearing Contain No New and Materially Different Information

The third report proffered by Intervenors, the Nuttle Report, is not explicitly mentioned in Contention 6-E or any of Intervenors' other new contentions. The Board and parties are left to infer its relevance, if any, to the contentions.[147] The Nuttle Report focuses on a June 28, 2018,

---

144 *See* Fourqurean Report at 8-10. Notably, although Dr. Fourqurean states that his opinions are "based on the data on seagrass distribution, nutrient availability and water quality of both surface water and groundwater available to [him] as of June 23, 2019," he notes that he has yet to complete the data collection process, and that he is "work[ing] toward publishing a paper once a full 3 years of data are collected and is correlated with all existing data." *Id.* at 1.

145 Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018) at 18 (citing May 14, 2018 Fourqurean Report at 1) (ML18213A529).

146 *Id.* (citing May 14, 2018 Fourqurean Report at 6).

147 *See USEC,* CLI-06-10, 63 NRC at 457 (noting that "it is not up to the boards to search through pleadings or other materials to uncover arguments and support never advanced by the petitioners themselves; boards may not simply 'infer' unarticulated bases of contentions").

Everglades Mitigation Bank Phase II Permit Modification (No. 0193232-182) issued by the FDEP to FPL.[148] It also discusses Miami-Dade County's related September 17, 2018, Petition for Administrative Hearing,[149] which Intervenors separately identify as "new information" in Section IV.B.1 of their Motion. Dr. Nuttle opines that the outcome of Miami-Dade County's hearing request "will affect the impact that the operation of the CCS will have both on the groundwater, surface water and ecological resources in the Model Lands Basin and on the efficacy of FPL's efforts to remediate the CCS groundwater plume and to protect potable water supply wells."[150] Curiously, Intervenors devote nearly seven pages to discussing the Miami-Date County Petition, but do not attach it to their Motion or the Nuttle Report or provide any direct link to the document. Nor do they ever directly cite the Miami-Date County Petition in their new contentions.

Neither the Miami-Dade County Petition nor Dr. Nuttle's discussion thereof amounts to new and materially different information for purposes of Section 2.309(c)(1). First, the Miami-Dade County Petition was available to Intervenors ten months ago—it is far from new information. Furthermore, Miami-Dade County identified its concerns in writing before it even filed the Petition, as evidenced by an attachment to Intervenors' Petition to Intervene. Namely, on page 26 of their Petition to Intervene, Intervenors cited a July 18, 2018, letter from the MDC-DERM to the FDEP.[151] That letter (included as Attachment M to their Petition to Intervene)

---

[148] As explained in the DSEIS (at 3-24, 3-93), under the Everglades Mitigation Bank, both public and private entities can own lands in the program. FPL owns the Everglades Mitigation Bank land, which comprises approximately 13,000 acres of relatively undisturbed freshwater and estuarine wetlands west and south of the Turkey Point CCS. FPL operates the Everglades Mitigation Bank as a commercial mitigation bank offering wetland habitat credits that can be purchased to offset regional wetland impacts. The FDEP has regulatory authority over the mitigation bank program within Florida pursuant to the Florida Mitigation Banking Rule and issues related permits.

[149] *Miami-Dade Cty. v. Dep't of Envtl. Protection*, Petition for Administrative Hearing (Sept. 17, 2018) ("Miami-Dade County Petition").

[150] Nuttle Report at 11.

[151] *See* Petition to Intervene (citing Letter from Lee N. Heft, Director, MDC-DERM, to Lee Crandall and Timothy Rach, FDEP (July 18, 2018) ("July 18, 2018 MDC-DERM Letter")).

describes Miami-Dade County's specific concerns regarding the Permit Modification—the *same* concerns underpinning and set forth in the County's Petition for Administrative Hearing.[152] The Nuttle Report relies, in significant part, on the July 18, 2018, letter from MDC-DERM to FDEP, noting that the letter "documents the technical and scientific basis for concern that these consequences are being realized as a result of FDEP's stipulations in the recent permit modification."[153] This is further evidence that the Miami-Dade County Petition contains no new and materially different information that would support a good cause finding.

* * *

In summary, none of the documents cited by Intervenors—the FPL reports, their three sponsored reports, or the Miami-Dade County Petition—constitutes new and materially different information for purposes of the Section 2.309(c)(1) good cause inquiry.

3. Contention 6-E Raises Issues That Are Outside the Scope of the Proceeding

As explained in its Answer to Intervenors' Waiver Petition, FPL does not object to Intervenors' position that a waiver is not needed to file Contention 6-E given the Staff's determination in the DSEIS that the issue of water quality impacts on adjacent waterbodies is a new, site-specific issue that is neither Category 1 nor Category 2. However, Contention 6-E raises issues outside the scope of this proceeding and lacks materiality for another reason—it directly challenges the NRC Staff's reliance on the actions and oversight of State and County regulators in finding that the impacts of continued CCS operation on groundwater quality and adjacent surface

[152] One of the letter's purposes was to request a 60-day extension of time to file the County's Petition for Administrative Hearing.

[153] Nuttle Report at 4.

water bodies via the groundwater pathway will be SMALL.[154] Intervenors assert that the DSEIS simply assumes that continued oversight by State and County regulators will address environmental impacts from the CCS.[155] They similarly claim that the NRC Staff incorrectly "presumes that compliance with the FDEP Consent Order and the Miami-Dade Consent Agreement will effectively manage salinity conditions in the [CCS] and therefore prevent adverse impacts on adjacent surface water bodies."[156]

Intervenors' arguments run counter to the Board's conclusion in LBP-19-3 that pursuant to "binding case law," the Board must "accord 'substantial weight' to the determination of FDEP and DERM that FPL will comply with its legal obligations,"[157] and that "absent evidence to the contrary . . . [it] presume[s] that FDEP will enforce, and FPL will comply with, the legally mandated measures in the Consent Order."[158] The Board's conclusion on this point is both correct and consistent with controlling Commission precedent.[159] Indeed, the Commission spoke directly to this issue in CLI-07-25, in which it affirmed a licensing board's rejection of a contention alleging that a reactor licensee had failed to consider the impact of a proposed power uprate on certain state and federal water use issues, and the potential impact that EPA and state regulations

---

154 *See*, *e.g.*, DSEIS at 4-23 ("[U]pon consideration of the FDEP's and DERM's existing requirements and their continuing oversight of FPL's site remediation efforts, the NRC staff concludes that the impacts on adjacent surface water bodies via the groundwater pathway from the CCS during the subsequent license renewal term would be SMALL.").

155 *See* Motion at 41.

156 *Id.* at 43. In a related vein, Intervenors claim that the Miami-Dade County Petition demonstrates FDEP's and Miami-Dade's "existing requirements" are "incompatible," such that the NRC cannot conclude that compliance with and oversight by FDEP and Miami-Dade's requirements will result in small environmental impacts. Motion at 34. The relevance of the Miami-Dade County Petition to SLR, if any, is far from clear. In any event, Intervenors' argument clearly raises an issue outside the scope of this proceeding. The NRC is not an arbiter, mediator, or participant in any dispute between Miami-Dade County and the FDEP.

157 LBP-19-3, slip op. at 38 (quoting *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503, 527 (1977)).

158 *Id.* at 54.

159 *See*, *e.g.*, *Turkey Point*, CLI-16-18, 84 NRC at 174-75 n.38 ("[W]e decline to assume that FPL will not comply with applicable requirements," and "[the petitioner] has not shown a reason, for purposes of the NEPA review at issue here, to doubt that FPL will comply with environmental conditions required by State and local authorities.").

would have on water flow, water volume and surface water withdrawal for the plant's cooling systems.[160] The Commission agreed that the contention raised issues that were not within the scope of or material to the proceeding, as they "are appropriately within the jurisdiction of other agencies."[161] It also reiterated that "the NRC's adjudicatory process was not the proper forum for investigating alleged violations that are primarily the responsibility of other Federal, state, or local agencies."[162] CLI-07-25 also makes clear that it is not the NRC's prerogative to question the informed technical judgments and regulatory decisions of State and local regulators, especially within the context of an NRC adjudicatory proceeding.[163] That is exactly what Intervenors ask the Board to do here—to impermissibly second-guess the decisions and oversight capabilities of the FDEP and MDC-DERM with respect to FPL's ongoing CCS-related mitigation measures.[164]

4. Contention 6-E Lacks Adequate Support and Fails to Raise a Genuine Material Dispute with the DSEIS

Contention 6-E also fails to meet the requirements of Section 2.309(f)(1)(v) and (vi) and should be rejected on these grounds as well. The contention is based on two erroneous factual premises. First, Intervenors claim that the "DSEIS recognizes that Applicant's efforts to reduce salinity in the [CCS] through the addition of water pumped from the Upper Floridan aquifer have been unsuccessful."[165] Second, they assert that the DSEIS's conclusions regarding CCS salinity

---

160 *See PPL Susquehanna LLC* (Susquehanna Steam Elec. Station, Units 1 and 2), CLI-07-25, 66 NRC 101 (2007).

161 *Id.* at 104.

162 *Id.* at 105 (citing *Hydro Res., Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998)).

163 *See id.* at 106 ("[T]he respective responsibilities of NRC, Pennsylvania PUC, SRBC, and the EPA in this area are clear . . . . The NRC's consideration of the EPU application does not affect SRBC's authority to grant or deny the permit for additional water usage."); *see also id.* at 108 ("[T]his issue falls properly within SRBC's jurisdiction to determine what steps PPL must take to verify its water use, and that this matter is outside the scope of our EPU proceeding.").

164 *See Hydro Res.*, CLI-98-16, 48 NRC at 121-22 (noting that the NRC has "no roving mandate to determine other agencies' permit authority," and that "the Presiding Officer should narrowly construe [a contention's] scope to avoid where possible the litigation of issues that are the primary responsibility of other agencies").

165 Motion at 41 (citing DSEIS at 3-49).

impacts are "based on numerical modeling that has proven unreliable and unsupported assertions by Applicant's modelers that more favorable climactic conditions will resolve the problem."[166] Both statements are factually incorrect and misrepresent the DSEIS's contents.

The relevant discussion on page 3-49 of the DSEIS, as cited by Intervenors, explains that FPL has numerically modeled CCS operation, with a focus on quantifying the volumes of water and the mass of salt entering and exiting the CCS.[167] The models are used as tools to "understand and predict different aspects of the CCS," including the effectiveness of mitigation measures.[168] As germane to Intervenors' claims, the DSEIS states in part:

> In 2014, Tetra Tech used numerical models to estimate the volume of Upper Floridan aquifer water that would be required to reduce CCS water salinity to seawater range. The modeling exercise produced an estimate that with the addition of 14 mgd (53,000 m^3/day) of Upper Floridan aquifer water that had a salinity of 2 PSU it would require less than a year to reduce salinities in the CCS to 35 PSU (Tetra Tech 2014a). However, while FPL then added an average of 12.8 mgd (48,500 m^3/day) of Upper Floridan aquifer brackish water to the CCS from the beginning of November 2016 to the end of May 2017, salinities in the CCS did not go down to 35 PSU (FPL 2017a). Rather, at the end of May 2017, average salinity concentrations in the CCS were 64.9 PSU (FPL 2017b). Comparing CCS data and model results, the modelers concluded that during this period (most of which occurred during the dry season), evaporation rates exceeded precipitation rates. . . . The modelers anticipate that under more favorable climatic conditions (e.g., less severe dry seasons), the addition of Upper Floridan aquifer water should help to reduce CCS water salinities to 34 PSU (FPL 2017a, FPL 2017b).[169]

The DSEIS further notes that, if FPL fails to reach an annual average salinity of at or below 34 PSU by the required time periods, then the Consent Order requires it to submit a plan to the FDEP detailing additional measures, and a revised timeframe for achieving the 34 PSU target.[170]

---

166 *Id.* at 43-44 (citing DSEIS at 3-49).

167 DSEIS at 3-49.

168 *Id.*

169 *Id.*

170 *Id.* As noted on page 3-47 of the DSEIS, the 2016 Consent Order provides, in relevant part:

Thus, contrary to Intervenors' claims, the DSEIS does *not* conclude that FPL's salinity reduction efforts have been ineffective, that FPL's numerical modeling is unreliable, or that more favorable climactic conditions are an integral assumption of FPL's modeling activities or FDEP-approved mitigation measures. Rather, the relevant DSEIS discussion simply describes certain modeling efforts undertaken by FPL and its contractors to date, and the observed effects of drier conditions on the model predictions and results. It does not indicate, as Intervenors suggest, that FPL failed to achieve some interim CCS "salinity target" of 35 PSU, or that "further inquiry is necessary to determine what climatic conditions are needed to meet the salinity target and whether those conditions are likely to occur."[171]

Finally, Intervenors also make passing references to "phosphorus loadings attributable to the [CCS]" and the Fourqurean Report, claiming that the latter "demonstrates impacts on water quality in Biscayne Bay via the groundwater pathway are impacting seagrass communities and that continued operation of the cooling canal system is likely to violate narrative water quality standards."[172] These claims also lack adequate factual support and ignore relevant discussion in the DSEIS. The DSEIS notes that on May 16, 2016, FPL submitted to the FDEP the nutrient monitoring results from certain surface water monitoring stations in deep channels adjacent to the

---

> If FPL fails to reach an annual average salinity of at or below 34 PSU by the end of the fourth year of freshening activities, within 30 days of failing to reach the required threshold, FPL shall submit a plan to the [FDEP] detailing additional measures, and a timeframe, that FPL will implement to achieve the threshold. Subsequent to attaining the threshold in the manner set forth above, if FPL fails more than once in a 3 year period to maintain an average annual salinity of at or below 34 PSU, FPL shall submit, within 60 days of reporting the average annual salinity, a plan containing additional measures that FPL shall implement to achieve the threshold salinity level.

DSEIS at 3-47 (quoting Consent Order, ¶ 20.a, at 8). Intervenors' suggestion that FPL was required or expected to achieve compliance with this part of the Consent Order (*i.e.*, an average annual salinity of 34 PSU) within one year is simply mistaken. *See* Motion at 36-37. Because it is incorrect, it does not provide the basis for a contention or constitute materially different information sufficient to support a new contention after the initial deadline.

171 Motion at 37.

172 *Id.* at 42, 44.

CCS for total nitrogen, total *phosphorus*, and total Kjeldahl nitrogen, and that "[t]he FDEP reviewed this information and determined that no exceedances of surface water quality standards were detected in Biscayne Bay monitoring."[173] Intervenors and Dr. Fourqurean simply speculate that phosphorus in Biscayne Bay must originate from the CCS (as opposed to other known sources, such as agricultural runoff), and that water quality violations are "likely."

* * *

In summary, Contention 6-E is untimely under 10 C.F.R. § 2.309(c)(1) because it is not based on any new and materially different information. It also is inadmissible because it raises issues that are outside the scope of this proceeding, lacks adequate support, and fails to establish a genuine material dispute, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

B. Contention 7-E Should Be Rejected As Untimely Under 10 C.F.R. § 2.309(c)(1) and Inadmissible Under 10 C.F.R. § 2.309(f)(1)

1. Summary of Contention 7-E

Contention 7-E asserts that the DSEIS does not take a hard look at impacts to groundwater quality.[174] Intervenors assert that the NRC Staff's conclusion in the DSEIS, *i.e.,* that impacts to groundwater will be SMALL during the SLR term, is factually unsupported and flawed for the same reasons described in support of Contention 6-E.[175] Thus, they argue that "[b]ecause remediation/freshening efforts are not working, and are not expected to work in the future, the impacts to groundwater will be either moderate or large."[176]

---

[173] DSEIS at 3-51.

[174] Motion at 44.

[175] *Id.* at 44-45.

[176] *Id.* at 45-46.

2. Contention 7-E Is Not Timely Filed Under 10 C.F.R. § 2.309(c)(1) Because It Is Not Based on Any New and Materially Different Information

Contention 7-E should be rejected as untimely because Intervenors again fail to show that the contention in based on new and materially different information. In fact, the contention, as set forth on pages 44 through 47 of the Motion, contains no specific (or even general) references to any purported "new information." "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."[177] Intervenors have not met that burden. Further, because Contention 7-E (like 6-E) seeks to litigate the adequacy of State and County-approved groundwater remediation and CCS freshening efforts that were fully described in the ER, the contention (and associated waiver request) are untimely for that additional reason. Therefore, Contention 7-E should be rejected on these grounds alone.

3. Contention 7-E Is Inadmissible Because It Raises Issues That Are Outside the Scope of the Proceeding

Similar to Contention 6-E, Contention 7-E seeks to challenge NRC Staff findings related to a Category 1 issue (non-radiological impacts to groundwater quality), a fact evidenced by Intervenors' accompanying request for a waiver of certain Part 51 regulations in connection with Contention 7-E.[178] Further, Intervenors impermissibly challenge the efficacy of mitigation measures approved and enforced by State and County regulators.[179] As explained in the response to Contention 6-E above, which FPL incorporates by reference here, that issue is not within the scope of this proceeding or material to the NRC Staff's NEPA findings.[180]

---

177 Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998) (emphasis added).

178 *See* Waiver Petition at 1.

179 *See* Motion at 45-46 ("Because the remediation/freshening efforts are not working, and are not expected to work in the future, the impacts to groundwater will be either moderate or large.").

180 *See Turkey Point*, LBP-19-3, slip op. at 37-38, 54. *See also Progress Energy Fla., Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-13-4, 77 NRC 107, 219 (2013) (noting that required "monitoring and mitigation measures,

4. Contention 7-E Is Further Inadmissible Because It Lacks Adequate Support and Fails to Raise A Genuine Material Dispute

For the reasons discussed in Section V.A.4 above, Contention 7-E's challenge to the adequacy of State and County-approved mitigation measures neither raises an issue that is material to the NRC's findings or establishes a genuine material dispute with the DSEIS. Intervenors, moreover, fail to provide any credible factual or expert opinion support for the claim that FPL's CCS remediation and freshening efforts are ineffective or inadequate. As explained in Sections V.A.2.a and V.A.3, *supra*, and in the DSEIS, those measures are in progress and subject to continuing FDEP and MDC-DERM oversight. Thus, even if Intervenors were to obtain the Section 2.335 waiver necessary to file Contention 7-E, this contention nevertheless should be rejected as inadmissible under 10 C.F.R. § 2.309(f)(1)(iv)-(vi) for the reasons stated above.

* * *

In summary, Contention 7-E is untimely under 10 C.F.R. § 2.309(c)(1) because it is not based on any new and materially different information. It also is inadmissible because it raises issues that are outside the scope of this proceeding, lacks adequate support, and fails to establish a genuine material dispute, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

C. Contention 8-E Should Be Rejected As Untimely Under 10 C.F.R. § 2.309(c)(1) and Inadmissible Under 10 C.F.R. § 2.309(f)(1)

1. Summary of Contention 8-E

Contention 8-E asserts that the DSEIS fails to take a hard look at cumulative impacts on water resources.[181] Intervenors contest the NRC Staff's conclusions in Section 4.16.2.1 of the

combined with the active oversight and policing of the state and local environmental agencies . . . provide the NRC with reasonable assurance that sound monitoring and mitigation measures will actually be implemented and will be successful").

[181] Motion at 47.

DSEIS regarding cumulative impacts to water resources because they "rely on the success of Applicant's remediation and freshening efforts."[182] They note that the bases for Contention 8-E "mirror" the bases for Contentions 6-E and 7-E and incorporate those bases by reference.[183]

2. Contention 8-E Is Not Timely Filed Under 10 C.F.R. § 2.309(c)(1) Because It Is Not Based on Any New and Materially Different Information

Given that it relies on the same arguments and bases as Contentions 6-E and 7-E, the Board should reject Contention 8-E as inadmissible for the same reasons set forth in FPL's responses to those contentions, which FPL incorporates by reference here. Intervenors again fail to include any specific references to, or descriptions of, the "new information" they claim supports their contention. Thus, 8-E should be rejected as untimely under Section 2.309(f)(1)(i)-(ii) because Intervenors have not identified any new and materially different information that was unavailable to them when they filed their original contentions based on the ER.

3. Contention 8-E Is Inadmissible Because It Raises Issues That Are Outside the Scope of the Proceeding

In Contention 8-E, Intervenors again inappropriately seek to litigate a Category 1 issue (non-radiological groundwater-related impacts) and the effectiveness of mitigation measures that are within the purview of other regulatory agencies, and thus are outside of the NRC's jurisdiction and the scope of this proceeding. Indeed, in rejecting a SACE contention (1-C) that raised very similar issues as contrary to 10 C.F.R. §§ 2.309(f)(1)(iii) and 2.335, the Board found that cumulative impacts related to hypersalinity and mitigation measures involve Category 1 issues (*i.e.*, altered salinity gradient and groundwater degradation).[184]

---

[182] *Id.* at 49.

[183] *Id.* at 48.

[184] *See Turkey Point*, LBP-19-3, slip op. at 37. *See also* FPL's responses to Contentions 6-E and 7-E, *supra*, incorporated by reference here.

4. Contention 8-E Is Inadmissible Because It Lacks Adequate Support and Fails to Raise A Genuine Material Dispute

Given that Contention 8-E's bases "mirror" those of Contentions 6-E and 7-E, this contention also lacks materiality, is inadequately-supported, and fails to raise a genuine material dispute.[185] Notably, in LBP-19-3, the Board rejected a similar contention by SACE challenging the ER's conclusion that cumulative impacts will be SMALL. The Board noted that "[t]he ER's conclusion [like the DSEIS's] that cumulative impacts will be small is based on the mitigation measures imposed by FDEP in a Consent Order and by DERM in a Consent Agreement."[186] As a result, the Board found that there was no "genuine dispute with the ER's conclusion that cumulative environmental impacts of the CCS will be small because FPL will comply with its current permit."[187] The Board should make the same finding here with respect to Intervenors' similar challenge to the DSEIS.

* * *

In summary, Contention 8-E is untimely under 10 C.F.R. § 2.309(c)(1) because it is not based on any new and materially different information. It also is inadmissible because it raises issues that are outside the scope of this proceeding, lacks adequate support, and fails to establish a genuine material dispute, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

---

185 *See* FPL's responses to Contentions 6-E and 7-E, *supra*, incorporated by reference here.

186 *Turkey Point*, LBP-19-3, slip op. at 37.

187 *Id.* at 38.

D. Contention 9-E Should Be Rejected As Untimely Under 10 C.F.R. § 2.309(c)(1) and Inadmissible Under 10 C.F.R. § 2.309(f)(1)

1. Summary of Contention 9-E

Contention 9-E alleges that the DSEIS fails to take a hard look at impacts to groundwater use conflicts.[188] Intervenors' core claim, similar to its other new contentions, is that the DSEIS "unlawfully substitutes the existence of state and county requirements and oversite for a proper NEPA analysis" in assessing groundwater use impacts for the Biscayne Aquifer and the Upper Floridan Aquifer.[189] They also argue that analyses referenced in the DSEIS do not support the NRC Staff's conclusions, because the rate of groundwater withdrawal necessary to meet salinity targets and retract the hypersaline plume is "substantially higher than evaluated in the DSEIS."[190] Intervenors attribute the Staff's conclusions to groundwater modeling projections that "rely on the presumption that Applicant's current groundwater withdrawal rates will remain the same (or lower), and that the ongoing effort to mitigate the hypersaline plume will achieve its objectives."[191] Finally, Intervenors contest the DSEIS's statement (based on FPL's representation in the ER) that "FPL does not anticipate the need to withdraw groundwater at a rate exceeding its current permits and/or authorizations during the [SLR] period."[192]

2. Contention 9-E Is Not Timely Filed Under 10 C.F.R. § 2.309(c)(1) Because It Is Not Based on Any New and Materially Different Information

Contention 9-E suffers from the same material flaws as Intervenors' other proposed new contentions and should be rejected on the same grounds.[193] The first of those flaws stems from

---

188 Motion at 49.

189 *Id.* at 50 (citing DSEIS at 4-33).

190 *Id.* at 52.

191 *Id.* (citing DSEIS at 4-32).

192 *Id.* (quoting DSEIS at 4-33).

193 *See* FPL's responses to Contentions 6-E, 7-E, and 8-E, *supra*. FPL incorporates those responses by reference here,

Intervenors' failure to demonstrate that the contention is based on any new and materially different information. Intervenors only make general reference to "Section IV.B" of their Motion and cite page 2 of the Wexler Report—that is the sum total of their proffered support for Contention 9-E. As explained in Section V.A.2.b, *supra*, which FPL incorporates by reference here, the Wexler Report neither contains nor constitutes new and materially different information that would support a good cause showing under 10 C.F.R. § 2.309(c)(1).

3. Contention 9-E Is Inadmissible Because It Raises Issues That Are Outside the Scope of the Proceeding

Although the issue of groundwater use conflicts is a Category 2 issue requiring site-specific analysis, Contention 9-E still raises issues that are outside the scope of this proceeding. Namely, it asserts that the NRC Staff improperly relies on the existence of State and County requirements in its DSEIS.[194] In addition, insofar as 9-E alleges that FPL will need to increase future groundwater withdrawal rates to support CCS mitigation/freshening activities, such determinations (and any associated permitting actions) would be handled by Florida regulators—not the NRC. As the Commission has noted, the NRC should not "concern itself with water use matters within the jurisdiction of other state and Federal agencies."[195] Such matters are plainly outside the scope of the proceeding, contrary to the requirement in 10 C.F.R. § 2.309(f)(1)(iii).

4. Contention 9-E Is Inadmissible Because It Lacks Adequate Support and Fails to Raise A Genuine Material Dispute

Contention 9-E also lacks adequate support and fails to raise a genuine dispute with the DSEIS on a material issue.[196] Insofar as NEPA and Part 51 require the NRC to evaluate

---

[194] *See* Motion at 50 (asserting that the DSEIS violates NEPA's hard look requirements because it "unlawfully substitutes the existence of state and county requirements and oversite [sic] for a proper NEPA analysis").

[195] *Susquehanna*, CLI-07-25, 66 NRC at 107.

[196] *See* 10 C.F.R. § 2.309(f)(1)(v) & (vi).

groundwater use conflicts on a site-specific basis, the NRC Staff has fully discharged that duty in the DSEIS. Intervenors provide no information to support a contrary conclusion.

Specifically, on pages 4-28 through 4-33 of the DSEIS, the NRC Staff provides a detailed evaluation of groundwater use conflicts issues. That discussion includes, *inter alia*, information on FPL's specific water withdrawal rates, the relevant State permits/authorizations, FPL's legal obligations under those permits/authorizations (including withdrawal allocations and mitigative actions to avoid harm to other groundwater users), and the specific modeling and confirmatory evaluations performed by FPL and State regulators to support issuance of the permits. Based on that information, the NRC Staff fully explains the basis for its conclusion that "[c]urrently available information indicates that FPL will need to operate the five CCS freshening wells (*i.e.*, wells F-1, F-3, F-4, F-5, F-6) in addition to its three saline production wells (PW-1, P-3, PW-4) during the [SLR] period of extended operation."[197] The Staff also explains the bases for its related environmental impact findings. Intervenors entirely disregard this information, and make no attempt to directly controvert the NRC Staff's analysis in the DSEIS.

As the DSEIS explains in discussing the Biscayne Aquifer, the water use permit (Permit No. 13-06251-W) issued by the South Florida Water Management District ("SFWMD") for operation of the recovery well system bounds the total installed production capacity of the recovery wells.[198] The permit also requires that FPL mitigate interference with existing legal uses of groundwater and mitigate harm to natural resources, possibly by reducing or otherwise altering groundwater withdrawals to mitigate impacts.[199] With regard to the Upper Floridan Aquifer, the modified Site Certification and associated Conditions of Certification for the Turkey Point site

---

[197] DSEIS at 4-33.

[198] *Id.* at 4-29.

[199] *Id.*

require FPL to mitigate harm to offsite groundwater users (either related to water quantity or quality) as well as to offsite water bodies, land uses, and other beneficial uses.[200] As necessary, the SFWMD can order FPL to reduce withdrawals or undertake other mitigative actions.[201] Finally, any future FPL actions needed to support ongoing mitigation efforts (*e.g.,* pumping more water or installing more wells) would be subject to the same processes and standards as its current water withdrawals, including those governing impacts to other users. Such actions would need to be approved by the applicable Florida regulatory authority.[202] Intervenors also overlook this fact in Contention 9-E, further underscoring the contention's lack of factual support and failure to raise a genuine material dispute.

* * *

In summary, Contention 9-E is untimely under 10 C.F.R. § 2.309(c)(1) because it is not based on any new and materially different information. It also is inadmissible because it raises issues that are outside the scope of this proceeding, lacks adequate support, and fails to establish a genuine material dispute, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

VI. CONCLUSION

For the foregoing reasons, Intervenors' amended and new contentions are untimely filed under 10 C.F.R. § 2.309(c)(1) and inadmissible under 10 C.F.R. § 2.309(f)(1). Accordingly, the Board should deny their Motion in its entirety and terminate this adjudicatory proceeding.

---

200 *Id.* at 4-32.

201 *Id.*

202 *See*, *e.g.*, *id.* at 4-30 ("[E]ven if the groundwater remediation timeframe is extended or delayed, the modeling results and the safeguards imposed by SFWMD through permit conditions provide reasonable assurance that any impacts on groundwater resources and users would be mitigated, while producing beneficial effects on groundwater quality.").

Respectfully submitted,

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

Paul M. Bessette, Esq.
Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave, N.W.
Washington, D.C. 20004
Phone: 202-739-5796
E-mail: paul.bessette@morganlewis.com
E-mail: ryan.lighty@morganlewis.com

Signed (electronically) by Martin J. O'Neill

Martin J. O'Neill, Esq.
Morgan, Lewis & Bockius LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
Phone: 713-890-5710
E-mail: martin.o'neill@morganlewis.com

Counsel for Florida Power & Light Company

Steven Hamrick, Esq.
Florida Power & Light Company
801 Pennsylvania Ave., N.W. Suite 220
Washington, D.C. 20004
Phone: 202-349-3496
E-mail: steven.hamrick@fpl.com

Dated in Washington, D.C.
this 19th day of July 2019

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)	)	July 19, 2019

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Florida Power and Light Company's Answer Opposing Intervenors' Motion to Migrate or Amend Contentions 1-E and 5-E and to Admit New Contentions 6-E, 7-E, 8-E, and 9-E" was filed on the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned proceeding. A copy of the foregoing also was sent by electronic mail to Richard E. Ayres, Esq. at ayresr@ayreslawgroup.com.

Signed (electronically) by Martin J. O'Neill

Martin J. O'Neill, Esq.
Morgan, Lewis & Bockius LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
Phone: 713-890-5710
E-mail: martin.oneill@morganlewis.com

Counsel for Florida Power & Light Company

DB1/ 105233757