

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 & 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

**Florida Power & Light Company's Answer Opposing the  
Village of Pinecrest's Petition to Intervene in the Turkey Point Units 6 & 7  
Combined Construction and Operating License Application Proceeding**

September 9, 2010

**TABLE OF CONTENTS**

*Page*

- I. INTRODUCTION ..... 1
- II. BACKGROUND ..... 2
- III. LEGAL STANDARDS GOVERNING LOCAL GOVERNMENT PARTICIPATION IN LICENSING HEARINGS..... 3
- IV. PINECREST HAS NOT SUBMITTED ANY ADMISSIBLE CONTENTIONS..... 4
  - A. Legal Standards for Contention Admissibility ..... 5
    - 1. Petitioner Must Specifically State the Issue of Law or Fact to Be Raised ..... 7
    - 2. Petitioner Must Explain the Basis for the Contention ..... 7
    - 3. Contentions Must Be Within the Scope of the Proceeding..... 8
    - 4. Contentions Must Raise a Material Issue ..... 9
    - 5. Contentions Must Be Supported by Adequate Factual Information or Expert Opinion ..... 9
    - 6. Contentions Must Raise a Genuine Dispute of Material Law or Fact ..... 11
  - B. None of the Submitted Contentions is Admissible ..... 13
    - 1. Contention 1 (Failure to Describe Construction and Operation Impacts on Surface Waters and Groundwater) Is Inadmissible ..... 13
    - 2. Contention 2 (Failure to Adequately Address Safety Impacts of Transmission Lines on Law Enforcement and Emergency Communications) Is Inadmissible..... 20
    - 3. Contention 3 (Economic Impact of East Corridor Transmission Line is Out of Proportion to Benefit) Is Inadmissible..... 23
- V. SELECTION OF HEARING PROCEDURES..... 27
- VI. CONCLUSION..... 29

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**I. INTRODUCTION**

Florida Power & Light Company (“FPL” or “Applicant”) hereby submits this answer (“Answer”) to the “Petition By The Village of Pinecrest, Florida, for Leave to Intervene in a Hearing on Florida Power & Light Company’s Combined Construction and Operating License Application for Turkey Point Units 6 & 7, or in the Alternative, Participate as a Non-Party Local Government” (“Petition”) filed by the Village of Pinecrest (“Pinecrest”) in this proceeding on August 16, 2010. Pinecrest seeks to intervene in this proceeding and requests that the Nuclear Regulatory Commission (“Commission” or “NRC”) conduct a hearing regarding FPL’s application for a combined construction permit and operating license (“COL” or “combined license”) for new Units 6 & 7 at the Turkey Point site in Miami-Dade County, Florida, (“Turkey Point Units 6 & 7”).

The Commission's regulations and case law clearly set forth the requirements that a petitioner must satisfy in order to propose an admissible contention. As this Answer describes more fully below, the Commission's current pleading standards were designed to raise the threshold for the admission of contentions. The purpose of these intentionally strict admissibility requirements is to ensure that hearings, if required, would focus on concrete issues that are relevant to the proceeding and that are supported by a factual and legal foundation. Each of the Pinecrest Contentions fails to reach the required threshold, falling short of any number of the applicable pleading standards.

The Board should reject all of Pinecrest's Contentions and deny its Petition to Intervene because Pinecrest has failed to propose a single admissible contention.

## **II. BACKGROUND**

FPL submitted an application to the NRC for a COL for Turkey Point Units 6 & 7 ("Application") on June 30, 2009.<sup>1</sup> The Application and this proceeding are governed by 10 C.F.R. Part 52. In particular, Subpart C of the Part 52 rules sets out the procedures and requirements applicable to the issuance of combined licenses.

The NRC Staff conducted a sufficiency review and, finding the Application acceptable for docketing, docketed the Application on September 4, 2009. Florida Power & Light Company, Acceptance for Docketing of an Application for Combined License for Turkey Point Units 6 & 7 Nuclear Power Plants. 74 Fed. Reg. 51,621 (Oct. 7, 2009). On June 18, 2010, the NRC published its Notice of Hearing and Opportunity to Petition for Leave to Intervene and Order Imposing Procedures for Access to Sensitive

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<sup>1</sup> Application for Combined License for Turkey Point Units 6 and 7 (Rev. 0, June 30, 2009), transmittal letter available at ADAMS Accession No. ML091830589. Entire Application available at <http://www.nrc.gov/reactors/new-reactors/col/turkey-point.html>. See also Florida Power & Light Company; Notice of Receipt and Availability of Application for a Combined License, 74 Fed. Reg. 38,477 (Aug. 3, 2009).

Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for Turkey Point Units 6 & 7. 75 Fed. Reg. 34,777.

Pinecrest timely filed its Petition on August 16, 2010.

### **III. LEGAL STANDARDS GOVERNING LOCAL GOVERNMENT PARTICIPATION IN LICENSING HEARINGS**

The NRC offers local governments two mutually exclusive avenues for participation in a licensing proceeding. First, a local government entity may choose to participate formally, as a party to the proceeding, under 10 C.F.R. § 2.309. If a state or local government chooses to participate as a party, it must satisfy the same standards as a private petitioner. *Northern States Power Co.* (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138, 140 (1996) (citing *Nuclear Fuel Services* (West Valley Reprocessing Plant), ALAB-263, 1 NRC 208, 216 n.14 (1975)). 10 C.F.R. § 2.309(d)(2)(i) provides that a local government desiring to participate as a party need not address the standing requirements with respect to a facility within its boundaries. An interested local government wishing to participate as a party to the proceeding must, however, meet the other requirements of Section 2.309, including the standards for admissibility of contentions set forth in 10 C.F.R. § 2.309(f). 10 C.F.R. § 2.309(d)(2). Once admitted as a party, a State or local government “is entitled to the rights and bears the responsibilities of a full party,” including the ability to initiate motions and take positions on the merits. “Final Rule, Changes to Adjudicatory Process,” 69 Fed. Reg. 2,182, 2,201 (Jan. 14, 2004).

Alternatively, a local government that does not wish to participate as a formal party, may choose to participate in the proceedings as an “interested” local government under 10 C.F.R. § 2.315(c). Section 274(l) of the AEA, which is implemented by

10 C.F.R. § 2.315(c), sets forth a limited framework for governmental participation in NRC adjudicatory proceedings.<sup>2</sup> A request for participation by a governmental entity does not trigger a hearing where no admissible contentions are otherwise proffered. *See Northern States Power Co.* (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 527 (1980); *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 215-16 (1983); *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 426-27 (1984). In order for an interested State or local government to participate under Section 2.315(c), there must be at least one other party with an admitted contention. *Northern States Power*, LBP-96-22, 44 NRC at 140.

However, and contrary to Pinecrest’s apparent understanding (*see* Petition at 10), “the plain terms of section 2.315(c)” prevent a State or local government from participating under that provision where it has already submitted contentions and been admitted as a full party. *Louisiana Energy Services, L.P.* (National Enrichment Facility) (“LES”), CLI-04-35, 60 NRC 619, 626 (2004). If a Pinecrest contention is admitted for hearing, it cannot also participate as an interested local government. *See id.*

#### **IV. PINECREST HAS NOT SUBMITTED ANY ADMISSIBLE CONTENTIONS**

In addition to demonstrating standing, a petitioner must plead at least one admissible contention to be admitted as a party in this proceeding. 10 C.F.R. § 2.309(a). While FPL does not object to Pinecrest’s standing in this proceeding, as set forth below, Pinecrest has not proffered an admissible contention and therefore its Petition should be denied.

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<sup>2</sup> An interested government “may introduce evidence, interrogate witnesses where cross-examination is permitted, advise the Commission without the need to take a position on the subject at issue, file proposed findings where findings are permitted, and petition for review with respect to the admitted contentions.” *LES*, CLI-04-35, 60 NRC at 626 (citing 10 C.F.R. § 2.315(c)).

### A. Legal Standards for Contention Admissibility

The Commission's contention admissibility rules are "strict by design". *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)). While "federal courts permit considerably less-detailed 'notice pleading', the Commission requires far more to plead a contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 505 (2001); *see also Fansteel, Inc.* (Muskogee, Oklahoma Site) CLI-03-13, 58 NRC 195, 203 (2003). 10 C.F.R. § 2.714 (now § 2.309) was amended in 1989 "to raise the threshold for the admission of contentions." Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (Aug. 11, 1989) ("Final Rule"). These rules were "toughened . . . because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" *Millstone*, CLI-01-24, 54 NRC at 358. Under the NRC's Rules of Practice, "a protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that such a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." 54 Fed. Reg. at 33,171 (quoting *Conn. Bankers Ass'n v. Bd. of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980)).

Accordingly, a petition "must set forth with particularity the contentions sought be raised." 10 C.F.R. § 2.309(f)(1). Petitioners must provide "a clear statement as to the basis for the contentions and [submit] supporting information and references to specific

documents and sources that establish the validity of the contention.” *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006) (citing *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)). Specifically, “for each contention,” the petition must:

- (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 in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1). Contentions that do not satisfy each of these six requirements must be rejected. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324 (2009).

The petitioner bears the burden of proffering contentions that meet the NRC’s pleading requirements. See *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998). Licensing boards are not to overlook deficiencies in contentions or to assume the existence of missing information. *Palo Verde*, CLI-91-12, 34 NRC at 155. In other words, “[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.”

Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998) (“1998 Policy Statement”). The requirements are discussed in detail below.

**1. Petitioner Must Specifically State the Issue of Law or Fact to Be Raised**

Each contention must provide “a specific statement of the issue of law or fact to be raised or controverted.” 10 C.F.R. § 2.309(f)(1)(i). To be admissible, a “contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].” *Millstone*, CLI-01-24, 54 NRC at 359-60. Moreover, the Commission has explained that Petitioners “must articulate at the outset the specific issues they wish to litigate as a prerequisite to gaining formal admission as parties.” *Oconee*, CLI-99-11, 49 NRC at 338.

**2. Petitioner Must Explain the Basis for the Contention**

In addition, petitioners must provide “a brief explanation of the basis for the contention.” 10 C.F.R. § 2.309(f)(1)(ii). A petitioner must provide the licensing board with “sufficient foundation” to “warrant further exploration.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB-942, 32 NRC 395, 428 (1990) (footnote omitted). In other words, a petitioner must “provide some sort of minimal basis indicating the potential validity of the contention.” 54 Fed. Reg. at 33,170. While licensing boards generally admit “contentions” for litigation rather than “bases,” the Commission has recognized that “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.” *LES* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 57 (2004) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Mass. v. NRC*, 924

F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991)). Therefore, the lack of an adequate basis is sufficient grounds for rejecting a proposed contention.

### **3. Contentions Must Be Within the Scope of the Proceeding**

Petitioners must also demonstrate “that the issue raised in the contention is within the scope of the proceeding.” 10 C.F.R. § 2.309(f)(1)(iii). The scope of this proceeding for which this licensing board has been delegated jurisdiction was set forth in the Commission’s Hearing Notice. *See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, ALAB-825, 22 NRC 785, 790-91 (1985). The Hearing Notice explained that the Licensing Board would consider FPL’s Application under Part 52 for a COL for Turkey Point Units 6 & 7. 75 Fed. Reg. at 34,778. Licensing boards “are delegates of the Commission” and so may “exercise only those powers which the Commission has given [them].” *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-316, 3 NRC 167, 170 (1976) (footnote omitted); *accord Portland General Electric Co. (Trojan Nuclear Plant)*, ALAB-534, 9 NRC 287, 289-90 n.6 (1979). Any contention that falls outside the specified scope of this proceeding is inadmissible.

Any contention that challenges an NRC rule is outside the scope of the proceeding because “no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding.” *See* 10 C.F.R. § 2.335(a); *see also Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)*; *Entergy Nuclear Generation Company & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station)*, CLI-07-3, 65 NRC 13, 18 n.15 (2007). Petitioners “may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies.” *Oconee*, CLI-

99-11, 49 NRC at 334. Contentions seeking to impose requirements in addition to those contained in Commission regulations impermissibly challenge those regulations. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987); *see also Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1273 (1983) (When a Commission regulation permits the use of a particular analysis or technique, a contention asserting that a different analysis or technique should be used is an impermissible challenge to the regulation).

#### **4. Contentions Must Raise a Material Issue**

Petitioners must further demonstrate “that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.”<sup>3</sup> 10 C.F.R. § 2.309(f)(1)(iv). Admissible contentions “must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].” *Millstone*, CLI-01-24, 54 NRC at 359-60. The Commission has defined a “material” issue as one where “resolution of the dispute *would make a difference in the outcome* of the licensing proceeding.” 54 Fed. Reg. at 33,172 (emphasis added).

#### **5. Contentions Must Be Supported by Adequate Factual Information or Expert Opinion**

Each contention must also “[p]rovide a concise statement of the alleged facts or expert opinions which support [the petitioner’s] position on the issue and on which [the petitioner] intends to rely at hearing, together with references to the specific sources and documents on which [the petitioner] intends to rely to support its position in the issue.” 10 C.F.R. § 2.309 (f)(1)(v). The petitioner bears the burden of coming forward with a sufficient factual basis “indicating that a further inquiry is appropriate.” *Yankee Atomic*

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<sup>3</sup> The standards defining the findings that the NRC must make to support issuance of a COL in this proceeding are set forth in 10 C.F.R. § 52.97.

*Electric Co. (Yankee Nuclear Power Station)*, CLI-96-7, 43 NRC 235, 249 (1996) (citing Final Rule, 54 Fed. Reg. at 33,171 (requiring “some factual basis” for the contention)).

Under this standard, a petitioner is obligated “to provide the [technical] analyses and expert opinion” or other information “showing why its bases support its contention.” *Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia)*, LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff’d in part*, CLI-95-12, 42 NRC 111 (1995). Where a petitioner has failed to do so, “the [Licensing] Board may not make factual inferences on [the] petitioner’s behalf.” *Id.* (citing *Palo Verde*, CLI-91-12, 34 NRC at 149). *See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, LBP-98-7, 47 NRC 142, 180 (1998) (a “bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;” rather, “a petitioner must provide documents or other factual information or expert opinion” to support a contention’s “proffered bases”) (citations omitted). A mere reference to documents does not provide an adequate basis for a contention. *Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI-98-25, 48 NRC 325, 348 (1998). A petitioner’s failure to present the factual information or expert opinions necessary to support its contention adequately requires that the contention be rejected. *Yankee*, CLI-96-7, 43 NRC at 262; *Palo Verde*, CLI-91-12, 34 NRC at 155.

The Commission has made clear that conclusory statements, even when provided by an expert, are insufficient to demonstrate that further inquiry is appropriate. *USEC (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006) (“[A]n expert opinion that merely states a conclusion (e.g., the application is ‘deficient,’ ‘inadequate,’ or

‘wrong’) without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion ....” (footnote omitted)).

This requirement must be met at the outset. A contention is not to be admitted “where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts.” 54 Fed. Reg. at 33,171. The Rules of Practice bar contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003).

#### **6. Contentions Must Raise a Genuine Dispute of Material Law or Fact**

Finally, each contention must “provide sufficient information to show that a genuine dispute exists with the applicant... on a material issue of law or fact.” 10 C.F.R. § 2.309 (f)(1)(vi). The NRC’s pleading standards require a petitioner to read the pertinent portions of the combined license application and supporting documents, including the Final Safety Analysis Report (“FSAR”) and Environmental Report (“ER”), state the applicant’s position and the petitioner’s opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,171; *Millstone*, CLI-01-24, 54 NRC at 358. Contentions must be based on documents or other information available at the time the petition is filed. 10 C.F.R. § 2.309(f)(2). Indeed, a petitioner

has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention. Neither Section 189a of the Atomic Energy Act nor [the corresponding Commission regulation] permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff.

54 Fed. Reg. at 33,170 (quoting *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983)). The obligation to make specific reference to relevant facility documentation applies with special force to an applicant's FSAR and ER, and a contention should be rejected if it inaccurately describes an applicant's proposed actions or ignores or misstates the content of the licensing documents. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2076 (1982); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1804 (1982); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1504-05 (1982).

If the petitioner does not believe that a licensing request and supporting documentation address a relevant issue, the petitioner is "to explain why the application is deficient." 54 Fed. Reg. at 33,170; *Palo Verde*, CLI-91-12, 34 NRC at 156. A contention that does not directly controvert a position taken by the applicant in the license application is subject to dismissal. *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). An allegation that some aspect of a license application is inadequate does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is

unacceptable in some material respect. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990).

**B. Pinecrest’s Contentions are Inadmissible**

As set forth below, none of Pinecrest’s contentions complies with these NRC standards for contention admissibility. The NRC’s pleading requirements were designed to require more from Petitioners than mere notice pleading. In fact, they must “plead specific grievances.” See *McGuire/Catawba*, CLI-03-17, 58 NRC at 428-29. *Private Fuel Storage*, LBP-01-39, 54 NRC at 505. Contrary to the requirements of 10 C.F.R. § 2.309(f)(1), Pinecrest merely identifies three issues it would like to litigate in a hearing – the very “notice pleading” that the NRC’s rules have disallowed.

**1. Contention 1 (Failure to Describe Construction and Operation Impacts on Surface Waters and Groundwater) Is Inadmissible**

In Contention 1, Pinecrest alleges:

FPL’s Environmental Report (ER) fails to sufficiently describe the impact of construction and operation of the proposed nuclear generating units on local surface waters and groundwater so that the Commission can prepare an adequate Environmental Impact Statement (EIS) and propose adequate mitigation alternatives in its Environmental Protection Plan required under NEPA.

Petition at 7. Contention 1 is inadmissible because it fails to demonstrate the existence of a genuine dispute with FPL regarding any specific portions of the Application, fails to provide the facts or expert opinion necessary to support its position, and fails to demonstrate the issue raised is material to the findings the NRC must make to support the issuance of the COL. 10 C.F.R. §§ 2.309(f)(1)(vi), (v), and (iv).

**a. Contention 1 Is Inadmissible Because It Fails to Demonstrate the Existence of a Genuine Dispute with the Application**

Pinecrest concedes that FPL’s ER identifies the potential environmental impacts from the construction and operation of Turkey Point Units 6 & 7. Petition at 7. Pinecrest provides a long uncited quotation asserting that those impacts

could result from: (1) hydrologic alteration of local surface water bodies, including streams and wetlands, and groundwater as a result of operational diversions, (2) ground surface elevation changes as a result of subsidence caused by the withdrawal of groundwater, (3) groundwater elevation changes as a result of groundwater withdrawal operations, and (4) groundwater impacts from the deep injection wells. Impacts could also occur to water quality as a result of erosion and sedimentation and to surface water and groundwater resulting from spills of fuels, lubricants, and other operational-related pollutants.

*Id.* Pinecrest notes that, while FPL determined that these impacts would be SMALL, State agencies “continue in their attempts to ascertain all of the necessary information to complete Florida’s Power Plant Siting Act process.” *Id.*

Pinecrest’s uncited quotation was taken from the introduction to Section 5.2, “Water-Related Impacts,” of FPL’s ER. ER at 5.2-1. The next sentence, which Pinecrest omits, states: “Because of this potential for impacting surface water and groundwater resources, applicants are required to obtain a number of permits as outlined in Table 1.2-1.” *Id.* FPL does not dispute that State agencies are engaged in ongoing review of its Site Certification Application (“SCA”) and that various state and local environmental permits will be required prior to construction or operation of Units 6 & 7. FPL’s ER anticipated this State agency review. In fact, Table 1.2-1 of FPL’s ER identifies all of the permits and authorizations that FPL must obtain prior to engaging in various phases of licensing, construction, and operation of Units 6 & 7, as required by 10 C.F.R. § 51.45(d). Pinecrest’s reference to this ongoing agency review does not establish a

litigable dispute with FPL; the mere existence of ongoing and concurrent state review does not signify that there are any deficiencies in the Application before the NRC.

The Commission has consistently held that its licensing process need not await issuance of authorizations or permits from other agencies. The Commission stated many years ago that “[a]s a general rule it is the practice of the Commission to pursue its administrative procedures while other state and local proceedings are under way.” *Wisconsin Electric Power Co.* (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928, 930 (1974) (holding that the proceeding may continue before issuance of a water quality certificate by a state agency); *see also Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 N.R.C. 81, 93 (2004) (holding that the state environmental permitting process is outside the scope of the NRC licensing proceeding and outside the jurisdiction of the Board). Thus, citation to the existence of a state proceeding relating to the Turkey Point Units 6 & 7 project does not create a dispute with the applicant as to a material issue of law or fact.

Pinecrest then provides five “examples of concerns” allegedly held by State and local agencies engaged in the SCA review. Petition at 7. Among these are claimed concerns with: (1) the adequacy of FPL’s groundwater model; (2) the potential for the proposed withdrawals to exacerbate saline water intrusion; (3) the potential for the proposed withdrawals to adversely impact Biscayne Bay ecology; (4) the potential for the proposed withdrawals to adversely impact the Comprehensive Everglades Restoration Project (“CERP”); and (5) the potential for adverse impacts to regional water sources. *Id.* at 7-8.

10 C.F.R. § 2.309(f)(1)(vi) requires that, in order to demonstrate the existence of a genuine dispute with the applicant, a petitioner “*must include* references to specific portions of the application [including the ER] that the petitioner disputes and the supporting reasons for each dispute.” (Emphasis added). Other than its uncited quotation of the introductory text to Section 5.2, Contention 1 (and the entire Pinecrest Petition) fails to include a single reference to FPL’s ER. The one section of the ER that Pinecrest quotes merely identifies areas of potential impacts and does not reflect the existence of a dispute with the Application. Petition at 7. Based on the “concerns” it presented in bullet form, Pinecrest appears to agree that these are areas of *potential* impacts. *See id.* at 7-8. However, despite the requirements of Section 2.309(f)(1)(vi), Pinecrest identifies no specific portion of FPL’s ER with which it disagrees.

Pinecrest fails to dispute the ER’s conclusion that these impacts will be SMALL. *See* Petition at 7-8. Instead, Pinecrest simply asserts that “[d]espite these assertions, relevant state agencies continue in their attempts” to review the SCA. *Id.* at 7. The mere fact that a state or local agency has an alleged “concern” does not mean that the impacts will not be small. In any event, Pinecrest does not claim that those alleged state agency concerns mean that the environmental impacts would be anything other than SMALL, as they are described in FPL’s ER. *See id.* at 7-8. As a result, Contention 1 fails to demonstrate the existence of a genuine dispute with FPL’s ER. *See* 10 C.F.R. § 2.309(f)(1)(vi).

**b. Contention 1 Is Inadmissible Because It Fails to Demonstrate that the Issue Raised is Material**

Moreover, as a Petitioner, Pinecrest must demonstrate “that the issue raised in the contention is material to the findings the NRC must make to support the action that is

involved in the proceeding.” 10 C.F.R. § 2.309(f)(1)(iv). A “dispute at issue is ‘material’ if its resolution would ‘make a difference in the outcome of the licensing proceeding.’” *Oconee*, CLI-99-11, 49 NRC at 333-34 (citing 54 Fed. Reg. at 33,172). Pinecrest fails to explain how the state agency reviews of FPL’s SCA are material to the NRC’s evaluation of FPL’s ER or how the agencies’ alleged concerns with respect to the SCA provide any indication that FPL’s ER, a separate document, is inadequate. In fact, Contention 1 does not even demonstrate that there are any deficiencies with FPL’s SCA; it simply alleges that some State agencies have “concerns.” Pinecrest must do more than allege “concerns” of state agencies with respect to the SCA and declare FPL’s ER inadequate. It must review the ER, identify what deficiencies exist, and explain why those deficiencies are material.

Even if the state or local agencies were to identify a deficiency in the SCA (which Pinecrest does not allege), that determination by itself would not necessarily indicate a deficiency in the ER. Not only are the state agencies reviewing a different document, they are applying different legal standards. The state agencies are applying substantive state and federal environmental laws and regulations to their review of the project, whereas NEPA is merely procedural and requires only a reasonably thorough discussion of the environmental impacts of the proposed project. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Seattle Audubon Soc’y v. Espy*, 998 F.2d 699, 703 (9th Cir.1993). Whether state agencies assert that FPL has provided them with inadequate information to comply with those substantive requirements has no bearing on whether FPL has provided adequate information in its ER from which the NRC may prepare an Environmental Impact Statement describing the reasonably foreseeable

environmental impacts of the proposed action. Pinecrest fails to account for the different applicable legal standards or the fact that the state agencies are reviewing a different application. Accordingly, Pinecrest fails to demonstrate that the issue raised in Contention 1 is material to the findings the NRC must make to support issuance of the COL. 10 C.F.R. § 2.309(f)(1)(iv).

**c. Contention 1 Is Inadmissible Because It Fails to Provide Factual or Expert Support for Pinecrest's Position**

A petitioner must provide the licensing board with “sufficient foundation” to “warrant further exploration.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB-942, 32 NRC 395, 428 (1990) (footnote omitted). But, Pinecrest merely asserts, with no supporting documentation, that state agencies have several particular “concerns.” However, a “bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;” rather, “a petitioner must provide documents or other factual information or expert opinion” to support a contention’s “proffered bases.” *Private Fuel Storage*, LBP-98-7, 47 NRC at 180. A reference to a number of documents without elaboration and without demonstration that they support a petitioner’s position is insufficient to support a contention. *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985), *rev’d and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986); *Calvert Cliffs*, CLI-98-25, 48 NRC at 348. “Parties must clearly identify evidence on which they rely . . . with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-03, 29 NRC 234, 240, 241 (1989). Thus, a mere reference to documents does not provide an adequate basis for a contention.

But, Pinecrest fails even to reference the state agency documentation supporting its concerns.

Of course, state agencies that perform a searching review of a permit application will often have questions on particular aspects of that application. This is an unremarkable state of affairs. The questions of these state agencies can be analogized to the requests for additional information (“RAIs”) that the NRC Staff issues in its licensing reviews. It is “well established” that an RAI, alone, does not constitute grounds for a contention. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant Units 1 and 2), LBP-09-10, 70 NRC 51,144 (2009) (citing *Nuclear Management. Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 164 (2006) (“we have held repeatedly that the mere issuance of a Staff RAI does not establish grounds for a litigable contention”). The Commission explained its reasoning in the *Oconee* license renewal proceeding:

The petitioners themselves provided no analysis, discussion, or information of their own on any of the issues raised in the RAIs -- which, we note, cover a wide variety of disparate subject matters, such as door locking mechanisms and the Oconee coatings program. At bottom, the RAIs show only an ongoing staff dialogue with Duke Energy, not any ultimate staff determinations. Apart from a broad reference to these follow-up questions posed by the staff, the petitioners did not posit any reason or support of their own -- no alleged facts and no expert opinions -- to indicate that the application is materially deficient. Petitioners seeking to litigate contentions must do more than attach a list of RAIs and declare an application “incomplete.” It is their job to review the application and to identify *what* deficiencies exist and to explain *why* the deficiencies raise material safety concerns.

CLI-99-11, 49 NRC at 337 (emphases in original). This reasoning is even more applicable to the questions raised by state agencies. Those agencies have not reached an

“ultimate determination” and Pinecrest has provided no reason or support of its own – no facts and no expert opinions – to indicate that FPL’s ER is materially deficient.

**2. Contention 2 (Failure to Adequately Address Safety Impacts of Transmission Lines on Law Enforcement and Emergency Communications) Is Inadmissible**

In Contention 2, Pinecrest alleges:

FPL’s ER fails to adequately address the potential safety impacts certain of its proposed transmission facilities might have on Village emergency operations by failing to specifically address how or to what extent they might interfere with law enforcement and emergency response communications occurring within proposed transmission corridors.

Petition at 8.

In support of Contention 2, Pinecrest asserts that the Village of Pinecrest Police Department is located on U.S. Highway 1, “within FPL’s proposed preferred East transmission corridor.” *Id.* Pinecrest acknowledges that FPL’s “ER addressed its compliance with Florida laws concerning magnetic field exposure,” but argues that the ER fails to “address the impact a 230kV transmission facility across the street from the Police Department will have on emergency communications.” *Id.* Pinecrest argues that FPL “should be required to make a more meaningful report” on the impacts of the transmission line on police and emergency communication systems. *Id.*

Contention 2 is inadmissible because it fails to demonstrate that the issue raised is material to the findings that the NRC must make to support the issuance of the COL, fails to provide the facts or expert opinion necessary to support its position, and fails to demonstrate the existence of a genuine dispute with FPL’s Application by citing to specific portions of the ER and providing supporting reasons for its belief that omitted information is required by law. 10 C.F.R. §§ 2.309(f)(1)(iv), (v), and (vi). Notably,

Pinecrest fails to reference or challenge the ER's consideration of the effects that transmission lines may have on radio equipment. *See* ER at 5.6-9.

**a. Contention 2 Is Inadmissible Because It Fails to Demonstrate that the Issue Raised is Material**

Pinecrest must demonstrate “that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.” 10 C.F.R. § 2.309(f)(1)(iv). A “dispute at issue is ‘material’ if its resolution would ‘make a difference in the outcome of the licensing proceeding.’” *Oconee*, CLI-99-11, 49 NRC at 333-34 (citation omitted). Contention 2 is a contention of omission: “FPL’s ER fails to specifically address how or to what extent [the transmission lines] might interfere with law enforcement and emergency response communications occurring within proposed transmission corridors.” Petition at 8. But Pinecrest fails to demonstrate that the omitted information is required by the NRC regulations. In other words, Pinecrest fails to show that if proven, this Contention would entitle Pinecrest to relief. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Generating Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 363 n.10 (2002).

NEPA requires consideration of reasonably foreseeable environmental impacts. *Pa’ina Hawaii, LLC* (Materials License Application) CLI-10-18, 72 NRC \_\_\_, slip op. at 45 (July 8, 2010). In order to show that the issue of transmission line impacts on law enforcement and emergency equipment is material, Pinecrest must allege facts tending to demonstrate that transmission lines will have an adverse impact on those communication systems. 10 C.F.R. § 2.309 (f)(1)(iv). Pinecrest fails to make such a demonstration, or

even make a direct assertion, that such impacts will take place.<sup>4</sup> See Petition at 8. Accordingly, Pinecrest has not established any significant link between the alleged failure of FPL's ER to discuss this potential and protection of the health and safety of the public or the environment. *Millstone*, LBP-04-15, 60 NRC at 89.

**b. Contention 2 Is Inadmissible Because It Fails to Provide Factual or Expert Support for Pinecrest's Position**

As discussed above, Contention 2 fails to even assert that transmission lines will have an impact on communications equipment. This failure is accompanied by a concomitant failure to provide the facts or expert opinion necessary to support a position that the transmission lines would have such an impact. 10 C.F.R. § 2.309(f)(1)(v). Factual or expert opinion must be provided "on which the Petitioner intends to rely at hearing, together with references to the specific sources and documents on which the [petitioner] intends to support its position on the issue." *Id.* Pinecrest fails to provide the facts or expert opinion necessary to support its position and "the Board may not make factual inferences on petitioner's behalf." *Georgia Tech*, LBP-95-6, 41 NRC at 305 (citing *Palo Verde*, CLI-91-12, 34 NRC at 155).

**c. Contention 2 Is Inadmissible Because It Fails to Demonstrate the Existence of a Genuine Dispute with the Application**

Because Pinecrest fails to assert that the transmission lines will actually have an impact on communications equipment, its Petition necessarily fails to demonstrate the existence of a dispute with FPL's ER on the issue. See 10 C.F.R. § 2.309(f)(1)(vi). A

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<sup>4</sup> Contention 2 equivocally criticizes the ER for failure to adequately address "the *potential* safety impacts certain of its proposed transmission facilities *might* have on Village emergency operations by failing to specifically address how or to what extent they *might* interfere with law enforcement and emergency response communications." Petition at 8 (emphases added).

contention that does not directly controvert a position taken by the applicant in the application will be dismissed. *See Comanche Peak*, LBP-92-37, 36 NRC at 384.

Under 10 C.F.R. § 2.309(f)(1)(vi), a petitioner must include references to specific portions of the application and the supporting reasons for its dispute. Section 5.6.3.5 of FPL's ER states:

Radio interference and television interference can occur from corona, electrical sparking, and arcing between two pieces of loosely fitting hardware or burrs or edges on hardware. This noise occurs at discrete points and can be minimized with good design and maintenance practices. The effect of corona on radio and television reception depends on the radio/television signal strength, the distance from the transmission line, and the transmission line noise level. As described in Subsection 5.6.3.4, the proposed transmission lines would be designed to minimize corona discharge up to their maximum operating voltage.

Should complaints related to radio and television interference occur, FPL would investigate the cause and, if necessary, take steps to correct the issue.

ER at 5.6-9. Pinecrest fails to reference this section of FPL's ER. By ignoring this discussion of transmission line impacts on radio communications, Pinecrest fails to demonstrate the existence of a genuine dispute with the Application. 10 C.F.R. § 2.309(f)(1)(vi).

### **3. Contention 3 (Economic Impact of East Corridor Transmission Line is Out of Proportion to Benefit) Is Inadmissible**

In Contention 3, Pinecrest alleges:

FPL's proposed East Corridor for associated 230kV transmission facilities has an economic impact on the Village of Pinecrest which is out of proportion with any benefit the proposed Turkey Point Units 6 & 7 and any associated facilities might have for the Village and its residents.

Petition at 8.

In support of Contention 3, Pinecrest maintains that “the proposed East transmission corridor will have a critical negative socio-economic impact on the Village of Pinecrest.” *Id.* at 9. Pinecrest notes that the proposed transmission corridor runs along the “entire northern border of the Village, which is also the only commercial zone in the Village” and is an area the Village hopes to further develop in order to increase revenue. *Id.* Pinecrest claims that the “proposed transmission corridor *may* prove inconsistent with those redevelopment efforts.” *Id.* (emphasis added). Finally, Pinecrest asserts that the proposed transmission corridor (U.S. Highway 1) is a major transportation route and the failure to “upgrade and improve” this corridor will “hamper promotion of the economic health of the Village and south Miami-Dade County by impeding proposed upgrades in the busway and extension of rail transit.” *Id.*

Contention 3 is inadmissible because it fails to demonstrate the existence of a genuine dispute with FPL’s Application, fails to demonstrate the issue raised is material to the findings that the NRC must make to support the issuance of the COL, and fails to provide the facts or expert opinion necessary to support its position. 10 C.F.R. §§ 2.309(f)(1)(vi), (iv), and (v).

**a. Contention 3 Is Inadmissible Because It Fails to Demonstrate the Existence of a Genuine Dispute with the Application**

It is not clear whether Contention 3 is intended to be a challenge to the adequacy of FPL’s discussion of economic impacts or to assert a contention of omission alleging that the ER failed to discuss the economic impacts on Pinecrest specifically.<sup>5</sup> *See*

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<sup>5</sup> Accordingly, Contention 3 lacks the necessary specificity of an admissible contention. *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 73, 78 (2008) (citing *Seabrook*, ALAB-899, 28 NRC at 97) (holding that contention was not put forth with reasonable specificity so as “to put the other parties on notice as to what issues they will have to defend against or oppose”).

Petition at 8-9. To the extent this contention is intended to be a contention of omission, it fails to identify “the supporting reasons for [Pinecrest’s] belief” that the ER fails to contain information required by law. 10 C.F.R. § 2.309(f)(1)(vi).

Further, Contention 3 fails to acknowledge or challenge the Cost-Benefit analysis in Section 10.4 of the ER. As a result, neither Contention 3, nor any of its supporting bases, identify any specific dispute with FPL’s Application. *See* Petition at 8-9. In fact, Pinecrest does not make any argument directly related to FPL’s ER at all. To be admissible, a contention must “include references to specific portions of the application . . . that the petitioner disputes.” 10 C.F.R. § 2.309(f)(1)(vi). On issues arising under NEPA, petitioners must file contentions based on the ER. 10 C.F.R. § 2.309(f)(2). Pinecrest fails to identify any issue or dispute with the statements in FPL’s ER concerning economic impacts.

**b. Contention 3 Is Inadmissible Because It Fails to Demonstrate that the Issue Raised is Material**

Pinecrest does not take issue with any aspect of FPL’s ER, but seems to argue that FPL’s ER must include a cost-benefit analysis specifically tailored to the Village of Pinecrest. *See* Petition at 8-9. However, the Petition fails to allege, much less demonstrate, that NEPA requires a cost-benefit analysis be performed on a town-by-town basis. Accordingly, Pinecrest fails to demonstrate that the issue raised is material to the findings the NRC must make to support issuance of the COL. 10 C.F.R. § 2.309(f)(1)(iv).

FPL performed a cost-benefit evaluation in Section 10.4 of the ER because, while NEPA does not mandate a cost-benefit analysis, it is generally regarded as calling for some sort of a weighing of the environmental costs against the economic, technical, or

other public benefits of a proposal. *LES* (Claiborne Enrichment Center) CLI-98-3, 47 NRC 77, 88 (1998) (citing *Id. By & Through Id. Pub. Utils. Comm'n v. ICC*, 35 F.3d 585, 595 (D.C.Cir.1994); *Calvert Cliffs' Coordinating Comm., Inc. v. AEC*, 449 F.2d 1109 (D.C.Cir.1971)). The EIS (and, consequently, the ER) need not, however, always contain a formal or mathematical cost-benefit analysis. *LES*, 47 NRC at 88 (citing *Sierra Club v. Lynn*, 502 F.2d 43, 61 (5th Cir.1974), *cert. denied sub nom*, 422 U.S. 1049 (1975)). In addition, the “[d]etermination of economic benefits and costs that are tangential to environmental consequences are within [a] wide area of agency discretion.” *Id.* (citing *S. La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011 (5th Cir.1980)).

Pinecrest offers no citation to any law, rule, or regulation that would call for FPL's ER to contain a cost-benefit analysis specifically for the Village of Pinecrest. *See* Petition at 8-9. In fact, the Petition offers no citation to any legal requirement at all and fails even to explicitly assert that such an analysis is required. Therefore, Contention 3 fails to demonstrate that the issue raised is material to the findings the NRC must make to support issuance of the COL. 10 C.F.R. § 2.309(f)(1)(iv).

**c. Contention 3 Is Inadmissible Because It Fails to Provide Factual or Expert Support for Pinecrest's Position**

Finally, assuming, *arguendo*, that Contention 3 is meant to allege that FPL's ER failed to provide a required analysis of the economic impact of transmission lines on the economic development of the Village of Pinecrest, Petitioners offer no facts or expert opinion in support of this assertion. 10 C.F.R. § 2.309(f)(1)(v). Pinecrest only offers the bald assertions that the “East transmission corridor will have a critical negative socio-economic impact on the Village” and “proposed transmission facility *may* prove inconsistent with [its] redevelopment efforts.” Petition at 9 (emphasis added). Pinecrest

offers no explanation for how this negative impact would arise. *Id.* Nor does Pinecrest make clear whether it is referring to a formal, approved development plan, such as those discussed in the ER (*see e.g.* ER at 2.2-8 - 2.2-9), or simply as-yet-unformulated redevelopment “hopes.” *See* Petition at 9. Pinecrest provides no “references to the specific sources and documents” that support its position. *See* 10 C.F.R. § 2.309(f)(1)(v). Nor does Pinecrest provide a development expert to opine that the transmission corridor would lead to the “[f]ailure to upgrade and improve this transportation corridor.” Petition at 9.

For the above stated reasons, Pinecrest has tendered no admissible contentions and may not be admitted as a party to this proceeding.

## **V. SELECTION OF HEARING PROCEDURES**

Commission rules require the Atomic Safety and Licensing Board designated to rule on a petition to intervene to “determine and identify the specific procedures to be used for the proceeding” pursuant to 10 C.F.R. §§ 2.310 (a)-(h). 10 C.F.R. § 2.310. The regulations are explicit that “proceedings for the . . . grant . . . of licenses subject to [10 C.F.R. Part 52] may be conducted under the procedures of subpart L.” 10 C.F.R. § 2.310(a). The regulations permit the presiding officer to use the procedures in 10 C.F.R. Part 2, Subpart G (“Subpart G”) in certain circumstances. 10 C.F.R. § 2.310(d). It is the proponent of the contentions, however, who has the burden of demonstrating “by reference to the contention and bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.” 10 C.F.R. § 2.309(g). Pinecrest did not address the selection of

hearing procedures in its Petition and, therefore, did not satisfy its burden to demonstrate why Subpart G procedures should be used in this proceeding. Accordingly, any hearing arising from the Petition should be governed by the procedures of Subpart L.

VI. **CONCLUSION**

For all of the foregoing reasons, the Petition should be denied.

Respectfully Submitted,

/Signed electronically by Steven Hamrick/

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September 9, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 & 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Florida Power & Light Company’s Answer Opposing the Village of Pinecrest’s Petition to Intervene in the Turkey Point Units 6 & 7 Combined Construction and Operating License Application Proceeding,” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 9th day of September, 2010.

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/Signed electronically by Steven Hamrick/

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