UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

E. Roy Hawkens, Chair
Dr. Michael F. Kennedy
Dr. William C. Burnett

In the Matter of	)	
	)	Docket Nos. 52-040 and 52-041
Florida Power & Light Company	)	
	)	ASLBP No. 10-903-02-COL-BD01
Turkey Point, Units 6 and 7	)	October 22, 2010

JOINT PETITIONERS' ANSWER IN OPPOSITION TO FPL MOTION TO STRIKE PORTIONS OF JOINT PETITIONERS' REPLY TO FPL ANSWER OPPOSING PETITION TO INTERVENE AND NRC STAFF ANSWER TO PETITION TO INTERVENE

Pursuant to 10 C.F.R. § 2.323(c), petitioners, Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (collectively, "Joint Petitioners"), hereby submit this Answer in Opposition to Florida Power & Light Company's ("FPL") Motion to Strike Portions of Joint Petitioners' Reply to FPL Answer Opposing Petition to Intervene and NRC Staff Answer to Petition to Intervene ("Motion to Strike") dated October 12, 2010. For the reasons set forth below, the Motion to Strike should be denied.

I. BACKGROUND

The Nuclear Regulatory Commission ("NRC") published a "Notice of Hearing and Opportunity to Petition for Leave to Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for Turkey Points Units 6 & 7" in the Federal Register on June 18, 2010. 75 Fed. Reg. 34,777. Pursuant to that notice, on August 17, 2010, Joint Petitioners filed a timely Petition to Intervene (the "Petition to Intervene" or the "Petition"). FPL and the NRC Staff each filed an answer to the Petition to Intervene on September 13, 2010 (the "FPL Answer" and "NRC Staff Answer", respectively; collectively, the "Answers"). Then, on October 1, 2010, Joint Petitioners timely replied to the Answers (the "Reply"). FPL now moves to strike portions of that Reply.

II. LEGAL FRAMEWORK

It is well-established that "a reply is not an opportunity for a petitioner to bolster its original contentions with new supporting facts and arguments. Rather, it is a chance to amplify issues presented in the initial petition as well as the applicant's and NRC Staff's Answers." *N. States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2)* 68 N.R.C. 905, 918 (2008); *La. Energy Servs., L.P.*, 60 N.R.C. 223, 225 (2004); *Nuclear Mgmt. Co. (Palisades Nuclear Plant)*, 63 N.R.C. 727, 732 (2006). Joint Petitioners do not contest this rule.[1] Joint Petitioners do, however, object to the

[1] Nor does FPL. In FPL's Motion to Strike Portions of Citizens Allied for Safe Energy's Reply to FPL's Answer Opposing Revised Petition to Intervene and Request for Hearing, October 12, 2010, which has been incorporated by reference into the Motion to Strike, FPL states, "the Petitioners' reply brief should be 'narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer.'" FPL Motion to Strike Case Reply at 5, *quoting La, Energy Servs., L.P.*, 60 N.R.C. 223, 224-25 (2004).

incomplete treatment FPL gives it. In the Motion to Strike, FPL argues, "[Joint] Petitioners do not limit themselves to defending the adequacy of their contentions as pled in their Petition." Motion to Strike at 3. Joint Petitioners, of course, were not required to do so. Rather, the reply must focus on *either* issues presented in the initial petition or new issues presented in the Answers. *See Prairie Island,* 68 N.R.C. at 918. FPL entirely failed to recognize this acceptable second area of focus. Motion to Strike at 5. In doing so, FPL mischaracterized the adequacy of the Reply.

Indeed, the Reply permissibly amplified issues raised in the Petition to Intervene and the Answers. By attempting to deny Joint Petitioners the chance to respond to many of these issues, FPL seeks to secure an unfair advantage over Joint Petitioners. Certainly, FPL is not arguing that it may raise new issues but deny Joint Petitioners the opportunity to respond.[2] Accordingly, the Motion to Strike should be denied.

III. ARGUMENT

FPL's Motion to Strike fails to recognize that replies may address arguments either first presented in the original petition or raised in answers to it. The contested portions of Joint Petitioners' Reply contain appropriately tailored discussions of arguments previously presented by Joint Petitioner's in their Petition to Intervene or FPL and the NRC Staff in their Answers. Accordingly, FPL's Motion to Strike should be denied.[3]

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[2] Although, FPL accused Joint Petitioners of doing just that. *See* Motion to Strike at 3 ("Petitioners' addition of new claims and arguments beyond those in the Petition . . . seeks to gain [Joint] Petitioners an unfair advantage over FPL and the NRC Staff, who have not had an opportunity to address these new issues and claims.").

[3] As noted in Attachment 1, Joint Petitioners have stipulated that the Board need not consider, in its decision on the Petition to Intervene, the following portions of the Reply: (1) Page 15, first full paragraph, first ten lines; and (2) Page 30, last paragraph, second line, the word "adequately".

Contention NEPA 1.5

a. Existing Saltwater Plume

As originally pled, Contention NEPA 1.5 contains sufficient information to demonstrate that the Environmental Report ("ER") inadequately discusses the hypersaline plume beneath the plant property. In the FPL Answer, FPL attempts to justify their analysis by arguing, "Common sense would seem to indicate that, if hypersaline water is drawn into the radial collector wells it would serve to reduce both saltwater intrusion and the size of the hypersaline plume." FPL Answer at 60. FPL nevertheless asserts that three paragraphs of Joint Petitioners' Reply directly responding to FPL's new argument should be stricken because these are "new factual assertions and discuss four new exhibits . . . ." Motion to Strike at 7. The three paragraphs FPL moves to strike appropriately illustrate why analysis of the hypersaline plume is not a "common sense" problem.

Indeed, the three paragraphs FPL moves to strike demonstrate that the issues surrounding the hypersaline plume are complex. First, the Department of the Interior ("DOI") expressed their concern regarding the saltwater plume and the inadequacies of FPL's groundwater model. DOI explained that FPL's groundwater model "fails to simulate actual or planned conditions that include . . . hypersaline plume migration." U.S. Department of Interior, *FPL, Turkey Point Units 6 and 7 COL*, Scoping Comments (Aug. 16, 2010). Further, DOI stated that the constant density assumption in FPL's three-dimensional model was inadequate. Id. at 12. Additionally, the South Florida Water Management District ("SFWMD") expressed similar concerns regarding the complexity of the issue. The SFWMD stated that there was a need to determine the vertical and

horizontal extent of the plume as well as the effects of the plume on surface water. Fifth Supplemental Agreement Between the South Florida Water Management District and Florida Power & Light Company, October 16, 2009.

Thus, Joint Petitioners' Reply does nothing more than "focus on the matters raised in the applicant's Answers." *Nuclear Mgmt. Co.*, 63 N.R.C. 314, 329 (2006). FPL is well aware that, as a matter of fairness, they cannot offer new arguments and then prevent Joint Petitioners from providing a response to those issues. *See Palisades*, 63 N.R.C. at 732. Accordingly, the Motion to Strike portions of Contention NEPA 1.5 regarding the existing saltwater plume should be denied.

b. Sea Level Rise

As originally pled, Contention NEPA 1.5 contains sufficient information to demonstrate that the ER inadequately discusses the effects of sea level rise in connection with the radial collector wells. In the FPL Answer, FPL first argues, "In the Reply, Petitioners seek to reverse the focus of this contention, from the effects of sea level [rise] *on* the radial collector wells to the effects of sea level rise *together with* the radial collector wells." Motion to Strike at 7 (emphasis in original). The first four lines FPL moves to strike, however, are within the scope of Contention NEPA 1.5. Contention NEPA 1.5 argues that the ER does not adequately address *cumulative impacts* of the wells. *See* Petition at 23. As the Reply explains in its discussion of Contention NEPA 1.5, "cumulative effect" is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *See* Reply at 22 (quoting 40 C.F.R. § 1508.7). In this

case, such cumulative effect includes the collective impact of the wells and sea level rise on the environment. The four lines FPL seeks to strike simply frame the cumulative effects analysis that is required under the National Environmental Policy Act ("NEPA") and NRC regulations. While Contention NEPA 1.5 could have been more artfully articulated, this is not fatal to Joint Petitioners' claims;[4] the Petition effectively discusses the adequacy of FPL's analysis of the cumulative impact of the project and sea level rise.

In addition, Attachment 1 provides that the "first partial paragraph, fourth through eighth lines" on page twenty-four of the Reply should also be stricken. Motion to Strike at Attachment 1. However, FPL's Motion to Strike offers no explanation why these five lines are inappropriate. In any event, this portion of Contention NEPA 1.5 is a direct response to FPL's argument that the impact of sea level rise "is not a NEPA issue that is subject to consideration under Part 51." FPL Answer at 62 (citing Supplemental Staff Guidance to NUREG-1555 ("Supplemental Guidance")). In support of this proposition, FPL cites the Supplemental Guidance. Joint Petitioners' Reply explains that FPL's use of the Supplemental Guidance is misguided. Reply at 24. The Supplemental Guidance actually requires FPL to address changes in resource areas as a result of climate change. Id.

Accordingly, the Motion to Strike portions of Contention NEPA 1.5 regarding sea level rise should be denied.

[4] In assessing the acceptability of a contention the board must look at the "four corners" of the contention and determine whether the basis for the contention is set forth with *reasonable* specificity. *See Vt. Yankee Nuclear Power Corp.*, 31 N.R.C. 85 (1990). *See also Carolina Power & Light Co.*, 16 N.R.C. 2069 (1982) (requiring reasonable specificity in articulating the contention's rationale).

Contention NEPA 2.1

Joint Petitioners' Reply for Contention NEPA 2.1 properly focuses on new arguments raised by FPL in their Answer. *See* FPL Answer at 67. FPL argues two paragraphs should be stricken because they "contain new factual assertions and cite to five references that were not part of the Petition." Motion to Strike at 8. The first paragraph FPL moves to strike directly responds to FPL's argument that vertical migration of effluents is "not a reasonably foreseeable event." FPL Answer at 67. Joint Petitioners do nothing more than respond by highlighting that FPL's own ER calls into question the conclusion set forth in the FPL Answer. Reply at 26-27. Joint Petitioners cite sections of the ER to show that vertical migration is reasonably foreseeable.

The second paragraph FPL moves to strike directly responds to FPL's argument that they accounted for vertical migration by performing a "bounding analysis of a radiological receptor from the effluent stream." FPL Answer at 67. Joint Petitioners' Reply addresses the flaws of FPL's new argument. Reply at 28. Joint Petitioners simply argue the use of a surface water model to account for groundwater migration is inadequate.

Thus, Joint Petitioners' Reply appropriately focuses "on the matters raised in the applicant's Answers." *Nuclear Mgmt. Co.*, 63 N.R.C. at 329. FPL is well aware that, as a matter of fairness, they cannot discuss new issues and then prevent Joint Petitioners from providing a response to those issues. *See Palisades*, 63 N.R.C. at 732. Accordingly, the Motion to Strike portions of Contention NEPA 2.1 should be denied.

Contention NEPA 2.2

Joint Petitioners' Reply for Contention NEPA 2.2 properly focuses on arguments raised by FPL in their Answer. *Compare* FPL Answer at 67, *with* Reply at 31-32. In the FPL Answer, FPL cites to sections of the ER and argues that these sections address the impacts associated with the construction of the reclaimed water pipelines. FPL Answer at 77-81. FPL nevertheless asserts that two paragraphs of Joint Petitioners' Reply addressing this new argument should be stricken because they contain "a challenge to the Application raised for the first time." Motion to Strike at 8. In their Reply, Joint Petitioners only point out that FPL's proffered block quotes make conclusory statements with no analysis of potential impacts. Joint Petitioners explain that "[s]imple, conclusory statements of 'no impact' are not enough to fulfill an agency's duty under NEPA." *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 154 (D.C. Cir. 1985). Thus, Joint Petitioners' Reply contains a reasonable response to new arguments submitted by FPL. Accordingly, the Motion to Strike portions of Contention NEPA 2.2 should be denied.

Contention NEPA 3

Contention NEPA 3 is a contention of adequacy. While Contention NEPA 3 is admittedly inelegantly framed, artful phraseology is not a requirement under NEPA. *See Carolina Power & Light Co.*, 16 N.R.C. 2069 (1982) (requiring reasonable specificity in articulating the contention's rationale). What Joint Petitioners lack in eloquence, FPL makes up for in mischaracterization of the Petition. FPL, in its Motion to Strike, states that "[Joint] Petitioners use a variant of the phrase, . . . 'fails to discuss,'" four separate times and a variant of the phrase, 'there is no discussion,' four separate times." Motion to Strike at 9.

Contention NEPA 3's heading, however, specifically states that "[t]he ER fails to *adequately* address the direct, indirect, and cumulative impacts of constructing and operating the transmission lines associated with Units 6 & 7 on wetlands . . . ." Petition at 32 (emphasis added). Additionally, Joint Petitioners state, "[t]here is no discussion of the impacts from the construction, operations, and maintenance of the lines *other than general statements* that the corridor would traverse wetlands and that these wetlands would be impacted." Id. at 33-34 (emphasis added). The Petition's next sentence similarly notes, "[t]here is no discussion with respect to the *specific impacts to these wetlands* . . . ." Id. at 34 (emphasis added); *see also* id. at 35 ("The ER fails to discuss *the extent to which* the panthers and other species use the lands and wetlands . . . and the potential impacts to the panther and other protected species.") (emphasis added); id. ("Further, the ER lacks *sufficient* vegetation and wildlife surveys and studies of the selected corridors to assess the baseline conditions of these areas.") (emphasis added). Contention NEPA 3 concludes by stating that "[t]he ER's failure to discuss *the specific impacts of constructing, operating, and maintaining transmission lines* in these corridors violates 10 C.F.R. § 51.45 . . . ." Id. at 36 (emphasis added).

Joint Petitioners' Reply simply amplifies the ER's shortcoming described in the Petition. Reply at 36-41. Moreover, the Reply responds to the arguments made in the Answers to demonstrate the ER's lack of necessary impact discussion. As such, Joint Petitioners' Contention NEPA 3 Reply should not be stricken for being outside the scope of the Petition.

Assuming, for the sake of argument, that Contention NEPA 3 includes allegations framed as omissions and that the Reply contains new adequacy claims that must be

stricken, FPL's Motion to Strike is overbroad. FPL haphazardly moves to strike more than five pages of text without differentiating between arguments that FPL asserts are new and those that are not. Motion to Strike at 9. For instance, in the five pages FPL moves to strike, the Reply quotes FPL's Answer on four occasions. Reply at 36-41. The Reply is clearly responding to arguments made in FPL's Answer and thus should not be stricken. In addition, FPL moves to strike page 36 through most of page 39 in Joint Petitioners' Reply. These pages concern the ER's inadequate explanation of impacts due to constructing, operating, and maintaining transmission lines in the West Preferred Corridor and West Secondary Corridor. This discussion is not new. The Petition addresses these concerns, stating that the "ER[] fails to discuss the specific impacts of constructing, operating, and maintaining transmission lines in these corridors," "fails to adequately address the direct, indirect, and cumulative impacts of constructing and operating the transmission lines associated with Units 6 & 7 on wetlands," and that "[t]here is no discussion of the impacts from the construction, operations, and maintenance of the lines other than general statements that the corridor would traverse wetlands and that these wetlands would be impacted." Petition at 32; 33-34; 36. Joint Petitioner's Reply simply responds to FPL's Answer and amplifies the Petition's argument that the ER fails to sufficiently discuss specific impacts due to transmission lines in these corridors.

Contrary to FPL's Motion to Strike, Joint Petitioners' Reply for Contention NEPA 3 does not raise new issues outside the scope of the Petition and should not be stricken.

Contention NEPA 6

FPL mistakenly claims that the Reply at 78-79 contains a new factual assertion that was not part of the Petition. Motion to Strike at 9. FPL moves to strike two sentences of Joint Petitioners' Reply regarding the cumulative impacts of the operation of radial collector wells and connected draw-downs. Reply at 78-79. Contrary to FPL's assertion, the Petition addresses the ER's failure to discuss the cumulative impacts of the radial collector wells. Petition at 48-51. The scope of a contention is based not only on the contention itself, but also on the "basis or bases provided for the contention," which "clarify the 'reach' and 'focus' of a contention." NRC Digest; Prehearing Matters at 96 (Jan. 2010); *see, e.g.*, *Duke Energy Corp.*, 59 N.R.C. 388, 391 (2004). The Petition discusses how draw-downs could intensify the impacts of the radial wells. Petition at 49-51. Indeed, Joint Petitioners cite the SFWMD's yearly draw-downs and challenge the ER's failure to address the cumulative impacts created by these draw-downs. Id. Joint Petitioners' Reply continues this thread, citing to the ER's failure to adequately discuss cumulative impacts in its mention of draw-downs. Reply at 78-79. Joint Petitioner's Reply is thus clearly within the "envelope," "reach," or "focus" of the contention when read with the original bases offered for it. *See Duke Energy Corp.*, 59 N.R.C. at 391. Accordingly, the Motion to Strike portions of Contention NEPA 6 should be denied.

Contention NEPA 7

FPL moves to strike several portions of Joint Petitioners' Reply regarding Contention NEPA 7. All of these portions appropriately amplify arguments introduced by Joint Petitioners in the Petition or respond to new arguments raised by the NRC Staff

or FPL in their Answers. *See, e.g., N. States Power Co.*, 68 N.R.C. at 918. Accordingly, the Motion to Strike these portions of Joint Petitioners' Reply should be denied.

First, FPL moves to strike portions of pages 84 and 85 of the Reply. These pages do nothing more than amplify Joint Petitioners' contention that FPL failed to address the cumulative, environmental effects of sea level rise, when combined with the construction and operation of Units 6 & 7. Petition at 52. To that end, the first five lines of page 86 illustrate the cumulative effects that could result.

Next, FPL makes an overreaching attempt to strike Dr. Wanless's affidavit and its exhibits, as well as those portions of the Reply that are supported by the affidavit and its exhibits. Contrary to FPL's assertions, Joint Petitioners did not include these documents to add threshold support for contentions in their Reply. *See* Motion to Strike at 10. Rather, Joint Petitioners included these documents for two appropriate purposes. First, these documents are cited in response to FPL's new claim that the Final Safety Analysis Report ("FSAR") renders a NEPA driven review of sea-level rise impacts in the ER unnecessary. Second, these documents demonstrate that the SFWMD comments relied on by Joint Petitioners in the Petition (and which FPL attacks in their Answer) are adequate. Both are permissible uses of supporting materials in a Reply. *See Nuclear Mgmt. Co.*, 63 N.R.C. at 329.

In their Answer, FPL cites to the Supplemental Guidance in arguing that a "NEPA-driven review of sea-level rise impacts . . . is rendered unnecessary by FPL's FSAR analysis and the NRC's ongoing oversight authority under the AEA [(Atomic Energy Act)]." FPL Answer at 132. Contention NEPA 7 concerns the adequacy of the ER – not the FSAR. When FPL chose to nevertheless discuss the FSAR and the

Supplemental Guidance in the Answer, Joint Petitioners appropriately responded. S*ee* Reply at 86-89.

As pages 86-88 explain, the NRC recently issued Supplemental Guidance setting out the specific aspects of climate change the NRC should consider under NEPA. These aspects include (1) the potential impacts of the proposed action on the environment, and (2) the changes in significant resource areas that may occur during the lifetime of the proposed action as a result of a changing climate. Reply at 87. Joint Petitioners, in turn, introduced Dr. Wanless's affidavit to explain how FPL's ER fails to consider these aspects of climate change. Reply at 87-88. Thus, pages 86-89 directly rebut and disprove FPL's position that a discussion of climate change in its FSAR is sufficient. If FPL does not want the Board to be informed of the Supplemental Guidance's NEPA requirements, it should not have opened the door to this issue in the first place. *See Palisades*, 63 N.R.C. at 732.

Lastly, FPL moves to strike most of pages 90-92. In its Answer, FPL challenges Joint Petitioners' reliance on the SFWMD's comments, arguing that SFWMD is not an expert and thus Joint Petitioners lack factual or expert support for the assertions made in Contention NEPA 7. FPL Answer at 133-34. As a direct response to this argument, Joint Petitioners' Reply explains that there is adequate support for Contention NEPA 7 because the SFWMD comments are based on the research of Dr. Wanless (as adopted through the Climate Change Advisory Task Force ("CCATF")) and that research has been cited to and relied upon by numerous state and federal agencies. Reply at 90-92. Moreover, pages 90-92 directly respond to FPL's attempt to discredit the findings of the SFWMD comments by demonstrating the strength of the CCATF findings, explaining how other

governmental agencies are taking such findings seriously in their review of Units 6 & 7, and highlighting how the ER fails to analyze sea level rise in a manner that is consistent with these findings.

Accordingly, the Motion to Strike portions of Contention NEPA 7 should be denied.

Contentions NEPA 8 and 9

FPL moves to strike four portions of Joint Petitioners' Reply regarding Contentions NEPA 8 and 9. Motion to Strike at 12-14. These portions appropriately amplify arguments introduced by Joint Petitioners in the Petition to Intervene or respond to arguments raised by NRC Staff or FPL in their Answers to the Petition. *See, e.g., N. States Power Co.*, 68 N.R.C. at 918. Accordingly, the Motion to Strike these portions of the Reply should be denied.

First, FPL moves to strike Joint Petitioners' statement that the in-service date delay "significantly increases the probability" that energy efficiency and renewable energy technologies could meet the demand for energy. Reply at 97-98. This statement is admissible because it amplifies arguments made in the Petition to Intervene. The Petition repeatedly notes the importance of considering efficiency measures as an alternative or mitigation measure to the proposed construction of Units 6 & 7. *See* Petition at 56 ("[T]he ER fails to consider the effect that greater efficiency can have on demand. FPL's energy efficiency programs are relatively weak."); Petition at 61 ("FPL will resist lower cost prospective efficiency programs in meeting customer demand because it has already garnered a determination of need for its nuclear reactors based on

lower efficiency goals. . . . [In its ER, FPL has] dismiss[ed] efficiency programs or renewable options in meeting electricity demand.").

Moreover, in its Answer, FPL dismisses energy efficiency and renewable options as reasonable alternatives by pointing only to Florida's "limited capacity for wind power," and cost and availability problems associated with solar power. FPL Answer at 142. The portion of the Reply which FPL moves to strike points to the viability of energy efficiency due to "improving technology and cost of efficiency, improving technology and cost of renewable, and moderating natural gas prices." Reply at 97-98. This directly rebuts FPL's arguments, demonstrating that solar, wind, natural gas, and other energy efficient alternatives are viable alternatives to the construction of Units 6 & 7.

Second, FPL moves to strike Joint Petitioners' assertion that a claim was made "in the most recent docket that FPL has not decided whether or not to build the reactors." Reply at 99-100, n. 10. This assertion is in direct response to FPL's argument that there is no evidence "that there might not be a need for the units based on a lack of need for power." FPL Answer at 144. Furthermore, the statement which FPL moves to strike is part of a larger argument suggesting that FPL is trying to avoid "testing the reactor against [Demand Side Management ("DSM")]" in order to avoid incurring more costs while the construction of the plants remains uncertain. Reply at 99. This argument amplifies Joint Petitioners' assertion in their Petition that "FPL has yet to make a decision on whether to finish construction [of] Units 6 & 7 . . . . The FPL proposal before the NRC is speculative . . . [and] contingent on economics and state and federal energy policy." Petition at 58.

Next, FPL moves to strike Joint Petitioners' quotation of Mr. Sim, FPL's Senior Manager of Integrated Resource Planning, regarding the 2009 DSM goals docket. Joint Petitioners use this quote to highlight the significant problems with the state process for evaluating energy demand. Reply at 100. These problems were first addressed in the Petition. In fact, the Petition frequently references the difference between energy generation and energy need as it pertains to the need for the new reactors. *See* Petition at 54-56. In particular, the Petition states that "[e]ven FPL has realized the drop in demand can no longer support the need for power on its original timeframe." Petition at 56. Mr. Sim's statement that "we had for the first time in a DSM goals docket an achievable number that was larger than our projected resource needs," speaks directly to the assertions in the Petition. Reply at 100. Therefore, it should not be stricken.

Finally, FPL moves to strike Joint Petitioners' assertion that DSM is a reasonable alternative that could displace baseload generation, and therefore must be addressed adequately in the ER. Id. at 105-106. This statement should not be stricken because it responds to a new argument raised by FPL in its Answer. FPL asserts that DSM does not need to be considered as an alternative in the ER because it could not address baseload needs, the stated purpose of the construction of the units. FPL Answer at 158-59. The Reply appropriately refutes this assertion. Reply at 105-106.

The portions of Joint Petitioners' Reply that FPL moves to strike are admissible because they amplify arguments found in the Petition to Intervene or respond to new arguments raised in the Answers. Therefore, Motion to Strike portions of Contentions NEPA 8 and 9 should be denied.

IV. CONCLUSION

For the reasons stated herein, the Motion to Strike should be denied.

Respectfully submitted this 22nd day of October 2010.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 52-040 and 52-041
Florida Power & Light Company	)	
	)	ASLBP No. 10-903-02-COL-BD01
Combined License Application for Turkey Point Units 6 & 7	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JOINT PETITIONERS' ANSWER IN OPPOSITION TO FPL MOTION TO STRIKE PORTIONS OF JOINT PETITIONERS' REPLY TO FPL ANSWER OPPOSING PETITION TO INTERVENE AND NRC STAFF ANSWER TO PETITION TO INTERVENE** was served upon the following persons by Electronic Information Exchange and/or electronic mail:

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