

AAS 44-06

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Florida Power and Light Company  
Turkey Point, Units 6 & 7

Docket Number: 52-040-COL and 52-041-COL

Location: Homestead, Florida

Date: Friday, November 19, 2010

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1 UNITED STATES OF AMERICA  
 2 U.S. NUCLEAR REGULATORY COMMISSION

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4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 8 In the Matter of: : Docket No. 52-040 and  
 9 FLORIDA POWER & LIGHT : 52-041-COL  
 10 COMPANY :  
 11 (Juno Beach, Florida) :  
 12 (Turkey Point, Units 6 & 7) :  
 13 \_\_\_\_\_ :

14 Friday,

15 November 19, 2010

16 Homestead, Florida

17  
 18  
 19 BEFORE:

20 E. ROY HAWKENS, Chairman

21 MICHAEL F. KENNEDY, Administrative Judge

22 WILLIAM C. BURNETT, Administrative Judge

23  
 24  
 25  
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## P R O C E E D I N G S

9:02 a.m.

1  
2  
3 CHAIRMAN HAWKENS: Let's go on the record  
4 please. Today's case is Florida Power & Light Company  
5 (FPL), Docket No. 52-040-COL and 52-041-COL. My name  
6 is Roy Hawkens and I'm joined today by my two fellow  
7 judges, Dr. Mike Kennedy and Dr. William Burnett.

8 This case involves challenges to the  
9 application filed by Florida Power & Light for a  
10 license to construct and operate two nuclear reactor  
11 plants at its Turkey Point facility. Three hearing  
12 requests have been filed challenging that application,  
13 one by the Village of Pinecrest, one by Citizens  
14 Allied for Safe Energy which I'll refer to as CASE and  
15 filed jointly by two individuals and two  
16 organizations. The two individuals are Mark Oncavage  
17 and Dan Kipnis. And the two organizations are  
18 Southern Alliance for Clean Energy (SACE) and National  
19 Parks Conservation Association. And I'll refer to  
20 that as Joint Petitioners hereinafter.

21 Presently we have one representative from  
22 those three Petitioners as well as one representative  
23 from the Applicant, Florida Power & Light Company, and  
24 one representative from the Nuclear Regulatory  
25 Commission at counsel table. And at this point would

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1 they please identify themselves and any individuals  
2 who are with them starting with the Village of  
3 Pinecrest please.

4 MR. GARNER: William Garner with the  
5 Village of Pinecrest, the firm Nabors, Giblin &  
6 Nickerson representing.

7 MR. GROSSO: Good morning. I'm Richard  
8 Grosso with the Everglades Law Center on behalf of the  
9 Joint Petitioners. We have a number of folks here.  
10 Would it be appropriate for me to allow them to  
11 introduce themselves?

12 CHAIRMAN HAWKENS: Whatever is best for  
13 you. And, Mr. Grosso, if you'd like to sit, it looks  
14 like it may be easier to talk into the mike.

15 MR. GROSSO: Yes.

16 CHAIRMAN HAWKENS: And it may be better  
17 for a give and take.

18 MR. GROSSO: Thank you, Your Honor.  
19 Richard Grosso with the Everglades Law Center. And  
20 I'll ask my co-counsel at the Everglades Law Center to  
21 identify himself.

22 MR. TOTOLU: Jason Totolu, Everglades Law  
23 Center.

24 MR. GROSSO: We also have co-counsel from  
25 the Emory Law Clinic with us today.

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1 MS. GOLDSTEIN: Mindy Goldstein with the  
2 Emory Law Clinic.

3 MR. SANDERS: Lawrence Sanders, Director  
4 of the Turner Environmental Law Clinic.

5 MS. WENDLER: Maggie Wendler, Turner  
6 Environmental Law Clinic law student.

7 MS. ATKINS: DeKeely Atkins, student,  
8 Turner Environmental Law Clinic.

9 MR. SHECHTMAN: Matt Shechtman, student as  
10 well.

11 MR. THURMAN: Carte Thurman, student.

12 MR. GROSSO: Thank you. We also have a  
13 representative of each of the party, at least one,  
14 that is here with us this morning also. Thank you.

15 CHAIRMAN HAWKENS: Thank you.

16 MR. WHITE: Good morning. Barry White  
17 with CASE. I'll be speaking by myself. I do see  
18 Mayor Stoddard who is one of our directors at CASE  
19 with us. Mayor Stoddard. And I don't know if Steve -  
20 - Is Steve here yet? No. Okay. So that's it from  
21 CASE.

22 CHAIRMAN HAWKENS: Thank you. It's  
23 important to speak directly into the mikes because we  
24 have the portable air conditioner on and it may be  
25 difficult for people in the audience to hear as well

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1 as the court reporter. Thank you.

2 MR. FERNANDEZ: Good morning, Your Honor.

3 CHAIRMAN HAWKENS: Good morning.

4 MR. FERNANDEZ: Antonio Fernandez for  
5 Florida Power & Light. With me I have co-counsel  
6 Steve Hamrick, Mitch Ross. Mitch Ross also is here as  
7 the Agency as the company representative. He's Vice  
8 President and General Counsel of Nuclear for Florida  
9 Power & Light. Matt Diaz and Mr. John O'Neill.

10 Also we have several people from Florida  
11 Power & Light. I would like to at least introduce  
12 two, Steve Scruggs, Senior Director for Development  
13 for Florida Power & Light, and Bill Maher, Senior  
14 Director for Nuclear Licensing for Florida Power &  
15 Light. Thank you.

16 CHAIRMAN HAWKENS: Thank you.

17 MR. MOULDING: Good morning, Your Honor.  
18 My name is Patrick Moulding. I'm Counsel for the NRC  
19 staff. With me as co-counsel are Sarah Price and Russ  
20 Chazell and also here with the NRC staff we have Manny  
21 Comar, the Safety Project Manager, Andy Kugler, the  
22 Environmental Project Manager, and subject matter  
23 experts whom we may speak with, Dan Mussatti, Michael  
24 Masnik and Paul Thorne.

25 CHAIRMAN HAWKENS: Thank you.

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1 MR. MOULDING: Thank you.

2 CHAIRMAN HAWKENS: This Board issued an  
3 order on November 8th that outlined the format for  
4 today's argument and provided a list of questions and  
5 areas of concern that counsel and representatives of  
6 the parties will be addressing this morning and this  
7 afternoon.

8 We'll hear argument today first on the  
9 Village's request for a hearing and thereafter we'll  
10 hear arguments from CASE. At that point, we'll break  
11 for lunch and finish in the afternoon hearing from the  
12 Joint Petitioners.

13 The parties in this case have already  
14 submitted fairly extensive pleadings and based on  
15 those pleadings and today's oral argument this Board  
16 will decide whether to grant any or all of the hearing  
17 requests. And the Board will endeavor to get its  
18 decision out in January.

19 And if a party is dissatisfied with the  
20 Board's decision, the party can seek review by the  
21 five Commissioners who head the Nuclear Regulatory  
22 Commission who were appointed by the President for a  
23 term. If a party is dissatisfied with any decision  
24 issued by the Commissioners, they can in turn seek  
25 review in a Federal Court of Appeals and ultimately

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1 the U.S. Supreme Court.

2 Before we begin arguments this morning, on  
3 behalf of this Licensing Board, I'd like to express  
4 our gratitude to the citizens of Homestead and the  
5 public officials who have allowed us to use counsel  
6 chambers today in the City Hall. And, in particular,  
7 I'd like to thank Mayor Steven Bateman, Interim City  
8 Manager Julio Brea, City Clerk Elizabeth Sewell who  
9 has been our principal point of contact and has been  
10 extraordinarily helpful, Major Scott Kennedy of the  
11 Homestead Police Department and two individuals from  
12 the Florida State Police who were helping us out  
13 today, Officer Jordan and Officer Lafontant.

14 All right. We're not ready to proceed  
15 with argument. Before we do, we'll have to do some  
16 chair shuffling. We're going to have -- We have nine  
17 mikes at council table and in the interest of fairness  
18 we were going to allocate three to the Petitioner who  
19 will be presenting argument, three to the Applicant  
20 and three to the NRC staff. So if you'd go ahead and  
21 occupy your seats we'll stand by.

22 As they're getting situated, I'll explain  
23 our procedure today. As I say, we're starting with  
24 the Village of Pinecrest. The Village has been  
25 allocated 20 minutes to address the questions and

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1 concerns identified by the Board. If they wish, they  
2 can reserve an amount of that time for rebuttal.

3 Following their initial presentation, we  
4 will hear both from the Applicant, Florida Power &  
5 Light, and by the NRC staff. They've been allocated  
6 jointly 20 minutes which they can allocated among  
7 themselves.

8 In the interest of efficiency, the time  
9 allocation will be monitored and will be strictly  
10 enforced. And once the time has elapsed, we will ask  
11 whoever is presently at that point to please finish up  
12 and sit down.

13 If you're wondering if you're running out  
14 of time, our law clerk, Josh Kirsten, you can glance  
15 at him because he has several signs and why don't you  
16 raise them right now. You can refresh my memory and  
17 let them know what they can expect, Josh.

18 MR. KIRSTEN: The first one will be if  
19 you're within that time limit 30 minutes. The second  
20 one will be ten minutes, five and then one minute.

21 CHAIRMAN HAWKENS: Great. Are we ready?

22 MR. GARNER: Yes, Your Honor.

23 CHAIRMAN HAWKENS: Do you wish to reserve  
24 any time for rebuttal?

25 MR. GARNER: No. Well, yes. I'll reserve

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1 five minutes for rebuttal.

2 CHAIRMAN HAWKENS: Five minutes for  
3 rebuttal. All right. You may proceed.

4 MR. GARNER: Thank you, Your Honor.

5 Members of the Board, thank you for the  
6 opportunity to address you today. As mentioned  
7 earlier, my name is William Garner with the firm  
8 Nabors, Giblin & Nickerson. I'm here to represent the  
9 Village of Pinecrest in this proceeding.

10 The Board has a lot of ground to cover  
11 today. We have a lot of litigants and I'd like to --

12 CHAIRMAN HAWKENS: Could I ask you to  
13 speak a little closer to the mike?

14 MR. GARNER: I'm sorry. Yes. I'd like to  
15 help the Board out in that regard by keeping this  
16 fairly short.

17 The first question that the Board asked  
18 the Village of Pinecrest in its order was whether or  
19 not it was going to -- let me get it right -- press  
20 for the admission of some or all of its contentions.  
21 The Board does not abandon its contentions but  
22 acknowledges from the outset that the strict pleading  
23 requires required in NRC rules may have not been met  
24 and would focus to day on the alternative pleading in  
25 our petition of participation as an interested local

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1 government.

2 That's not to say that the Village doesn't  
3 strongly hold those contentions to heart and wish to  
4 perhaps pursue them if the opportunity arises in the  
5 future. It's simply an acknowledgment of the strict  
6 nature of the rules and the Village's pleading and the  
7 nature of it based on the lateness of entering the  
8 proceedings and the unfamiliarity of the NRC rules.

9 Having said that, the Village of Pinecrest  
10 is a local government. It's located less than 20  
11 miles from the site of the proposed units. It's a  
12 small community of approximately 19,000 residents,  
13 probably more than 1,000 of whom obtain their drinking  
14 water from wells that are supplied by a groundwater  
15 system that is sure to be effected by the construction  
16 and operation of these proposed units.

17 It has a single commercial zone that's  
18 situated in the path of the Applicant's proposed  
19 associated transmission corridor. The proximity of  
20 the village to Turkey Point creates an ever present  
21 and increased potential for radiological harm to the  
22 village and its residents in the event that  
23 radioactive materials are released into the air or  
24 water.

25 And because the village has an obvious

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1 interest in the outcome of this licensing proceeding  
2 and because it's a local government, it meets the  
3 requirements for participation as a local interested  
4 government under 10 CFR Section 2.315©. That section  
5 of the regulations states in pertinent part "The  
6 presiding officer will afford an interested local  
7 governmental body which has not been admitted as a  
8 party under Section 2.309 a reasonable opportunity to  
9 participate in a hearing." This section states that  
10 the local government's representative can do various  
11 acts as a litigation, introduce evidence, interrogate  
12 witnesses where cross examination is --

13 CHAIRMAN HAWKENS: Counsel, may I  
14 interrupt you?

15 MR. GARNER: Sure.

16 CHAIRMAN HAWKENS: I understand the  
17 Village of Pinecrest, the entire municipality, is  
18 within 20 miles of the Turkey Point facility.

19 MR. GARNER: That's correct.

20 CHAIRMAN HAWKENS: I'm not speaking for  
21 the Board, but I personally believe you do meet the  
22 criteria for participating as a local municipality in  
23 the event a hearing request is granted. I notice that  
24 the NRC staff agreed that you would be eligible if a  
25 hearing was granted.

1 MR. GARNER: And I was going to point that  
2 out.

3 CHAIRMAN HAWKENS: And I don't believe --  
4 I'm not sure whether the Applicant took a position on  
5 it. I don't think they affirmatively disputed it.

6 MR. GARNER: Right.

7 CHAIRMAN HAWKENS: But we'll hear from  
8 them in a minute. I personally have heard enough on  
9 that particular argument. Do you have anything else  
10 of the contentions that you would like to address?

11 MR. GARNER: No. That's what we're  
12 prepared to address today is our admission as an  
13 interest local party government.

14 CHAIRMAN HAWKENS: May I suggest then why  
15 don't we hear from the other parties on that issue and  
16 you can reserve the remaining time to rebut to the  
17 extent you feel that's warranted.

18 MR. GARNER: Absolutely.

19 CHAIRMAN HAWKENS: All right. Thank you.

20 MR. GARNER: You're welcome.

21 CHAIRMAN HAWKENS: Let's hear from the  
22 Applicant please.

23 MR. HAMRICK: Thank you, Your Honor. May  
24 it please the Board? I'm Steven Hamrick for the  
25 Applicant, Florida Power & Light.

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1 As counsel for the Village has graciously  
2 acknowledged their three contentions do not meet the  
3 contention admissibility standards.

4 CHAIRMAN HAWKENS: I'm not sure he  
5 acknowledged that.

6 MR. HAMRICK: Correct. Or has agreed not  
7 to push those points this morning. FPL agrees that  
8 none of their contentions are admissible. However, to  
9 the extent at least one contention of at least one  
10 other party has admitted such that there would be a  
11 hearing in this proceeding, FPL would not object to  
12 the Village's participation as an interested local  
13 government under 10 CFR 2.315©. They would clearly  
14 meet the requirements for participation under that  
15 section.

16 If the Board would like to hear discussion  
17 of the admissibility of the contentions I could go  
18 into that at this point. But, if not, I wouldn't want  
19 to.

20 CHAIRMAN HAWKENS: I think we can forego  
21 hearing a presentation on the admissibility of the  
22 contentions. We'll now hear from the NRC staff  
23 please.

24 MR. HAMRICK: Very well. Thank you.

25 CHAIRMAN HAWKENS: Thank you.

1 MR. MOULDING: I'm Patrick Moulding for  
2 the NRC Staff. The Staff understood the Board's first  
3 question as being primarily directed to the Village.  
4 The Staff's answer indicated that it would not object  
5 to Pinecrest's participation as an interested  
6 governmental entity under 2.315©.

7 Consistent with case law, I would just  
8 note that that position was provided on the assumption  
9 that for the reasons and the Staff answered that the  
10 contentions were not admissible. That's the only  
11 clarification I would make at this time.

12 CHAIRMAN HAWKENS: All right.

13 MR. MOULDING: Thank you.

14 CHAIRMAN HAWKENS: Thank you.

15 I think you have substantial time for  
16 rebuttal although you need not take all of it.

17 (Laughter.)

18 MR. GARNER: Thank you, Your Honor. I  
19 think that brevity is the soul of wit and you guys  
20 have a lot of hard work to do today. So I'm just  
21 going to let it rest there.

22 CHAIRMAN HAWKENS: All right. Thank you  
23 very much.

24 We now are going to have to engage in some  
25 more chair moving. We'll continue to have three

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1 chairs for the Applicant, three chairs for the NRC  
2 staff and now CASE can sit at counsel table and occupy  
3 up to three chairs.

4 MR. WHITE: Is this all right?

5 CHAIRMAN HAWKENS: We can hear you.  
6 That's good.

7 MR. WHITE: Thank you so much.

8 CHAIRMAN HAWKENS: Tell me when you're  
9 ready.

10 MR. WHITE: Okay. Good to go.

11 CHAIRMAN HAWKENS: All right.

12 MR. WHITE: Good morning. Welcome to  
13 Homestead and South Florida.

14 CHAIRMAN HAWKENS: Before may I ask a  
15 question? And I will announce CASE has been allocated  
16 60 minutes for its presentation and the Applicant and  
17 the NRC Staff jointly have been allocated 60 minutes  
18 as well.

19 Do you wish to reserve any time for  
20 rebuttal?

21 MR. WHITE: Yes, I would say 10 minutes.

22 CHAIRMAN HAWKENS: Ten minutes. All  
23 right. Thank you. Please proceed.

24 MR. WHITE: Thank you.

25 Good morning. Welcome to Homestead and

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1 South Florida on behalf of CASE, Citizens Allied for  
2 Safe Energy and the people who work, live and visit  
3 here. We appreciate your coming to Homestead for  
4 these oral arguments.

5 Perhaps you'll have a chance to visit or  
6 revisit Biscayne National Park, our Everglades  
7 National Park or maybe drop a line in our waters. We  
8 think we live in paradise and we're working to keep it  
9 that way.

10 In responding to the Board's order  
11 outlining format and questions for oral argument and  
12 the request for explanations with specificity on  
13 several points on some of CASE's contentions, CASE is  
14 fundamentally concerned with the direct and the  
15 potential impact the placement and daily operation of  
16 the proposed AP1000 reactors at Turkey Point will have  
17 on the health and safety of the people who live, work  
18 and visit the area.

19 Regarding Contention 1, with the Court's  
20 permission, we will address Contention 2 first and  
21 then Contention 1. Regarding Contention 2, CASE has  
22 been asked to explain with specificity whether the  
23 alleged deficiencies in FPL's proposed emergency plan  
24 satisfy the strict admissibility requirements of 10  
25 CFR Chapter 2.309(f)(1.3-6) as relates to several

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1 issues, population growth, sheltering in place and  
2 transient or seasonal populations.

3 Section 3 requires that the issue be  
4 within the scope of the proceeding. In the  
5 explanation of scope at General Provisions Chapter 52,  
6 the statement is made that (b) "an applicant shall  
7 comply with all requirements of 10 CFR Chapter 1 that  
8 are applicable." Therefore, all provisions of Chapter  
9 1 are within the scope of these proceedings.

10 The general theme of the regulations is  
11 stated at 10 CFR 57.47, Energy Plan. "No initial  
12 combined license under Part 52 of this chapter will be  
13 issued unless a finding is made by the NRC that there  
14 is reasonable assurance that adequate protective  
15 measures can and will be taken in the event of a  
16 radiological emergency."

17 Regarding population growth, the order  
18 requests that CASE focus with particularity on the  
19 alleged inaccuracy concerning population growth. In  
20 Chapter 1 at Section 52.17, Contents of Applications  
21 Technical Information, at (a)(8) we read "the  
22 application must contain the existing and projected  
23 future population profile of the area surrounding the  
24 site."

25 It is CASE's contention that the FPL COL

1 application does not project population change over  
2 time in relationship to the ETE as required by this  
3 regulation. The FPL COL does provide projections of  
4 population growth into the future, but at no point  
5 does it relate or indicate how the evacuation times  
6 will change due to such increases.

7 Since 52.17 states that the application  
8 must contain existing and projected population  
9 profiles, the COL should also provide sufficient  
10 information for the Atomic Safety Licensing Board to  
11 determine if a problem will arise in the future due to  
12 these changes. The regulation did not request the  
13 population for informational or rhetorical reasons.  
14 Rather it was requested to be used in evaluating the  
15 completeness of the plan.

16 And in this case the timely and orderly  
17 and safe evacuation of a population following a  
18 nuclear event. But there is no projection in the FPL  
19 COL application into a minimum 40 year and possibly 60  
20 year life expectancy for Turkey Point six and seven.  
21 The ETA does not present what the ETE will be at a  
22 given point in the future given future population  
23 levels. There is an omission. So the COL application  
24 is incomplete without these calculations because the  
25 findings of such an inquiry could materially influence

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1 the Board's decision regarding the licensure and  
2 siting at Turkey Point.

3           Sheltering in place. The order next asks  
4 that CASE address the alleged deficiency in evacuation  
5 plan relative to sheltering.

6           The finalized revision of NUREG 0654 was  
7 published in September 1988 and reissued in 1990.  
8 There is no mention of sheltering in place in that  
9 publication. The three draft revisions of NUREG 0654  
10 -- There are three draft revisions of NUREG 0654, but  
11 none has been finalized. CASE is not sure if draft  
12 policies can be enforced or used to support designs,  
13 plans and actions. But CASE will assume for purposes  
14 of this discussion that they can be.

15           In reviewing the FPL COL except for a  
16 casual mention in Part 5, Emergency Plan Messages to  
17 the Public, CASE could find no reference to the use of  
18 sheltering in place. While the last discussion draft  
19 of NUREG 0654 discusses sheltering in place  
20 extensively, it is not mentioned elsewhere in the FPL  
21 COL application.

22           The latest draft of NUREG 0654 which is  
23 titled NUREG 0654 Draft Report For Comment was  
24 published March 2010. The publication discusses  
25 sheltering in place exhaustively. However, there are

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1 no references to citations of real time, live  
2 structural testing of various types of buildings and  
3 at various locations in buildings regarding protection  
4 from radiological plume. Also there are no references  
5 to the scientific work of others nor are there any  
6 analyses of nuclear or other events which could yield  
7 an insight into the actual behavior of structures in  
8 such situations. All information is based on armchair  
9 and computer analyses.

10 As FPL pointed out on September 13, 2010  
11 in its answer opposing CASE's petition to intervene at  
12 29 Case Law, specifically Fansteel, states "a  
13 contention will be ruled inadmissible if the  
14 petitioner has offered no tangible information, no  
15 experts, no substantive affidavits but instead only  
16 bare assertions and speculation." CASE submits that  
17 this applies to FPL and to all cooperating local,  
18 state and federal agencies as well. Nowhere does FPL  
19 provide a citation or reference based on experience  
20 and real time events which supports the assumption  
21 that sheltering is a safe and effective manner in  
22 which to protect human life and health.

23 The protocols in the last draft of NUREG  
24 0654 are untested and they are not regulations, only  
25 guidelines. They are akin to the instructions during

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1 the '50s for school children to hide under their desks  
2 in the event the Russians sent over a nuclear bomb.  
3 It would seem that with so much at stake recommends  
4 and actions based on fact should be the standard in  
5 order to meet the level of analyses indicated by the  
6 regulations. Indeed it is stated at 50.47, Emergency  
7 Plans, "no initial operating license for nuclear power  
8 reactor will be issued unless a finding is made by the  
9 NRC that there is a reasonable assurance that adequate  
10 protective measures can and will be taken in the event  
11 of a radiological emergency." The intent and the  
12 standard are clear. All must comply.

13 Also regarding sheltering in place the --  
14 CHAIRMAN HAWKENS: Interrupt with a quick  
15 question. Is it your position that the application  
16 violates NUREG 0654?

17 MR. WHITE: I just want to see where the  
18 statement is. Violate? Yes. I have to go back and  
19 think here. What I'm saying here is the position that  
20 it should be real time. I'm sorry. Without going  
21 back and thinking that exactly where, I don't have a  
22 quick answer for that. I'm sorry.

23 CHAIRMAN HAWKENS: All right. Give that  
24 some thought as you make your presentation.

25 MR. WHITE: Okay.

1                   CHAIRMAN HAWKENS:   And maybe later in  
2   rebuttal if you have an answer that would be great.

3                   MR. WHITE:   Let me make a note.

4                   CHAIRMAN HAWKENS:   Please continue.

5                   MR. WHITE:   Thank you.

6                   Also regarding sheltering in place, the  
7   abstract to the updated Supplement 3 to NUREG 0654,  
8   FEMA Rep 1, Criteria for Preparation and Evaluation of  
9   Radiological Emergency Response Plans and the  
10   Preparedness in Support of Nuclear Power Plants, it  
11   states "the protective action strategies, PAR, study  
12   results suggest that the NRC should consider improving  
13   it's PAR guidance and synopsis of the results  
14   including radial evacuation should remain the major  
15   element of protective action strategies." Sheltering  
16   in place should receive more emphasis in protective  
17   action strategies because it is more protective than  
18   radial evacuation under rapidly progressing severe  
19   accidents at sites with longer evacuation times.

20                   Staged evacuation should be considered  
21   because it is more protective than immediate radial  
22   evacuation. Although in some scenarios, the improved  
23   benefit of staged evacuation is not large. The  
24   strategy decreases demand on offsite response  
25   organization resources as well as disruption to the

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1 public.

2           Precautionary protective actions such as  
3 evacuating schools and parks during a site area  
4 emergency are prudent and should be considered.  
5 Strategies that reduce evacuation time reduce public  
6 health consequences. Evacuation time estimates are  
7 important in planning the PAR strategies. Advanced  
8 planning for the evacuation of special needs  
9 populations that do not reside in special facilities  
10 may not be consistently addressed within all the  
11 nuclear power plant's EPZs.

12           Thus it is clear that sheltering in place  
13 is only an alternative when evacuation is  
14 problematical. Such would be the case for Turkey  
15 Point. As Table 7-1D in FPL COL titled "Time to Clear  
16 the Indicated Area of 100 Percent of the Effected  
17 Population" shows the minimum time required is two  
18 hours. The maximum is 11 hours and 40 minutes, not  
19 counting the time required to prepare to leave.

20           Given the average wind speed of 9.3 miles  
21 per hour in Homestead and the prevailing east and  
22 southeast wind direction, only the swiftest of the  
23 200,000 people in the area will escape. The rest will  
24 be trapped. Sheltering in place because there is no  
25 alternative. In the vernacular, they will be toast.

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1                   Transient or seasonal populations. The  
2 third concern addressed in the order is the alleged  
3 failure of the plan to allow for transient or seasonal  
4 populations. CASE references 10 CFR 57.7, Emergency  
5 Plans, "no initial combined license, under Part 52 of  
6 the this chapter, will be issued unless a finding is  
7 made by the NRC that there is a reasonable assurance  
8 that adequate protective measures can and will be  
9 taken in the event of a radiological emergency."

10                   CASE's main concern here is that the  
11 evacuation plan does not sufficiently allow for  
12 residents and the sometimes enormous transient and  
13 seasonal population coming north from the Keys along  
14 the only possible road US-1. In the Turkey Point  
15 Units 6 and 7 COL Application Part 2, Evacuation  
16 Routes for Area 8, the map shows that US-1 reduces to  
17 a few lanes for about half a mile from the tip of  
18 Florida to Southwest 344 Street.

19                   The related narrative states that in 2005  
20 there were six million visitors to the Florida Keys.  
21 Dividing by 365, that would mean on an average day  
22 over 16,000 people are visiting the Keys. Not all of  
23 the Keys visitors will be within the 50 mile radius,  
24 but a substantial percentage will.

25                   The COL states further "there is much

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1       uncertainty associated with quantifying the transient  
2       population to 50 miles. Because of this uncertainty,  
3       the transient population was not keyed to sectors or  
4       projected for future years." CASE contends that this  
5       position and lack of analysis should be unacceptable  
6       and that further analysis be required for what could  
7       be a disastrous situation in the event of a nuclear  
8       event at Turkey Point or even if a strong  
9       unsubstantiated rumor should circulate among the  
10      population. Anyone who has traveled to and from the  
11      Keys on a holiday weekend can tell you that gridlock  
12      would not begin to describe the scene due to a  
13      radiological emergency.

14                   Ziegler and Johnson study. The order also  
15      directs CASE to please explain with specificity  
16      whether FPL's plan for Units 6 and 7 may be deemed  
17      inadequate based on the conclusions in the document  
18      entitled "Evacuation Behavior In Response to Nuclear  
19      Power Accidents." This statement is provided in NUREG  
20      0654. "Each organization is to establish coordinated  
21      arrangements for dealing with rumors."

22                   It should be recognized that rumor control  
23      may play a great role in communications, a greater  
24      role than anticipated in the past. During emergency  
25      events, the public uses cell phones and the Internet

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1 for immediate communication, text messages or blasted  
2 to large groups or recipients and Internet social  
3 networking utilities are widely used. Emergency  
4 response agencies should monitor social networks and  
5 address information expeditiously through rumor  
6 control.

7 The use of blog sites by emergency  
8 management agencies is helpful in controlling rumors.  
9 Establishing an emergency management blog has proved  
10 effective.

11 NUREG 0654, Additional Guidance For More  
12 Effective Messaging, includes this statement. "The  
13 public will generally want to confirm the need to take  
14 action and it may be expected that they will seek  
15 additional information. With telephones, cell phones  
16 and the Internet readily accessible to some Americans  
17 it should be expected that attempts to confirm  
18 information will be immediate and the propagation of  
19 information will quickly occur. Requests that the  
20 public refrain from using these services are not  
21 likely to be heeded."

22 These statements and admonitions recognize  
23 that behavior of people in the circumstances we are  
24 concerned with here will not always or necessarily  
25 followed desired or directed orders or procedures. In

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1 fact, this addition of NUREG 0654 is full of such  
2 statements. This is exactly what Drs. Donald Ziegler  
3 and James Johnson, Jr. considered in their study and  
4 analysis of human response following the Three Mile  
5 Island accident. It is CASE's contention that all of  
6 the well thought out plans and procedures in FPL COL  
7 will go by the board in real life.

8 The Ziegler and Johnson paper makes five  
9 conclusions which are included in CASE's revision  
10 petition at 24 and 25 for reference here, the main  
11 points without related discussion.

12 CHAIRMAN HAWKENS: Before you tell me the  
13 main points a quick question for you. Remember this  
14 particular contention is a challenge to the ER,  
15 meaning there's either an omission from it or an  
16 inadequate discussion. It seems the argument you're  
17 making now is regardless of any amplification or  
18 supplement to the ER. It just doesn't matter because  
19 the chaos, the confusion, the rumors in this context.  
20 In other words, the bottom line is that if I  
21 understand you that there is no remedy even if they do  
22 supplement the ER.

23 MR. WHITE: I'll accept that summary.

24 CHAIRMAN HAWKENS: Say it again.

25 MR. WHITE: I'll accept that summary.

1 It's a good summary. I would agree with that. There  
2 is really no solution. In the event of a catastrophic  
3 event, total chaos where we are sitting today will  
4 prevail. There's no way you're going to control this  
5 population.

6 CHAIRMAN HAWKENS: You'll also recall that  
7 the ER which is generated pursuant to NEPA is a  
8 procedural document and it's a tool to ensure that  
9 citizens and the government consider and ventilate  
10 issues which may have an impact on the health, safety  
11 of the public and the environment. And it's not a  
12 mandating statute. It doesn't require you to approve  
13 or disapprove the ultimate federal project but simply  
14 make sure that these issues are fully considered.

15 So how do you reconcile the purpose of  
16 NEPA with your contention which the bottom line is  
17 that it doesn't matter? They can discuss it, consider  
18 it exhaustively. But your unhappiness is with the  
19 bottom line of their decision to submit an application  
20 rather than with their ER it seems to me.

21 MR. WHITE: Well, two answers on that.  
22 First of all, I was responding to your order which  
23 asks us to explain with specificity whether the plan  
24 may be deemed inadequate based on the conclusions in  
25 the document entitled "Evacuation Behavior Response to

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1 Nuclear Power Accidents." So I was responding more to  
2 that question, how does it relate, than to the other  
3 requirement to discuss regs.

4 In that regard though, we did state at the  
5 beginning that our concern is with safety and we cited  
6 several regulations that mandate that this health and  
7 safety be considered and that the plans be adequate to  
8 provide for that. And I think based on that  
9 requirement my comments are germane.

10 CHAIRMAN HAWKENS: All right. Thank you.

11 MR. WHITE: Thank you.

12 To plan for only -- These are the five  
13 points that the research has found and this is based  
14 on their evaluation of Three Mile Island activity  
15 after the accident: to plan for only a ten mile  
16 evacuation is to significantly under-plan for nuclear  
17 power station accident; to locate all the public  
18 shelters and reception centers immediately beyond the  
19 ten mile EPZ is to invite underutilization and chaos;  
20 to depend on buses to evacuate populations without  
21 cars, school children, the elderly, prison and  
22 hospital populations is to ignore rural conflicts  
23 within the emergency personnel designated as drivers  
24 and vital to successful evacuation; to package  
25 information for radiological accident emergency

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1 planning as similar to an emergency response to other  
2 disasters, for example hurricanes, is to ignore that  
3 there are major differences in how people respond to  
4 these very different events; to expect to manage the  
5 evacuation response is not realistic. As referenced  
6 above, 10 CFR 57.47, Emergency Plans, requires that  
7 there is reasonable assurance that adequate protective  
8 measures can and will be taken in the event of  
9 radiological emergency.

10 This point was also made in October 28,  
11 2010 letter from Mr. Richard Rasmussen of the Office  
12 of New Reactors to Mr. Robert Sisk of Westinghouse  
13 Electric Company in which Mr. Rasmussen cited 10 CFR  
14 2.390 stating that "Westinghouse Electric Company did  
15 not use realistic analyses in their application."  
16 CASE submits that this same criteria should be applied  
17 to the evacuation plan presented by FPL and concurred  
18 with by the several agencies involved. Drs. Ziegler  
19 and Johnson documented the disorder and panic which  
20 did, can and will occur following a catastrophic  
21 event.

22 Regarding public behavior in emergencies,  
23 CASE finds the following statement regarding  
24 protective action recommendation, PAR, in NUREG 0654  
25 to be troubling and internally contradictory. This is

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1 under Determination of PAR for Rapidly Progressing  
2 Scenarios. This is a quotation. "As the PAR study  
3 indicates, a nuclear power plant accident that leads  
4 to a rapidly progressing release is a very unlikely  
5 scenario." But the emergency preparedness planning  
6 basis includes this event.

7 A rapidly progressing event in this  
8 context is defined as a scenario in which a large  
9 radioactive release may occur in less than one hour.  
10 Historically, emergency prepared regulations and  
11 guidance have been based on a spectrum of accidents  
12 which is a concept embodied in NUREG 0654, Planning  
13 Basis for the Development of State and Local  
14 Government Radiological Emergency."

15 Revision one notes that planning should  
16 not address a single accident sequence as each  
17 accident could have different consequences. To state  
18 that the worst case scenario is highly unlikely denies  
19 the entire purpose of 10 CFR. We must assume that the  
20 worst case scenario will happen and plan for it. And  
21 that includes assuming that people will as Maslow  
22 described consider their biological needs first and  
23 their safety second.

24 Conforming to socially acceptable behavior  
25 will not be a consideration when the lives of oneself

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1 and family are threatened. Anticipating such behavior  
2 and planning to protect health and to provide safety  
3 is specifically what the regulations require and state  
4 repeatedly. And this should include not creating a  
5 situation which could be catastrophic.

6 Thus FPL's plans for evacuation regarding  
7 Turkey Point 6 and 7 and their proposed siting are  
8 inadequate and inappropriate. Indeed such a plan is  
9 not possible.

10 Going back to Contention 1, we will only  
11 address Contention 1's concern with the ready  
12 availability --

13 ADMIN. JUDGE BURNETT: Excuse me.

14 MR. WHITE: Please.

15 ADMIN. JUDGE BURNETT: Yes, Mr. White.

16 MR. WHITE: Yes, sir.

17 ADMIN. JUDGE BURNETT: Before you go to  
18 the next contention, I'd just like to clarify  
19 something you mentioned. It actually was back when  
20 you were talking about sheltering in place. And,  
21 during your discussion, you mentioned two different  
22 types of evacuation. One was called staged and I  
23 didn't actually catch the name. I think you said  
24 something like radial evacuation.

25 MR. WHITE: That was quoting from the

1 regulation. Sure. I have it right here. It was from  
2 the NUREG. The NUREG mentions a staged evacuation  
3 should be considered because it is more protective  
4 than immediate radial evacuation. Although in some  
5 scenarios the improved benefit of staged evacuation is  
6 not large, the strategy decreases on offsite response  
7 organizations and resources as well as a disruption to  
8 the public. Is that what you're referring to?

9 ADMIN. JUDGE BURNETT: That's it. Yes, I  
10 have it now. Thank you.

11 MR. WHITE: Okay.

12 ADMIN. JUDGE KENNEDY: Mr. White.

13 MR. WHITE: Yes, please.

14 ADMIN. JUDGE KENNEDY: I guess this is  
15 where it gets confusing to me. I'm hearing discussion  
16 related to the NUREG document. Now let's take just  
17 the different types of evacuation, the staged and the  
18 radial. And this goes back to I think Judge Hawken's  
19 question.

20 Are you asserting that there is an error  
21 or an inadequacy in the current emergency plan for  
22 Turkey Point 6 and 7 that is relevant to this NUREG  
23 recommendation? I'm trying to track with you with the  
24 NUREG recommendations versus what's currently in the  
25 Turkey Point emergency plan and what you would assert

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1 to be an inadequacy in that plan so we can try to keep  
2 it together.

3 MR. WHITE: Well, I think there is more  
4 than one inadequacy.

5 ADMIN. JUDGE KENNEDY: Let's just take the  
6 one we just talked about just to work through the  
7 example. As an example of a recommendation in NUREG  
8 0654, various supplement revisions, and the current  
9 emergency plan, the recommendation was considering  
10 staged versus radial evacuations. How does that  
11 relate to what is currently recommended within the  
12 Turkey Point emergency plan for Units 6 and 7, if you  
13 could use that example?

14 MR. WHITE: I must say that I was simply  
15 quoting from the reg. And that's not a critical or  
16 even a mentioned factor in our discussion. I was  
17 simply quoting from the reg. in the context of their  
18 overall consideration of the relationship between  
19 sheltering in place and evacuation. And my point  
20 there I believe hopefully was that sheltering in place  
21 is really an option only when evacuation is not  
22 possible.

23 And it's not the first choice as I read  
24 the regulation, the NUREG. It's simply if there's  
25 nowhere else to go this is what you've got to do. And

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1 so I think it was more a way of showing that even  
2 within the regulation it was more an action of  
3 frustration than an act of helpful of protecting  
4 oneself from a nuclear event.

5 ADMIN. JUDGE KENNEDY: Yes. I think that  
6 the difficulty in following the oral argument here is  
7 trying to separate the recommendations of the NUREG  
8 with direct assertions of what's inadequate in the --  
9 Because at the peak of this, you're declaring an  
10 inadequacy in the emergency plan. And now trying to  
11 track through the recommendations and how they relate  
12 to the current emergency plan is what I've been trying  
13 to take some notes on and sort through here so that we  
14 have a clear picture what's behind this contention.  
15 And it seems to be that's what you're trying to get  
16 at. I was trying to pick maybe at least one example  
17 or two that we could kind of work through.

18 MR. WHITE: Right. If I may, I think that  
19 going with where we are now discussing the analysis by  
20 the psychologists of the behavior following Three Mile  
21 Island clearly showed that a well thought out plan  
22 armchaired in advance is just that. It's not going to  
23 work in real life. And the final decision as to  
24 whether or not to place additional nuclear reactors in  
25 this location could and would have these consequences

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1 should there be an accident.

2 And the real question is is it prudent and  
3 responsible to place those reactors in this location.  
4 This particular location and I'm sure will be made by  
5 others is unique, troublesome, problematical and very  
6 small. It's only 16 miles from the ocean to the  
7 Everglades right here. And there's only three roads  
8 out. So there's nowhere to go.

9 And you've got millions of visitors each  
10 year coming in the Keys. So where are they going to  
11 go? How are they going to get out? It's just at  
12 every turn there's more problems than you can imagine.  
13 I'm just trying to highlight some of them.

14 ADMIN. JUDGE KENNEDY: I understand.

15 MR. WHITE: Did that answer your question,  
16 sir?

17 ADMIN. JUDGE KENNEDY: Exactly. Just one  
18 quick follow-up on the document that you're quoting  
19 from with the five recommendations.

20 MR. WHITE: Yes, please.

21 ADMIN. JUDGE KENNEDY: I guess I'm  
22 curious. Was this a case study based on the Three  
23 Mile Island accident?

24 MR. WHITE: Yes, sir. Absolutely.

25 ADMIN. JUDGE KENNEDY: And so that the

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1 conclusions, are they rooted -- I'm not familiar with  
2 the reference. But are they rooted in the behavior of  
3 personnel of population around the Three Mile Island?

4 MR. WHITE: Much more than that. Dr.  
5 Johnson has 40 pages of publications to his credit  
6 which document his experience in analyzing these types  
7 of events. And Dr. Zeigler is one of the noted  
8 commentators and professionals in this area. So they  
9 weren't drawing on just the experience I believe from  
10 Three Mile Island. They had much deeper and broader  
11 experience in these types of things.

12 ADMIN. JUDGE KENNEDY: All right. Thank  
13 you. That's what I was looking for.

14 MR. WHITE: Okay.

15 We only address Contention 1's concern  
16 with the ready availability and distribution of iodine  
17 since the other concerns of the order have been  
18 addressed in a response to Contention 2. They were  
19 similar concerns.

20 The order states "Regarding Contention 4  
21 which raises issues related to radiation exposure  
22 caused by a radiological accident. Please explain  
23 with specificity whether the contention satisfies the  
24 strict admissibility requirements in 10 CFR 5-6.  
25 Please also explain whether FPL and ultimately the NRC

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1 may appropriately rely on the analysis and findings in  
2 NUREG 1437 for this combined license application and  
3 (b) whether CASE's challenge in its reply to FPL's  
4 reliance on NUREG 1437 is timely."

5 With apologies, looking at NUREG 1437, it  
6 was unclear what was being requested since the  
7 document seems to relate to spent nuclear fuel. With  
8 clarification, CASE will be happy to address that  
9 issue in writing.

10 CASE's concern is that potassium iodide  
11 (KI) cannot be delivered in a timely manner to provide  
12 best protection from thyroid cancer. According to 10  
13 CFR 50.47, "the onsite and acceptance provided in  
14 paragraph D of this section offsite, emergency  
15 response plans for nuclear power reactors must meet  
16 the following standards. A range of protective  
17 actions have been developed for the plume exposure  
18 pathway EPZ for emergency workers and the public.  
19 Developing this range of actions, consideration has  
20 been given to evacuation sheltering and as a  
21 supplement to these the prophylactic use of potassium  
22 iodide (KI) as appropriate. Guidelines for the choice  
23 of protective actions during an emergency consistent  
24 with federal guidance are developed and in place and  
25 protective actions for the ingestion exposure pathway

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1 EPZ appropriate to the locale have been developed."

2 The FPL COL application addresses the KI  
3 issue with this COL section with a statement under  
4 Messages to the Public "The state and/or the counties  
5 control the distribution of radial protective drugs to  
6 the public. Also in supplemental information, it  
7 states "FPL also lists the State of Florida document,  
8 "Florida Radiological Emergency Management Plan," etc.  
9 At page 10 in this section as it is referenced, it's  
10 the referenced document for content of its plan for  
11 the emergency distribution of potassium iodide.

12 According to Chapter 2 of the State of  
13 Florida emergency plan, Florida counties are held  
14 responsible for the distribution of potassium iodide.  
15 Miami-Dade County has no post radiological accident  
16 plan for the distribution of potassium iodide other  
17 than to make KI available at the single emergency  
18 reception center that is 30 miles away from the Turkey  
19 Point site along a traffic intensive route.

20 Tamiami Park Emergency Reception Center  
21 houses -- that's ERC -- the county's supply of  
22 potassium iodide. This ERC is 20 miles from the ten  
23 mile diameter emergency planning zone. In the event  
24 of an emergency radiation release, the time required  
25 to evacuate the ten mile EPZ to the ERC at Tamiami

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1 Park up to 17 hours would be too great -- actually  
2 that's up to 11 hours according to FPL's figures -- to  
3 prevent initial exposure to inhaled radial iodines.  
4 The county has no effective plan to transport KI from  
5 the FIU campus to residents who shelter in place in  
6 their houses or businesses prior to their exposure  
7 from a moving radiation cloud.

8 The Turkey Point COL states that FPL's  
9 plan is contained within the State of Florida  
10 emergency plan. The State of Florida places the  
11 responsibility for KI distribution with the county and  
12 the County of Miami-Dade has essentially no plan.  
13 Therefore, the Turkey Point Units 6 and 7 is  
14 incomplete under 10 CFR 50.47(b)(10).

15 World Health Organization guidelines state  
16 "To be effective at protecting against thyroid cancer  
17 particularly in children and the unborn potassium  
18 iodide should be taken before encountering an airborne  
19 radiation plume from a release." Clearly, the plans  
20 in place obviate that admonition. The state and  
21 Miami-Dade County give minimum guidance. We quote  
22 "Potassium iodide may be used to reduce the risk of  
23 thyroid's adsorption of radioactive iodine. Each of  
24 these protective actions is addressed in greater  
25 detail in each response respective site plan." That's

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1 it.

2 The state plan also says Risk counties  
3 must "ensure that procedures are developed for the  
4 distribution of potassium iodide to all emergency  
5 workers and members of the general public for whom  
6 evacuation from the effective area is not feasible."  
7 The Miami-Dade County Radiological Emergency  
8 Preparedness Plan reads "KI may be issued to emergency  
9 workers and those who are deemed difficult to move  
10 when authorized by the Miami-Dade IC upon the  
11 recommendation of the BRC and the County Health  
12 officials. If the decision is made to administer KI  
13 (potassium iodide) the drug should be given before or  
14 as soon as possible after an incident resulting in a  
15 release of radioactive iodine with the protective dose  
16 to the thyroid gland greater than 5 rem.

17 These are the deficiencies. All agencies  
18 agree that the county is responsible for distributing  
19 potassium iodide to people soon after a radiation  
20 release. The agency details a mechanism to distribute  
21 potassium iodide to people sheltering away from the  
22 ERC before they encounter a windborne radiation plume.

23 ADMIN. JUDGE KENNEDY: Mr. White.

24 MR. WHITE: Yes, please.

25 ADMIN. JUDGE KENNEDY: This is Judge

1 Kennedy. Again, I'm trying to follow the thread here.  
2 We again deflected or maybe veered a bit from the  
3 Turkey Point Emergency Plan and the regulatory  
4 requirements placed upon the Applicant in this case to  
5 Miami-Dade County and other state and local emergency  
6 plans.

7 Can you help link together for us? I  
8 think you started to say it early in your presentation  
9 how this links back to the FPL application and its  
10 emergency plan. I am hearing your concerns about the  
11 weaknesses that you see in the county and local  
12 emergency response function. But help take us back to  
13 a regulatory basis for FPL.

14 MR. WHITE: Thank you. The COL I believe  
15 defers to the state and local and county governments  
16 in providing plans for this to occur. And our  
17 observation is that these plans either don't exist or  
18 woefully inadequate and could not possibly deliver the  
19 iodine in a timely manner to be of any assistance to  
20 anybody.

21 And they pass the buck from one to another  
22 it would seem to such an extent that nobody watching  
23 the store. It's not happening. There is no plan in  
24 place. And Dr. Stoddard, a biologist from FIU, is one  
25 of our directors and he's very concerned that as a

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1 biologist who knows all the downsides to this  
2 situation he's terribly concerned that this entire  
3 iodine plan is not -- cannot work and therefore would  
4 not meet the requirements to provide adequately for  
5 health and safety of the public as required. We cited  
6 several times that is the --

7 And as we said in the beginning, CASE's  
8 main concern is what the result of having these  
9 reactions and even the present reactors are should a  
10 radiological event occur. So our basic concern is  
11 health and safety. Has it been provided for? Do  
12 FPL's plans provide for it? And by extension do the  
13 county and local government's plan provide for it? If  
14 not, that has to be I would think considered in  
15 deciding whether or not the plan, the COL, is complete  
16 and appropriate.

17 ADMIN. JUDGE KENNEDY: Yes. I think that  
18 the heart of why we're trying to probe the potassium  
19 iodide was our sense that the regulations require the  
20 Applicant to make the potassium iodide available and  
21 it doesn't provide for down-flowing requirements on  
22 how to implement that. And that's left to the state  
23 and local agencies.

24 But we understand what you're saying and  
25 just to give you a perspective of where we were in

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1 asking that question, both in the written order and  
2 here today.

3 MR. WHITE: I appreciate that. Thank you.

4 ADMIN. JUDGE KENNEDY: Thank you.

5 MR. WHITE: I'll go back to here. All  
6 agencies agree that the county is responsible for  
7 distributing potassium iodide to people soon after a  
8 radiation release. But agency details -- I've read  
9 that.

10 Likewise, no plan gets the majority of  
11 people in the EPZ to the stocks of potassium iodide  
12 before they would encounter a radiation plume. Normal  
13 meteorological conditions in South Florida would push  
14 airborne radiation across the EPZ in approximately one  
15 hour. Thus to be effective at preventing thyroid  
16 cancer, potassium iodide should be ingested by people  
17 in the EPZ in less than one hour after the onset of a  
18 radiological release.

19 Potassium iodide intended for distribution  
20 to the public in the event of a radiologic emergency  
21 is stored near Tamiami ERC not in the EPZ itself.  
22 Even a normal traffic distribution of potassium iodide  
23 to people sheltering in the EPZ would take hours after  
24 the decision has been made to do so. Complete  
25 evacuation of the EPZ to the ERC where potassium

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1 iodide is available is predicted by the state to take  
2 as much as 11 hours.

3 Miami-Dade County clearly understands the  
4 need for timely dosing with potassium iodide. It has  
5 a multi-level command chain for making distributions.  
6 Yet it details no mechanism for timely distribution of  
7 potassium iodide to members of the public who cannot  
8 reach the ERC. Thus, no plausible mechanism exists in  
9 the plan for the majority of members of the public  
10 residing, schooling and working and traveling in  
11 radiation plume receiving potassium iodide before  
12 exposure to airborne radiation in general.

13 I'm going to go to Contentions 6 and 7  
14 please.

15 MR. KIRSTEN: Mr. White.

16 MR. WHITE: Yes.

17 MR. KIRSTEN: Before you go, you have five  
18 minutes left until your rebuttal time and then 15  
19 minutes left total.

20 MR. WHITE: Okay. Let me -- If I may, I  
21 do want to read these things. If I get into my  
22 rebuttal time, that's fine.

23 MR. KIRSTEN: That's fine.

24 MR. WHITE: Yes. Okay.

25 Please explain with specificity whether

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1 the contention satisfies strict admissibility  
2 requirements for 10 CFR 2.309, Statement of Law or  
3 Fact that Shows One or More Acceptable Criteria under  
4 Part 52 Won't Be Met. The full force of 10 CFR 52.79  
5 in its entirety has bearing on both the licensing and  
6 the inadequacy of the COLA.

7 Without a stated plan or details for how  
8 to manage and store the so-called low level waste that  
9 would be generated by the proposed reactors beyond the  
10 two years at most the AP-1000 temporary waste storage  
11 area designed for and since there is currently no  
12 offsite location that would permanently accepted this  
13 waste, it is impossible for the NRC to "reach a final  
14 conclusion on all safety matters that must be resolved  
15 by the Commission before the issuance of a combined  
16 license." 52.79 specifies this includes resolution  
17 that Part 20 will be met. It is not possible to  
18 resolve this without a clear statement of how it will  
19 be met.

20 The contention asserts that the license  
21 application is not complete because it does not have  
22 a specific plan for how a large amount of highly  
23 radioactive waste will be handled if it must be stored  
24 on the site beyond the two year temporary holding  
25 capacity of the site. The NRC must make safety and

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1 health findings its prime cause.

2 So-called low level waste and its  
3 disposition is material to the COLA. There are  
4 complete chapters primarily devoted to it in the  
5 design control document, the environmental report and,  
6 some day if it is written, the NRC Environmental  
7 Impact Statement. The declaration of Diane Diargio  
8 has been offered and Mary Olson, Southeast Office of  
9 Nuclear Information and Resource Service, has  
10 consulted with and supported the CASE filing.

11 Our dispute is that the Applicant has  
12 failed to address a fundamental situation. It plans  
13 to generate waste and while it has a short-term  
14 holding area and apparently two contractors also have  
15 short-term holding areas, the fact remains that there  
16 is no permanent place for this waste to go. CASE  
17 wants to know what FPL is going to do with its waste  
18 and wants a complete in-depth analysis of both the  
19 safety and health ramifications of this and also the  
20 environmental impact.

21 We cite 52.79 and the NRC's mandate to  
22 protect public health and safety and the common  
23 defense. We do not bring a security focus contention.  
24 But we do point out that given the population density  
25 and the fact that dirty bombs have been made with far

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1 less material that will be generated as a so-called  
2 low level waste at the proposed reactors. These are  
3 very important issues to deal with. The consequences  
4 of not adequately providing for a large accumulation  
5 of this waste would definitely be "contrary to  
6 providing reasonable assurance of adequate protections  
7 of the public health and safety. On page 71 of FPL's  
8 answer addressing Contention 7, FPL states that the  
9 regulations are in place to protect public health and  
10 safety and both FPL and Studsvik are bound to comply  
11 with these regulations."

12 Currently, if the COL were granted as the  
13 COLA is written, the regulations referred to here  
14 would apply to Studsvik for one year and to FPL for  
15 two years. What is at issue here what happens after  
16 that. It is a given that a 40 year license will  
17 result in more than four years of so-called low level  
18 waste regeneration. This is because decommissioning  
19 as an activity generates new so-called low level waste  
20 in addition to the entire nuclear reactor facility  
21 which becomes waste because it was dedicated to become  
22 waste when the system goes hot. Therefore, while the  
23 regulations may continue to apply, it is not clear  
24 what they're applying to.

25 An aside, it is very interesting that

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1 intervention in a license results in adjudication. It  
2 is not necessarily wrong, but is a very interesting  
3 and somewhat strange matter for the regulators to step  
4 aside and for attorneys and judges to determine if the  
5 future of a community based on the words on a page.  
6 In our view, the entire Code of Federal Regulations  
7 still applies whether we as pro se Interveners wrote  
8 the exact Code number down.

9           So, assuming that the regulator applies  
10 its own rules which in our view it has the obligation  
11 to do, whether we say the number of not, then we turn  
12 to 52.79 which calls for the design and materials of  
13 construction that are sufficient to provide reasonable  
14 assurance that the design will conform to the design  
15 basis prior to licensing. One can and some may  
16 attempt to construe that this would not apply to  
17 something as lowly as so-called low level waste  
18 storage. However, there is no safe dose of radiation.

19           The National Academy of Sciences  
20 Biological Effects of Ionizing Radiation Report stand  
21 all affirmed that there is no threshold below which  
22 radioactivity can be called safe.

23           MR. KIRSTEN: Ten minutes.

24           MR. WHITE: Therefore, there should be no  
25 threshold below which radioactive waste generated

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1 under the COL proposed is not regulated. Also it  
2 calls for analysis with the objective of assessing the  
3 risk to public health and safety. In order to show  
4 that all of 10 CFR 52.79(a) has been met, it is  
5 necessary for the license applicant to account for how  
6 40 years of waste generation will be handled.

7 The existing regulation -- Please address  
8 whether the existence of regulation relieves an  
9 applicant of its duty to describe the means for  
10 controlling and limiting radioactive effluence and the  
11 radiation exposures within the limits set forth in  
12 Part 20. The regulations such as they are provide the  
13 criteria for judging whether the stated plan will  
14 fulfill those regulations.

15 Simply saying regulations exist as a blind  
16 implication that no matter what the application does  
17 will meet the regulations is to drop the role of the  
18 regulator completely. It is the equivalent of making  
19 nuclear power reactor construction into an activity  
20 like building model airplanes. "Here is the  
21 guidebook. Have fun."

22 The public and CASE's members have the  
23 right to know what the plan is, how it will meet the  
24 regulations and, most important, per Part 52.79 the  
25 NRC staff must make the finding that the safety

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1 conditions will have been met. Contrary to  
2 impressions that they have a common misperception,  
3 this waste is not low risk. Parts of the so-called  
4 low level waste streams can and will deliver lethal  
5 dose of radiation to workers if not properly managed.

6 "The final safety analysis report shall  
7 include the following information at a level of  
8 information sufficient to enable the Commission to  
9 reach a final conclusion on all safety matters that  
10 must be resolved by the Commission before issuance of  
11 a combined license." That's a quotation from 52.79.

12 As lay people we would presume that part  
13 of the safety matters that must be resolved is whether  
14 the Applicant's activities will meet NRC regulations,  
15 indeed NRC's own regulations, in this same Part 52.79,  
16 just to be sure NRC staff and judges are awake, go on  
17 to specify meeting Part 20. It does not get much  
18 clearer than that. The Commission reach a final  
19 conclusion.

20 How will the Commission show that the  
21 regulations have been met if the Commission does not  
22 know what the Applicant proposes? Two years is not  
23 sufficient plan for 40 plus years of waste. A  
24 parallel example would be to license the proposed  
25 reactor for 40 years if the Applicant openly announced

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1 that the welds on pipes that are part of the key  
2 pressure boundary were only good for two years. A  
3 year license might be appropriate since it clearly  
4 would take time to replace all the pipes. A 40 year  
5 license would not. In our view, if NRC licensed an  
6 operation that will produce the waste it should be for  
7 only a period of time that a clear plan for waste is  
8 provided.

9 Two additional years of offsite waste  
10 storage might justify a four year license. But since  
11 the waste generated in the fourth year would leave no  
12 room for additional waste while either reformulating  
13 a plan or a decommissioning facility would recommend  
14 NRC follow its own regulations at 10 CFR 52.79 and not  
15 grant a COL at all until there is a plan that provides  
16 for 40 plus years of generation. If there were any  
17 uncertainty about the generation of this waste, it  
18 might be appropriate to leave the planning for it to  
19 future license amendment.

20 We do not find any uncertainty about the  
21 fact that resins will be used, pipes and other parts  
22 will have to be replaced down the road with large  
23 components like steam generator and pressure vessel  
24 lids will likely also have to be replaced.

25 What is the plan? NUREGs are guidance.

1 There is nothing enforceable about a NUREG. If a  
2 similar level of uncertainty were permitted for other  
3 aspects of the reactor design, NRC would be out of a  
4 job.

5 Finally, in light of the continuance  
6 element of a low level radioactive waste storage plan  
7 -- Scratch that. Finally, this would definitely be a  
8 question for FPL if we knew what the plan was. We  
9 could comment. We do not know what the plan is. That  
10 is our point.

11 Briefly, regarding Contention 8, the  
12 question about the timeliness of the admissibility.  
13 Briefly, there was -- I'll read this. Contention 8  
14 was added to the revised petition because it was  
15 inadvertently left out of the rushed filing of the  
16 original petition at 10:20 p.m. on August 17, 2010.  
17 The EIE system failed and CASE was unable to file  
18 until the next morning.

19 To be sure CASE met the midnight deadline  
20 we filed what we could just before midnight. We lost  
21 much time between 10:20 p.m. and 12:00 midnight trying  
22 to figure out if our computers were at fault or if it  
23 was a system problem. In compiling the hastily  
24 assembled document, we left out Contention 8.

25 MR. KIRSTEN: Five minutes, Mr. White.

1 MR. WHITE: FPL subsequently filed a  
2 motion to strike. NRC staff filed a motion concluding  
3 that they were neutral on the motion. Before FPL  
4 filed its motion to strike Contention 8, they advised  
5 CASE -- FPL advised CASE -- that they had withdrawn  
6 their request for a limited work authorization.

7 However, FPL did hold out the possibility  
8 of refileing the request at a later time. In view of  
9 that possibility CASE filed Contention 8 and request  
10 that it be admitted and held in abeyance in the event  
11 that FPL does refile the limited work authorization.

12 CHAIRMAN HAWKENS: When you submitted your  
13 revised petition, you didn't submit a motion  
14 addressing the timeliness or even pointing out the  
15 existence of new Contention 8 I observed. Is that  
16 correct?

17 MR. WHITE: If I may, we were -- It was  
18 the suggestion of NRC staff that we include it.

19 CHAIRMAN HAWKENS: All right.

20 MR. WHITE: Thank you.

21 CHAIRMAN HAWKENS: All right. Please  
22 continue.

23 MR. WHITE: Thank you. Before I make a  
24 concluding statement regarding Contention 8 and its  
25 admissibility, it may not be admissible because there

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1 is no letter on file letter requesting the  
2 authorization. So, without that, we can't really  
3 respond to that.

4 But what we're really responding to is the  
5 angst by everyone in South Florida over any possible  
6 building on that precious site that is prior to proper  
7 direction from the NRC as to how to proceed. And if  
8 you've read the description of the site, it's more  
9 like Madagascar than any place on the planet. It's  
10 immensely rich in flora and fauna and it's 11,000  
11 acres. And I think they occupy only 10 percent of it.

12 And given some of the plans that they have  
13 offered over the last six months including building a  
14 road right across the middle of the property which  
15 they say won't affect the flow of water and things  
16 like that which most of the people in this area find  
17 to be reprehensible and impossible to believe, given  
18 that, what Contention 8 filing was reflecting was the  
19 angst that even any building should occur there during  
20 the 20 years or 10 years I guess before they plan to  
21 build so that we wanted to have be on line if they  
22 should try and do that. That was the main reason for  
23 filing that Contention 8.

24 And, in addition, the 200 page filing from  
25 the South Florida Water Management District that has

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1 a 40 page letter and 160 pages of documentation, it  
2 also just reflects their concern that any building  
3 occur on this site and how precious this site is and  
4 important to the water and health of the people and to  
5 the ecology of this area. So that's what the filing  
6 of Contention 8 really was all about.

7 Thank you for the opportunity for CASE to  
8 present its concerns. Our contentions are important.  
9 They need to be heard. We ask that you accept them  
10 for a full --

11 MR. KIRSTEN: One minute.

12 MR. WHITE: -- hearing where the issues  
13 can be fully discussed and evaluated. CASE rests its  
14 case.

15 CHAIRMAN HAWKENS: All right. Thank you.  
16 I think your time is just about elapsed, but we'll  
17 grant you a few minutes for rebuttal if you do want to  
18 use them.

19 I might have misunderstood you, but did  
20 you say you intended to submit something in writing in  
21 response to one of the concerns here?

22 MR. WHITE: There was a question. The  
23 first question that was posed.

24 CHAIRMAN HAWKENS: All right. Let me --  
25 I want to emphasize that the Board has not invited

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1 additional written responses nor do we contemplate  
2 receiving any. If somebody wishes to submit an  
3 additional pleading, please do it in accordance with  
4 our motion rules.

5 MR. WHITE: Yes, sir. That's clear.

6 CHAIRMAN HAWKENS: All right. Yes, please  
7 do.

8 ADMIN. JUDGE BURNETT: Yes. Mr. White.

9 MR. WHITE: Yes, sir.

10 ADMIN. JUDGE BURNETT: Concerning  
11 Contentions 6 and 7, can you give you stance on  
12 whether or not the private contractor, Studsvik, I  
13 think is the name in Irwin, Texas, when they take  
14 waste from utility, do they own the waste?

15 MR. WHITE: No. It's our understanding  
16 that they only have to hold it for a year and it's our  
17 understanding that the FPL contract it can come back  
18 to FPL. That's our understanding that they can only  
19 hold it for a limited amount of time I believe.

20 ADMIN. JUDGE BURNETT: So what are the  
21 conditions under which it would go back to the  
22 Applicant?

23 MR. WHITE: If they run out of legal time  
24 to hold it. They can only require -- It's our  
25 understanding they can only hold onto the waste for a

1 certain amount of time at which time they have to get  
2 rid of it.

3 ADMIN. JUDGE BURNETT: Couldn't they send  
4 it to a disposal site if there was one accepting  
5 waste?

6 MR. WHITE: Possibly. But since there is  
7 no such a site that accepts Level D and C waste I  
8 believe, then FPL would be required to take it back at  
9 Turkey Point or maybe at Juno Beach.

10 ADMIN. JUDGE BURNETT: Thank you.

11 CHAIRMAN HAWKENS: All right. Let's hear  
12 from the Applicant please and a reminder that the  
13 Applicant and staff have been allotted 60 minutes  
14 total to be divided among themselves as they see fit.

15 MR. TRAVIESO-DIAZ: Good morning, Mr.  
16 Chairman. My name is Matias Travieso-Diaz. I'm  
17 counsel for FP&L. I'll be addressing several  
18 contentions.

19 Before I do, I have a procedural question  
20 for the Board. We heard CASE go through all its  
21 contentions from one through eight. Is the Board  
22 preference that we address them like one and two  
23 Applicant, one and two Staff? Then Applicant four?  
24 Staff four? Or should we go through all of them,  
25 Applicant one through eight? Staff one through eight?

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1 CHAIRMAN HAWKENS: Do I understand that  
2 you contemplate being some duplicative presentations  
3 by the Applicant and the Staff?

4 MR. TRAVIESO-DIAZ: Well, I expect that it  
5 won't be easier for the Board to follow what we have  
6 to say about Contention 1 if we are having to wait 30  
7 minutes for the Staff to talk about Contention 1. So  
8 it seems to me perhaps the more sensible way to go is  
9 to divide it in the way I suggested. We talk about  
10 one and two. They talk about one and two. We talk  
11 about four. They talk about four and so on.

12 It's the Board's preference. I'm just  
13 asking the question.

14 ADMIN. JUDGE: I think it should be up to  
15 them.

16 CHAIRMAN HAWKENS: If the Applicant and  
17 the Staff think that's the most effective way to make  
18 their presentation, the Board has not objection to  
19 that approach.

20 MR. TRAVIESO-DIAZ: May I consult with  
21 Staff?

22 (Off the record discussion.)

23 MR. MOULDING: Your Honor, that's okay  
24 with the Staff. I would just note that we haven't  
25 coordinated our answers. We've just agreed to split

1 the time evenly between the Staff and the Applicant  
2 for responding to the Board's questions.

3 CHAIRMAN HAWKENS: So you'll be flying by  
4 the seat of your pants. We understand.

5 MR. MOULDING: All right. Thank you.

6 MR. TRAVIESO-DIAZ: Mr. Chairman, I will  
7 be talking about Contentions 1 and 2 for a total of  
8 ten minutes. Before I do respond to the Board on  
9 those contentions, there were two points that were  
10 raised with the Applicant, I'm sorry, with CASE by the  
11 Board which I'd like to address up front.

12 First, the question was raised does the  
13 emergency plan comply with or satisfy NUREG 0654. I  
14 would like to say first that the emergency plan that  
15 we filed has not been challenged by CASE at any point,  
16 even mentioned, except for the deficiency of the ET  
17 that they are alleging. Second, the emergency plan of  
18 the State of Florida has never even mentioned. When  
19 I say that, it's because the Supplemental Information  
20 2 to the emergency plan is a concordance. It's a  
21 table that shows each of the provisions of NUREG 0654  
22 and how the emergency plan complies with that.

23 So I don't believe that CASE can be heard  
24 now saying that we don't comply with 0654 because they  
25 didn't raise that. They had the plan before them and

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1 if there was any inconsistency with 0654 they had the  
2 obligation to raise it to the Board. That's my first  
3 point.

4 The second point that also came in the  
5 questions by the Board was that the Chairman probed  
6 into whether it's your contention that no matter how  
7 compliant your plan is with the regulations and the  
8 guidance it cannot be done. The answer -- And they  
9 agree that that was a contention. That, of course, is  
10 a challenge to the regulations as impermissible to  
11 say, "You comply with the regulations, but your  
12 application is no good." That is just not something  
13 that is permissible in NRC proceedings.

14 Going back now to the contentions -- and  
15 I'll do them in order -- I'll go one first and two  
16 second. And I'll try to be fast.

17 First, there are no differences between  
18 the Miami-Dade emergency plan and the Applicant's  
19 emergency plan simply because there's an additional  
20 responsibility. The emergency plan is responsible for  
21 defining the onsite measures and the proposed  
22 recommendations for the offsite actions.

23 How those recommendations are implemented,  
24 the matter in which that is done, is the purview first  
25 of the state and then under the state direction all

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1 the various municipalities. So when we talk about  
2 iodine distribution, for example, the state will  
3 decide how it has to be done. The City of Miami will  
4 do it in accordance with the state directive. The  
5 Applicant has no role in that. And it cannot be  
6 predicted because that is case-by-case event  
7 dependent.

8 Now one more point that I want to raise  
9 which also goes to all the contentions, the validity  
10 of an implementation capabilities of all the offsite  
11 emergency plans is assessed by FEMA, Department of  
12 Homeland Security. FEMA does an assessment of the  
13 capabilities of the various state and local agencies  
14 and writes a letter that concludes that if they do  
15 that the plans are capable of being implemented and  
16 are appropriate.

17 FEMA has issued such a letter here in this  
18 case December 2, 2009. We are alerting our pleadings  
19 to CASE that such a letter existed because they didn't  
20 mention it in their original submission. They have  
21 not mentioned it in their reply.

22 There is ample case law that says there is  
23 a rewardable presumption that a FEMA finding that your  
24 offsite plan is adequate and can be implemented it's  
25 acceptable. It is a rewardable presumption that that

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1 takes care of any concerns of an offsite emergency  
2 plans. That rewardable presumption has --

3 CHAIRMAN HAWKENS: What is the case law or  
4 the regulation that establishes that?

5 MR. TRAVIESO-DIAZ: Well, the case law  
6 specifically that I have here are two cases is Public  
7 Service Company of New Hampshire, Seabrook Station,  
8 CLI 9010 32 NRC 218 at 222. That's 1990. And also  
9 Philadelphia Electric Company Limerick, A Lab A45 23  
10 NRC 220 at 239. So there is a chance -- They had the  
11 chance in their reply if they had not been alerted to  
12 the fact that there was this FEMA finding to say why  
13 they disagree with it. They never did. So I think  
14 that they cannot be heard now to raise deficiencies in  
15 the Miami plant.

16 Those are general observations. Let me go  
17 to the specifics of what they are claiming.

18 I would like to say also these Contentions  
19 1 and 2 are inadmissible apart from the points I just  
20 made for the following reasons.

21 (1) There is no expert testimony or facts  
22 that are being produced that support the contentions.  
23 Therefore they are fatally flawed under  
24 2.309(f)(1)(5). These are all concerns by laymen  
25 expressed and valid as far as expressions of concern.

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1 But they are not admissible as evidence in this  
2 proceeding.

3 (2) They have not made any case as to what  
4 the significance would be if assuming their concerns  
5 were right with respect to these specific areas,  
6 intents or the findings that the Board and the Staff  
7 has to make with respect to the licensibility of this  
8 plant. So they don't meet (f)(1)(4) either.

9 (3) But perhaps as significant and no  
10 more, they don't meet (f)(1)(6) either because they do  
11 not take issue of the fact -- they don't take issue  
12 with the application on the material fact. And I will  
13 explain why going through the four specific issues  
14 that they raise and I'll do it very quickly.

15 First, with respect to the ability to  
16 evacuate the ten mile emergency plan. At various  
17 times they talk about 17 hours, 12 hours or whatever  
18 to evacuate 187,000 people. Well, that is incorrect.  
19 In the emergency plan that they have not reviewed or  
20 if they have reviewed they have not cited there is a  
21 description of what the emergency plan is and what the  
22 most severe accident sequence is which is general  
23 emergency.

24 Under a general emergency, you are  
25 required to only equate an area of five miles the site

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1 of the plant and shelter the rest of the people.  
2 Those five miles it just so happens that Florida Power  
3 & Light owns most of the property in the five miles  
4 around the plant. The total population of those five  
5 miles is 7200 people. So the question will not be  
6 170,000. It will be only 7200. So it is making an  
7 assumption that is not borne by the scenarios that are  
8 being considered for emergency planning purposes.

9 With respect to the second contention that  
10 they make --

11 CHAIRMAN HAWKENS: Let me interrupt. What  
12 is the regulation underlying that particular  
13 requirement to evacuate people within a five mile  
14 radius under those conditions?

15 MR. TRAVIESO-DIAZ: Well, it's not a  
16 regulation. It's guidance of 0654 which is  
17 implemented by the PRAs.

18 CHAIRMAN HAWKENS: All right.

19 MR. TRAVIESO-DIAZ: And I will give you a  
20 citation to where in the plan this is if I can find it  
21 here. Okay. If you take a look at the emergency  
22 plan Part 2 at J10, Figure J2, it shows what the  
23 various areas are. Then if you take a look at the  
24 protective response recommendations for the most  
25 severe accident conditions, you will see that are

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1 required or the recommendation in the most severe  
2 cases to evacuate at most five miles, and that again  
3 is in a flow chart on Part 2 at J10, Figure J2, and  
4 you also should look at AT Figure 3-1 at ES12. So I'm  
5 saying that the basic assumption that they're making  
6 that you can't evacuate is flawed because the amount  
7 of people that are saying that you have to move in  
8 fact doesn't have to be moved.

9           The second concern that they raised is the  
10 shelter provisions like the capacity for the people  
11 that have to be moved. That is really not a  
12 contention because it's only true if you assume that  
13 you had to move 170,000 people. But even if you did,  
14 once they're at the EPC you don't care. They are safe  
15 and because it's not a public order as opposed to a  
16 safety concern.

17           I think I'm going to run out of time. I  
18 will just mention that the iodine distribution issue  
19 is covered by state guidance and that the concern  
20 about the design of the AP-1000 is challenged to the  
21 certified design and is irrelevant anyway.

22           On Contention 2, I'll be very brief.  
23 First of all, the three deficiencies that they claim  
24 that exists in the ETE don't exist. One, there is no  
25 requirement in the regulations and the case law

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1 reflects this that you have to project population 40  
2 years into the future to do your EP. The ETE is a  
3 living document and all that you are required is to  
4 show what the population is at the time you do and at  
5 the time of the application.

6 Second, with respect to the sheltering  
7 versus evacuation, the NRC regulation 10 CFR 50.47(b)  
8 (10) requires that sheltering be a part of your plan.  
9 So whether you pick one or the other, you still have  
10 to have sheltering as one of your components.

11 The third issue is transient populations,  
12 visitors, special events, all that, they claim they  
13 don't exist. The reality is that they are covert in  
14 the plan and they are -- I'll give you quickly the  
15 three citations where in the ETE these things are  
16 considered. They are considered at Sections 3.2, 3.4,  
17 and 3.6 of the EP. So the information is there and it  
18 was taken into account in doing the plan and the EP.

19 I think my time is up. So I'll stop  
20 unless the Board has questions.

21 MR. CHAZELL: May it please the Board  
22 Russell Chazell for the NRC staff and I will be  
23 discussing CASE's proposed Contentions 1 and 2.

24 With regard to CASE's proposed Contention  
25 1, the NRC staff opposes admitting this contention for

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1 hearing because it fails to meet the Commission's  
2 admissibility criteria specifically with regard to 10  
3 CFR 2.309(f)(1, 5 and 6). The Board asked what the  
4 material differences between the emergency plans  
5 currently on file with Miami-Dade County and the  
6 proposed plan in FPL's application were. The staff's  
7 review of the FPL's EP is ongoing and therefore the  
8 staff cannot at this time take any position as to the  
9 adequacy of that plan.

10 But having said that the Miami-Dade County  
11 emergency plan is one piece of the plan submitted for  
12 FPL on its application. FPL EP purports to be an  
13 integrated plan including three annexes and six  
14 appendices. The Staff is unaware of any differences  
15 between the current Miami-Dade EP and the copied  
16 Miami-Dade emergency plan included in their  
17 application.

18 With regard to the Board's overarching  
19 question about admissibility as I said earlier they  
20 don't meet the -- CASE's contention doesn't meet  
21 admissibility requirements under 5 and 6. There were  
22 numerous examples in the pleadings of (f)(1) (5 & 6)  
23 deficiencies in their amended petition. I'm going to  
24 just cover a quick few representative examples of  
25 those.

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1 First with regard to KI distribution, CASE  
2 has not explained in what way its claims regarding KI  
3 distribution even if correct contradict any assumption  
4 analysis or conclusion found in the COL application  
5 contrary to (f)(1)(5).

6 With regard to evacuation screening and  
7 shelter lack of capacity, CASE references  
8 FloridaDisaster.org in their pleading. To demonstrate  
9 the capacity of the Tamiami ERC, but that website  
10 contains a spreadsheet with over 50 other hurricane  
11 sites. Without further explanation -- hurricane  
12 shelters, excuse me. Without further explanation,  
13 their reliance on that document fails to support their  
14 stated conclusion contrary to (f)(1)(5).

15 With regard to evacuation plans, CASE  
16 makes general statement regarding evacuation routes,  
17 times and the possible effects of parents driving into  
18 the evacuation zone to pick up their children. But  
19 they do not explain how any of these statements  
20 contradict the emergency plan in the COL application,  
21 much less demonstrate that it is inadequate, thereby  
22 failing to meet (f)(1)(6).

23 If there are no other questions, I'll move  
24 on to Contention 2. The NRC staff opposes admitting  
25 this contention for hearing because it fails to meet

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1 the Commission's admissibility criteria under  
2 (f)(1)(3, 5 and 6).

3 The Board asked FPL's plan for Units 6 and  
4 7 be deemed inadequate based on the conclusions in the  
5 document entitled "Evacuation Behavior and Response to  
6 Nuclear Power Plant Accidents." We don't believe that  
7 the plan is inadequate for that reason.

8 CASE fails to explain how the Zeigler and  
9 Johnson article constituting a specific disagreement  
10 with an assumption or analysis or conclusion in the  
11 application, much less demonstrate an inadequacy with  
12 the emergency plan. The states are very vague and  
13 generalized and do not meet (f)(1)(6).

14 The next question, do the alleged  
15 deficiency in the proposed FPL plan satisfy strict  
16 admissibility requirements? As I said, no, they do  
17 not. Specifically with regard to the alleged  
18 inaccuracy in the plan regarding population growth,  
19 CASE has not identified any part of the COL  
20 application that states Turkey Point 6 and 7  
21 evacuation plan is the same plan as that used for the  
22 existing units. They failed to provide support,  
23 factual or otherwise, for the claim that either the  
24 existing or proposed plan fails to appropriately  
25 account for post 1970 population growth contrary to

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1 (f)(1)(5). They cite the extrapolated 2009 population  
2 estimate. But they do not explain the basis for the  
3 disagreement with the application on that basis.

4 With respect to the alleged deficiency in  
5 the plan concerning evacuation route due to  
6 sheltering, to the extent that CASE is seeking to  
7 dispute the appropriateness of considering sheltering  
8 in the emergency response, that dispute we believe  
9 constitutes an impermissible challenge to NRC  
10 regulations. Per 50.47(b)(10) sheltering is required  
11 to be considered in developing the range of protective  
12 action recommendations in the EP and the COL  
13 application discusses that at Part 2 Section J and  
14 that basis fails to address why the EP's discussion is  
15 inaccurate or inadequate and it does not provide  
16 factual support for such a dispute.

17 CASE takes the abstract language in NUREG  
18 0654 out of context by ignoring the additional  
19 language in the same document that clarifies the  
20 condition under which evacuation is recommended over  
21 sheltering. And that's at NUREG 0654 Supplement 3  
22 (1996) at 1-3. This basis fails to explain how the EP  
23 deviates from the cited NUREG 0654 guidance or as  
24 otherwise inadequate and fails to show the genuine  
25 dispute as required under (f)(1)(6).

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1 With regard to Part C, the alleged failure  
2 of the plan to consider transient or seasonal  
3 populations, this basis does not support admissibility  
4 for 5 and 6 because the COLA states that it accounts  
5 for these groups in the ETE study at 3-3 and 2.3-10 of  
6 Supplement 1. The basis fails to provide facts or  
7 expert support for its assertions under (5) and it  
8 does not reference the COL application or contradict  
9 any assumption, analysis or conclusion under  
10 (f)(1)(6).

11 And I'm happy to take questions.

12 ADMIN. JUDGE BURNETT: Yes. I'd like to  
13 ask a question about the population growth issue.

14 MR. CHAZELL: Yes, sir.

15 ADMIN. JUDGE BURNETT: And actually either  
16 the Applicant or the NRC staff could respond. Mr.  
17 White earlier today said that the projected population  
18 growth may have been considered, but it didn't enter  
19 into reflecting any changes that may be necessary to  
20 the emergency plan. And I just wondered how you  
21 respond to that.

22 MR. CHAZELL: Well, Your Honor, under 10  
23 CFR Part 50 Appendix E Section 2G, there is a  
24 requirement for projecting the time and means to be  
25 employed in the notification. But it says that they

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1 are required to project the future population. But it  
2 does not require -- Excuse me. The ETE is developed  
3 to inform protective actions. And there is no  
4 requirement to account for future population growth.  
5 And that's at Appendix G of Part 50.

6 MR. TRAVIESO-DIAZ: If I may elaborate on  
7 that. There is a misunderstanding apparently as to  
8 the purpose of the ETE. The ETE is a tool that is  
9 used to inform decision makers as to where the  
10 chalking points for traffic are, why the difficulties  
11 and particularly what question strategies may be and  
12 even though those things may change over time the  
13 evaluation of these things for informational purposes  
14 is only appropriate and valid based on the population  
15 you have at the time you do the ETE. That's the  
16 reason why ETE needs to be updated.

17 Does that answer your question?

18 ADMIN. JUDGE BURNETT: Yes.

19 MR. TRAVIESO-DIAZ: Thank you.

20 MR. O'NEILL: Mr. Chairman, Members of the  
21 Board, are you prepared to go Contention 4?

22 CHAIRMAN HAWKENS: Please proceed.

23 MR. O'NEILL: Mr. White did not discuss  
24 Contention 4. So I will I believe abbreviate my  
25 remarks in turn and reserve some time for 6 and 7

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1 which is a little bit more complicated.

2           Contention 4 relates to radiological  
3 impacts in the event of a severe accident to meet the  
4 Commission's requirements that the environmental  
5 report provide some estimate of environmental impacts  
6 but severe beyond design basis accident. The  
7 Petitioner fails to establish a genuine dispute in its  
8 initial contention. It's one of omission.

9           But the ER contains the analysis that CASE  
10 claims that was omitted. In the reply, they attempt  
11 to change this into a contention of inadequacy.  
12 CASE's initial contention fails to provide an factual  
13 expert support to indicate the doses and the pathways  
14 it describes would be significant to the analysis or  
15 conclusion in the ER.

16           In its reply, it refers to a report from  
17 Arnold Gunderson. By the way, nothing in that report  
18 addresses surface water pathway exposure. And indeed  
19 the report itself indicates that it would not be  
20 appropriate for severe accidents because I quote on  
21 page 25 of this report Mr. Gunderson says "My concern  
22 is that the potential for a breach of the AP-1000  
23 containment as discussed in the report is not a remote  
24 probability event and may, in fact, occur prior to  
25 design basis accident."



1                   Therefore, this talks about an ongoing  
2 problem before there's even a design basis accident,  
3 much less a severe accident, and indeed as Mr.  
4 Gunderson notes the assumptions for severe accident or  
5 a design basis accident includes a breach of  
6 containment. So this does not add to anything. And  
7 of course this is outside the scope of this proceeding  
8 in any event because it's being dealt in the DCD.  
9 That is his fundamental technical issue. In addition,  
10 as we note, there is no materiality for the original  
11 contention.

12                   Can as the Board asks FPL appropriately  
13 rely on the analysis and findings in NUREG 1437? All  
14 COL and ESP applicants have relied on the generic  
15 environmental impact statement and NUREG 1437 for  
16 their severe accident analysis, the surface water  
17 exposure pathways. The staff has issued four  
18 environmental impact statements for ESPs. All four  
19 final environmental impact statements discuss the GEIS  
20 in their severe accident analysis of surface water  
21 exposure pathways.

22                   The staff has issued five draft  
23 environmental impact statements for COLs. All five  
24 draft environmental impact statements discuss the GEIS  
25 for license renewal in their severe accident analysis.

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1 It's appropriate because it provides a detailed  
2 extensive analysis that is a bounding condition that  
3 results in any event a very small number because of  
4 the low probability of occurrence of these severe  
5 accidents particularly for the AP-1000 which is in the  
6  $10^{-7}$  range.

7 Board question 3, were CASE's challenge in  
8 its replay to FPL's reliance on the NUREG 1437 timely?  
9 No. The original contention was one of omission. The  
10 switch in the reply is not appropriate. And, of  
11 course, there was no showing of lateness. And they  
12 couldn't show lateness. And I refer the Board to the  
13 Commission decision in Louisiana Services CLI-0425 and  
14 CLI-0435 where they said twice, "What our rules do not  
15 allow is using reply briefs to provide for the first  
16 time the necessary threshold support for contentions.  
17 Such a practice would effectively bypass and  
18 eviscerate our rules governing timely filing,  
19 contention amendment and submission of late filed  
20 contentions."

21 I'll rest there and turn it over to the  
22 Staff.

23 CHAIRMAN HAWKENS: Would it be fair to say  
24 your principal argument then against timeliness is  
25 that it improperly expands the scope of the contention

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1 as it was originally proffered and therefore it's an  
2 untimely effort to change?

3 MR. O'NEILL: One of my colleagues calls  
4 it the chameleon contention. It began with a mission  
5 and then switched over to inadequacy. And the answer  
6 is yes. In addition, of course, it provides  
7 additional information such as this Gunderson report  
8 which we had no opportunity to address in the original  
9 contention.

10 CHAIRMAN HAWKENS: Thank you.

11 MR. CHAZELL: Your Honor, with regard to  
12 CASE's proposed Contention 4, the NRC staff opposes  
13 admitting this contention for hearing because it fails  
14 to meet the Commission's admissibility requirement.  
15 The Board asks whether FPL and ultimately the NRC may  
16 rely on the analyses and findings of NUREG 1437 for  
17 this combined license application.

18 Yes, both FPL and the NRC may rely on this  
19 document because they use this data to inform their ER  
20 and EIS processes generally. While the staff takes no  
21 position as to the adequacy of the ER's analytical  
22 approach, the ultimate utility of GEIS data will be  
23 evaluated for its applicability to the COL application  
24 on hand. In short, there is no reason why an  
25 applicant could not use GEIS data to inform aspects of

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1 an ER so long as the analytical justification for such  
2 use is ultimately accepted by the staff as relevant to  
3 the application and technically sound.

4 The Board asked whether CASE's challenging  
5 its reply to FPL's reliance on NUREG 1437 is timely.  
6 No, it is not. Commission case law states that new  
7 arguments are bases for contentions cannot be raised  
8 in a reply unless the 2.309 criteria are met.  
9 Specifically in Palisades ruling CLI-0617 the  
10 Commission affirmed the licensing board ruling that  
11 the Petitioner's reply constituted an untimely attempt  
12 to supplement the contention. A new bases for a  
13 contention cannot be introduced in a reply brief or  
14 any other time after the date the original contentions  
15 are due unless the petitioner meets the late filing  
16 criteria.

17 Additionally, in Oyster Creek CLI-09-7 the  
18 Commission states that neither new bases nor new  
19 arguments may be raised in a reply brief unless the  
20 standards for late filed contentions are met. Because  
21 the arguments CASE raised in its reply could have been  
22 made in the initial petition and were not and because  
23 CASE did not discuss the 2.309 timeliness criteria nor  
24 seek leave of the Board to raise this argument in its  
25 reply, the challenge made to FPL's reliance on NUREG

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1 1437 is untimely and should not be considered.

2 CHAIRMAN HAWKENS: Is the NRC staff view  
3 Contention 4 as a contention of omission as originally  
4 framed by the Petitioner?

5 MR. CHAZELL: Yes, Your Honor.

6 And as for the overarching question of  
7 whether the contention satisfies strict admissibility  
8 requirements in 2.309 (f) (1), we do not -- No, it does  
9 not. Other than vague generalizations about the  
10 importance of shoreline activities of all kind to the  
11 Miami-Dade tourist based economy, CASE fails to  
12 provide any factual or expert support to indicate that  
13 doses from the pathways it describes would be  
14 significant to the analysis or the conclusions in the  
15 ER. Even if CASE were correct, that the ER did not  
16 address the surface water pathways that CASE asserts  
17 are omitted, the contention would fail to comply with  
18 2.309(f) (1) (5) because those assertions are  
19 unsupported.

20 CASE quotes and criticizes several  
21 sentences from the first and second paragraphs of the  
22 ER analysis of surface water exposure pathways, but  
23 then fails to address the remainder of that second  
24 paragraph of the ER which explains the bounding  
25 analysis FPL used from the GEIS. Because their

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1 petition fails to explain why it disagrees with the  
2 Applicant's rationale regarding the significance of  
3 doses from surface water pathways including those that  
4 CASE claims are omitted from the application, CASE  
5 fails to show the genuine dispute exists with the  
6 application contrary to 2.309(f)(1)(6).

7 CHAIRMAN HAWKENS: Thank you.

8 MR. CHAZELL: Thank you.

9 MR. O'NEILL: If it pleases the Board, I  
10 will address Contentions 6 and 7 at this time. I  
11 have allocated the most time to this one because of  
12 the degree of interest by the Commission where it has  
13 been three times and by various boards in wrestling  
14 with low level radioactive waste, an issue with zero  
15 safety significance in the real world. And I say that  
16 because for over 50 years the industry, nuclear  
17 reactor licensees, material licensees, the medical  
18 licensees, the United States Navy and the Department  
19 of Energy have all safely managed low level  
20 radioactive waste. It's a non issue in the world of  
21 nuclear power. Yet it is the issue that is a safety  
22 issue that has caused the most interest in litigation  
23 thus far.

24 What I plan to do is to address the  
25 Board's questions first and then try to pull together

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1 the nuggets from the Commission decisions and the  
2 Board decisions which I believe gives this Board a  
3 path forward to a rational decision in my humble  
4 opinion.

5           CASE clearly states in its replies that  
6 Contention 7 is a contention of omission regarding low  
7 level radioactive waste. That is the FSAR in the COLA  
8 fails to address compliance with 52.79(a)(3) for an  
9 extended period of time, perhaps the entire licensed  
10 operating period. 52.79(a)(3) requires the FSAR to  
11 include "the kinds and quantities of radioactive  
12 materials expected to be produced in the operation and  
13 the means for controlling and limiting radioactive  
14 affluence and radiation exposures within the limits  
15 set forth in Part 20 of 10 CFR at a level of  
16 information sufficient to enable the Commission to  
17 reach a final conclusion on the safety matter."  
18 That's the issue before us.

19           (1) The kinds and quantities of materials  
20 to be produced are set forth in the AP-1000 DCD and  
21 incorporated by reference in the FSAR. That is not at  
22 issue.

23           (2) The means for controlling and limiting  
24 radioactive affluence and radiation exposures are also  
25 described in the AP-1000 DCD and incorporated by

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1 reference in the FSAR.

2 The plan for long-term management of low  
3 level radioactive waste includes storage onsite for  
4 approximately two years before shipment to Studsvik  
5 for treatment and disposal which I note FPL is doing  
6 under contract with Studsvik currently for its  
7 operating nuclear power plants and indeed the contract  
8 provides for the transfer of title to low level waste.  
9 It isn't clear to me the basis for Mr. White's  
10 assertion to the contrary. And as we've mentioned  
11 there is no contract presently for Turkey Point 6 and  
12 7 because waste would not be shipped for probably  
13 somewhere between 10 and 15 years.

14 FPL also described --

15 CHAIRMAN HAWKENS: Excuse me.

16 MR. O'NEILL: Sure.

17 CHAIRMAN HAWKENS: Let's talk a little bit  
18 more about Studsvik and the relationship and their  
19 obligations. As I read it --

20 MR. KIRSTEN: Twenty minutes.

21 CHAIRMAN HAWKENS: -- their obligation is  
22 to keep it for one year. What happens after that one  
23 year?

24 MR. O'NEILL: First of all, their  
25 obligation today, there's a contract. There's a

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1 letter of intent for the future. So today they take  
2 the material. They process it. They store it for a  
3 year under their present requirements in Tennessee by  
4 the way, not Texas. And then they ship it to Waste  
5 Control Specialists who can store it for another year.

6 Now Waste Control Specialists has just  
7 received a license and is part of the Texas-Vermont  
8 compact. Right now, materials can be disposed of from  
9 Texas and Vermont. Waste Control Specialists has  
10 applied for and desires and its business plan is to  
11 take waste from other utilities, other licensees in  
12 other states. That hasn't happened yet. And that is  
13 the intent of their long-term business plan.

14 Whether that will occur within the next 10  
15 to 15 years we're not sure. We're not sure when we'll  
16 ever see spent fuel move either. But that doesn't  
17 affect the safety to maintaining low level radioactive  
18 waste as it does spent nuclear fuel. But that is the  
19 answer to the question. That's where we are today.

20 And right now material is moving from  
21 FPL's operating plants to Studsvik. They're taking  
22 title to it. They are processing it. They are  
23 disposing of it. And I note that some of the  
24 Commission decisions have stated that what happens to  
25 the waste once it leaves the site is not part of what

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1 is subject of litigation in a COL proceeding.

2 ADMIN. JUDGE BURNETT: Could I follow up  
3 on that?

4 MR. O'NEILL: Absolutely.

5 ADMIN. JUDGE BURNETT: So with the  
6 existing plants at Turkey Point, they've been  
7 operating for some time. After the two year period,  
8 what happens?

9 MR. O'NEILL: I'm sorry. After?

10 ADMIN. JUDGE BURNETT: After -- Okay. So  
11 you have one year in Tennessee for the waste because  
12 they're processing waste today. Correct?

13 MR. O'NEILL: Correct.

14 ADMIN. JUDGE BURNETT: From the existing  
15 plants.

16 MR. O'NEILL: Correct.

17 ADMIN. JUDGE BURNETT: They hold it for  
18 one year and they send it to the waste disposal  
19 service in Texas.

20 MR. O'NEILL: There is no specific time  
21 that they must hold it. It's just -- There's a note  
22 that they can hold it for at least a year after  
23 processing. So there is a period of time which the  
24 material arrives, perhaps sits there, then is  
25 processed, completed processing. They can hold it for

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1 a year. I don't know how long that whole period would  
2 take. And then they ship it off. It is Studsvik  
3 obligation by the way to dispose of it. That's what's  
4 happening today. It's not being returned to Turkey  
5 Point.

6 ADMIN. JUDGE BURNETT: That is my real  
7 question. So to date has any waste been returned?

8 MR. O'NEILL: No.

9 ADMIN. JUDGE BURNETT: Okay. Thank you.

10 MR. O'NEILL: Now and what happens  
11 tomorrow, what happens 10 years from now, is  
12 speculative. But that is a plan that is working today  
13 for the utility. There was no reason for them to  
14 develop another different plan. And indeed NUREG 0800  
15 specifically recommends short storage at the site and  
16 then transfer offsite which is what most licensees  
17 have in their existing plans and in their future plans  
18 because those plans are developed five years ago or  
19 so.

20 ADMIN. JUDGE BURNETT: Thank you.

21 MR. O'NEILL: The details on contingent  
22 solutions that CASE in the D'Arrigo affidavit seek are  
23 not required by 52.79 (a)(3). The information  
24 provided in the FSAR is more than sufficient to permit  
25 the Commission to make a final conclusion on the safe

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1 control effluence and radiation exposures as has been  
2 done throughout the industry for many decades. Bottom  
3 line, there is no omission here. There is no genuine  
4 dispute here. CASE has failed to meet the test of  
5 (f) (1) (6).

6 Now getting to the Board's questions. The  
7 Board asked whether reference to regulations on page  
8 71 of our answer was FPL's proposed means of complying  
9 with 52.79(a) (3). I just described how we comply with  
10 52.79(a) (3) fairly explicitly.

11 The reference to the regulations goes to  
12 what happens if 10-15 years from now Studsvik isn't  
13 able to dispose the material. What happens if they  
14 say "I've got to send it back"? What happens? And  
15 the answer is there are processes in place that have  
16 been used when we have not been able to ship spent  
17 fuel, when we've had to ship spent fuel from one plant  
18 to another plant, when we've had to replace steam  
19 generators to deal with those contingencies in the  
20 future.

21 We actually today can't predict what the  
22 contingencies will be for this plant decades from now.  
23 But there are processes in place that ensure that  
24 public health and safety will be provided for making  
25 any change to the plant, whether that change is to a

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1 facility or to an operating procedure. And those  
2 processes are 50.59 which allow you to make changes  
3 without a license amendment or the license amendment  
4 process.

5 That was the point. That's not our plan.  
6 That happens to be the answer to the question what  
7 would we do if what we don't know that's going to  
8 happen happens. And the answer is that what we've  
9 done for many decades will solve the problem and will  
10 do it safely because that's what the regulations  
11 require.

12 CHAIRMAN HAWKENS: The changed  
13 circumstance now is that many of the entities that  
14 were receiving storing low level waste in the past no  
15 longer do that. And so the question is whether, as I  
16 understand it, you plan to have a capacity storage for  
17 two years coupled with your relationship with Studsvik  
18 is compliant with our regulations, is a means for  
19 controlling and limiting radioactive effluence and  
20 radiation exposures.

21 MR. O'NEILL: I think the answer is yes,  
22 onsite. If something happens and we have to hold it  
23 longer, then we can always replicate that two year  
24 storage facility using 50.59 or our license amendment  
25 proceeding or maybe we'll do something else. Maybe

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1 we'll put a pad in some storage containers. Maybe  
2 there will be a whole new design 15 years from now.

3 But it makes no sense to have this  
4 licensee spend some millions of dollars designing a 40  
5 year facility when we don't plan to ever use it. And  
6 I don't think the Commission's regulations require it.  
7 And I don't think it's required for the Commission to  
8 make a decision as to whether this licensee can  
9 maintain the storage and control of low level  
10 radioactive waste to protect the safety of the public  
11 and the workers. That finding can certainly be made  
12 without a detailed 40 year facility.

13 CHAIRMAN HAWKENS: How long would it take  
14 if you had to go through a license amendment process  
15 to build a second low level waste facility that had at  
16 least the capacity of the one you plan to have for two  
17 years?

18 MR. O'NEILL: You know the answer to that  
19 is we haven't run through those numbers to be honest.  
20 Interestingly and I don't know if I'll get the chance  
21 to talk about all the decisions, but yesterday Judge  
22 Baratta in a motion for summary disposition of one of  
23 these contentions answered that very question based on  
24 his own engineering judgment which is pretty good. So  
25 I would suggest that that's a good place to look to

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1 answer that very question that the majority and  
2 denying the motion for summary judgment thought was an  
3 issue. Judge Baratta thought it was a non issue and  
4 goes through that analysis and that came out yesterday  
5 in the Levy proceeding.

6 CHAIRMAN HAWKENS: Were the plans in Levy  
7 identical to the plans?

8 MR. O'NEILL: No.

9 CHAIRMAN HAWKENS: How do they differ?

10 MR. O'NEILL: There is no Studsvik  
11 opportunity there. The plan there was basically two  
12 year storage and then if we have to do something we'll  
13 do something.

14 So the difference here which is a very  
15 important difference because in the Calvert Cliffs  
16 Commission decision the Commission actually said "It  
17 may be then out of the plant to transfer low level  
18 radioactive waste to a particular treatment facility  
19 resolves this issue." This utility already had that  
20 as part of their plan. They included it in their plan  
21 for the future and therefore they believe that this  
22 solves the question.

23 CHAIRMAN HAWKENS: If I understand  
24 correctly, in the Levy decision which issued  
25 yesterday, the plan was even less than FPL has.

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1 MR. O'NEILL: Right.

2 CHAIRMAN HAWKENS: All she had was a two  
3 year capacity.

4 MR. O'NEILL: Correct. It's a different  
5 plan. But even there Judge Baratta thought that we  
6 met, we because I represent the applicant there, the  
7 requirements of 52.79(a)(3) based on the Vogel Board's  
8 analysis at 52.79(a)(3) that it was not required to go  
9 through a deep planning process for what happens if 10  
10 to 15 years from now we need to do something  
11 different.

12 This particular utility is in a better  
13 position because its plan is actually to ship the  
14 material offsite. Its plan actually is consistent  
15 with what the Commission said in Calvert Cliffs. But  
16 the fact is I believe Judge Baratta's descent and the  
17 Vogel Board's approach is the right approach for this  
18 Board to take under consideration as to whether or not  
19 we meet 52.79(a)(3) and that's the narrow question  
20 before the Board.

21 And I've been told by my colleagues that  
22 the time we've allotted to this is over. So I'll let  
23 the staff go forward unless you have some questions  
24 you would like to ask me. I would love to talk about  
25 all the decisions.

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1 CHAIRMAN HAWKENS: We'll hear from the  
2 staff now. Thank you.

3 MR. O'NEILL: Thank you, Your Honor.

4 MS. PRICE: Good morning, Your Honor.  
5 Sarah Price for the NRC staff. I will be addressing  
6 your questions on Contentions 6 and 7.

7 With respect to Contentions 6 and 7, the  
8 Board has asked the staff to address whether these  
9 contentions meet the admissibility requirements of  
10 2.309(f)(1). As explained in the staff answer, these  
11 contentions are admissible in part. But the other  
12 stated bases are inadmissible.

13 The staff did not oppose admission of the  
14 limited portion of both the safety and the  
15 environmental contentions consistent with Commission  
16 precedent regarding whether a genuine dispute was  
17 identified with the application.

18 The admissible portion of Contention 6  
19 asserts that the COL application is inadequate because  
20 the ER fails to address environmental impacts in the  
21 event that the Applicant will need to manage Class B  
22 and C low level radioactive waste onsite for a period  
23 of more than two years. As stated in the staff's  
24 answer, consistent with recent Commission precedent --  
25 that being the Levy County case CLI 10-02 -- the

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1 contention is an admissible contention of omission to  
2 the extent that the Petitioners have asserted that  
3 there is currently no access to an offsite low level  
4 radioactive waste disposal facility for the proposed  
5 Units 6 and 7; that it is reasonably foreseeable that  
6 low level radioactive waste generated by normal  
7 operations will need to be stored at the site for  
8 longer than the two year period contemplated in the  
9 ER; and that the analysis in the Applicant's ER is  
10 insufficient because it fails to address the  
11 environmental impacts in the event the Applicant will  
12 need to manage Class B and Class C low level  
13 radioactive waste on the Turkey Point site for a more  
14 extended period of time.

15 CHAIRMAN HAWKENS: And why isn't there a  
16 contractual arrangement or an anticipated arrangement  
17 with Studsvik address that concern?

18 MS. PRICE: The nature of Studsvik's  
19 license and any contractual agreement with FPL will be  
20 something that the staff will need to review in  
21 reviewing the COL application.

22 CHAIRMAN HAWKENS: Okay.

23 MS. PRICE: With respect to Contention 7,  
24 the contention is admissible to the limited extent  
25 that the Petitioners assert that if a disposal

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1 facility for Class B and Class C low level radioactive  
2 waste is unavailable after two years of operation and  
3 such accumulated low level radioactive waste from  
4 Units 6 and 7 exceeds the planned storage capacity.  
5 The Applicant's plan for managing such low level  
6 radioactive waste relies solely on transfer to the  
7 Studsvik facility and would be insufficient to satisfy  
8 10 CFR 52.79(a).

9 Again, the staff has not completed its  
10 review of the COL application with respect to the  
11 requirements of 52.79(a). The staff's position at  
12 this time is that the portion of the proposed  
13 Contention 7 creates a material dispute with the  
14 Applicant as required by 2.309(f)(1)(6).

15 CHAIRMAN HAWKENS: And is your position  
16 that this is an admissible contention as narrowed by  
17 the staff based on the fact that you have not taken a  
18 close look at the letter of intent with Studsvik?

19 MS. PRICE: The petition is -- Our  
20 contention is that the petition identifies a material  
21 dispute with the Applicant at this time.

22 CHAIRMAN HAWKENS: I understand that.  
23 When I ask you what about -- what impact is the letter  
24 of intent with Studsvik have on it I understood you to  
25 say we will --

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1 MS. PRICE: That is something that we will  
2 look at.

3 CHAIRMAN HAWKENS: -- will look at. So  
4 your conclusion that it's admissible does not take  
5 into account the existence of that letter of intent.

6 MS. PRICE: Not at this time.

7 In addition to the specific admissible  
8 claims just discussed, the Petitioners present other  
9 bases for the contentions that are not admissible.  
10 For example, the Petitioners assert that the  
11 application must address a range of other alleged  
12 impacts. These include heat treatment, incineration,  
13 burial, synergistic health and physical impacts, storm  
14 surge and the combined effects of other reactors in  
15 the same watershed.

16 For most of these assertions, the  
17 Petitioners offer little or no facts or expert opinion  
18 or fail to explain why the asserted bases are not  
19 remote and speculative. In particular, with respect  
20 to their assertions regarding the impacts from storm  
21 surge, the Petitioners do not provide factual or  
22 expert support to explain the relationship between  
23 stronger storms and unspecified other environmental  
24 security and safety related problems. These claims  
25 fail to meet the requirements of 2.309(f)(1)(5).

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1           Similarly, the Petitioners mention that  
2 Turkey Point Units 6 and 7 would be in the same  
3 watershed as other reactors but offered no explanation  
4 of how this co-location would relate to impacts to any  
5 relevant resource areas. In summary, Contentions 6  
6 and 7 are admissible only to the limited extent  
7 expressed in the staff's answers with all other  
8 asserted bases being inadmissible.

9           CHAIRMAN HAWKENS: Is it conceivable once  
10 you get a closer look at the letter of intent with  
11 Studsvik that you may be amenable to findings a motion  
12 for summary disposition appropriate?

13           MS. PRICE: Once the staff has made a  
14 final conclusion regarding the COL application, yes.

15           CHAIRMAN HAWKENS: And I'm wondering why  
16 you haven't looked at the letter of intent. Was it  
17 not made available? Normally, when we're at this  
18 stage in determining the admissibility, it seems to me  
19 like the letter of intent would be similar to them  
20 saying "And we're committed to building another  
21 facility that has the same storage capacity" which  
22 shows that they have the ability beyond two years to  
23 handle extended storage of low level radioactive  
24 waste.

25           Here they say we have the capacity store

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1 for two years. And in addition we have this letter of  
2 intent. And to me that seems to be a significant  
3 representation. And I'm not sure how you reconcile  
4 your conclusion that there is a genuine issue of  
5 dispute on a material fact when this seems to be a  
6 very significant fact that could demonstrate there is  
7 no genuine issue of dispute.

8 MS. PRICE: At this time, the staff again  
9 -- It's an ongoing process reviewing the COL  
10 application. They have not reached a final conclusion  
11 regarding the adequacy of the Studsvik. But to make  
12 such a conclusion at this stage of the process would  
13 be a -- decision. At this stage what's important are  
14 the pleading requirements of 2.309(f)(1).

15 CHAIRMAN HAWKENS: And what was the  
16 significant holding in the Commission's decision in  
17 Levy which you believe supports the conclusion that  
18 this is an admissible contention?

19 MS. PRICE: If I may have just one moment,  
20 Your Honor.

21 CHAIRMAN HAWKENS: Sure.

22 MS. PRICE: This again is CLI 10-02 where  
23 the Commission found that with respect to the staff's  
24 environmental review the EIS must discuss the  
25 reasonably foreseeable environmental impacts of the

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1 project. Absent a license low level radioactive waste  
2 disposal facility that will accept waste from the Levy  
3 County facility, it is reasonably foreseeable that low  
4 level radioactive waste generated by normal operations  
5 will be stored at the site for a longer term than is  
6 currently envisioned in progress of the COL  
7 application.

8 ADMIN. JUDGE KENNEDY: Question for the  
9 staff. Do you read that to mean that the Applicant  
10 needs additional design activity or an extended --  
11 It's been characterized here an extended plan. It  
12 seems unclear to me having heard that.

13 MS. PRICE: At this time, we don't believe  
14 that a detailed design is required at this stage,  
15 simply that there be a plan as consistent with the  
16 Commission precedent.

17 ADMIN. JUDGE KENNEDY: So the dispute you  
18 would see in this case would be the lack of an  
19 extended plan.

20 MS. PRICE: Yes, Your Honor. And at this  
21 point what's important is that the Commission has  
22 stated that extended storage is a reasonably  
23 foreseeable event. Therefore the Applicant needs to  
24 address that.

25 ADMIN. JUDGE KENNEDY: I guess then back

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1 to FP&L. We've heard about Studsvik. How would you  
2 address that particular point, the extended plan,  
3 relative to Turkey Point?

4 MR. KIRSTEN: Ten minutes.

5 MR. O'NEILL: Since the Levy proceeding is  
6 my case, there's a couple of facts that I think are  
7 important to go to that Commission decision. That  
8 Commission decision was on the initial contention  
9 which had no plan whatsoever to be honest. Subsequent  
10 to that decision, we amended, Progress Energy amended,  
11 the COLA to establish what they said, "Here's our  
12 plan. We're going to store for two years and if we  
13 need additional storage we will build additional  
14 storage facilities." That was their plan. And they  
15 said, "We'll do it under 50.59 or license amendment."

16 That was a change from what went to the  
17 Commission when the Commission issued the decision  
18 that counsel referred to. Subsequently, we mooted  
19 that initial contention because we did have a plan  
20 which was the contention of omission and that was  
21 mooted and dismissed.

22 A new contention was filed. This one said  
23 they found the plan inadequate. That contention was  
24 admitted with Judge Baratta's descent. Judge Baratta  
25 found that that plan was adequate for purpose of

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1 52.79(a)(3).

2 Then there was summary disposition as he  
3 has suggested actually in his descent on that  
4 particular plan, once again the plan that does no more  
5 than say we have two years of storage as set forth in  
6 the DCD. Plus if we have to 15 years from now,  
7 whatever it is, we will expand and we'll do it under  
8 50.59 or license amendment.

9 In 40 page decision yesterday, summary  
10 disposition was not granted by the Board. Judge  
11 Baratta having a very vigorous descent suggesting what  
12 Vogel says is that plan for low level waste disposal  
13 is adequate for purposes of the Commission making the  
14 safety finding. So that is those cases and how that  
15 works out.

16 This plan, this is the plan, is different.  
17 This plan has not been looked at. This plan far  
18 exceeds what Judge Baratta would find necessary. This  
19 plan is more like and different than but more like the  
20 plan in Vogel which was not appealed I note.

21 So my suggestion here is that this  
22 contention, this is all legal issues. It's not a  
23 real safety issue we're worried about but whether  
24 admissibility of contentions. I think this one fails  
25 because there is a plan. They said there was no plan.

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1 We have a plan. The plan takes into account potential  
2 for extended long term storage someplace else. And so  
3 consequently it fails on (f)(1)(6) and a couple other  
4 reasons because there's support for it.

5 But I think that's the key issue here is  
6 that our plan is different. And if you work through  
7 all of the decisions I believe that the Calvert Cliff  
8 decision, the decision that says you don't look beyond  
9 shipping it offsite which was the original Bellefonte  
10 decision and the Vogel decision and Judge Baratta's  
11 analysis will get you to where this is not an  
12 admissible contention because the implication if it is  
13 an admissible contention is we've got to go design  
14 something that no one ever plans to use just for  
15 purposes of an interpretation of this particular  
16 regulation where that was never intended I don't think  
17 by anybody who wrote it.

18 ADMIN. JUDGE KENNEDY: Thank you.

19 CHAIRMAN HAWKENS: Commission, would you  
20 like to respond?

21 MS. PRICE: I would just like to clarify  
22 the staff's position. Again, as I've stated, the  
23 staff has not reviewed the plan, has not reached the  
24 final conclusion. At this stage what's important are  
25 the pleading requirements of 2.309(f)(1). Both

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1 contentions have raised a genuine dispute over whether  
2 reliance in the Studsvik plan is adequate. And the  
3 staff has no position on that at this time. But there  
4 is an identified genuine dispute..

5 Would you like for me to continue and  
6 address the remaining Board questions in the order?

7 CHAIRMAN HAWKENS: Yes, please.

8 MS. PRICE: Thank you.

9 The Board has also asked the staff to  
10 address whether the existence of regulations relieves  
11 an applicant of its duty to describe the means for  
12 controlling and limiting radioactive effluence and  
13 radiation exposures within the limits set forth in  
14 Part 20 under 10 CFR 52.79(a)(3). In short, the  
15 answer to this question is no. Under 52.79(a)(3) --

16 MR. KIRSTEN: Five minutes.

17 MS. PRICE: -- an applicant must do more  
18 than simply state its intention to comply with the  
19 regulations including the limits in Part 20. Instead  
20 it must provide some description of its approach to  
21 meeting these requirements. However the level of  
22 detail necessary for that description depends on the  
23 means identified by the particular applicant.

24 The Board has also asked the staff to  
25 address whether the 10 CFR 50.59 process in reference

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1 to the framework of NUREG 0800 and the license  
2 amendment process demonstrate compliance with 10 CFR  
3 52.79(a)(3) on site specific level.

4 As a general matter, a COL applicant's  
5 plan to use one or more of these approaches might help  
6 support a finding that the application meets  
7 52.79(a)(3). However, the applicant would still have  
8 to include some description of how it would employ  
9 these processes individually or in combination  
10 specifically in the context of low level radioactive  
11 waste management. A COL applicant is expected to  
12 comply with all applicable NRC federal, state and  
13 local regulations addressing the generation onsite  
14 storage characterization, packaging and labeling,  
15 shipping and transportation and waste acceptance  
16 criteria for the disposal of Class B and Class C low  
17 level radioactive waste shipped to third party  
18 processors or disposal facilities.

19 Finally, in light of the contingency  
20 element of the low level radioactive waste storage  
21 plan, the Board has asked the staff to address the  
22 adequacy of the plan two year storage capability in  
23 relation to the time frame required to implement the  
24 contingency plan. In response, the staff again notes  
25 because it has not reached any conclusions about the

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1 adequacy of this contingency plan it cannot address  
2 whether the timing of its implementation is  
3 appropriate. However, because the Petitioners did not  
4 raise the question of implementation time as part of  
5 their petition, the staff does not consider that to be  
6 a dispute with the application.

7 If you have any questions, I'd be happy to  
8 answer them.

9 CHAIRMAN HAWKENS: No. Thank you.

10 MS. PRICE: Thank you.

11 MR. TRAVIESO-DIAZ: Mr. Chairman, I'm  
12 ready to proceed with CASE Contention 8. I will ask  
13 the Clerk if I may how much time do we have left.

14 MR. KIRSTEN: You have two minutes and 45  
15 seconds.

16 MR. TRAVIESO-DIAZ: This is for Applicant  
17 only or for everybody.

18 MR. KIRSTEN: Everybody.

19 MR. TRAVIESO-DIAZ: All right. I'll talk  
20 about Contention 8 then for one minute. Contention 8  
21 shows up unannounced, unadvertised, also over the  
22 transom in a filing that was supposed to be correcting  
23 errors in the original contention file released  
24 earlier. We move to strike because we thought that  
25 was a wholly inappropriate way to proceed to do what

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1 I just described.

2 Pending the Board's decision on the motion  
3 to strike, we'll answer on its merits as follows.  
4 This contention doesn't raise an issue with respect to  
5 the application because there is no application. The  
6 other application has been withdrawn. We cited to a  
7 letter that was done in September of 2009.

8 Moreover that letter announced that we are  
9 not changing the text of the COLA at that point. But  
10 we will do it in a subsequent revision. Revision 1  
11 was filed in September of this year. And guess what?  
12 All the references have been deleted. The Part 6 of  
13 the application doesn't exist. So there is no reason  
14 in the world to consider this contention.

15 CHAIRMAN HAWKENS: Am I correct in  
16 observing that if you included in the future a request  
17 for a limited work authorization that would be new and  
18 material information that could trigger at least the  
19 opportunity to proffer a new contention?

20 MR. TRAVIESO-DIAZ: In fact, it would have  
21 to be a new application for which some people could  
22 file contentions just based on that.

23 CHAIRMAN HAWKENS: Thank you.

24 MR. MOULDING: Patrick Moulding again for  
25 the staff. Stated in the staff answer, this

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1 contention is untimely because it was raised three  
2 days after the August 17th deadline for submitting  
3 petitions. It does not comply with 2.309(c)(1)  
4 because it did not attempt to address --

5 MR. KIRSTEN: One minute.

6 MR. MOULDING: -- any of the (c)(1)  
7 criteria which alone is sufficient grounds to dismiss  
8 it. Even if it had addressed those criteria there is  
9 no showing of good cause for the late filing which is  
10 the most important of the (c)(1) factors. In any  
11 event as explained in the staff answer as just  
12 reiterated by FPL, because the LWA request that was  
13 the subject of the contention has been withdrawn,  
14 challenges to it are no longer a genuine dispute with  
15 the application.

16 I would like to briefly respond to CASE's  
17 suggestion earlier that the staff suggested that the  
18 LWA contention be included in its filing. I'm not  
19 aware that staff counsel or any member of the  
20 technical staff made such a suggestion. If he's  
21 referring to the Office of the Secretary, we're not  
22 aware of that. But that would not be an NRC staff  
23 position.

24 That's all I have.

25 CHAIRMAN HAWKENS: All right. Thank you.

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1           Mr. White, although your time has lapsed,  
2 a lot has been said and you'd like five minutes to  
3 rebut anything that was said we'll extend that  
4 opportunity to you.

5           MR. WHITE: Thank you. Thank you, Your  
6 Honor.

7           First of all, regarding the 17 hour  
8 evacuation time, I inadvertently started to make that  
9 reference today. I corrected myself and if we made  
10 that reference anywhere in our pleadings the maximum  
11 time is 11.5 hours. Seventeen hours is the Miami-Dade  
12 County figure for total evacuation in the event of a  
13 hurricane. But 11.5 as provided in (7)(1)(d) is the  
14 maximum time which is atrocious. But that's what it  
15 is.

16           Both the NRC staff and FPL have stated in  
17 writing and verbally that sheltering in place is  
18 required by the regulations. Going back to what Judge  
19 Burnett asked me to go back to before, there's no  
20 requirement that sheltering in place be included. It  
21 simply says "Sheltering in place should receive more  
22 emphasis in protective actions strategies because it  
23 is more protective than radial evacuation under  
24 rapidly progressing severe accidents at sites with  
25 longer evacuation times." It's just saying consider

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1 it.

2 I will note again that nowhere in the FPL  
3 COL application other than the casual mention to a  
4 reference to a statute do they mention sheltering in  
5 place. So I'm not going to go to the mat on that.  
6 But it's not required by my reading.

7 I have a sin of omission. I left the  
8 reply on Contention 4 when I was compiling my remarks  
9 today which is probably just as well because it would  
10 have put me over time.

11 I would like to make an observation on  
12 Contention 4 which was suggested by Lisa Case, a CASE  
13 member and supporter, who lived for 41 years of her  
14 life two miles east of here. Turkey Point is eight  
15 miles east of here. So she lived within six miles of  
16 Turkey Point for 41 years of her life. Now she lives  
17 in Sanibel. She's suffering from thyroid cancer which  
18 is interesting because a recent study from a major  
19 university here found a 32 percent increase in thyroid  
20 cancer incidents over the state average for the three  
21 counties of Miami-Dade, Broward and Palm Beach  
22 Counties. And that study has been released also. So  
23 that's where that contention came from.

24 And she is concerned with what's on the  
25 water here because her relatives still live here.

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1 They're the ones who would eat, drink and be exposed  
2 to that radiation should something happen. So that's  
3 where that concern came from.

4 CHAIRMAN HAWKENS: Mr. White, the  
5 Applicant and the NRC staff say and I agree with them  
6 that Contention 4 should fairly be characterized as a  
7 contention of omission. The way it's phrased the COL  
8 fails to completely address specifically there is no  
9 rad dose given for people fishing and consuming marine  
10 based food. Would you see that it is a contention of  
11 omission?

12 MR. WHITE: That's fine.

13 CHAIRMAN HAWKENS: Can you address? They  
14 say that your reliance on the GEIS in your reply brief  
15 was not timely. Can you address that please?

16 MR. WHITE: Not as I sit here. I would  
17 have to get into it a little bit more.

18 CHAIRMAN HAWKENS: All right.

19 MR. WHITE: Thank you.

20 MR. KIRSTEN: One minute.

21 MR. WHITE: Regarding three and four, I am  
22 -- I would ask the question. According to my sources  
23 and you can check me on this, title will not pass --  
24 it's my understanding -- to the processor. But the  
25 title will be retained by FPL to the radioactive

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1 material and ultimately under current laws,  
2 regulations and what's in place, the material could  
3 come back to Turkey Point. The experience with Turkey  
4 Point 3 and 4 as I understand it has not been without  
5 blemish. The handling of their material I believe  
6 they've had fines and citations several times for the  
7 way that material has been handled.

8 And I think to think of more material  
9 coming back for them to handle as one who lives within  
10 20 miles of the site frightens me. And the impact,  
11 it's the greatest shell game in history I think is  
12 what we're really looking at moving that stuff around.  
13 Which shell is the nuclear waste under?

14 I think that's the sum of my remarks.  
15 Thank you for your time.

16 CHAIRMAN HAWKENS: Thank you very much,  
17 Mr. White. Thank you, FPL. And thank you for the NRC  
18 staff. We're going to take a recess now. As I  
19 indicated in my introductory remarks, take a lunch  
20 break. And then we'll return to hear from the final  
21 petitioners, the Joint Petitioners.

22 Let me consult with my colleagues and then  
23 advise you when we will return.

24 (Off the record discussion.)

25 Let's -- If the Petitioner, Joint

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1 Petitioners and FPL and the NRC staff would be seated  
2 and prepared to proceed at 1:00 p.m. we'd be grateful.  
3 Recess until 1:00 p.m. Off the record.

4 (Whereupon, at 11:33 a.m., the above-  
5 entitled matter recessed to return the same day at  
6 1:00 p.m.)

7 CHAIRMAN HAWKENS: Again, my name is Roy  
8 Hawkens, and I'm joined on the Licensing Board by Dr.  
9 Mike Kennedy, and Dr. William Burnett. This case  
10 involves challenges to the application brought by  
11 Florida Power & Light for a license to construct and  
12 operate two nuclear reactor plants at its Turkey Point  
13 facility.

14 We have three requests for review, three  
15 Petitions to Intervene. This morning we heard from  
16 the Village of Pine Crest, and we heard from the  
17 Citizens Allied for Safe Energy. This afternoon we're  
18 going to hear from the Joint Petitioners, which were  
19 two individuals, Mark Ocavage and Dan Kipnis, and two  
20 organizations, Southern Alliance for Clean Energy, and  
21 National Park Conservation Association.

22 The Joint Petitioners have been allotted  
23 80 minutes to make their presentation to respond to  
24 the questions embodied in our November 8 order, and  
25 then the Applicant and the NRC Staff will divide the

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1 80 minutes among themselves.

2 I will observe that arguing on behalf of  
3 the Joint Petitioners this afternoon, I believe, will  
4 be some law students from Emory University School of  
5 Law from the Turner Environmental Law Clinic. And we  
6 welcome you. I'm glad you're going to have this  
7 opportunity to develop your litigation sea legs.

8 Before we launch into the Joint  
9 Petitioners, I do have a question from this morning's  
10 argument, so this will not -- this time will not be  
11 charged against the Joint Petitioners. But I believe  
12 it was Ms. Price who was addressing Contentions Six  
13 and Seven.

14 MS. PRICE: Yes, Your Honor.

15 CHAIRMAN HAWKENS: And if I understood you  
16 correctly, you represented that in the Staff's view,  
17 there was a genuine dispute in light of the two-year  
18 storage capacity coupled with the Studsvick Letter of  
19 Intent. And my question is, the genuine dispute, does  
20 it go to an issue of fact, or to an issue of law? And  
21 if you could address the both with respect to the  
22 safety contention, and the environmental contention.

23 MS. PRICE: May I have just a moment, Your  
24 Honor, please?

25 CHAIRMAN HAWKENS: You may. I know I

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1 caught you off guard.

2 MS. PRICE: Yes, you did. Thank you. Yes,  
3 Your Honor. It's the Staff's position that the  
4 dispute about the adequacy of the plan for safety  
5 relates to the adequacy of the environmental impacts  
6 analysis, that this is both a dispute in fact, and in  
7 law.

8 CHAIRMAN HAWKENS: I'm having a little  
9 difficulty hearing you. I'm sorry.

10 MS. PRICE: It's both a factual, and a  
11 legal dispute.

12 CHAIRMAN HAWKENS: With regard to both the  
13 safety, and the environmental.

14 MS. PRICE: Yes, Your Honor.

15 CHAIRMAN HAWKENS: And does the factual  
16 dispute go toward the Staff's desire to understand  
17 exactly what the Letter of Intent with Studsvick  
18 means?

19 MS. PRICE: Just one moment, Your Honor,  
20 please. At this time, again, the Staff hasn't  
21 reviewed whether or not the plan meets the  
22 requirements of 5279A.3. At this time, it appears  
23 that there is a dispute between the Petitioners and  
24 the Applicant about the applicability of this plan,  
25 and whether or not it meets 5279A.3. And that's a

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1 legal dispute.

2 CHAIRMAN HAWKENS: You say, and that's a  
3 legal issue. Did I understand you? Was that your  
4 final --

5 MS. PRICE: Yes.

6 CHAIRMAN HAWKENS: And what is the factual  
7 dispute then? You mentioned there was a factual  
8 dispute, as well as a legal dispute.

9 MS. PRICE: Hold on just one minute, again.  
10 I wasn't thinking about it that way. Thank you.

11 CHAIRMAN HAWKENS: And let me clarify where  
12 I'm coming from. I'm not trying to catch you in a  
13 trap, but if it's a purely legal dispute, then I'm  
14 wondering why it's not ripe for resolution now. What  
15 more -- what legal research will be required by the  
16 Staff before it will have a position on this  
17 contention? If it's a factual dispute, I'm just  
18 curious as what the genuine factual dispute is. Does  
19 it center on the Letter of Intent, and what about the  
20 Letter of Intent, or is it a combination of the two-  
21 year capacity and uncertainties about the Letter of  
22 Intent?

23 MS. PRICE: Yes. At this time, Your Honor,  
24 the Staff believes that the factual portion of this is  
25 a dispute over the adequacy of the Studsvick plan and

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1 that that is the dispute that was identified by the  
2 Petitioners. And that goes to the legal sufficiency  
3 under 5279A.3.

4 CHAIRMAN HAWKENS: All right.

5 MS. PRICE: Does that answer your question?

6 CHAIRMAN HAWKENS: It will for now. We'll  
7 proceed. If you want to supplement that answer later  
8 after the break, we'd welcome.

9 MS. PRICE: Thank you, Your Honor.

10 CHAIRMAN HAWKENS: But I think that does  
11 answer it for now.

12 MR. FERNANDEZ: Your Honor, we would like  
13 just a minute to address the last point that was  
14 raised by the Staff, if we may.

15 CHAIRMAN HAWKENS: You may have one minute.

16 MR. FERNANDEZ: Mr. O'Neill will be  
17 addressing that, so if you don't mind him coming up  
18 here.

19 MR. O'NEILL: Thank you, Your Honor.  
20 First, this whole issue was not pled in the original  
21 contention. It is moved on in the reply, but,  
22 secondly, there is -- I can't imagine a fact that is  
23 in dispute. No one disagrees that we have a facility  
24 that has storage for around two years, depending on  
25 the production at the time. No one disagrees with --

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1 we've identified all of the waste that will be  
2 produced. No one disagrees that we have described how  
3 we will maintain the facility to protect the safety of  
4 the public and workers. No one takes issue with the  
5 statement we've made under oath or affirmation that we  
6 have a Letter of Intent. I can't imagine what  
7 difference it would make as the Letter of Intent is an  
8 obligation in good faith to enter into a contract.  
9 It's too many years away to enter into a contract  
10 today. There's no disagreement we have a contract,  
11 and we're sending materials now to Studvicks, so I  
12 can't imagine there's anything that the Staff, if they  
13 work this through, could have, is whether or not as a  
14 legal matter the plan that we've set forth meets the  
15 requirements of 5279A.3.

16 CHAIRMAN HAWKENS: Thank you. Joint  
17 Petitioners have been allocated 80 minutes. Do you  
18 wish to reserve any of that time for rebuttal?

19 MR. GROSSO: Excuse me. Yes, Your Honor,  
20 15 minutes for rebuttal, please.

21 CHAIRMAN HAWKENS: And for the benefit of  
22 our law students and our audience, it's not unusual in  
23 courts to have arguing from a podium that has an amber  
24 light indicating you have a few minutes left, a red  
25 light indicating no time left. This afternoon, as we

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1 did this morning, we're going to have our law clerk,  
2 Josh Christian, holding up signs, and in the event  
3 people don't see a sign, you will hear Josh's voice  
4 coming across fairly loudly. He's agreed to modulate  
5 it a little bit more this time, but I think it's  
6 helpful to have him remind the counsel of the time  
7 remaining.

8 MR. GROSSO: And, Your Honor, before my  
9 time gets started, I'll tell you that I'll go first,  
10 and Carter Thurman will go second arguing Contention  
11 Two, Matt Schectman will go third arguing Contention  
12 Three, Maggie Wendler will argue Contention Four,  
13 Jason Totoiu will argue Contention Five, DeKeely  
14 Atkins will argue Contention Six, and then Mr. Totoiu  
15 will argue Contention Eight. And we'll try to  
16 regulate our own time internally to allocate our 80  
17 minutes. Of course, we'll try to do 65, and reserve  
18 the 15.

19 Do questions from the bench, that counts  
20 for ---responding to questions counts to our 80?

21 CHAIRMAN HAWKENS: Correct.

22 MR. GROSSO: Okay. Then I'm prepared at  
23 your pleasure to --

24 CHAIRMAN HAWKENS: Please proceed.

25 MR. GROSSO: Thank you. Richard Grosso on

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1       behalf of the Joint Plaintiffs, Your Honor.

2                   Let me -- I will respond to the questions  
3 posed by the Board throughout the course of my  
4 discussion. Let me first jump into our contentions,  
5 and an overview of our contentions. I believe they  
6 amply meet the pleading requirements. I remind the  
7 Panel, we are -- it is not proper here to try to argue  
8 back and forth who's right, who's wrong. That's not  
9 what occurs here. This is a pleading stage. The  
10 question is, have we adequately raised material,  
11 important disputed points of fact? Have we engaged in  
12 bare assertions, and pure speculation, or in  
13 compliance with the rules, have we put forth material  
14 facts, and given you reason to believe based on  
15 documents, reports, other things to which we refer,  
16 that there's a basis for those facts? I think,  
17 clearly, we have.

18                   Let me jump into our contentions very  
19 quickly. NEPA 1.1. That contention is about the  
20 deficiency of the analysis of the impacts of the  
21 radial collector wells. The contentions are extremely  
22 detailed, not nearly the bare assertions that you're  
23 not allowed to rely on, but replete with references to  
24 the ER, replete with references to numerous state  
25 agency with specialized knowledge comments that speak

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1 directly to the models, and the assumptions, and the  
2 statements about the groundwater regime, what the  
3 scenario is like under Biscayne Bay, the flora and  
4 fauna that depend on it.

5 Let me make a comment, initially, about  
6 the reply. The reply seems to suggest that we can't  
7 rely on letters from state agencies that were written  
8 in the context of the corresponding state proceeding.  
9 And we get the argument, and the point of law, that we  
10 couldn't cite to those for the proposition that the ER  
11 is deficient relative to the federal rules. We can't  
12 cite to them for the proposition, because it's not  
13 within your jurisdiction of whether the state agency  
14 application is complete. But that's not the point of  
15 those references.

16 The point of those references is to show  
17 here are state agencies with specialized knowledge of  
18 this ecosystem who have said the models that are being  
19 used by FP&L are flawed. These agencies are saying we  
20 know the geology there, assumptions, and variables,  
21 and statements being made by FP&L are incorrect, or at  
22 least are highly questionable, and are refuted, either  
23 clearly refuted, or strongly questioned by facts and  
24 information that those agencies know, as a result of  
25 their specialized knowledge.

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1           That is enough to support a dispute of  
2 material fact. The context in which those letters  
3 were written is not particularly important, but they  
4 say very clearly there is reason to dispute the  
5 adequacy, the accuracy, the viability of statements  
6 made by Florida Power & Light in doing its job of  
7 laying out what the environmental impacts are going to  
8 be under NEPA. That's enough. That far exceeds what  
9 the cases say are bald, bare, speculative assertions  
10 upon which contentions cannot rest. And every agency  
11 with jurisdiction, South Florida Water Management  
12 District, the specialized agency with water resource  
13 protection in South Florida, Miami-Dade County and its  
14 technical staff, the Florida Department of  
15 Environmental Protection. Those are the three big  
16 ones with jurisdiction over this area. All three of  
17 those agencies have questioned key assumptions and the  
18 variables that speak to the impact of the radial  
19 collector wells. All three have raised --

20           CHAIRMAN HAWKENS: So the question, a mere  
21 question by itself may not create a genuine dispute.  
22 It may simply ask for additional information. How are  
23 these distinguished from a question --

24           MR. GROSSO: Understood, Your Honor. Yes,  
25 because of the factual, and scientific, and technical

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1 statements made within those questions, our ER has got  
2 several references to statements of fact, or technical  
3 fact, or scientific fact made by those agencies about  
4 the porosity of the geology here, the nature of the  
5 flora and fauna in this ecosystem, the sensitivity of  
6 the flora and fauna in Biscayne Bay to -- so, it is  
7 the statements made about the technical and scientific  
8 facts that are the key point, and the key element of  
9 that, Your Honor. And I think that is -- goes above  
10 and beyond what I think the requirements are for a  
11 contention that can hardly in good faith, I present to  
12 you, submit to you, be said that the agency comments,  
13 the statements made in the ER are speculative, bald  
14 speculation, unsupported assumptions. That's just not  
15 a fair and accurate characterization of this.

16           And let me point out that we are at the  
17 pleadings stage, so when you read the several pages of  
18 the reply that say oh, no, we did. Oh, no, it really  
19 was accurate. Oh, no, it really was an adequate,  
20 correct, full -- that's in the we dispute what you say  
21 category. That's disputing the facts, and the case  
22 falls quite clear that at this stage of determining  
23 whether the contentions are adequate, the plaintiffs  
24 are not required to prove that their version of the  
25 facts are correct. The plaintiffs are not required to

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1 prove that the impacts under NEPA will, in fact,  
2 occur.

3 We are required to demonstrate allegations  
4 that show the potential significance, and the  
5 potential for those impacts, and the potential that  
6 they are significant. The agency comment, the  
7 statements I referred to earlier supply that, clearly  
8 say that, that these are significant impacts if they  
9 occur. We can't say for sure they're all going to  
10 occur, but that analysis is what's required under  
11 NEPA, and that is a common theme throughout the  
12 problems with the ER that that analysis hasn't been  
13 done. So, for the replies from the Staff and NPR to  
14 say we haven't proven that those things are going to  
15 occur, that's just not for this point in the process.

16 Then the next thing is that the NEPA  
17 requirements for a hard look, they vary depending on  
18 the significance and the nature of the ecosystem and  
19 the impact. And it's clear from the facts that we've  
20 alleged that this is not your garden variety  
21 ecosystem. This is a national park. It's an aquatic  
22 preserve under state law, and outstanding Florida  
23 water under state law. This is an ecosystem already  
24 under so much stress that it is the subject of a  
25 multibillion dollar major state and federal

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1 restoration project. That raises the ante for the  
2 level of the hard look that NEPA requires here. So,  
3 where FP&L will say in its reply, they're not required  
4 to analyze every potential environmental impact,  
5 that's fine, that's true, that's the law. But when  
6 you're talking about an ecological impact, i.e.,  
7 salinity, that exacerbates the problem that the  
8 Everglades Restoration Plan is trying to fix for  
9 Biscayne Bay, you can hardly say that's an  
10 insignificant, minor, theoretical impact that doesn't  
11 have to be analyzed fully under NEPA. Obviously, this  
12 is at the highest level of a unique, important  
13 ecosystem, and set of issues. And the case for that  
14 would be National Audubon Society versus DEP and the  
15 Navy in the Fourth Circuit 2005.

16 CHAIRMAN HAWKENS: Do you have a cite for  
17 that, please?

18 MR. GROSSO: You know, can I get that for  
19 you a moment, Your Honor?

20 CHAIRMAN HAWKENS: Yes.

21 MR. GROSSO: Thank you very much.

22 Moving on a little bit, the other key  
23 points that I want to make about our specific  
24 contentions are that they go specifically to the  
25 flawed assumptions in the models. I'm not going to

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1 get into detail with my limited amount of time, but  
2 the agencies who know this ecosystem with jurisdiction  
3 over it in South Florida have said the assumptions are  
4 flawed. That is enough for the adequacy contentions  
5 that we have raised here.

6 I want to make a comment about, and we've  
7 also cited to the Browder document, the Roessler  
8 document. We refer to science, scientific documents.  
9 Somehow, the suggestion that our petition is not based  
10 upon science, and factual and scientific documents and  
11 reports just simply cannot be taken seriously.

12 I want to speak to our specific NEPA 1.5  
13 allegation of the inadequacy of the restoration  
14 discussion. There's an argument, I believe, that FP&L  
15 asserts that they don't have to analyze impacts on  
16 restoration programs. That's clearly not the law.  
17 Certainly, factually, the South Florida Water  
18 Management District, the state partner in restoring  
19 Biscayne Bay and the Everglades said these radial  
20 wells could run counter to our restoration efforts.  
21 That's enough of a fact to get you past the contention  
22 pleading stage. And on both of these issues, the  
23 cases that -- I've got a case cite for you that  
24 clearly says under NEPA, "Impacts on restoration  
25 programs are relevant," even if that case wasn't out

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1 there. It's a cumulative impact; past, present, and  
2 future actions that would impact the ecosystem must be  
3 considered as a cumulative impact. Surely, the State  
4 and Federal Restoration Program for Biscayne Bay is  
5 such a future, in fact, it's an ongoing current  
6 project that must be. I don't think we can take  
7 seriously the argument that legally those impacts are  
8 irrelevant.

9           The final point I want to make then about  
10 our arguments about the salt water plume, and sea  
11 level rise, and the other parts of our contentions  
12 there, while FP&L will say no, look, we did discuss  
13 that, we did mention that, we did discuss that. The  
14 case law that I don't believe I need to cite to this  
15 Board that says EIS discussions that are conclusory,  
16 that don't give factual, compelling support for bald  
17 statements and generalities is inadequate under NEPA.  
18 That case law clearly supports the adequacy of our  
19 contentions, and clearly demonstrates that the  
20 inadequacy of the generalized statements that FP&L  
21 would rely upon here to say they've done all they need  
22 to do under NEPA; surely, there's no argument that the  
23 NEPA requirements don't apply in this forum.

24           I'm sorry. It's the Border Power Plant  
25 Working Group case, 260 Fed. Supp. 2d, 997, Southern

1 District of California 2007 that says impacts on  
2 restoration programs are relevant under NEPA.

3 CHAIRMAN HAWKENS: That's 265 F. 2d.

4 MR. GROSSO: 260 F. Supplement.

5 CHAIRMAN HAWKENS: Oh, F. Supp. 2d.

6 MR. GROSSO: 260 F. Supplement 2d, 997.

7 I'm sorry, I talk fast. I know I'm running out of  
8 time.

9 The final point, factual point on sea  
10 level rise, FP&L says they analyzed sea level rise.  
11 They only analyzed it in their safety document, Impact  
12 on Safety Issues. They did not analyze the impact of  
13 sea level rise in terms of how it would interact with  
14 the use of these radial collector wells, and the  
15 resulting impact on the environment. So, that's a  
16 pretty key point there.

17 Let me speak now to the law on the  
18 admissibility of our contentions being admissible.  
19 You know, your rules, 2.309, brief explanation of the  
20 basis, a concise statement of the alleged facts,  
21 references to specific portions of the application,  
22 and various other environmental reports. We've surely  
23 done that.

24 I cite to you a number of cases, the  
25 Detroit Edison Company case, 70 NRC 227, a 2009 case

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1 that accepted contentions just like our's, impacts of  
2 also blumes in Lake Erie. You read that case, that's  
3 this case. The same types of impacts being alleged  
4 there were found to be accepted as contentions for the  
5 same types of things that we are alleging here;  
6 impacts on threatened and endangered species that rely  
7 upon that lake for their habitat. The case makes the  
8 point, this is not a hearing on the merits. The  
9 Petitioners do not have to prove, at this point, that  
10 their version of the facts is right. And that case  
11 says you view the Petitioners' allegations in the  
12 light most favorable to the Petitioners. That case  
13 accepted a number of those types of allegations.

14 The Crowe Butte case, 69 NRC 535, again,  
15 found a municipal contention based on a state agency  
16 comment letter that strongly questioned the  
17 assumptions in the ER. Those are our contentions.  
18 That supports our contention in and of itself there.

19 CHAIRMAN HAWKENS: That case you cited, was  
20 that a Board decision, or a Commission decision?

21 MR. GROSSO: I believe that that was a -- I  
22 don't know the answer to your question, Your Honor.  
23 I cited 69 NRC 535, 2009, NRC Lexus 78, June 25, 2009.  
24 And I'm just sorry, off the top of my head I don't  
25 know which forum that was.

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1           The case is -- I think it's generally  
2 applicable law here. The truth and the accuracy, and  
3 whose version of the facts are right is left for  
4 litigation. That's not to be decided here at the  
5 contention stage. The burden is on the Applicant and  
6 the Staff to do a sufficient environmental report, an  
7 EIS. The burden is not on the Petitioners to write it  
8 for them, and to come up with all of the answers. Our  
9 burden was only to show, like we've done, that there  
10 are important potential impacts, and important issues  
11 that were not adequately analyzed in the EA.

12           There are a number of other issues that  
13 you've asked us to respond to, what level of detail is  
14 required in an ER, and what level of deference is  
15 given to the Staff? I believe that we have other  
16 folks who are going to argue after me that should  
17 address those issues. So, I will end my presentation,  
18 unless, of course, any member of the Panel has a  
19 question.

20           ADMIN. JUDGE KENNEDY: I have a couple of  
21 questions.

22           MR. GROSSO: Yes, sir.

23           ADMIN. JUDGE KENNEDY: And I'm going to  
24 take you back probably a third of the way back into  
25 your presentation. You were on a roll, and I didn't

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1 want to interrupt you.

2 (Laughter.)

3 ADMIN. JUDGE KENNEDY: Let's go back to --

4 I think the FERME Board decision, and I think it was  
5 -- may have been ruled on appeal. That may be  
6 important to talk, because that's partly what we're  
7 struggling with here. In the FERME case, as I  
8 understand it, those were omissions from the  
9 environmental report, and those contentions were  
10 admitted for hearing.

11 In this case, I'm sensing what I see as  
12 errors of adequacy, and the Applicant has responded  
13 with the material isn't present in the application.  
14 They have declared an impact in cases, you know. And,  
15 again, I'm not giving you specifics, but looking at  
16 this more in general terms, because from an omission  
17 standpoint, I understand, and I think they're exactly  
18 as you phrased it. I think there's a different  
19 position. But in this case, and, again, just picking  
20 arbitrarily on Contention 1.1, it appears to talk  
21 about an inadequacy in the application. The Applicant  
22 has countered. And I think there is a burden there to  
23 demonstrate that what is in the ER is inadequate; not  
24 that it's omitted, but that there's a deficiency there  
25 that would be litigable. Because I think that flavor

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1 moves through a number of these contentions.

2 MR. GROSSO: I think that's our  
3 understanding of the law, as well, Your Honor. And  
4 that is our position, is that the discussions are  
5 inadequate. They do not rise to the level required.  
6 They're way too conclusory, particularly given the  
7 impact -- the importance of the impact, and the  
8 importance of the ecosystem that would be suffering  
9 that impact.

10 ADMIN. JUDGE KENNEDY: And are we now  
11 approaching the discussions on level of detail  
12 required in the environmental report? Is that where  
13 you're going with this?

14 MR. GROSSO: I believe so. And I had a  
15 discussion for that, and I took up too much of my  
16 time, so I was going to let somebody else handle that.  
17 But, certainly, there's significant case law, and,  
18 certainly, the rules that require rigor, that require  
19 detailed, thoughtful analysis commensurate with the  
20 importance of the issue, and the significance of the  
21 ecosystem. So, I think you've put your finger on it.  
22 I think the next question then becomes what are those  
23 NEPA type of analysis requirements. And, again, when  
24 we're getting into yes, we did; no, you didn't, we  
25 have surely raised material disputes about those, to

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1 say the least.

2 ADMIN. JUDGE KENNEDY: I think the other  
3 piece of this discussion, and you said it yourself, is  
4 that it's the level of significance. And I think  
5 there could be some challenges here, have you  
6 demonstrated the level of significance on some of  
7 these particular issues. And trying to balance both  
8 of these arguments, and not just making a fact-based  
9 argument, I think there's a lot of legal issues here,  
10 or precedents that we're trying to work our way  
11 through.

12 MR. GROSSO: Certainly, you're more  
13 knowledgeable than I am on this, but I would simply  
14 submit, Your Honor, that where the state agencies here  
15 in South Florida who are responsible for trying to  
16 restore an ecosystem; obviously, first of all, that  
17 tells you you've got a major ecosystem of national  
18 importance that is in such distress that these  
19 agencies are engaged in a multibillion dollar project.  
20 I think that's a key point right there.

21 And then I think the second point is that  
22 those very agencies are saying that key variables that  
23 speak to the modeling, and there's case law that says,  
24 you know, look, the analysis has to reflect reality;  
25 otherwise, you don't know what the facts are. When

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1 they're saying key variables in the very models that  
2 are designed to demonstrate what the impacts are going  
3 to be on salinity in Biscayne Bay, which is the  
4 restoration problem, are flawed, and this is an  
5 ecosystem of national importance, and that is the  
6 restoration problem with it, I would submit, Your  
7 Honor, that we more than reach that threshold of  
8 significance under NEPA, and under your rules.

9 I very much thank you for your time, and  
10 I will now turn over to my --

11 CHAIRMAN HAWKENS: I have one more question  
12 for you.

13 MR. GROSSO: Yes, sir.

14 CHAIRMAN HAWKENS: In almost every instance  
15 where you've alleged an inadequacy, FP&L has countered  
16 with some discussion, and there's a conclusion. And  
17 either the impact is small, moderate, minimal. So,  
18 then does your argument become that an inadequacy or  
19 an omission of discussion, or is it the same?

20 MR. GROSSO: An inadequacy. Those  
21 discussions, those points they make are either very  
22 generalized, simplistic, conclusory statements saying  
23 it's common sense that they're not going to impact.  
24 You've seen what we've laid out in our petition how  
25 complex the hydro geology of Biscayne Bay and the

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1 underlying aquifer are, and they want to rely on a  
2 statement that says it's common sense that our wells  
3 aren't -- it's inadequate, short answer to your  
4 question.

5 CHAIRMAN HAWKENS: I'm remembering one  
6 discussion where there -- it's, essentially, a drop in  
7 the bucket argument, where they say the volume of  
8 Biscayne Bay is so immense, and the volume of water  
9 being taken out by the radial wells is -- to me, as a  
10 lay person, not a lot of detailed analysis, but it  
11 does make some sense to me.

12 MR. GROSSO: It's like saying you got  
13 burned by the sun, not that flame that was next to  
14 your finger. Okay? It's the volume of salt water  
15 versus what we've showed you, the state agencies are  
16 saying is, it's a lot more complex than that. It's  
17 the distribution of fresh versus salt, it's where it  
18 is within the Bay, it's the variability throughout.  
19 Just this volume of fresh water thing is just not --  
20 cannot be taken seriously, given the complexity hydro  
21 geology of this Bay; not just our word, but as the  
22 state agencies are telling you, Your Honor.

23 CHAIRMAN HAWKENS: Okay. Thank you.

24 MR. GROSSO: Thank you.

25 MR. THURMAN: Good afternoon. My name is

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1 Carter Thurman, and I am a second year student at  
2 Emory Law School. And I will be discussing Contention  
3 Two, which deals with the environmental reports,  
4 failure to adequately address impacts to groundwater,  
5 air, surface water, wetlands, and surf.

6 First, I will begin by explaining why  
7 Contention Two meets the admissibility requirements.  
8 Second, I will address the Board's questions  
9 concerning the EPA study that we cited in our reply,  
10 and our answer, and explain why it provides the  
11 requisite facts to support our argument that vertical  
12 migration is foreseeable. Third, I will discuss a few  
13 impacts that FP&L might need to analyze in their  
14 study. And, finally, we noticed the Board has asked  
15 FP&L and the NRC Staff to address the criticisms that  
16 we advanced towards their model on vertical migration,  
17 or their model on releases, and we will briefly touch  
18 on that again, and answer any other questions..

19 So, to begin, we have met all  
20 admissibility requirements under 2.309F-1. The first  
21 three admissibility requirements are uncontroverted,  
22 so I will spend my time on the fourth, fifth, and  
23 sixth requirement.

24 For the fourth requirement, Joint  
25 Petitioners have demonstrated that the issue raised is

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1 material to the findings that NRC must make. Under  
2 NRC regulations, the NRC is required to analyze  
3 reasonably foreseeable impacts. And by assuming that  
4 vertical migration doesn't occur, FP&L has foreclosed  
5 any potential impacts from occurring to the above  
6 aquifer. And given that there is a significant link  
7 between vertical migration and potential environmental  
8 impacts, this issue is material to the findings that  
9 NRC must make.

10           Regarding the fifth requirement, we have  
11 provided the concise statement of the alleged facts by  
12 citing to the EPA document in both our petition, and  
13 our reply. And this does demonstrate that vertical  
14 migration is reasonably foreseeable, which will be  
15 discussed more in a bit.

16           Regarding the last requirement, Joint  
17 Petitioners have provided sufficient information to  
18 demonstrate that there is a genuine issue of material  
19 fact and law. In our petition, again, we cite to the  
20 EPA document, which demonstrates that vertical  
21 migration is reasonably foreseeable, and shows that  
22 FP&L did not address this reasonably foreseeable  
23 event. And it produces some doubt about the adequacy  
24 of FP&L's analysis.

25           So, this leads us into the discussion that

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1 the Board has asked us to address concerning our  
2 citation to the EPA document in our reply, and our  
3 petition. First, just to be clear, we're not arguing  
4 that Units 6 and 7 will result in the same  
5 environmental impacts. The contaminants that will be  
6 injected are different than what was studied in the  
7 EPA document. What we're arguing is that the impacts  
8 will result from the same mechanism, or the same  
9 process, the vertical migration through the confining  
10 unit.

11 Second, this document does provide the  
12 sufficient support to support our claim that it is  
13 reasonably foreseeable that their injective effluent  
14 could reasonably foreseeably migrate through the  
15 confining unit. This is a technical document, and the  
16 study was performed by the federal agency who has  
17 broad oversight over the entire underground injection  
18 program.

19 In addition to the EPA's findings, FP&L's  
20 ER cites several studies that call into question the  
21 ability of the confining unit to impede vertical flow.  
22 For example, in the EPA study, they documented 18  
23 wells in South Florida that appear to be associated  
24 with some form of unintended fluid movement from the  
25 injection zone, and into the above aquifer. Each of

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1 these facilities was injecting fluid into the same  
2 boulder zone, into the same area, the migration  
3 occurred through the exact same confining unit that  
4 FP&L intends to rely on. The only difference is the  
5 type of waste that's going to be injected.

6 And, furthermore, this document makes  
7 clear that the EPA, and actually Congress directed EPA  
8 to do the study, and to amend their rules because this  
9 confining unit provides inadequate confinement, and  
10 that there is this potential impact that these  
11 effluents, these contaminants will migrate into the  
12 above aquifer. And FP&L simply did not address this.

13 Thus, instead of relying on their  
14 assertions or speculation, we have pointed to a  
15 document that shows that vertical migration is  
16 reasonably foreseeable, and it shows that this is  
17 happening through the same unit that FP&L intends to  
18 rely on, and through the same process that FP&L is  
19 going to inject their waste under pressure into the  
20 boulder zone.

21 Which brings us to the issue of -- I mean,  
22 what impacts might FP&L be required to analyze? And,  
23 generally, FP&L is required to analyze those impacts  
24 that are required by NEPA, and NEPA requires a hard  
25 look, as you've heard today. And a hard look is what

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1 is reasonable in light of the circumstances. And,  
2 here, in light of the EPA document, it's reasonably  
3 foreseeable that vertical migration could occur; thus,  
4 affecting the above aquifer.

5 So, just a few examples of what questions  
6 might need to be addressed. What concentrations of  
7 contaminants could be expected in the above aquifer?  
8 Could these concentrations affect the future viability  
9 of this aquifer being labeled as an underground source  
10 of drinking water? What are the effects to surface  
11 water, to plants, to the marshes, to the soils, et  
12 cetera? And we can sit here all day and speculate  
13 about what impacts FP&L needs to address, but this  
14 just illustrates that the underlying data, the  
15 underlying study is missing. And the NRC regulations  
16 make clear that the burden is on the Applicant to  
17 provide sufficient information to aid the NRC staff in  
18 developing an independent analysis.

19 Again, in sum, what FP&L is required to  
20 analyze is based on NEPA's requirements, or NEPA's  
21 concept of reasonableness. And, again, in light of  
22 the study, it has documented that vertical migration  
23 under the exact same facts and situations, it's  
24 reasonably foreseeable that it could occur here.

25 And just an illustration on this is the

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1 model that you have asked FP&L and the NRC Staff to  
2 address. And this issue with the model is  
3 straightforward. The model that they have chosen to  
4 use, LADAPTU, is simply not capable of representing  
5 groundwater flow. It's a surface water model. It  
6 provides -- it incorporates no algorithms that are  
7 capable of understanding groundwater flow in this  
8 regime, and it's a perfect illustration of the problem  
9 that we have with this contention.

10 FP&L has created this scenario that has  
11 completely removed the upper aquifer from their  
12 analysis. No impacts could occur under their  
13 analysis, because the model won't allow it. And,  
14 thus, based on the EPA study, there are enough facts  
15 that we have cited that shows that there is a  
16 reasonably foreseeable chance that vertical migration  
17 could occur. This happened through the same confining  
18 unit that FP&L will rely on, under the same process of  
19 injecting fluids, and, thus, it is reasonably  
20 foreseeable.

21 And with that, I will gladly answer any  
22 questions.

23 ADMIN. JUDGE BURNETT: I'd like to ask a  
24 technical question, and I would understand if you're  
25 not prepared to answer it. But the EPA study, and the

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1 upward migration, it is the same mechanism; however,  
2 the mechanism of upward migration is difference in  
3 density. And there may be a difference in density  
4 between the waste that the Applicant will be injecting  
5 compared to the waste stream that was the focus of the  
6 study by the EPA. Do you happen to know if, in fact,  
7 there is a difference in these two waste streams?

8 MR. THURMAN: I believe the ER states that  
9 under certain scenarios, salt water would be injected,  
10 which would make it less foreseeable for vertical  
11 migration. However, fresh water will also be  
12 injected, which would lead to the conclusion that it's  
13 more foreseeable, because of the density differences.  
14 And, furthermore, they're injecting to get under a  
15 high temperature, which also has buoyancy impacts, and  
16 density impacts, as well, which would make vertical  
17 migration more foreseeable.

18 ADMIN. JUDGE BURNETT: Okay. Thank you.

19 MR. THURMAN: And moving on to Contention  
20 Three.

21 MR. SHECHTMAN: Good afternoon. My name is  
22 Matt Shechtman, and I will be discussing proposed  
23 Contention Three, the direct, indirect, and cumulative  
24 impacts of the proposed transmission lines, and their  
25 construction, maintenance, and operation on endangered

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1 species, wetlands, and SERP Alternative.

2 I will start with, specifically, the  
3 requirements, the pleading requirements under 10 CFR  
4 2.309(f)(1), move on to the Board's remaining two  
5 questions, the level of deference, as Mr. Grosso's  
6 pointed out, that you also asked for Contention One,  
7 as well as the level of detail required for an impact  
8 statement to be discussed.

9 Starting with Section 2.309, the only  
10 problems under contention are those 4-6. First, under  
11 F-1.4, Contention Three does raise an issue material  
12 to the findings that the NRC must make in this  
13 proceeding. Federal regulations recognize an issue as  
14 material if it would make a difference in the outcome  
15 of the licensing proceeding. What is at issue here,  
16 and recognized by the Board, and the NRC Staff, and  
17 FP&L's answers is the level of detail required in  
18 these impact statements. If this contention were  
19 found meritorious, it would certainly have an impact  
20 in the outcome of this proceeding, and it would be  
21 material under F-1.4.

22 Moving on to F-1.5, this problem requires  
23 Petitioner to allege facts sufficient to establish a  
24 minimal basis moving on to the full proceeding. And  
25 the Joint Petitioners here pointed to inadequacies in

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1 the environmental report, cited studies supporting the  
2 importance of the issues, a PANTHA recovery plan,  
3 Florida DEP report, SFWMP report, as well as citing to  
4 the ER's deficiencies on a whole.

5 Moving on to F-1.6, Contention Three does  
6 contain sufficient information to show that a genuine  
7 dispute exists regarding a material issue of law or  
8 fact. Joint Petitioners identified each failure, and  
9 appropriately discussed the impacts to wetlands, and  
10 endangered species.

11 Further, the purposes of 2.309 are clearly  
12 supported by the pleading here, in that they leave  
13 appropriate level of detail to put the other parties  
14 on notice as they clearly understood and responded to  
15 the contention at issue here, and put the scope of  
16 contention at issue.

17 I'd like to move on to the Board's  
18 question of the level of deference that should be  
19 afforded to NRC Staff. As stated before, this does  
20 apply to Contention One, as well. The Joint  
21 Petitioners respectfully contend that no deference  
22 should be afforded to NRC Staff at this stage.

23 First, NRC decisions confirm this point,  
24 holding that Staff does not occupy a favored position  
25 at hearing. It is just another party to the

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1 proceeding, like an Applicant, or an Intervener, and  
2 its views are subject to the same scrutiny as other  
3 parties. And I have several cites here, if you're not  
4 already familiar with those. And these decisions  
5 clearly make sense for a number of reasons.

6 First, we're not disputing the NRC Staff's  
7 determination that the application was complete.  
8 Rather, our dispute is clearly over the level of  
9 adequacy of the impacts stated in the contention. At  
10 this stage in the proceeding, the Applicant -- the  
11 license application is an issue, not the adequacy of  
12 the Staff's review of the application.

13 Second, NRC regulations require  
14 contentions to be pled at the earliest possible time.  
15 If we waited until the Draft Environment Impact  
16 Statement was issued to raise contentions regarding  
17 the adequacy here, then our contentions could be  
18 considered untimely. And this leaves us in a little  
19 bit of a Hobson's Choice, if NRC Staff were given  
20 deference, because at that point, no contentions would  
21 be admitted at all.

22 Third, NRC regulations require an  
23 environmental report to satisfy NEPA. NEPA requires  
24 the Commission to take a hard look, as we have already  
25 mentioned, at the impacts of the proposed transmission

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1 lines. And the opinion of NRC Staff regarding the  
2 completeness of the application does not speak to  
3 these requirements.

4 - Finally, support for a contention is  
5 viewed in a light most favorable to the Petitioner,  
6 and inferences construed in their favor. And this  
7 simply does not align with affording NRC Staff  
8 deference at this point in a combined license  
9 application.

10 I would like to move on to how much detail  
11 is required to address the impacts of transmission  
12 lines on wetlands and wildlife at this point. And as,  
13 again, has already been mentioned, what is required  
14 under NEPA is a hard look. And it is governed by a  
15 Rule of Reason that cannot be outlined with rule-like  
16 precision, but depends on the circumstances at issue.

17 Though it is determined on a case-by-case  
18 basis, there are several factors outlined by NRC  
19 regulations, and by case law that do matter, and serve  
20 as a floor, or at least considerations in each  
21 inadequacy of impact statements here.

22 First, the Supreme Court has required a  
23 thorough investigation into environmental impacts of  
24 an action. They also require candid acknowledgment of  
25 the risks that those impacts entail. Further, NRC

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1 regulations at least, while not requiring, they  
2 certainly prefer cumulative -- quantification of the  
3 various factors when at all possible. And, as well,  
4 require the environmental report to look into the  
5 cumulative impacts of the proposed action. And, at  
6 the end, there must be sufficient data to aid the  
7 Commission in its development of an independent  
8 analysis.

9 As Mr. Grosso mentioned earlier in  
10 Contention One, there is 4th Circuit case law that  
11 specifically requires heightened scrutiny when actions  
12 may affect a Congressionally protected area. You  
13 asked for the cite earlier, and the case is National  
14 Audubon Society versus Department of Navy, and that's  
15 422 F.3d 174, specifically, pages 185-189. And that's  
16 4<sup>th</sup> Circuit 2005. That is, clearly, on point here  
17 given the proximity to the Everglades, the SERP  
18 Alternative O, and wetland water migration issues, as  
19 well as the number of endangered species that have  
20 been pointed out by Joint Petitioners, as well as FP&L  
21 in the combined application.

22 Joint Petitioners contend that the  
23 application simply did not meet these requirements,  
24 and in a vast majority of instances noted merely that  
25 impacts could occur. As, again, mentioned by Mr.

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1       Grosso, a merely conclusional analysis is not enough  
2       when we're discussing the adequacy of an impact  
3       statement.     Rather, the application should have  
4       included these quantitative analysis to the fullest  
5       extent practical, as required by NRC regulations. And  
6       it should have given a heightened analysis for the  
7       endangered species, and the proximity to the  
8       Everglades, or given one of the preferred  
9       alternatives, going right through the Everglades.

10                   CHAIRMAN HAWKENS: I believe the NRC Staff  
11       in its reply indicated that the GEIS for license  
12       renewal concluded that impacts to habitat, diversity  
13       from transmission line maintenance was minimal. And  
14       I'm wondering how that impacts on your Contention  
15       Three?

16                   MR. SHECHTMAN: Given the number of cites  
17       by FP&L and NRC Staff, I believe that was pretty much  
18       across the board what they cited, in that they  
19       discussed it, and they concluded that it was minimal.  
20       And, I mean, if I will, I'm not exactly sure which  
21       part of the ER that you're referencing, but, for  
22       instance, in FP&L's answer, and this provides a pretty  
23       indicative response to most of the Joint Petitioners  
24       issues, FP&L cites that the ER provides an extensive  
25       discussion of the species in the area, and the

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1 potential impacts on those species.

2 For instance, the environmental report  
3 presents over 60 pages of information containing  
4 narrative, charts, maps, and tables that in exhaustive  
5 detail present the ecology of the region that would  
6 host the facilities proposed by Turkey Point's Units  
7 6 and 7.

8 I would submit that the Board look at  
9 these 60 pages that were provided, because while there  
10 are 60 pages between 2.4-1 and 2.4-59, or at least  
11 almost 60 pages, there are actually two pages  
12 regarding the species at issue. And in those two  
13 pages, it provides an encyclopedic sort of response to  
14 what these species actually entail in the area, and  
15 point to sightings of these species.

16 It also, in regards to --

17 CHAIRMAN HAWKENS: Let me interrupt.  
18 Getting back to my initial question, they relying on  
19 GEIS' support. And is it your position that that GEIS  
20 is not relevant here, or are you challenging the  
21 conclusion in that GEIS?

22 MR. SHECHTMAN: Well, I mean, we're  
23 certainly not challenging the conclusion in the EIS at  
24 this point in the proceeding. We simply are  
25 submitting that there was not a sufficient analysis to

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1 go forward. We submit that whether or not the  
2 conclusion is correct is for the later proceeding in  
3 which experts are to argue that in front of this  
4 Board.

5 ADMIN. JUDGE KENNEDY: So, the inadequacy,  
6 as we talked before, this goes back to Contention One,  
7 is one of the level of detail contained within the  
8 environmental report --

9 MR. SHECHTMAN: Yes, Your Honor.

10 ADMIN. JUDGE KENNEDY: -- as it's  
11 presented today? And you started to mention you have  
12 some citations that would be relevant to that level of  
13 detail? And we may have cut you off, I'm not sure.

14 MR. SHECHTMAN: No. Well, the level -- the  
15 citations that I mentioned regarded the level of  
16 deference to afford the NRC Staff, which is a  
17 different question, I think, than the level of detail.

18 ADMIN. JUDGE KENNEDY: Okay. So, you did  
19 or did not provide references then for --

20 MR. SHECHTMAN: For the level of detail?

21 ADMIN. JUDGE KENNEDY: Right. Are you --

22 MR. SHECHTMAN: Well, I mean, we did cite  
23 National Audubon Society. There is also Supreme Court  
24 case, Robertson versus Methow Valley, 490 U.S. 332,  
25 and then the NRC regulations specifically require in

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1 51.45 several different factors, quantification of  
2 factors, consideration of economic, technical, and  
3 other benefits and costs that were not considered  
4 almost across the board in the environmental report.

5 ADMIN. JUDGE KENNEDY: Does the importance  
6 or significance of the impact have any relevance  
7 relative to the level of detail contained in the  
8 environmental report?

9 MR. SHECHTMAN: Well, I think that goes  
10 directly to the National Audubon Society case, in  
11 noting the heightened scrutiny for Congressionally  
12 protected areas. And, in that case, it only had one  
13 Congressionally protected issue. Here, not only are  
14 there the Everglades, there's SERP Alternative O, and  
15 endangered species that are at issue.

16 ADMIN. JUDGE KENNEDY: You know, again,  
17 this is the struggle we're having starting with  
18 Contention One. The contention appears to be one of  
19 inadequacy, yet, the petition provides no insight or  
20 clarification as to what's inadequate. I keep coming  
21 back to, it seems to be read as the information is --  
22 there's an insufficient level of detail, and I  
23 apologize, I keep repeating that. But I'm looking  
24 really for, is there something here that I'm missing  
25 that is at the heart of the petitions. Contentions

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1 One, Contentions Three, and I think possibly  
2 Contention Four, seem to keep going at this issue.

3 As Mr. Grosso pointed out, the Staff keeps  
4 coming back, and the Applicant has come back and  
5 stated that it's in the ER, and I think so we're back  
6 to that issue. It's not an omission. I think he was  
7 clear on that. It's one of inadequacy, and we're  
8 struggling with the criteria that, if this would go to  
9 litigation, how would it -- what case law, or what  
10 regulation would we use?

11 MR. SHECHTMAN: Well, I mean, that would be  
12 the balancing that we're talking about with the hard  
13 look, and the Rule of Reason under NEPA. And, I mean,  
14 when you --

15 CHAIRMAN HAWKENS: Let me stop you there.  
16 In your framework, the "hard look," is that measured  
17 by the level of information provided in the  
18 environmental report? Does that what would govern  
19 what a hard look entails?

20 MR. SHECHTMAN: Well, the hard look  
21 requirement applies to federal agencies, which would  
22 be the NRC here, but given the framework that we're  
23 referencing, the environmental report should give  
24 sufficient analysis for an independent review by this  
25 Board. So, it is, as well, mandated to satisfy NEPA's

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1 requirements.

2 CHAIRMAN HAWKENS: It's to aid the Staff in  
3 its performance of its NEPA duties. And I have  
4 difficulty, also. We have to determine whether  
5 there's sufficient information to aid the Staff, and  
6 determining, making that determination, we're just  
7 looking for guidance in that. And I still am not sure  
8 of the standard to apply, other than the hard look and  
9 the Rule of Reason, which are --

10 MR. SHECHTMAN: I mean, that's sort of the  
11 difficulty that we're all faced with.

12 CHAIRMAN HAWKENS: Yes.

13 MR. SHECHTMAN: Right. Thank you.

14 CHAIRMAN HAWKENS: Please continue, then.

15 MR. SHECHTMAN: That brings me to way over  
16 my time, and I think the conclusion of my points.

17 CHAIRMAN HAWKENS: Thank you.

18 MR. KIRSTEIN: We're coming up on 32  
19 minutes, just to give you a sense of how much time you  
20 have left total.

21 MS. WENDLER: Thank you. Good afternoon.  
22 My name is Maggie Wendler, and I'm a third-year law  
23 student, and I will be discussing Joint Petitioners'  
24 Contention Four today, pertaining to the adequacy of  
25 Florida Power & Light's discussion of the impacts on

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1 wetlands and wildlife from the construction and  
2 operation of access roads.

3 Contention Four is admissible because it  
4 meets all the requirements of 10 CFR 2.309(f)(1).  
5 However, Florida Power & Light, and NRC Staff only  
6 contest factors 4-6, so I will focus on these today,  
7 but I'm happy to answer any of the Board's questions  
8 on all the factors.

9 First, the petition adequately explains  
10 why the issue of impacts on wetlands and wildlife from  
11 construction and operation of access roads is  
12 material. Second, it provides sufficient facts to  
13 support this position. And, third, it establishes  
14 that a genuine dispute exists regarding the  
15 environmental report's discussion of these impacts.  
16 Thus, Contention Four complies with 10 CFR 2.309, and  
17 is admissible.

18 First, as I said, the petition adequately  
19 explains why the issue of these impacts from access  
20 roads is material to the findings that NRC must make.  
21 As the environmental report and Florida Power &  
22 Light's answer indicates, 330 acres of wetland  
23 habitats will be impacted by the construction and  
24 operation of this site. And access roads are a major  
25 facet of this, including expansions and improvements

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1 to existing roads totaling 70 acres, and 11 miles of  
2 impacts to wetlands. On top of this, access roads will  
3 be needed to construct transmission lines separate  
4 from the expansions to access roads that will lead to  
5 the plant, itself.

6 The ER clearly states that the roads will  
7 traverse various wetland habitats, and upland forests,  
8 home to state and federally protected endangered  
9 species. As the petition states, the construction and  
10 operation of these roads have the potential to cause  
11 disruption to ecological corridors, disruption of  
12 sheet flow, degradation to conservation lands,  
13 increased road kill, increased colonization of  
14 invasive or exotic plant species, increased dumping,  
15 and increased all terrain and off-road vehicle use on  
16 these roads.

17 Florida Power & Light must provide an in-  
18 depth consideration of these potential impacts from  
19 all of the access roads that are to be improved or  
20 built for access to the plant, or from transmission  
21 lines considering the potential for serious  
22 environmental harm, and it has failed to do so.

23 Adequate consideration of these impacts  
24 could alter Florida Power & Light's ultimate  
25 determination of the severity of the impacts on the

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1 wetlands, and wildlife, which they currently state are  
2 only small to moderate. Thus, the petition adequately  
3 sets forth a basis for materiality of these issues of  
4 access roads on wetlands and wildlife.

5 Second, the petition provides sufficient  
6 facts to support this position. The petition cites to  
7 Miami-Dade County's third completeness comments as  
8 evidence that these environmental impacts could result  
9 from the construction and operation of access roads at  
10 the Turkey Point site. They demonstrate that Miami-  
11 Dade County saw these impacts as foreseeable, and  
12 insisted that these impacts be adequately addressed.  
13 These comments reflect the same impacts from the  
14 access road the Petitioners have cited as inadequately  
15 addressed in the ER.

16 Therefore, the petition has sufficiently  
17 provided facts that support its position that the ER's  
18 discussion of impacts from construction and operation  
19 of access roads on wetlands and wildlife is  
20 inadequate, because there are foreseeable impacts  
21 which are properly documented by these Miami-Dade  
22 comments.

23 Finally, a genuine issue exists between  
24 the Petitioners and the Applicant on the material  
25 issue of law or fact. A genuine issue exists to the

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1       adequacy of the ER in addressing the impacts of  
2       construction and operating these access roads. The ER  
3       concludes without support or analysis that the impacts  
4       on wetlands and wildlife will range from small to  
5       moderate. Florida Power & Light asserts that the ER  
6       sufficiently discusses these impacts, and Joint  
7       Petitioners believe that they have not adequately met  
8       their burden.

9               A few examples of the ER's analysis  
10       include in their answer at page 97, Florida Power &  
11       Light cites to ER 2.2-34 to support that they have  
12       addressed these impacts to wetlands from access roads.  
13       However, if you turn to this page in the ER, it states  
14       only the percentage of wetlands that will be impacted,  
15       not the actual impacts, themselves.

16              Other citation on this page 97 of the  
17       answer to support that they've addressed impacts cites  
18       to ER 4.3-8, which simply acknowledges that there will  
19       be over 10 miles of roadway improvement and new road  
20       construction for the site, but doesn't discuss actual  
21       impacts on the wetlands or wildlife, just the possible  
22       activities that would be used to reduce these impacts,  
23       and the mitigation that will be done. There are  
24       further inadequacies in the discussion of where the  
25       transmission line access roads will be built, and what

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1 impacts the increased construction traffic discussed  
2 in Chapter 4.4 of the ER will have on wetlands and  
3 wildlife.

4 Finally, the ER at 4.1-6 and 7 states,  
5 "The construction activities for the new transmission  
6 lines access roads could result in vegetation loss."  
7 However, they, ultimately, conclude that these impacts  
8 will be small.

9 These generalized statements with little  
10 supporting data throughout the ER do not provide the  
11 NRC Staff with sufficient information to prepare their  
12 EIS. Questions remain, where will the access roads  
13 for the transmission lines be? What type of wetlands  
14 will be impacted? What are the functional values?  
15 Will the loss of these wetlands specifically alter the  
16 ecological makeup of this area? Without this  
17 information, Florida Power & Light cannot accurately  
18 conclude that such impacts are small to moderate.  
19 Thus, there is a material question of the adequacy of  
20 Florida Power & Light's analysis of these access road  
21 impacts. Thus, Contention Four has satisfied the  
22 requirements of 10 CFR Section 2.309, and is  
23 admissible here. And I will welcome any questions  
24 that you have.

25 CHAIRMAN HAWKENS: Thank you very much.

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1 MS. WENDLER: Thank you.

2 MR. FERNANDEZ: Your Honor, before the  
3 Petitioners proceed, there's been some photographing  
4 going on in the room, and I believe that's in  
5 violation of the order from the Board.

6 CHAIRMAN HAWKENS: No. Photography is  
7 permitted, so long as they use natural light, no  
8 artificial flashes, and so long as it's not  
9 distracting to counsel.

10 MR. FERNANDEZ: Thank you, Your Honor.

11 CHAIRMAN HAWKENS: I mean, are you finding  
12 it distracting, so that you're not able to --

13 MR. FERNANDEZ: I have not. I just  
14 misremembered the order from the Board.

15 CHAIRMAN HAWKENS: All right. Thank you.  
16 Please continue.

17 MR. TOTOIU: Good afternoon. I'm Jason  
18 Totoiu.

19 CHAIRMAN HAWKENS: And please don't charge  
20 that minute and a half to --

21 (Laughter.)

22 MR. TOTOIU: I appreciate that. Good  
23 afternoon. I'm Jason Totoiu with the Everglades Law  
24 Center appearing on behalf of Joint Petitioners.

25 MR. KIRSTEIN: You're coming up on 26

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1 minutes.

2 MR. TOTOIU: Thank you. Contention Five is  
3 the focus of my discussion today. Contention Five  
4 states that the ER fails to adequately address, one,  
5 all reasonable alternatives to the proposed  
6 transmission line corridors, and associated access  
7 roads. And, two, how the Applicant will avoid and/or  
8 minimize impacts to wetlands caused by construction,  
9 and operation of these transmission line corridors,  
10 and associated access roads. And I'd like to begin  
11 with a discussion about the alternatives.

12 An EIS must contain a reasonable range of  
13 alternatives. The alternatives analysis is the heart  
14 of NEPA. And to address a threshold issue that I  
15 think was raised by NRC Staff, what is exactly the  
16 scope of the alternatives? Does it just consist of a  
17 plant, is it the plant and the transmission lines?  
18 And we submit that the range of alternatives is  
19 dictated by the nature and scope of the project. And  
20 throughout the ER, you'll see in Section 1, FP&L, we  
21 believe, recognizes that. They reference throughout,  
22 they use such verbs as the general goal is one to  
23 connect, supply, provide power. So, at least in the  
24 Applicant's mind, we feel that they recognize that,  
25 and they further recognize that by citing to the Wolf

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1 King case, I think, of many years ago, where the NRC  
2 has treated the transmission lines and power  
3 generation as one action deserving an alternatives  
4 analysis.

5 And, apart from that, the case law makes  
6 clear where you have related dependent proposals on  
7 the table, that they have to be analyzed together.  
8 The lines in the power plant can't operate in absence  
9 of each other. You know, in support of that, we would  
10 cite Sierra Club versus Hodel, which I think is the  
11 leading case on this, 544 F. 2d. 1036 at page 1044,  
12 9<sup>th</sup> Circuit 1976. And maybe we'll have to go into  
13 more of this on my rebuttal, but I think just as a  
14 threshold issue, it remains clear that for the  
15 purposes of this NEPA analysis, it's the transmission  
16 lines, and the plant.

17 So, with that, let's look at the  
18 alternatives that have been proposed by FP&L. And,  
19 specifically, the western corridor that is under  
20 scrutiny here. The environmental report really only  
21 contains a discussion of two substantially similar  
22 alternatives. And we would even submit that it's  
23 really not two alternatives, because there's no action  
24 alternative, so, in essence, you're dealing with,  
25 perhaps, even one alternative. And that's -- the one

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1 option is we're going to put the segment of the  
2 western corridor in holdings within Everglades  
3 National Park, or we move them slightly to the east  
4 and we run that segment adjacent to Everglades  
5 National Park.

6 And I think on this point, the case of  
7 Muckleshoot Triad versus U.S. Forest Service is  
8 particularly instructive. And that case is 177 F. 3d  
9 800, 9<sup>th</sup> Circuit 1999.

10 I'm sorry for yelling, I'm having a hard  
11 time with this mic. Excuse me for my -- I'm a little  
12 vertically challenged.

13 CHAIRMAN HAWKENS: We're having no  
14 difficulty hearing you.

15 MR. TOTOIU: In Muckleshoot, we had a very  
16 similar incidence occur in that case. That involved  
17 a proposed land swap between the Forest Service and a  
18 timber company. And when the Forest Service was  
19 developing the environmental impact statement, it  
20 actually looked at five action alternatives, and a no  
21 action alternative. And by the time the EIS was  
22 prepared, it came down to two alternatives. And those  
23 two alternatives "were virtually identical." One was  
24 a land swap, or a land swap plus 141-acre donation of  
25 land. And I think the court was pretty clear that

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1 when you're dealing with two very similar  
2 alternatives, and there's other alternatives out  
3 there, that that's inadequate. That doesn't  
4 constitute a range of alternatives.

5 And what I mean by there's other  
6 alternatives out there, is that by FP&L's own  
7 admissions and analysis, there are somewhere between  
8 99 and 134 alternative route alignments. Now, how we  
9 get from 99 to 134 to two is problematic. And I think  
10 it's problematic for a reason that I think also  
11 violates NEPA; and that is, they've relied on their  
12 own analysis prepared to a State Certification Act  
13 process. And I think that flies in the face of  
14 Calvert Cliffs, where the total abdication of NEPA  
15 responsibilities to a state agency, not a federal  
16 agency, not subject to NEPA, is inappropriate, and it  
17 doesn't -- it's not appropriate. And in that --

18 CHAIRMAN HAWKENS: Counsel, is there -- do  
19 you detect any tension in your argument where the --  
20 here where the FP&L you argue should not be deferring  
21 to or relying on a state administrative process, and  
22 arguments made by your colleagues beforehand, where  
23 you're using the expertise you say the state agents  
24 have in supporting your contentions.

25 MR. TOTOIU: I agree, Your Honor, but I

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1 think that there's a distinction. I think with -- in  
2 our position that we are looking at those comments,  
3 we're using those comments in terms of admissibility  
4 under the NRC rules for this proceeding.

5 In this instance, what we're dealing with  
6 is a NEPA instance. It's more of a use of that  
7 material to otherwise get around NEPA in its entirety.  
8 I mean, what they're essentially saying is, we're  
9 going to take our own analysis, the State  
10 Certification process, not subject to NEPA, and we're  
11 going to wholesale lift that and put that into the  
12 environmental report. And they would like for you to  
13 adopt it in toto. And it is our position that that  
14 subverts the balancing test that is really at the  
15 heart of NEPA, as Judge Skelly Wright in Calvert  
16 Cliffs articulated so many years ago. And,  
17 furthermore, I mean to -- the argument is --

18 CHAIRMAN HAWKENS: Unless, of course, we  
19 find it to be a reasonable analysis performed by the  
20 state.

21 MR. TOTOIU: True, but I think that in many  
22 instances you run into a problem, because using that  
23 analysis for the purposes of NEPA in this instance  
24 without an independent look by the agency, I think  
25 runs afoul of Calvert Cliffs. And even in the

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1 instance, for instance, if you were to tier to that,  
2 okay?

3 CHAIRMAN HAWKENS: You're postulating that  
4 the NRC Staff would rely blindly on that, and that may  
5 not be a fair assumption.

6 MR. TOTOIU: That's fair. I'm not saying  
7 they would rely on it blindly, but I think what we're  
8 saying here is that FP&L has, essentially, truncated  
9 the analysis so that the only real analysis they're  
10 providing to you is two options. It's either through  
11 Everglades National Park, or next to Everglades  
12 National Park. And I think given the heightened  
13 scrutiny from the case discussed earlier with the  
14 Audubon Society versus the Department of Navy. And,  
15 in that case, it concerned a National Wildlife Refuge.  
16 And the perfect -- it's very analogous in that the  
17 refuge system, it's meant for a network of  
18 conservation lands, protection, very analogous to a  
19 national park system under the Organic Act, 16 USC 1,  
20 where it speaks of non-impairment per preservation for  
21 future enjoyment of future Americans.

22 CHAIRMAN HAWKENS: Do the Joint Petitioners  
23 have a suggestion as to what another reasonable  
24 alternative for the transmission line corridor might  
25 be?

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1 MR. TOTOIU: I'm glad you raised that  
2 point, Your Honor. And I would say with all due  
3 respect, that it is, first, not required under NEPA  
4 for us to submit one.

5 CHAIRMAN HAWKENS: No, I --

6 MR. TOTOIU: Okay. But do we have one? I  
7 think it's --

8 CHAIRMAN HAWKENS: Because of the  
9 obligation under NEPA is to consider reasonable  
10 alternatives.

11 MR. TOTOIU: Right.

12 CHAIRMAN HAWKENS: And what I'm interested  
13 in is, perhaps, they conclude they have considered  
14 reasonable alternatives.

15 MR. TOTOIU: Right. In terms of a specific  
16 route, corridor that we can put on the map, I would  
17 say no, we don't. But in terms of they have to go  
18 back, look at, for instance, why 99 or 134, it's not  
19 exactly clear, I think that number was between  
20 different substations. That's why 99 was assigned to  
21 one route alignment, and 134 for the other.

22 I think it's our position that somewhere  
23 in between in that calculus that it was -- how they  
24 got to it has to be smack dab in the Everglades  
25 National Park, or next to it, I think is very

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1 problematic. The analysis, itself, has -- is even more  
2 limiting in what it's defining itself as. It  
3 recognizes that there are certain self-imposed  
4 limitations that we took in account limitations based  
5 on the layout of the land, et cetera.

6 CHAIRMAN HAWKENS: The existing line  
7 transmission corridor.

8 MR. TOTOIU: What's that? Exactly. Yes,  
9 that's true. But with that said, just because it may  
10 be difficult for the Applicant -- what I'd like to  
11 point the Board's attention to, for instance, is in  
12 the ER they speak of, it wasn't our obvious -- there  
13 are immediately only a few obvious choices for routes.  
14 I mean, the hard look in NEPA goes beyond what's  
15 obvious. I mean, there actually has to be some kind of  
16 digging a little deeper. It may not be on its  
17 surface, there may be technical and practicable  
18 challenges, but that's not to say that alternatives  
19 that are difficult, or there may be certain obstacles,  
20 maybe it's not in someone's jurisdiction. Even to  
21 that extent, can't be considered in an EIS, I think is  
22 wrong.

23 I would conclude, because I don't want to  
24 take up too much time with the folks. I'd like to get  
25 to mitigation and avoidance, if I may.

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1 MR. KIRSTEIN: Just so you know, Joint  
2 Petitioners have 13 minutes and 40 seconds total left.

3 MR. TOTOIU: Okay. Sure, I will be real  
4 brief here with the issue of mitigation. I know the  
5 Board presented a specific question on mitigation, but  
6 I'd like to just preface that before I get into  
7 mitigation, how detailed mitigation has to be. I  
8 think that was one specific question that the Board  
9 raised; is this concept that we don't get to  
10 mitigation until we first avoid and minimize. And I  
11 think avoidance, I think it's clear in Robertson  
12 versus Methal Value that implicit in NEPA is a duty to  
13 avoid, first. And even the theory -- the 10 CFR  
14 51.45, the NRC regs, it speaks of reducing or avoiding  
15 adverse environmental effects.

16 So, our contention is two-fold. You  
17 haven't avoided and reduced, and even if you have,  
18 your mitigation discussion is lacking. And I know I'm  
19 pressed for time, but I'd like to say, I would direct  
20 the Board's attention to Neighborhood Cutty Mountain,  
21 which is a 9<sup>th</sup> Circuit case. It's 137 F. 3d 1372.  
22 That's 9<sup>th</sup> Circuit 1998, that speaks of what is  
23 required in terms of a mitigation discussion. And I  
24 think that there's a lot of similarities here, and in  
25 that case.

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1           What the court rejected was just  
2           conclusory remarks and statements about that maybe  
3           certain mitigation proposals would be implemented,  
4           listing, rattling off best management practices,  
5           fencing, what have you. If you look at those two  
6           cases, I think that in many ways, there's similarities  
7           in the level of detail in terms of just how lacking  
8           the discussion of mitigation is.

9           So, with that, I would close and say that  
10          if nothing more, I think that there is a reasonable  
11          dispute here, and that it is an admissible contention  
12          that needs to be further considered. Thank you.

13                   CHAIRMAN HAWKENS: Thank you.

14                   MS. ATKINS: Good afternoon, Your Honors.  
15          My name is DeKeely Atkins. I'm a third-year law  
16          student, and I will be explaining why Contention Six  
17          satisfies the pleading requirements, and should be  
18          admitted.

19                   Contention Six states that, "The  
20          environmental report fails to adequately address the  
21          cumulative impacts, the construction and operation of  
22          the new units may have on the salinity of the  
23          groundwater in Biscayne Bay, and the aquifer near and  
24          around the Turkey Point facility, as well as the  
25          related cumulative impacts that may be experienced by

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1 the flora, fauna, and wildlife in the area.

2 This contention satisfies all the pleading  
3 requirements set forth in Section 2.309(f)(1).  
4 However, NRC Staff and FP&L only argue that the  
5 contention does not raise a genuine dispute that is  
6 material and adequately supported by facts, or expert  
7 opinion, so I'll focus on those three requirements.

8 First, the contention does raise a genuine  
9 issue of law and fact regarding the data and analysis  
10 that Florida Power & Light is required to include in  
11 the ER. More specifically, how Florida Power &  
12 Light's expansion may exacerbate existing issues on  
13 salinity and derail efforts to restore fresh water  
14 supply throughout the nearby wetlands.

15 Florida Power & Light and Staff are  
16 correct in stating that Joint Petitioners have no  
17 dispute over the fact that the new units will,  
18 potentially, result in increased salinity levels in  
19 the groundwater near Florida Power & Light's property,  
20 and in the Biscayne Bay and aquifer. However, there  
21 is a genuine dispute as to whether the environmental  
22 report adequately assesses the impact of these  
23 increases, and whether FP&L sufficiently supports its  
24 conclusions that practically every cumulative impact  
25 will be, at most, minimal, and, therefore, require no

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1 mitigation.

2 For example, in discussing the effects of  
3 salt drift on vegetation near the cooling towers, the  
4 environmental report provides insufficient data and  
5 analysis, and, thus, provides an unwarranted  
6 conclusion that the impacts will be small.  
7 Specifically, FP&L concedes that vegetation near the  
8 cooling towers will be subjected to salt deposits  
9 attributable to drifts from the cooling towers. Then  
10 it states that "some plant species are more sensitive  
11 to salt deposits than others, but tolerance levels of  
12 most species are not well known." Then without  
13 identifying the specific species that may be affected  
14 by salt drift, or their relative levels of salt  
15 tolerance, Florida Power & Light concludes that  
16 because much of the vegetation includes coastal  
17 mangroves, which tend to be salt tolerant, the  
18 potential impacts of all vegetation in the area will  
19 be small, and not warrant mitigation.

20 Florida Power & Light and Staff find that  
21 these unsupported, generalized conclusions are  
22 sufficient, but Joint Petitioners do not.

23 MR. KIRSTEIN: You have 8 minutes and 30  
24 seconds.

25 MS. ATKINS: Okay. The environmental

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1 report is supposed to provide sufficient data to aid  
2 the Commission in its development of an independent  
3 analysis. And we're suggesting that -- the Joint  
4 Petitioners are suggesting that these cumulative  
5 impacts need to be thoroughly analyzed, and the  
6 environmental report's lack of a thorough analysis is  
7 a genuine issue of law and fact.

8 Second, the issues raised in this  
9 contention are undeniably material. The Commission's  
10 decision whether to approve or disapprove Florida  
11 Power & Light's combined application is dependent upon  
12 the Commission's assessment of environmental impacts  
13 pursuant to NEPA.

14 Contention Six addresses FP&L's failure to  
15 provide the Commission with sufficient data and  
16 analysis to conduct the required assessment and comply  
17 with the Act. There simply is insufficient data to  
18 permit the Commission to take a hard look. Detailed,  
19 quantitative, or qualitative data, and reasonably  
20 foreseeable cumulative environmental impacts is  
21 needed, and Contention Six provides many examples of  
22 where this information, this detailed information is  
23 lacking in the environmental report.

24 Third, the issues raised in Contention Six,  
25 are supported by facts and expert opinion that are

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1 clearly referenced in the petition, and the reply.  
2 The support ranges from publications by independent  
3 scientists regarding the Comprehensive Everglades  
4 Restoration Program, as well as statements and  
5 presentations made by the local water management  
6 district.

7           These secondary sources identify existing  
8 and foreseeable environmental impacts on and near the  
9 Turkey Point facility, and in the surrounding areas  
10 that Florida Power & Light must consider and analyze  
11 in its environmental report, further supporting the  
12 validity of this contention.

13           In conclusion, Contention Six identifies  
14 existing issues of salinity that will likely be  
15 exacerbated by the construction and operation of these  
16 new units. The lack of sufficient data and analysis  
17 on the potential cumulative impacts caused by these  
18 new units is a material issue of law and fact, that is  
19 substantiated by facts and opinions, and should be  
20 admitted for further review. Thank you.

21           CHAIRMAN HAWKENS: Thank you.

22           MR. TOTOIU: Thank you. Jason Totoiu,  
23 again, on behalf of Joint Petitioners. I will be  
24 discussing, very briefly, Contention Eight, because I  
25 see I have about six minutes. Is that correct?

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1. MR. KIRSTEIN: Six minutes, yes.

2. MR. TOTOIU: Great. Thank you.

3. Contention Eight consists of two parts,  
4. one, that ER fails to consider a drop in demand since  
5. 2008, and the ER erroneously relies on state and  
6. regional evaluations to satisfy NUREG-1555, and I will  
7. discuss both of those issues in turn. But I think it's  
8. important to, at least, preface this by saying that  
9. the need for power in this context is the principal  
10. benefit when weighing the benefits and costs of the  
11. proposed project under NEPA. And I would submit that  
12. you rely on a need determination that is problematic,  
13. or is insufficient, or is lacking, and it  
14. fundamentally skews that balancing tests.

15. The dispute exists because Joint  
16. Petitioners contend that the ER's need for power is  
17. based on outdated data; specifically, 2008 Florida PSC  
18. needs determination. And these inadequacies are  
19. evidence that demonstrates that electricity use has  
20. been well below the 2008, and 2009 forecasts relied on  
21. by FP&L, that peak demand will not occur until much  
22. later than one spot, that's 2022 as opposed to 2017.  
23. The in-service date of 2023 and 2024 respectively for  
24. these two units was not the in-service date that was  
25. predicted at the time of the PSC determination. And

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1 since then, the PSC has imposed greater renewable  
2 energy goals than they were once dealing with in 2008.  
3 So, when you look at the four elements as to whether  
4 or not the State Certification process satisfies  
5 NUREG-1555, it doesn't. And, specifically, it doesn't  
6 because it's not systematic, it's not comprehensive,  
7 and it's not responsive to uncertainty. And the  
8 critical point here is because it's locked in. The  
9 2008 PSC determination, we can't revisit. The need  
10 determination has been done, and while there's a 10-  
11 year site plan reviewing process, they can only really  
12 make recommendations. It's not a later, or subsequent  
13 determination that oh, it's no longer needed. So, I  
14 don't think it's responsive to this -- the change, the  
15 uncertainty, especially with the underground realities  
16 that we're dealing with both in terms of a -- for the  
17 first time, I mean, well, not the first time ever, but  
18 in a long time, a population decrease in the State of  
19 Florida evidenced in 2009, a prolonged recession, and  
20 a variety of other issues. So, I think that relying  
21 on the 2008 needs determination, that it's not -- it  
22 doesn't provide you with a full picture of the need  
23 for this project. And, thus, in turn, it skews the  
24 balancing test that is in Calvert Cliffs, was  
25 articulated is really the focal point of NEPA.

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1                   And with that, I would be free to respond  
2 to any questions you might have.

3                   ADMIN. JUDGE KENNEDY: I'm just curious.  
4 If we go back to the uncertainty in forecasting, and  
5 renewables, which, again, we don't have a  
6 quantification of.

7                   MR. TOTOIU: Sure.

8                   ADMIN. JUDGE KENNEDY: What I'm really  
9 curious about is going back to the balancing test. Is  
10 this really going to skew the answer in the context  
11 of, if the project isn't needed at all, or a question  
12 of when the project is needed?

13                  MR. TOTOIU: Well, I think, and correct me  
14 if I misunderstand your question, but I think from our  
15 perspective, it skews it in light of the significant  
16 environmental costs that are associated with this  
17 project. So, if the need -- if it's later determined  
18 that it's really not needed, I think in terms of the  
19 scales here, that the environmental costs clearly -- I  
20 mean, there would be more weight awarded in that  
21 direction in terms of suggesting that the  
22 environmental costs are just too great in light of the  
23 need for the project. Does that answer your -- I'm  
24 sorry if that does not answer your question.

25                  ADMIN. JUDGE KENNEDY: We're getting there.

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MR. TOTOIU: Okay.

ADMIN. JUDGE KENNEDY: It seems like the balancing test is the environmental consequences against the need for the project. Is that the way you characterize it?

MR. TOTOIU: Correct.

ADMIN. JUDGE KENNEDY: And you see significant -- enough uncertainty in the forecasted need for power that it would challenge that balancing?

MR. TOTOIU: We do. I think that if anything else, it's a need that has been significantly questioned in the sense of a time line in which this plant is needed. I mean, when you evidence these various factors and variables come into play, that it, at least, suggests that as of now, given the uncertainties, that the need is not there, and that, at least, that analysis needs to be shored up to demonstrate that that need is there.

ADMIN. JUDGE KENNEDY: I guess the other side of this is, there was some discussion, I think maybe in the answers, about if not this project -- well, the ability to go forward with this project would allow some flexibility to change the mix of generation in the state, or at least from FP&L's

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1 perspective. And although they didn't quantify the  
2 environmental benefits, I think that's the  
3 implication, that there's an environmental benefit  
4 there, as well. So, if your question is one of (a)  
5 it's the balancing question; (b) it's not the absolute  
6 need for the project, but the timing, I mean, I think  
7 there's other factors here in terms of a multi-year  
8 plan for generation mix.

9 MR. TOTOIU: And I think in some ways it  
10 ties in with Contention Nine, which the Board, I,  
11 respectfully, won't get into because the Board hasn't  
12 asked any questions, but I think it plays into Nine in  
13 terms of what other different alternatives are out  
14 there. Is it a cumulative kind of alternative in  
15 terms of fulfilling that need? I think Eight and Nine  
16 kind of work in tandem. I don't know if that is  
17 directly responsive to your question, but that's how  
18 I see it.

19 ADMIN. JUDGE KENNEDY: Just one last  
20 question. On the Calvert Cliffs, is that a recent --  
21 the recent Commission --

22 MR. TOTOIU: No, it's the old Calvert  
23 Cliffs from Judge Skelly Wright back in the '70s.

24 ADMIN. JUDGE KENNEDY: Okay.

25 CHAIRMAN HAWKENS: Thank you. We'll now

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1 hear from the Applicant and the NRC. Are you going to  
2 proceed as you did during this morning's argument?  
3 One second.

4 Absent objection, we're going to take a  
5 10-minute break, give people a little bit to stretch  
6 their legs, and we will resume again at 10 til.

7 (Whereupon, the proceedings went off the  
8 record at 2:39:45 p.m., and went back on the record at  
9 2:52:57 p.m.)

10 CHAIRMAN HAWKENS: Please come to order.  
11 We will now resume and hear the conclusion of today's  
12 argument hearing from both the Applicant and the NRC  
13 Staff, who have been allocated 80 minutes to share to  
14 respond to the Joint Petitioners' argument.

15 MR. HAMRICK: Thank you. Before my time  
16 ends, Your Honor, I would like to just explain that  
17 the Staff and the Applicant have agreed to split their  
18 time with 50 minutes for Florida Power & Light, and 30  
19 minutes for the Staff. And with the Board's  
20 indulgence, we would like to follow the same procedure  
21 we used this morning in arguing Contention One, and  
22 then one, et cetera, if that's acceptable.

23 CHAIRMAN HAWKENS: Thank you. That is  
24 acceptable.

25 MR. HAMRICK: Okay. Thank you.

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1           At the outset, I would like to respond to  
2           some of the arguments made by the Petitioners with  
3           respect to the propriety of relying on state agency  
4           documents as threshold support for contentions.  
5           Almost all of Contention 1 relies on completeness  
6           comments, and completeness questions made by state and  
7           local agencies in Florida that are reviewing a  
8           separate application, FP&L's Site Certification  
9           application. Those comments and questions are their  
10          functional equivalent of what at the NRC is called a  
11          Request for Additional Information, an RAI. And the  
12          Commission has long held that merely citing to an RAI  
13          is insufficient to support an admissible contention.  
14          And they explained their reasoning behind that in the  
15          Oconee license renewal case, which was CLI-9911. And  
16          there, they said the reason is that -- an RAI is, is  
17          it's an ongoing Staff dialogue. It's not a final,  
18          ultimate determination, it's a question. It may have  
19          a reasoned ultimate position behind it, but it may  
20          not. It's simply a question. It would not have any  
21          probative value, necessarily, if it was presented at  
22          hearing.

23                   10 CFR 2309.(f)(1)(5) indicates that  
24                   Petitioners are required to present allegations of  
25                   fact, or expert opinion that they intend to rely upon

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1 at hearing. If the Petitioners took these  
2 completeness comments to hearing, they would have no  
3 probative value as to the sufficiency of FP&L's ER,  
4 because they simply ask questions.

5 CHAIRMAN HAWKENS: Their point, I believe,  
6 though, is that it's not necessarily the question  
7 standing alone, and they would concur with the  
8 principle that a Request for Additional Information  
9 standing alone does not, necessarily, support a  
10 contention, but that's a qualified statement, does not  
11 necessarily. There may be cases where a request for  
12 additional information based on the underlying  
13 assumptions, the underlying facts may support  
14 admissibility of a contention. And I think that's  
15 their position here, that some of the questions asked  
16 by the state agency are based on facts which provide  
17 adequate support for admitting their contentions.

18 MR. HAMRICK: Absolutely, an RAI can form  
19 the basis, part of the basis of an admissible  
20 contention. FP&L's position is that that is not the  
21 case here. Basically, the Petitioners cite the  
22 questions, say the question exists; therefore, FP&L's  
23 application must be materially deficient. That is not  
24 enough.

25 What the Commission said in Oconee was to

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1 say it's the job of the Petitioners to review the  
2 application, and to identify what deficiencies exist  
3 with the application, explain why those deficiencies  
4 are material. So, basically, in the NEPA context --  
5 again, those questions were on a regulatory issue,  
6 not a NEPA issue, so what they have to do is transfer  
7 from the regulatory space, show why that regulatory  
8 concern against a different standard shows that the ER  
9 is not reasonable, which is a different standard under  
10 NEPA. That, I submit, is what is missing here. That,  
11 and again the fact that many of the completeness  
12 comments are simply questions; tell us how something  
13 works? That is not a final opinion, or determination.

14 With respect to the Board's first  
15 question, Question 1A, the application describes two  
16 alternative sources of cooling water. The first and  
17 primary would be reclaimed water from the Miami-Dade  
18 Water and Sewer Department. If that primary source is  
19 not sufficient, the water from the radial collector  
20 wells installed beneath Biscayne Bay would be  
21 utilized.

22 CHAIRMAN HAWKENS: May I interrupt? And  
23 I have a couple of factual questions.

24 MR. HAMRICK: Okay.

25 CHAIRMAN HAWKENS: It would be helpful for

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1 me. What is the maximum amount of reclaimed waste  
2 water that will be made available to you for this  
3 purpose?

4 MR. HAMRICK: The water use permit that the  
5 Water and Sewer Department District has says that they  
6 are required to provide up to 70 million gallons per  
7 day. The project would only require 60 million  
8 gallons per day. And that is an incorrect assertion  
9 in the petition that it would require up to 90, I  
10 believe. The correct value is only 60.

11 CHAIRMAN HAWKENS: Okay. So, the  
12 reclaimed waste water could provide in excess of 100  
13 percent of the needs of the proposed units.

14 MR. HAMRICK: Correct. That is the primary  
15 plan, correct. However, there is a potential if for  
16 whatever reason on a certain day there may be a  
17 problem, for that reason the alternative supply would  
18 be these radial collector wells. The total amount of  
19 water for the radial collector wells will be slightly  
20 high, or double, actually. If you were to operate 100  
21 percent of just the radial collector wells, it would  
22 require 124 million gallons per day. And in order to  
23 analyze the salinity impacts of those operations, FP&L  
24 performed a conservative bounding analysis, and  
25 assumed we're operating 100 percent off water from the

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1 radial collector wells with no reclaimed water. And  
2 FP&L then used a groundwater model, which -- yes?

3 CHAIRMAN HAWKENS: Going back, you say the  
4 project requires 60 million a day, but did I  
5 understand you to say that using the wells, you would  
6 require 124 million gallons a day?

7 MR. HAMRICK: Yes, there are differences --  
8 the reclaimed water would be fresh water, this would  
9 be salt water, so there are differences with the way  
10 the plant would operate under those different types of  
11 water.

12 FP&L then performed -- used the  
13 groundwater model and determined 92 to 100 percent of  
14 the water from the radial collector wells would come  
15 from recharge from Biscayne Bay, itself. And FP&L  
16 concluded in its ER that that amount of water, 92 to  
17 100 percent of 124 million gallons a day would be a  
18 very small amount compared to the larger natural  
19 freshwater recharge that comes into the Bay. And for  
20 that reason, the impacts would be minimal.

21 The Petitioners argue that FP&L assumed  
22 that the salinity would be constant, and that's not  
23 the case. In fact, the analysis was -- relied upon  
24 the fact that there is natural freshwater recharge  
25 into the Bay. As to groundwater, the remainder of the

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1 124 million gallons per day of the conservative  
2 bounding analysis would come from the surficial  
3 aquifer underneath the plant property, and out  
4 underneath Biscayne Bay. That's zero to 8 percent of  
5 the total.

6 FP&L noted in the ER that --

7 CHAIRMAN HAWKENS: I'm trying to keep up  
8 with you. That comes from where, the zero to 8  
9 percent?

10 MR. HAMRICK: The zero to 8 percent would  
11 come from the aquifer, the groundwater beneath the  
12 plant property, and out under Biscayne Bay, where the  
13 radial collector wells are located. That water the ER  
14 describes as not potable. The ER explains that there  
15 has been salt water intrusion up to six to eight miles  
16 inland in that area, so that water is not used as a  
17 drinking source. So, therefore, FP&L's --

18 CHAIRMAN HAWKENS: Where is that in the  
19 ER?

20 MR. HAMRICK: That is in -- it's page 5.2-  
21 22 is where this impact analysis is performed. It  
22 says that water is not a source of drinking water, not  
23 potable water. So, therefore, the ER says that  
24 because that water is not used as a drinking supply,  
25 there would be minimal effects to the sources of

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1 groundwater where it is used as a water source. So,  
2 that's how FP&L performed its analysis, as described  
3 in the ER.

4 ADMIN. JUDGE BURNETT: Could I interrupt  
5 here, too?

6 MR. HAMRICK: Certainly.

7 ADMIN. JUDGE BURNETT: I looked at that  
8 section several times, and I didn't really see an  
9 analysis. I saw conclusions that the effects on the  
10 salinity in Biscayne Bay would be small, or minimal.

11 MR. HAMRICK: Correct.

12 ADMIN. JUDGE BURNETT: But I didn't see any  
13 analytical data, I didn't see references to some model  
14 that had been done to show that that's the case.  
15 Surprisingly, to me, I found as an exhibit in the  
16 petition from Case, it was an exhibit that was a  
17 PowerPoint presentation given by Florida Power & Light  
18 concerning salinity variations, and what would happen  
19 with the radial collector wells if they were used.  
20 And I actually copied some of the pages. And it does  
21 indicate, it doesn't have a lot of detail, but it does  
22 indicate that some modeling was done to show what  
23 would happen. And the conclusion in this presentation  
24 was that --

25 MR. HAMRICK: That is correct.

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1 ADMIN. JUDGE BURNETT: -- the effects are  
2 small. But I didn't see this mentioned anywhere in  
3 the ER. Did I miss it?

4 MR. HAMRICK: No. That gets to the Board's  
5 question on what level of detail is required in an ER.  
6 FP&L did perform a salinity impacts analysis that was  
7 provided to the State of Florida as part of its Site  
8 Certification application. However, under NEPA, 10  
9 CFR 51.45(b)(1) explains that impacts are to be  
10 described in proportion to their significance. Here,  
11 FP&L has the analysis to show that the impacts would  
12 be small. And, for that reason, there wasn't the need  
13 to flood the ER with reams of data, so FP&L was  
14 required to submit that to the state, but did not to  
15 the NRC.

16 That's an important and interesting issue,  
17 but I want to highlight that's not what the contention  
18 is here. The contention is not there's a missing  
19 quantitative analysis. The contention is you have  
20 performed an analysis, and the way you did it was you  
21 assumed the salinity would be constant. And that is  
22 incorrect.

23 So, when faced with a lack of data, the  
24 Petitioners have, basically, two options. One, they  
25 can say you've omitted a necessary analysis. That's

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1 my contention. The other option is to guess at how it  
2 was performed, and say that is inadequate. That's  
3 what the Petitioners have done here. They have  
4 guessed at how --

5 ADMIN. JUDGE BURNETT: Excuse me. I was  
6 under the understanding that the constant density  
7 model was for another purpose. It was to show how much  
8 groundwater would be affected relative to sea water.  
9 It was not designed to test the salinity variation.

10 MR. HAMRICK: That's absolutely correct.

11 ADMIN. JUDGE BURNETT: But that's not what  
12 you just said, is it?

13 MR. HAMRICK: No, I said the Petitioners  
14 are arguing that the way FP&L analyzed salinity was to  
15 assume it was constant. We pointed out in the answer  
16 that is not what we did. There was a constant density  
17 assumption in the groundwater model for the limited  
18 purpose of determining where the water would come  
19 from. That has not been challenged. The Petitioners  
20 have no challenge to the concept that 92 to 100  
21 percent of the water would come from the Bay, and up  
22 to 8 percent would come from the groundwater. So,  
23 their challenge of the constant density assumption in  
24 the groundwater model, they haven't shown that as  
25 material.

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1                   And with that, I'm well over my time. If  
2 you have any further questions, I would be happy to  
3 entertain them on Contention One.

4                   CHAIRMAN HAWKENS: I do have a further  
5 question.

6                   MR. HAMRICK: Okay.

7                   CHAIRMAN HAWKENS: I understand your  
8 argument that the length and depth of discussion  
9 should be linked to the significance, and here because  
10 you concluded it was an insignificant impact, or  
11 modest, small impact, you felt it was unnecessary to  
12 include a discussion of the model.

13                   MR. HAMRICK: Correct.

14                   CHAIRMAN HAWKENS: That may be correct as  
15 a matter of law, but doesn't it make more sense when  
16 we're dealing with such a fragile ecosystem, and where  
17 FP&L wants -- doesn't want to be perceived as saying  
18 small impact, you can trust me. It would include it,  
19 so it could be a part of the DEIS, be subject to  
20 public comment, which would give rise to greater  
21 confidence of the public.

22                   MR. HAMRICK: Unfortunately, I have three  
23 answers to that, so it's going to take a little bit of  
24 time.

25                   CHAIRMAN HAWKENS: I'm interested in all

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1 three.

2 MR. HAMRICK: All right. The first answer  
3 is that, that's not the contention that was presented.  
4 Again, as I was explaining to Dr. Burnett, the  
5 contention wasn't you have omitted that analysis, it  
6 was that it was done incorrectly.

7 Second is that, in NEPA --

8 CHAIRMAN HAWKENS: Well, I'm looking at the  
9 contention here, whether you failed to adequately  
10 address the direct/indirect cumulative impact of the  
11 radial collector wells on salinity levels. To me,  
12 that's a contention challenging the adequacy of your  
13 discussion in the ER of the impact.

14 MR. HAMRICK: To the extent they say that  
15 FP&L failed to assess it, that is --

16 CHAIRMAN HAWKENS: Failed to adequately  
17 assess.

18 MR. HAMRICK: The way they characterized  
19 the assessment is to say that FP&L assumed that  
20 salinity was constant, and that's a  
21 mischaracterization of the ER. What they don't say  
22 is, there should be a quantitative analysis somewhere,  
23 and it's missing. That's not what's included.

24 CHAIRMAN HAWKENS: In your ER, did you  
25 affirmatively state that we conducted an analysis

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1 using a particular model, and determined that the  
2 impact would be minimal to give them a clue?

3 MR. HAMRICK: We did not mention a model,  
4 but we described that the -- no, we described the  
5 outcome, the conclusion. And your question about  
6 whether we should have --

7 CHAIRMAN HAWKENS: You stated the outcome.

8 MR. HAMRICK: Correct. Correct. Again,  
9 your question about whether the NRC Staff would need  
10 this to perform their review, it certainly would be  
11 available to them in their audit.

12 CHAIRMAN HAWKENS: So, in other words, your  
13 position is that what you've done, and what you're  
14 able to provide to the NRC in support of what you've  
15 done is sufficient to aid them in the performance of  
16 their NEPA responsibilities.

17 MR. HAMRICK: Yes. And, in fact, as part  
18 of their auditing process, and their Staff review,  
19 they have asked questions about it, and FP&L will be  
20 providing this detailed model in a revision to the COL  
21 in December.

22 Finally, the 3<sup>rd</sup> Circuit in the --

23 CHAIRMAN HAWKENS: So, this answer  
24 providing the discussion of the model, and your use of  
25 it will be put in the public record next month?

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1 MR. HAMRICK: Absolutely. That is the  
2 plan, correct. Yes. Again, I will rest at that  
3 point, unless you have any further questions.

4 CHAIRMAN HAWKENS: No, thank you.

5 MR. MOULDING: Your Honor, I'll be  
6 addressing the Board's questions with respect to  
7 Contention One for the Staff.

8 The Board asked first how FP&L arrived at  
9 its conclusions regarding radial well impacts, and  
10 what level of detail FP&L is required to provide. I  
11 need to emphasize at the outset that the Staff is  
12 still reviewing the application, including determining  
13 whether to request additional information about the  
14 environmental report. Therefore, contrary to what the  
15 Joint Petitioners seem to suggest in their reply, and  
16 also in argument today, the Staff has not taken a  
17 position on whether FP&L's analysis and conclusions  
18 are accurate, or sufficiently supported, or whether  
19 they comply with NEPA. Both for that reason, and --

20 CHAIRMAN HAWKENS: But they're correct in  
21 representing that you have indicated an interest in  
22 the modeling, and that you requested them to supply  
23 that to you?

24 MR. MOULDING: I wouldn't disagree with  
25 that. The Staff has not issued any Requests for

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1 Information at this time, and I guess I would just  
2 emphasize that the review is ongoing, and what the  
3 Petitioners seem to have suggested is that the Staff  
4 is agreeing with the contents of the application in  
5 our answer, and I just wanted to clarify that we've  
6 looked at what the contents of the ER are, and  
7 described where information appears to be in the  
8 application or not.

9 Both for that reason, and because this  
10 stage of the proceeding is only concerned with  
11 contention admissibility, the Staff's answer to the  
12 petition focused only on what FP&L has asserted in its  
13 application, and did not depend on assumptions or  
14 inferences about FP&L's methods, or reasoning. So, to  
15 the extent that the Board is seeking the Staff's views  
16 on the basis for FP&L's conclusions beyond what is  
17 stated in the application, the Staff cannot answer  
18 that question at this time.

19 The Staff's answer explained that  
20 Contention One is inadmissible because, among other  
21 things, it did not identify and support its material  
22 dispute with the application. But I do want to  
23 reiterate that this position does not indicate or  
24 depend on the Staff's views on the merits of the  
25 application.

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1           With respect to the level of detail  
2 required of the Applicant, we think it's best to  
3 answer this question together with one of the other  
4 questions from the Board regarding what decision  
5 supports the Staff's view on the appropriate level of  
6 detail required to aid the Commission in the  
7 performance of its NEPA analysis.

8           The adequacy of the ER's description of  
9 environmental impacts is always a fact-specific  
10 determination based on the contents of a particular  
11 application, and the nature and magnitude of impacts  
12 at the particular site. While a number of NRC cases  
13 reference the language in Section 51.45, that the ER  
14 is to aid the Commission in the performance of its  
15 NEPA analysis, those cases do not indicate a universal  
16 standard for what level of detail is necessary to  
17 satisfy it.

18           However, that's unsurprising given that  
19 the same regulation emphasizes that for the  
20 significance of potential impacts -- emphasizes that  
21 impacts are to be discussed in proportion to their  
22 significance, and the significance of potential  
23 impacts ultimately depends on both the particulars of  
24 the action, and the site. But we understand the  
25 Board's question to be focused on how that 10 CFR Part

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1 51 provision bears on contention admissibility, and  
2 the Commission's NEPA case law does address the  
3 relationship between the level of detail needed in an  
4 ER, and the obligations of a Petitioner seeking to  
5 raise environmental challenges.

6 In particular, we'd emphasize the  
7 Commission's decision in the Grand Gulf Early Site  
8 Permit proceeding, CLI05-4, which was cited in the  
9 Staff's answer. The Commission there noted that, "At  
10 NRC licensing hearings, Petitioners may raise  
11 contentions seeking correction of significant  
12 inaccuracies and omissions in the ER. Our Boards do  
13 not sit to flyspeck environmental documents, or to add  
14 details or nuances. If the ER or EIS on its face  
15 comes to grips with all important considerations,  
16 nothing more need be done."

17 The Grand Gulf decision cited an earlier  
18 Commission case, Hydro Resources at CLI01-4, and has  
19 itself been subsequently relied on by the Commission,  
20 including, for example, in the Clinton Early Site  
21 Permit proceeding, CLI05-29. And the central concept  
22 of significance, as it relates to the materiality  
23 requirements for contention admissibility is  
24 emphasized by many other cases, as well as by the  
25 regulations, themselves, in 51.45(b)(1).

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1           This is, ultimately, the same case law  
2           that the Staff would point to in response to the  
3           Board's related questions for Contentions Three and  
4           Five in the context of cumulative impacts and  
5           alternatives. Likewise, whether impacts, and  
6           alternatives, and mitigation are discussed in  
7           sufficient detail is, ultimately, a fact-specific  
8           determination. But what the contention admissibility  
9           requirements ultimately emphasize is that for a  
10          contention to warrant further scrutiny in an  
11          evidentiary hearing, a Petitioner who disagrees with  
12          the application must do more than allege the mere  
13          potential for impacts to occur.

14                 The Petitioner must explain with  
15          specificity why the application's treatment of that  
16          issue is deficient, and why those alleged failings  
17          would, ultimately, make a difference to the outcome of  
18          the proceeding. If the Petitioner thinks that an ER's  
19          discussion and conclusion on a topic is incomplete,  
20          inadequate, or conclusory, it needs to identify those  
21          portions of the ER in the initial petition, and  
22          explain the basis for the material disagreement. So,  
23          in other words, at this stage, the focus of the  
24          inquiry is not what NEPA requires in the abstract, or  
25          even whether this environmental report, itself,

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1 complies with NEPA, but whether the Petitioners have  
2 adequately identified and supported their disagreement  
3 with respect to the facts of this application.

4 So, as explained in the Staff answer, the  
5 Petitioners have not done so in Contention One. But  
6 it appears to the Staff that the Board's question  
7 regarding the level of detail in the ER closely  
8 relates to an argument that is raised repeatedly in  
9 the Joint Petitioners reply, and to which the Staff  
10 considers it important to respond.

11 Namely, the Joint Petitioners assert that  
12 the Staff is exaggerating the contention admissibility  
13 requirements, and inappropriately attempting to shift  
14 the burden of complying with NEPA to the Petitioners.  
15 In other words, demanding that they definitively prove  
16 that the alleged impacts will, in fact, occur; and,  
17 indeed, that they must conduct in full the analysis  
18 that they claim is absent from the ER. But that does  
19 not accurately describe either the Staff's position,  
20 or the relevant standard for contention admissibility.

21 The Staff is not contending that the  
22 Petitioner must prove that impacts will occur in order  
23 to offer an admissible contention, or that it must  
24 prepare its own analysis to demonstrate what the ER or  
25 EIS should have included.

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1           In any event, despite what the Petitioners  
2 appear to believe, no one is disputing that the  
3 agency, that the NRC must, ultimately, prepare an EIS  
4 that complies with NEPA, or that the ER is intended to  
5 provide the NRC with adequate information to be a  
6 starting point for the Staff review.

7           In short, these protests from the  
8 Petitioners are, ultimately, a distraction from the  
9 relevant --

10          CHAIRMAN HAWKENS: Excuse me. I just want  
11 to make sure I heard that last sentence correctly --

12          MR. MOULDING: Yes, sir.

13          CHAIRMAN HAWKENS: -- that it's not to be  
14 assumed that the ER should provide the NRC Staff with  
15 complete information for it to perform its NEPA  
16 analysis?

17          MR. MOULDING: No, I'm saying no one is  
18 disputing that the ER is intended to aid the  
19 Commission in the analysis.

20          CHAIRMAN HAWKENS: Okay.

21          MR. MOULDING: Sorry for the confusion.

22          In short, these protests from the  
23 Petitioners are, ultimately, a distraction from the  
24 key issue of what 2.301(f)(1) does require in the  
25 first instance from those who seek to have

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1 environmental contentions admitted. That requirement  
2 is to provide sufficient support to articulate why  
3 asserted environmental impacts would be reasonably  
4 foreseeable, rather than simply remote and  
5 speculative. And, if so, why those alleged omissions  
6 or inadequacies would be, at least, potentially  
7 significant, rather than simply flyspecking, as the  
8 Commission put it in Grand Gulf ESP. And,  
9 furthermore, whether ER includes some discussion of an  
10 impact, and reaches a conclusion as to its  
11 significance, the Petitioner cannot ignore or talked  
12 past that discussion to demonstrate a genuine dispute.  
13 It is the Petitioner's burden to describe specifically  
14 how the position controverts that taken in the ER.

15           Regardless of whether the Petitioners  
16 think the ER's treatment of an issue is conclusory, or  
17 cursory, the petition must, at least, identify and  
18 dispute those portions of the application, or else the  
19 parties and this Board cannot reasonably assess  
20 whether there is a material deficiency, or whether the  
21 Petitioner simply overlooked the relevant contents of  
22 the application.

23           The Board also asked whether there is  
24 deference to a Staff view that the ER is adequate  
25 prior to the Staff's issuance of its Draft EIS.

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1 First, speaking generally, there would be no deference  
2 due to such a Staff position at this stage in a  
3 proceeding. But, more importantly, as just discussed,  
4 the Staff has not yet taken on the sufficiency of the  
5 ER's analysis and conclusions, so there is no Staff  
6 position at this time on whether 51.45 has been  
7 satisfied.

8 As explained before, the Staff's answer to  
9 the petition is limited to pointing out whether  
10 certain information or analysis is contained in the  
11 ER, and whether the petition has disputed that  
12 information in a way that satisfies the standards for  
13 contentions.

14 Finally, to answer the Board's overarching  
15 question, Contention One is inadmissible, as explained  
16 in the Staff answer, because it does not meet the  
17 criteria in 2.309(f)(1)(4), (5), and (6). In each  
18 sub-contention, the Petitioner does not explain why  
19 impacts would be reasonably foreseeable, does not  
20 explain in what way the impacts would be potentially  
21 significant, or does not directly controvert the  
22 Applicant's treatment of those impacts in the ER.

23 As one example, with respect to Contention  
24 1.1, where the ER contains a discussion of radial well  
25 impacts that describes the affected environment,

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1 acknowledges potential effects on salinity, and  
2 reaches a conclusion of small impacts, the petition  
3 that asserts little more than that some effects on  
4 salinity might result and, in turn, have some  
5 unspecified adverse effects on the ecosystem, does not  
6 meet the Commission's threshold for material dispute.

7 Consistent with 2.309(f)(1)(4) and (6),  
8 the Petitioners needed to articulate why the asserted  
9 potential impacts represent a dispute with the  
10 analysis and conclusions that are in the ER, and why,  
11 if correct, that would make a difference in the  
12 outcome of the proceeding.

13 Well, again, that doesn't mean that they  
14 must prove that impacts will occur. It does mean that  
15 there needed to be some articulation of why that  
16 difference would be environmentally significant, for  
17 example, other than small impacts, as asserted by the  
18 Applicant, not simply flyspecking for nuances.

19 With respect to Contention 1.5, the Staff  
20 also notes that the Petitioner has offered a number of  
21 new arguments and exhibits in their reply all directed  
22 at the claim that a hyper saline plume was  
23 insufficiently analyzed in the ER. Because these  
24 claims could have been raised in the initial petition,  
25 and were not simply responding to unanticipated

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1 arguments in the FP&L or Staff answer, this is an  
2 attempt to provide the necessary threshold support for  
3 the contention in the reply.

4 The Petitioners concluded that the  
5 relevant sections of the ER were impermissibly  
6 conclusory or inadequate, that they needed to have  
7 asserted those argument in the petition, itself, so  
8 that the Staff and Applicant could consider those  
9 claims.

10 Unless the Board has any further  
11 questions, we're prepared to move on to Contention  
12 Two.

13 CHAIRMAN HAWKENS: Please, proceed.

14 MR. HAMRICK: Before we move to Contention  
15 Two, I would like to correct the record. I misspoke  
16 with respect to Contention One. The model that will  
17 be submitted in December is a revision of the  
18 groundwater model that has already been included in  
19 FSAR Appendix 2CC. I stated that it would be the  
20 salinity impact analysis, and that was incorrect.  
21 It's a revision to the groundwater model that will be  
22 submitted in December. I apologize for the confusion.

23 MR. FERNANDEZ: Your Honor, with regard to  
24 Joint Petitioners Contention Two, I will take the bulk  
25 of the time to address Questions 2, 3, and 4 posed by

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1 the Board. With regard to Question 1, I will make a  
2 brief statement, and refer the Board to our written  
3 filings to accommodate the extra amount of time that  
4 was spent on Contention One. I think the pleadings in  
5 response to Contention Two are rather robust, and  
6 other than some minor points, they speak for  
7 themselves.

8 With regard to Contention Two, the Board  
9 asked two questions about the EPA document that was  
10 submitted by the Petitioners. The EPA document does  
11 not support the arguments being propounded by the  
12 Petitioner. In fact, the EPA document contradicts the  
13 claim that significant impacts would occur from the  
14 use of deep well injection. I would refer the Board  
15 to page 70523, first column of the Federal Register  
16 Notice from the EPA's Final Rule, where the EPA,  
17 itself, explains that it concludes that there is low  
18 risk to human health and the environment from the use  
19 of this technology.

20 Additionally, the proposed plan that FP&L  
21 has put before the NRC, and has explained in great  
22 detail in the answer from the Applicant, specifically  
23 states that FP&L intends to comply with the regulatory  
24 requirement that's described in the exhibit proposed  
25 by the Petitioner.

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1                   Additionally, this particular reference to  
2                   the EPA document is an example of a defect suffered by  
3                   various of the contentions proposed by the Petitioner,  
4                   by the Joint Petitioners in this case, in that there  
5                   is a logical leap that Petitioners are making beyond  
6                   what's actually represented by the exhibit. And this  
7                   defect applies to whether they're relying on RAIs from  
8                   state and local agencies, or, in fact, this final rule  
9                   document from the EPA. And the defect is that the  
10                  exhibit in this particular case, as in the other  
11                  cases, does make certain statements about generally  
12                  the issue that the Petitioners are complaining about.  
13                  But, in fact, the document does not really state  
14                  anything specifically with regard to the Applicant's  
15                  proposal before the agency, either as reflected in the  
16                  ER or the FSAR.

17                         For example, the final rulemaking from the  
18                         EPA addresses perceived incursions of injectate into  
19                         the U.S. drinking water supply from several water  
20                         waste treatment facilities in some counties in  
21                         Florida. The final rule in no place addresses the  
22                         proposal that FP&L intends to make. I believe it was  
23                         Judge Burnett that asked the question that's quite  
24                         telling of this issue, about well, what did the  
25                         Petitioner say about the density of the injectate that

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1 FP&L proposes to have in this application? And  
2 nowhere in the exhibit is that detailed. And,  
3 actually, it takes counsel to explain what their  
4 interpretation is of what's described in the ER.  
5 However, counsel is not an expert, and counsel is not  
6 really qualified to offer views about what the  
7 porosity, or behavior of the boulder zone. An expert  
8 would be required, or a factual document, or a  
9 technical document. The technical document that  
10 they're relying on to make the assertion that the  
11 proposal for the Applicant is not adequate, or in some  
12 way suspect, it's a document that it's a generic  
13 rulemaking, which we intend to follow, and we're  
14 required to implement as a permittee under that  
15 particular rule. And that really does not create a  
16 controversy with the proposal that we're addressing  
17 here, because it doesn't address the proposal before  
18 the Commission. It addresses generic waste water  
19 treatment facilities. FP&L is not proposing to build  
20 such a facility. While the application may be the  
21 same, in the course of permitting that, I'm sure the  
22 State of Florida under its delegated authority from  
23 the EPA, will examine FP&L's proposal, the drilling  
24 techniques, the porosity or no porosity, the geology  
25 of the site.

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1                   Based on the information that FP&L had  
2 available to it at the time that the ER was submitted,  
3 FP&L came to the conclusion that it is not reasonably  
4 foreseeable that the incursion of injectate into the  
5 U.S. drinking water supply would occur. That fact has  
6 not been challenged by any technical expertise, or  
7 factual, other than by counsel's logical jump from a  
8 generic document that was promulgated by the EPA in a  
9 final rule to make the assertion that at this site, on  
10 this application, the EPA made some sort of claim  
11 about the adequacy of the proposal. That is  
12 completely ridiculous.

13                   The EPA was talking back in 2005, it was  
14 promulgating a general rule, and, in fact, when  
15 closely examined, if you look at the document, it  
16 comes to a completely different conclusion than the  
17 one that the Petitioners advance, in which the EPA  
18 concludes that this particular method of disposing of  
19 waste water does not pose a risk to the environment,  
20 or to human health. So, in the end, proclaiming that  
21 this exhibit in any way supports the argument that  
22 they're trying to advance is completely incorrect.

23                   Also, briefly, we'd like to mention with  
24 regard to materiality, and lack of support for the  
25 contentions and the sub-parts in Contention Two. I

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1 think the best example, because I don't want to take  
2 too much of the Staff's time, this example is  
3 Contention 2.2.

4           - Contention 2.2, when it was originally  
5 filed, was a contention of omission. And I would --  
6 we would ask the Board to closely examine, and  
7 compare and contrast the contentions as they were pled  
8 in the original petition, and as the -- I think  
9 somebody followed the term earlier, the chameleon  
10 contention. All of a sudden, it became in the reply  
11 from the Petitioners, a different contention than the  
12 one that was pled. As Co-Counsel Hamrick had earlier  
13 said, it's longstanding Commission precedent that that  
14 is not allowed. A reply is not an opportunity for the  
15 Petitioners to enlarge, or in any way change the  
16 petition that was originally filed. And that's a  
17 defect that affects several of the contentions filed.

18           And I will conclude just merely by  
19 stating, and using 2.2, again, as an example. When  
20 they allege that there was an omission in the  
21 environmental report, and then presented with the  
22 actual passages of the environmental report that  
23 address the issues, they said oh, well, we didn't mean  
24 that it was omitted, it was that it wasn't adequate.  
25 Well, the reply is not the place to make that

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1 argument.

2 And, in addition to that, if you're going  
3 to argue that something is inadequate, you need to  
4 provide a basis, either in law, fact, or a technical  
5 expert that explains why the deficiency is somehow  
6 material to the findings that the NRC must make. And  
7 in all of their contentions, the Petitioners have  
8 sorely failed to do that.

9 I will stop talking, unless the Board has  
10 any questions.

11 CHAIRMAN HAWKENS: Counsel, did you address  
12 the last sentence in our areas of concern in the order  
13 which has addressed the criticism advanced in Joint  
14 Petitioners' reply of the model used by FP&L?

15 MR. FERNANDEZ: It was an oversight, Your  
16 Honor. Yes. This is the first time in the reply --  
17 this is another great example. The reply is the  
18 first time that the Joint Petitioners decide to raise  
19 this issue about the LADAPT model. It was not raised  
20 in their petition. For the first time, they raised it  
21 in their reply. The merits of whether the LADAPT  
22 model is or is not an adequate modeling tool to model  
23 for the purpose that it was used in the environmental  
24 report, may or may not be an adequate contention to be  
25 admitted before this Board.

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1           However, I would advance that the reply is  
2 not the place to do that. It's in the original  
3 petition. Their claims regarding LADAPT model, as  
4 explained in our Motion to Strike, did not come to  
5 their mind to be raised until they replied to our  
6 answer. So, therefore, it's an inadequate argument to  
7 make, and wholly unsupported in the reply, if I may  
8 add.

9           I've taken too much of my time. Unless  
10 the Board has any more questions, I pass the time over  
11 to the Staff now.

12           MS. PRICE: Good afternoon, Your Honors.  
13 Sarah Price, again, for the NRC Staff. I'll be  
14 answering your questions regarding the Joint  
15 Petitioners' Contention NEPA 2.

16           As explained in the Staff answer,  
17 Contention NEPA 2 is not admissible because it does  
18 not meet the admissibility criteria of  
19 2.309(f)(1)(4), (5), and (6). With respect to the sub-  
20 parts of Contention NEPA 2, the petition fails to  
21 explain why the alleged impacts would be material,  
22 does not explain in what way the impacts would be  
23 potentially significant, or does not directly  
24 controvert the Applicant's treatment of those impacts  
25 in the ER.

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1           In their reply, the Petitioners assert  
2           that the Staff and the Applicant are again attempting  
3           to shift the burden to the Joint Petitioners,  
4           requiring them to indicate what potential impacts will  
5           be, and the likelihood these impacts will occur.  
6           However, what is important at this stage of the  
7           process is what 2.309(f)(1) requires of Petitioners in  
8           their initial pleading. In order to demonstrate a  
9           genuine dispute, it is the Petitioners' burden to  
10          describe specifically how their position controverts  
11          that taken in the ER.

12           The Staff's primary objection to the  
13          admissibility of NEPA 2.1 is the Petitioners' reliance  
14          on the conclusory statement that the ER is based on a  
15          faulty assumption that no vertical migration of  
16          effluents from the boulder zone will occur. The  
17          Petitioners' only supporting documentation is the 2005  
18          EPA Federal Register Notice from which they quote a  
19          portion of the background section. However, the ER  
20          includes a discussion of the Applicant's belief of the  
21          likelihood of vertical migration, as well as a lengthy  
22          discussion of the state and local permitting  
23          requirements designed to prevent migration, and  
24          potential impacts.

25           The Petitioner's contention, therefore,

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1 does not address the bases for the Applicant's  
2 assumptions regarding the likelihood of vertical  
3 migration, or the basis for the Applicant's reliance  
4 on well construction and monitoring to prevent such  
5 potential impacts.

6 With respect to Contention NEPA 2.2, the  
7 Petitioners assert two main points related to the ER's  
8 alleged failure to discuss the impacts associated with  
9 the construction of pipelines to convey the reclaimed  
10 waste water to the plant's waste water treatment  
11 facility. The Petitioners assert impacts to SERP as  
12 a result of the potential conflict between culverts  
13 being installed by the South Florida Water Management  
14 District for the SERP project, and FP&L's installation  
15 of the reclaimed water pipeline, and that there will  
16 be impacts to wetlands from pipeline construction,  
17 which has not been addressed in the ER.

18 However, with respect to the alleged  
19 conflict with SERP, even if the Petitioners were  
20 correct that there was a potential conflict, neither  
21 the petition, nor the cited exhibit, explain what the  
22 impacts from such a conflict would be, or why their  
23 environmental significance would contradict the ER's  
24 conclusions with respect to any particular resource  
25 contrary to 2.309(f)(1)(6).

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1           In their reply, the Joint Petitioners  
2 attempt to turn this contention from one of omission  
3 to one of adequacy. It is this conversion of the  
4 contention which is the subject of FP&L's Motion to  
5 Strike components of the Joint Petitioners' reply to  
6 Contention NEPA 2.2. And the Joint Petitioners' reply  
7 is not a legitimate amplification of an issue already  
8 raised, because the original petition asserted that  
9 there was no analysis.

10           The bases of proposed Contention NEPA 2.3  
11 do not meet the criteria of 2.309(f)(1)(4). Because  
12 the Petitioners have not alleged any environmental  
13 impacts to SERP, which could be expected to result  
14 from the Applicant's use of reclaimed waste water, the  
15 petition fails to demonstrate that the issue is  
16 material to the findings that the NRC must make to  
17 supports its environmental review. In sum, none of  
18 the sub-parts of NEPA 2 is admissible under  
19 2.309(f)(1).

20           The Board has also asked the Staff to  
21 address whether the Joint Petitioners' reliance on  
22 the 2005 EPA FRN provides the requisite alleged facts  
23 or expert opinion to support the claim of similar  
24 environmental impacts from the two new units. In  
25 short, the Staff's answer to this question is no. It

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1 is well settled that a document put forth by an  
2 intervener as the basis for a contention is subject to  
3 scrutiny both for what it does, and does not show.

4 The 2005 EPA Federal Register Notice does  
5 provide a brief history of impacts, which have been  
6 identified and connected to operation of deep  
7 injection wells in Florida. However, reliance on the  
8 FRN ignores the Florida Department of Environmental  
9 Protection requirements for issuance of permits for  
10 industrial wells.

11 FP&L has provided numerous sections  
12 discussing the construction and monitoring  
13 requirements for operation of their municipal -- of  
14 their injection wells. Therefore, citing to this  
15 document does not provide the requisite alleged facts  
16 or expert opinion necessary to support the claim that  
17 operation of Units 6 and 7 will result in vertical  
18 migration of effluents, or that such migration and the  
19 associated impacts are reasonably foreseeable.

20 The Board has also asked the Staff to  
21 address the kinds of impacts that the Applicant would  
22 be required to study with respect to operation of deep  
23 injection wells. As with all ERs, an applicant is  
24 required to analyze activities that are reasonably  
25 foreseeable, and result in potentially significant

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1 impacts to resource areas.

2 As outlined in the Staff's Environmental  
3 Standard Review Plan, NUREG-1555, these impacted  
4 resource areas might include groundwater, surface  
5 water quality, aquatic biota, and non-radiological  
6 health. Consistent with 10 CFR 51.45(b), these  
7 impacts are to be discussed in proportion to their  
8 significance.

9 Finally, with respect to Contention NEPA  
10 2, the Board has asked the parties to address the  
11 criticism advanced in Joint Petitioners' reply at the  
12 model used by FP&L. Again, the Staff has not  
13 completed its review of the application, and has  
14 reached no conclusions regarding the adequacy of the  
15 applicant's model, or its bounding analysis.

16 As a threshold matter, complaints about  
17 the model could have been raised in the original  
18 petition. The Joint Petitioners' criticism of the  
19 model is a new argument raised for the first time in  
20 its reply. In any event, the Joint Petitioners'  
21 criticism of the model used by the Applicant appears  
22 to be based on a misunderstanding of the Applicant's  
23 use of that model in the ER.

24 The Applicant's bounding analysis assumes  
25 that reclaimed waste water injected into the boulder

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1 zone will travel approximately 9,000 feet as  
2 groundwater before it reaches a potential receptor,  
3 which is assumed to be a well drilled at the nearest  
4 location on the Turkey Point -- to the Turkey Point  
5 facility, where such a well could be drilled. The  
6 LADAPT model is being used by the Applicant to analyze  
7 the decay rate of any radionuclides in the water once  
8 it is pumped from the boulder zone to the surface.  
9 It's not used in order to model decay rates of  
10 radionuclides as they travel from the point of  
11 injection to this theoretical receptor.

12 The Joint Petitioners have not met the  
13 requirements of 2.309(f)(1)(6), having failed to  
14 address this model in its original petition, and  
15 providing a new argument in the reply, which is based  
16 on a misunderstanding of the model.

17 I'll be happy to answer any questions.

18 CHAIRMAN HAWKENS: Thank you.

19 MS. PRICE: Thank you.

20 MR. KIRSTEIN: Just before you begin, 35  
21 minutes, about 34 minutes.

22 MR. FERNANDEZ: Your Honor, with regard to  
23 proposed Contention Three, the Commission -- I'm  
24 sorry. The Applicant's position, as reflected in our  
25 answer, is that the petition fails to provide any

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1 supported basis for its claims, and it fails to raise  
2 any material issues, or any controversies with the  
3 application. Again, this is one of these chameleon  
4 contentions, where the Petitioners started off arguing  
5 one thing, and then when it became inconvenient to  
6 argue that, in their reply changed the substance of  
7 their argument.

8 At the outset, Contention Three claimed  
9 that there had been omissions in the environmental  
10 report. When those omissions were demonstrated to not  
11 to be true, in the reply then without adequate  
12 support, the Petitioners then tried to argue that  
13 there had been some sort of inadequate analysis. Of  
14 course, as we've talked about before, and I will not  
15 go into in greater detail now, that's not an  
16 appropriate thing to do with the reply.

17 I would like to spend a small amount of  
18 time with regard to issues concerning SERP. The  
19 company, the Applicant here, has a long history of  
20 working with local and regional agencies in  
21 implementing, and has been a partner for many years in  
22 implementing SERP. And this project has been proposed  
23 to be consistent with all of SERP's requirements.

24 That said, the contention, as pled,  
25 basically, makes no sense. The Petitioners argue that

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1 the Applicant has not considered impacts to SERP.  
2 Well, SERP is a federal program, and impacts to  
3 another federal program are not really cognizable  
4 under NEPA. NEPA's requirements are that you analyze  
5 the impacts to the natural environment, the human  
6 environment.

7 In that regard, if what the Applicant  
8 meant to say but did not state, was that -- I'm sorry,  
9 the Petitioners meant to say, but did not state, is  
10 that we did not consider the impacts to the natural  
11 resources protected by SERP, and I don't mean to in  
12 any way provide assistance to the Petitioners, that is  
13 also incorrect. Because, in fact, the environmental  
14 report, as demonstrated in the answer, does detail how  
15 the environmental resources to be protected by SERP,  
16 primarily, wetlands, and Biscayne Bay, and the  
17 Everglades, are addressed in the environmental report,  
18 and are -- and the impacts with regard to those  
19 resources are assessed in the environmental report.  
20 So, whether it's impacts to SERP as a federal program,  
21 or impacts to the natural resources to be protected by  
22 SERP, as demonstrated in the answer, both were -- that  
23 was considered appropriately in the ER, and when that  
24 was demonstrated in the answer, then the reply changed  
25 to well, it was not adequately considered.

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1           Unless the Board has any questions on  
2 that, I will pass on to the Staff. I think we're  
3 running short on time.

4           CHAIRMAN HAWKENS: Thank you.

5           MR. MOULDING: Your Honor, I'll be  
6 addressing the Board's questions with respect to  
7 Contention Three. The questions on Contention Three  
8 focus, again, on the level of detail required of the  
9 Applicant in the associated case law. Our response  
10 is, essentially, the same as respect to Contention One  
11 with respect to potential impacts from radial  
12 collector wells.

13           The adequacy of the ER's description of  
14 environmental impacts is always, again, a fact-  
15 specific determination based on the contents of the  
16 particular application, and the nature and magnitude  
17 of impacts given that impacts are to be discussed in  
18 proportion to their significance.

19           We would reiterate the Commission's  
20 decision in Grand Gulf ESP, emphasizing that  
21 contentions must articulate significant inaccuracies  
22 or omissions, or identify an ER's failure to address  
23 important considerations.

24           Turning the Board's overarching question,  
25 Contention Three is inadmissible as explained in the

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1 Staff answer, because it does not meet the criteria in  
2 2.309(f)(1)(4), (5) and (6). In particular, the  
3 petition failed to show a genuine dispute with the  
4 application --

5 CHAIRMAN HAWKENS: May I interrupt with a  
6 question here going to adequacy?

7 MR. MOULDING: Yes, sir.

8 CHAIRMAN HAWKENS: Based on the guiding  
9 principles, if a Petitioner cannot identify a  
10 significant impact, or if the ER concludes it's not a  
11 significant impact, it will require much less of a  
12 discussion. Is that -- the impacts here in so many  
13 areas were determined to be small, modest, or  
14 insignificant. It seems that an argument could be  
15 made that an ER could be adequate just making those  
16 assertions, because they were an insignificant impact.  
17 And it's the significance of the impact that  
18 determines the scope of discussion. But, surely, it's  
19 not the case that you can just assert a conclusion  
20 that it's an insignificant impact, and then go to the  
21 next analysis in an ER. Is that correct?

22 MR. MOULDING: And that's a good point,  
23 Your Honor. I think what I would reiterate is that  
24 where the ER does contain some discussion of an issue,  
25 and does reach a conclusion, and where there is

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1 information in the ER, it does put some degree of a  
2 burden on Petitioners to explain why that's incorrect,  
3 or what significant impacts have been overlooked, or  
4 given short shrift. It's ultimately a fact-specific  
5 determination, but the inquiry at this stage is  
6 focused on did the ER address something to some  
7 degree, and if something is there, to understand  
8 whether we have an issue that warrants further  
9 scrutiny, the Petitioners need to explain what that  
10 dispute would be.

11 CHAIRMAN HAWKENS: All right. Thank you.

12 MR. MOULDING: I think I'll leave it at  
13 that, unless the Board has further questions.

14 MR. FERNANDEZ: May the Applicant be heard  
15 on the question that you just asked, Your Honor?

16 CHAIRMAN HAWKENS: Yes.

17 MR. FERNANDEZ: The thing that we should  
18 all remember is that these applications are submitted  
19 under oath or affirmation to the agency, and that  
20 Applicants and Licensees do not take that obligation  
21 lightly. So, in order to reach a conclusion that an  
22 impact was small, there is a significant amount of  
23 scientific and technical analysis that goes in, that  
24 while may not be specifically reflected in the text  
25 that's presented to the agency, it is available to the

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1 agency for inspection. And if the agency feels that  
2 it needs additional information, it has a process  
3 whereby it requests that information. And if the  
4 Petitioners in a particular situation, not this one,  
5 as we've shown in our answers, were to believe, and it  
6 had a valid scientific point to make that a particular  
7 conclusion that an impact was not small, but rather  
8 large, and, therefore, required additional analysis,  
9 Part 2 lays out the roadmap for how you achieve the  
10 goal of presenting that issue to the agency within the  
11 scope of a hearing, and that was not met here.

12 That road is not foreclosed merely because  
13 an Applicant reached the conclusion that an impact is  
14 small. It just puts the burden on the Petitioner that  
15 has a difference of opinion to substantiate that  
16 opinion merely beyond alleging that something is  
17 inadequate.

18 MR. TRAVIESO-DIAZ: May I proceed to  
19 Contention Four?

20 CHAIRMAN HAWKENS: Please, do.

21 MR. TRAVIESO-DIAZ: The Board asks whether  
22 Contention Four that challenges the adequacy of the  
23 ER's consideration with environmental impact of access  
24 roads is admissible. The short answer is no, it fails  
25 to comply with (1)(4), and (1)(5), and (1)(6). This

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1 contention is useful for us to consider one more  
2 reason beyond those expressed by Mr. Hamrick as to why  
3 relying on agency completeness comments is not a  
4 proper basis for raising a contention.

5 In addition to all that he discussed,  
6 there is one more factor. When the agency raises  
7 questions, it has before it not only a different  
8 application, but different factual materials. The  
9 agency may think you are missing giving us this  
10 information that we need. That doesn't mean the  
11 information is not in the ER.

12 In this case here, this is proved in  
13 spades. The Petitioners' Contention Four alleges  
14 numerous situations in which the information doesn't  
15 exist. Why is that? Because they cut and paste, took  
16 directly from the completeness comments before the  
17 state agency, which maybe didn't have this  
18 information, and said it doesn't exist in the ER.  
19 Well, I have news for you, the Applicant's in pages  
20 95-103, and the Staff on pages 67-69 prove that all  
21 the items of information that they claim it wasn't  
22 there, in fact, it exists in the ER. That illustrates  
23 both the danger of trying to blindly rely on  
24 completeness comments before another agency in another  
25 proceeding, and also the fact that, as is the case in

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1 all the contentions, Petitioners have, surprisingly,  
2 I almost say shockingly, failed to take the year that  
3 they had to look at this ER and make sure that before  
4 they claim something wasn't there, satisfy their  
5 ironclad obligation to review the ER, and make sure  
6 what they claimed wasn't there, in fact, was not. I  
7 think that for those reasons, both (f)(5), and  
8 (f)(1)(6) are not met.

9 In addition, the discussion that they  
10 claim is inadequate is provided in great detail, and  
11 let me just give you an example. The contention and  
12 the completeness comments claim there is not  
13 sufficient information to determine whether the access  
14 roads are going to have an impact on the migration  
15 paths of wildlife. Well, the ER, Section 4-110  
16 provides a detailed description of where the access  
17 roads are going to be, and it's very simple to  
18 determine where the migration paths are going to  
19 impinge. In other words, the claim that they make in  
20 this contention doesn't raise an issue, because it  
21 doesn't satisfy (f)(6).

22 Moreover, not only doesn't satisfy (f)(6),  
23 and (f)(5), but they have absolutely no discussion why  
24 it's important that all these deficiencies actually be  
25 considered. Let me give you an example. They claim

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1 that there's going to be an increase in roadkill,  
2 snakes and other animals because of the roads, because  
3 the road is being built. Well, let me put it bluntly,  
4 so what? Will the Staff have made a different  
5 conclusion with respect to the application because  
6 more snakes are going to be killed on the roads? They  
7 would have to show why is it, why that's the case.

8 One more point. On the looking -- they  
9 have turned again a contention of omission into a  
10 contention of adequacy in the reply. For all the  
11 reasons said before, that is improper. But, in  
12 addition, they do not explain why it's inadequate.  
13 There is ample case law, which I can cite, to say you  
14 claim something is inadequate, you have to provide the  
15 reason why, and support. And they never do that, as  
16 this contention, or the others. So, I believe that  
17 for those reasons, Contention Four is not admissible.

18 CHAIRMAN HAWKENS: When you talk about the  
19 irrelevancy of roadkill, were endangered species  
20 included among the concerned roadkill?

21 MR. TRAVIESO-DIAZ: Well, I don't know,  
22 because there's not a specified -- it is not specified  
23 in the contention. And if they were concerned about  
24 endangered species being part of the roadkill, if you  
25 will, they have the obligation in the contention to

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1 say this is inappropriate because it's going to affect  
2 endangered species, which they didn't say. It's too  
3 speculative as to what it's going to be.

4 CHAIRMAN HAWKENS: All right. Thank you.

5 MR. MOULDING: Your Honor, I'll address the  
6 Board's question with respect to Contention Four.  
7 Actually, at this point, the Staff has little to add  
8 beyond what was in our pleadings on this question, and  
9 issues that have already been discussed at argument  
10 earlier today. So, unless the Board has further  
11 specific questions, we'd be prepared to move on.

12 CHAIRMAN HAWKENS: Thank you.

13 MR. FERNANDEZ: Your Honor, can we do a  
14 time check as to how much time remains?

15 MR. KIRSTEIN: Yes, a little bit more than  
16 21 minutes.

17 MR. FERNANDEZ: Thank you.

18 MR. TRAVIESO-DIAZ: I'm going to address,  
19 also, Contention Five. Before I get into the details  
20 of Contention Five, I'd like, if I may, to try to  
21 answer some of the questions the Board has asked as to  
22 level of detail, and adequacy, and so on.

23 As the Staff correctly pointed out, this  
24 is much fact-laden, but there is some guidance. There  
25 are -- I'm going to give you citation to two cases

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1 that give you some general guidance that you may to  
2 use. First, there is the 3<sup>rd</sup> Circuit decision in  
3 Limerick, which says --

4 CHAIRMAN HAWKENS: Could you give me the  
5 cite first, and then tell me what it says?

6 MR. TRAVIESO-DIAZ: Oh, yes, I'm sorry.  
7 Yes. In the Limerick case, Limerick v. NRC, 869 F. 2d  
8 719, 737, 3<sup>rd</sup> Circuit 1989. They say, "The level of  
9 detail required in ERs is that which is sufficient to  
10 enable one who did not have a part in the compilation  
11 of the record to understand and consider meaningfully  
12 the factors involved.

13 At the NRC level, there is a very good  
14 description again of the level of detail that is  
15 required.

16 CHAIRMAN HAWKENS: Would you read that  
17 sentence to me one more time, please?

18 MR. TRAVIESO-DIAZ: Okay.

19 CHAIRMAN HAWKENS: A little bit more  
20 slowly.

21 MR. TRAVIESO-DIAZ: I'm sorry, I tend to go  
22 fast. "The amount of detail required in ER's has been  
23 described as that which is sufficient to enable those  
24 who did not have a part in its compilation to  
25 understand and consider meaningfully the factors

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1 involved." So, the person reading this can understand  
2 what you had evaluated, and what the factors were that  
3 is sufficiently detailed.

4 The Commission in the Hydro case, and,  
5 again, this Hydro Resources CLI0-629, 64 NRC 417, 426-  
6 27 says, "An EIS must address mitigation," they talk  
7 about mitigation, but it is cautions applicable to  
8 other discussions, "is sufficient detail to insure  
9 that the environmental consequences have been fairly  
10 evaluated." So, those are general guidelines.

11 Now, together with the question of how  
12 much is enough, is the question who has the burden of  
13 showing that it is enough, or not. It is uniformly  
14 the case law that it is -- if the Petitioners believe  
15 that the discussion is inadequate, they cannot say  
16 hey, it's inadequate, period. They do have to come up  
17 with a reason why, and provide evidence to support it.  
18 That is a number of cases I can cite, USEC, and I can  
19 cite the NRC decision in PFS, but this is very well  
20 accepted as being the principle. If you claim it's  
21 inadequate, it's not enough to say it's inadequate.  
22 You have to tell why.

23 One more thing that we want to --

24 ADMIN. JUDGE BURNETT: Excuse me. I'd like  
25 to follow-up on that, and thank you for bringing that

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1 up, because that is really something we have been  
2 struggling with.

3           However, based on what you just said, how  
4 can the Petitioners know that there's an insufficient  
5 amount of information if that information is not  
6 contained in the application? For example, the  
7 salinity argument we talked about, the model data was  
8 not presented, only the conclusion, so how can the  
9 Petitioners contest that conclusion if they don't have  
10 the underlying data that led to that conclusion?

11           MR. TRAVIESO-DIAZ: There are two ways, at  
12 least, that I can think of off the top of my head.  
13 First, typically, a Petitioner will have an expert  
14 that will tell you if an analysis is inadequate, why  
15 it is, and provide you solid scientific basis for it.  
16 In addition, there is ample discussion in the  
17 literature as to many of these issues, and that could  
18 be cited, relevant information that controverts, or  
19 points out blanks, or gaps in the information  
20 provided. So, it isn't that they are helpless, or  
21 unable to tell us why it's inadequate. If they say  
22 it's inadequate, they must have a reason, they must  
23 have a basis for it, and that's what the courts  
24 require.

25           Going back on Contention Five, there's a

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1 lot to say about it, but I'll be brief about it.  
2 First, on the alternatives issue, with respect to  
3 transmission lines, the Petitioners -- I was going to  
4 castigate Petitioners for claiming that the discussion  
5 of transmission lines was insufficient because  
6 alternatives were not propounded. I withdraw my  
7 criticism only because they say that there were 99,  
8 134 segments that could have been considered, and they  
9 were not. Guess what? You take a look at Section  
10 9.42.8 of the ER, the alternatives discussion, that's  
11 exactly what FP&L did. They ended up with two routes,  
12 a western route prefer, an alternative on an eastern  
13 route. Each of those routes was comprised of a number  
14 of segments, and they evaluated each of those  
15 segments. That's exactly what they did. They had to  
16 consider alternatives.

17 Now, the Petitioners claim that that's not  
18 enough, you have to look at things that are not even  
19 feasible, or not practicable. That's absolutely not  
20 the law. The Supreme Court decision in Vermont Yankee  
21 and a number of other decisions claim you only have to  
22 look at alternatives that are feasible.

23 On the point whether you can defer or pay  
24 attention, or be guided by what a state does, the  
25 decision in the D.C. Circuit of Citizens Against

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1 Burlington versus Bushi, 938 F.2d 190-199, makes it  
2 clear that, "The extent to which you have to consider  
3 an alternative is proportional. It depends on whether  
4 you are the agency that has the responsibility for  
5 making the ultimate decision." So, even though, yes,  
6 you have to study alternatives even in the context of  
7 transmission lines, it is not the NRC who licenses  
8 those transmission lines, and decides where they  
9 should go. It is properly the state, and unless you  
10 can point to deficiency in the state analysis, the NRC  
11 has the right to pay attention, and to abide by what  
12 the state says.

13 I have a number of other items with  
14 respect to Contention Five, but I am going to stop  
15 here, because I'm running out of time.

16 MR. MOULDING: Your Honor, I'll be  
17 addressing the Board's questions with respect to  
18 Contention Five. Part of the question, again, focuses  
19 on the level of detail required in the application,  
20 not in the associated case law, and our response there  
21 regarding the level of detail is essentially the same  
22 as with respect to Contentions One and Three. Given  
23 that impacts are to be discussed in proportion to  
24 their significance, how much information is needed to  
25 appropriately describe potential alternatives, and

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1 mitigation depends, in part, on the nature and  
2 magnitude of the impacts at the site being considered.

3 To address the Board's overarching  
4 question, Contention Five is inadmissible because it  
5 does not meet the requirements of 2.309(f)(1)(4), (5)  
6 and (6). In particular, the petition did not dispute  
7 the portions of the ER that discuss impacts on  
8 wetlands from transmission line corridors, and access  
9 roads, and, thus, did not controvert the application.  
10 The contention also does not identify any specific  
11 impact the Petitioners think ought to have been  
12 analyzed, or explain why those impacts would be  
13 environmentally significant, and, thus, material to  
14 the review.

15 Similarly, with respect to mitigation  
16 measures, the Petitioners did not dispute the relevant  
17 section of the ER addressing wetlands impacts and  
18 transmission line corridors, and do not identify any  
19 specific measures that they believe were omitted, or  
20 inadequately described.

21 And, finally, with respect to their  
22 challenge to the analysis of alternatives to  
23 transmission lines and access roads, Petitioners do  
24 not demonstrate why their contention is material to  
25 the findings the Staff must make. But even if they had

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1 done so, the petition doesn't explain what reasonable  
2 alternatives haven't been discussed, or why those  
3 alternatives might be environmentally preferable to  
4 those that the ER does identify. For these reasons,  
5 the contention is not admissible. Unless the Board has  
6 further questions, we would continue to Contention  
7 Six.

8 ADMIN. JUDGE BURNETT: In the Staff's  
9 answer to the Petitioners, it was mentioned that under  
10 NRC regulations transmission lines are not part of the  
11 proposed action.

12 MR. MOULDING: Yes, sir.

13 ADMIN. JUDGE BURNETT: Correct?

14 MR. MOULDING: That's correct.

15 ADMIN. JUDGE BURNETT: But I wondered why  
16 you didn't bring that up for Contention Three, which  
17 also dealt with transmission lines.

18 MR. MOULDING: Your Honor, we thought that  
19 was more squarely presented in Contention Five, which  
20 focused more explicitly and exclusively on  
21 alternatives with respect to transmission lines. But  
22 there is some applicability there, as well, but  
23 transmission lines seemed to us to be the most  
24 important place to raise that.

25 ADMIN. JUDGE BURNETT: Okay. Thanks.

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1 CHAIRMAN HAWKENS: So, it's the Staff's  
2 position that a discussion of alternatives is beyond  
3 the scope of the ER?

4 MR. MOULDING: Alternatives to transmission  
5 line corridors, Your Honor, not a discussion of  
6 alternatives, generally. It's limited to the  
7 discussion of issues that the NRC's rules define as  
8 preconstruction, or outside the scope of the NRC's  
9 federal action. But I would emphasize that the  
10 Staff's position is not that impacts from transmission  
11 line corridors wouldn't be discussed in the  
12 Environmental Impact Statement. The Commission's  
13 regulations make clear that those are to be discussed,  
14 but as cumulative impacts.

15 CHAIRMAN HAWKENS: Okay. But what is  
16 outside the scope of the jurisdiction is the  
17 alternative to transmission line corridors?

18 MR. MOULDING: That's correct, Your Honor.

19 CHAIRMAN HAWKENS: And that's based on what  
20 regulation?

21 MR. MOULDING: 51.45 and the Commission's  
22 understanding in Part 51, among other places, of the  
23 revised definition of construction that arose as a  
24 result of the 2007 LWA Rule that's cited in the Staff  
25 answer. Among the implications are a revised

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1 understanding of the difference between construction  
2 and preconstruction activities.

3 CHAIRMAN HAWKENS: Thank you.

4 MR. HAMRICK: Your Honor, I will now  
5 address Contention Six. Contention Six is a  
6 cumulative impacts analysis contention, and it  
7 actually does not cite to Section 5.11 of the ER,  
8 which is where FP&L presents its cumulative impacts  
9 analysis. And that's really a fatal flaw for  
10 Contention Six. 2.309(f)(1)(6) requires Petitioners to  
11 cite the specific portions of the application that are  
12 in dispute, and explain what is in dispute about those  
13 portions.

14 By failing to cite to, and identify a  
15 specific portion of the cumulative impacts analysis,  
16 the Petitioners fail to meet that particular test.  
17 The only citation to the application in all of  
18 Contention Six is with respect to the existence of  
19 crocodiles in the cooling canals. And there is no  
20 dispute that crocodiles do live in, and seem to prefer  
21 to live in the cooling canals. That's not in dispute.  
22 Had the Petitioners cited Section 5.11, they may have  
23 noticed the section that talks about how past and  
24 present actions are incorporated into the cumulative  
25 impacts analysis. And it says that particularly with

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1 past and present actions that impact water quality,  
2 such as the salinity issues raised here, those past  
3 and present actions are already included in the  
4 baseline data. Whatever past pumping, building of  
5 canals, dredging, all the things that have happened in  
6 South Florida over the past 100 years, those actions  
7 have had an effect, that's not in dispute, and those  
8 -- whatever the salinity of the area is, it is what it  
9 is in part due to those past actions. And that is  
10 already reflected in the baseline. And that's  
11 explained in Section 5.11, and the Petitioners don't  
12 cite to that, or dispute that. And that's a fatal  
13 flaw for this contention.

14 Moreover, the Petitioners also don't  
15 reference the long discussion in Chapter 2 of the ER  
16 of the impact of mankind on the groundwater and  
17 surface flow in South Florida, again, through pumping,  
18 and building of canals. That's all described in the  
19 ER. It doesn't use the words "full agricultural draw  
20 downs," per se, but it certainly describes man's  
21 impact. And those impacts, again, are reflected in  
22 the baseline data. And with that, I will defer to the  
23 Staff, unless the Board has any questions.

24 CHAIRMAN HAWKENS: While the Staff is  
25 making its presentation, would you, when they're

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1 complete, be ready to point out where in the ER you  
2 discuss the cumulative impacts from the proposed Units  
3 6 and 7 on sea grass?

4 MR. MOULDING: I will look into that.  
5 Thank you.

6 CHAIRMAN HAWKENS: Thank you.

7 MS. PRICE: With respect to Contention Six,  
8 Your Honors, we have nothing further to add beyond our  
9 pleadings. Basically, as explained in our answer, the  
10 contention is inadmissible, because it fails to meet  
11 the requirements of 2.309(f)(5) and (6), so unless you  
12 have any further questions, we'd move on to the next  
13 contention.

14 MR. O'NEILL: Mr. Chairman, could we give  
15 Mr. Hamrick a few more minutes, and perhaps we can do  
16 Eight, and then come back to him?

17 CHAIRMAN HAWKENS: That would be a great  
18 idea.

19 MR. O'NEILL: How much time do we have  
20 left, please?

21 MR. KIRSTEIN: Seven minutes and 13  
22 seconds.

23 MR. O'NEILL: Excellent. I think between  
24 us, we had a 20-minute presentation.

25 I'll first address Dr. Kennedy's question,

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1 does the uncertainty in forecasting just skew the  
2 answer of need versus when needed? And the answer is  
3 the uncertainty in forecasting doesn't change the  
4 benefit, it just puts off the benefit. The benefit is  
5 not meeting a need for power that otherwise won't be  
6 met. The benefit is the need for baseload nuclear  
7 power. That's what the State of Florida wants, that's  
8 what it passed a law to get, that's what the need  
9 determination demands, that is what the state wants.  
10 That's the benefit. They want baseload nuclear to  
11 decarbonize, reduce greenhouse gas emissions, to  
12 change the mix, as Dr. Kennedy said, of generation, to  
13 reduce coal, to reduce gas, and to increase nuclear.  
14 They also want to increase -- reduce the load due to  
15 demand side management, and renewables. But an  
16 integral part of that, and necessary part of that is  
17 to increase nuclear. That's the benefit, not just a  
18 traditional need for power analysis, but what this  
19 state says it needs for the citizens of Florida.

20 The question the Board asked with respect  
21 to whether Petitioners have an obligation to conduct  
22 its own cost-benefit analysis. The Petitioners have  
23 to do more than to complain about the need for power  
24 analysis. In Virgil Summer, CLI10-01, the Commission  
25 upheld the Board's rejection of an almost identical

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1 contention to Joint Petitioners' 8.1, and the Board  
2 found that the Applicant had considered several  
3 different economic conditions, including recessions,  
4 and reason that the contention could succeed only if  
5 the contention argued with adequate support that the  
6 economic impact analysis was inadequate.

7           The only document that was proffered as  
8 support for 8.1 was Exhibit 39, Slide 18, which was a  
9 CEO exhibit from an analyst meeting, which showed that  
10 there had been, indeed, a decline in population during  
11 the recession in the State of Florida. What the Joint  
12 Petitioners did not note is that same slide that they  
13 use for the only bit of evidence here shows a  
14 significant increase, well beyond the increase of  
15 population in the rest of the country as projected,  
16 because as the population ages, which I know only too  
17 well personally as a baby boomer, the increased  
18 population of Florida is projected by the University  
19 of Florida to increase fairly significantly. So, that  
20 one bit of data, which was the only one to support  
21 this contention, does not support the conclusions  
22 which they'd like to draw.

23           The third Board question went to the Joint  
24 Petitioners' argument that the demand side management  
25 framework somehow renders the State of Florida's

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1 decision making on power as neither systematic, nor  
2 comprehensive. They say that, they haven't shown any  
3 analysis to make that argument.

4 With respect to systematic, there is no  
5 more systematic a process than the State of Florida.  
6 It is the, shall we say, the Gold Standard. First,  
7 the Florida Public Service Commission oversees the  
8 need for power planning conducted by utilities.  
9 Second, the Office of Public Counsel serves as a  
10 public interest advocate. Third, need for power  
11 planning is reflected in an annually updated 10-year  
12 site plan. Fourth, there's an annual prudence  
13 proceeding with respect to the spend in moving forward  
14 on nuclear. Fifth, the public can participate in all  
15 these processes, and, indeed, the Joint Petitioners,  
16 at least some of them have. And, finally, the Florida  
17 regulatory process considers the regional and national  
18 data from NERC and the Energy Information Agency.  
19 There is nothing to suggest about the demand side  
20 management 2009 decision not being considered when the  
21 2008 decision was made for the need, as saying this is  
22 not systematic.

23 Also, it has nothing to do with whether or  
24 not it's comprehensive. And, indeed, the final point  
25 here is with respect to this very issue, the Public

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1 Service Commission of Florida stated that demand side  
2 management, even if it could increase, noting that it  
3 would have a new proceeding in 2009, even if there is  
4 more, which simply reduced the amount of gas that  
5 would be needed, and would not affect the need for  
6 this unit. Thank you very much.

7 MR. CHAZELL: Thank you, Your Honor.  
8 Russell Chazell, again, for the NRC Staff.

9 The Staff only has one thing to add to  
10 this contention, and that would be a response to the  
11 statement made by the Petitioners with regard to one  
12 of the NUREG-1555 criteria being whether or not the  
13 Applicant is responsive to forecasting uncertainty.  
14 And I realize that's not one of the questions that the  
15 Board specifically asked, but I believe the Applicant  
16 has covered those.

17 I would just like to say that the NUREG-  
18 1555 criteria about responsive to forecasting  
19 uncertainty has been misinterpreted by the Joint  
20 Petitioners. In a state need for power determination,  
21 this criteria is evaluated by considering sensitivity  
22 studies to ascertain how the need determination  
23 changes under various econometric scenarios. In the  
24 Turkey Point case, the ER discusses the various  
25 scenarios that were considered in the ER at Sections

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1 8.3.4. Joint Petitioners do not challenge those  
2 studies, and fail to support admissibility under  
3 (f)(1)(6).

4 Again, the responsiveness to forecasting  
5 uncertainty is not a forward-looking criteria. It's  
6 a snapshot of what the current circumstances were at  
7 the time the evaluation was made.

8 With that, we contend that NEPA 8 is  
9 inadmissible for failure to meet 2.309(f)(5) and (6).  
10 Thank you.

11 CHAIRMAN HAWKENS: Thank you. Although  
12 Joint Petitioners' time has lapsed, if they would like  
13 to avail themselves of three minutes of rebuttal time.

14 MR. TOTOIU: Okay. It's giving me trouble  
15 all day here. We very much would. Thank you, Your  
16 Honor.

17 I think there is many points which we take  
18 issue with, but one of the fundamental issues that we  
19 see is, and it harkens back, I think, earlier with  
20 regard to Contention Two, the discussion of the  
21 missing explanation of modeling, and where is that  
22 document? I think, if nothing else, it further  
23 advances our argument that the trust us, it's there,  
24 is just not sufficient under NEPA, and what really is  
25 required. And I make that point, because I think

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1 counsel had referenced well, the scientific basis not  
2 specifically identified, or referenced, while that may  
3 not have occurred, there's this process to look it up,  
4 or you could find it. We'll direct you to it. I  
5 think there's a case that's real instructive on this  
6 point, and that's actually a case that's been cited by  
7 Petitioners in other regards, but I think is  
8 particularly useful here, and it's Idaho Supporting  
9 Congress versus Thomas, 137 F. 3d, 1146 at 1150, 9<sup>th</sup>  
10 Circuit 1998. And in that decision, the court held,  
11 "The agency must provide to the public the underlying  
12 data on which the agency's expert based its opinion.  
13 Allowing the agency to rely on expert opinion without  
14 hard data, either vitiates a plaintiff's ability to  
15 challenge the agency action, or results in a court  
16 second-guessing the agency's scientific conclusions,  
17 neither of which is acceptable."

18 Furthermore, and I'll be brief here,  
19 because we only have 30 minutes, but --

20 CHAIRMAN HAWKENS: May I interrupt for a  
21 second, recognizing --

22 MR. TOTOIU: Sure.

23 CHAIRMAN HAWKENS: -- and I won't use the  
24 time against your three minutes.

25 MR. TOTOIU: Okay.

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1 CHAIRMAN HAWKENS: But I'm not familiar  
2 with that case, but I did get the cite, and I will  
3 take a look at it.

4 MR. TOTOIU: Okay.

5 CHAIRMAN HAWKENS: But it suggests that it  
6 was evaluating the validity of the EIS, not of the ER.

7 MR. TOTOIU: True. True.

8 CHAIRMAN HAWKENS: So, if we assume that  
9 the agency will properly perform its regulatory  
10 function, then we might assume that we will see  
11 reference to, and discussion of the salinity analysis  
12 model in the DEIS, giving you and the public the  
13 opportunity to comment on it, and further discussion  
14 of it in the FEIS.

15 MR. TOTOIU: And we would appreciate that  
16 opportunity for that to occur, but I think, moreover,  
17 my point is, is that the fact that this information is  
18 not in there to begin with, and I think it proves our  
19 contention that it just -- it's inadequate as it is.  
20 And that's where we are here today. It's an  
21 inadequate discussion.

22 And with that, I'm just going to touch on  
23 a couple of other things. I'm a little taken aback by  
24 the reference mentioned earlier that snakes could be  
25 possibly roadkill here, so what? Well, so what is

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1 that it's the Eastern Indigo snake listed under the  
2 Endangered Species Act. I think as Judge Hawkens  
3 alluded to earlier, and it's particularly troubling,  
4 not only for that, but I think for what appears to be  
5 here a mischaracterization of what's actually in  
6 Petitioners' contentions. We actually, specifically,  
7 reference the Eastern Indigo snake, the roadkill in  
8 pages 37 through 38 of our contention. And I think  
9 that there's other examples of this, this chameleon,  
10 this argument it's a chameleon-like contention. You  
11 know, in fact, it is with regard to the LADAPT  
12 modeling, it's actually in direct response to  
13 something that they brought up first time in their  
14 answer. And I have that in, I'm sorry, pages 67 of  
15 the FP&L answer.

16 (Off mic comment.)

17 MR. TOTOIU: To the answer, the Motion to  
18 Strike. I think in closing, what's important here is  
19 that we would hope that with a careful reading and  
20 review of our contentions that it becomes quite clear  
21 that they have inadequately addressed a lot of these  
22 impacts, many of the impacts, and that we've properly  
23 pled those in accordance with the admissibility rules.  
24 Thank you.

25 CHAIRMAN HAWKENS: I think FP&L had an

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1 answer, was getting an answer ready for me?

2 MR. HAMRICK: Thank you, Your Honor. The  
3 impacts to aquatic life by virtue of the operation of  
4 the radial collector wells are described as small on  
5 page 5.3-3 of the ER. That's the impacts from the  
6 operation of the radial collector wells. The  
7 cumulative impacts are also described as small on page  
8 5.11-8.

9 CHAIRMAN HAWKENS: Aquatic life is  
10 including -- includes sea grass?

11 MR. HAMRICK: Again, that doesn't use the  
12 word "sea grass," specifically, but it's impact to  
13 aquatic resources. Correct.

14 CHAIRMAN HAWKENS: And another question for  
15 FP&L, just to satisfy my curiosity. Is the salinity  
16 impact analysis model proprietary? Is there any  
17 reason why it could not be disclosed to the public,  
18 given the extensive discussion and attention, and its  
19 relevance to the ER?

20 MR. HAMRICK: No, it is not proprietary.  
21 It has been submitted, as I said earlier, I believe,  
22 to the State of Florida as part of the SCA process.  
23 And I wanted to reiterate again, I apologize for my  
24 confusion earlier. It's the groundwater model that  
25 will be submitted in December.

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1 CHAIRMAN HAWKENS: Right.

2 MR. HAMRICK: Not the salinity impact  
3 analysis.

4 CHAIRMAN HAWKENS: There's no present  
5 intention to submit it in December, but it may be well  
6 to submit it in the --

7 MR. HAMRICK: It seems like it may be a  
8 good idea.

9 CHAIRMAN HAWKENS: Thank you very much.  
10 The case is submitted, and before adjourning, I'd like  
11 to thank all the counsel from all the Petitioners who  
12 have participated, and special thanks to the  
13 participation by the law students who all of us up  
14 here think your preparation and poise was outstanding.  
15 So, we thank you. Again, express our thanks to the  
16 citizens from this region who are here in attendance  
17 today, and our thanks again to the officials of  
18 Homestead who allowed us to use this facility,  
19 Officers Jordan and L'Enfantant, who helped us out  
20 today, my Administrative Assistant, Karen Valloch, and  
21 our law clerks, Hillary Cain and Josh Kirstein. Thank  
22 you very much. We are adjourned.

23 (Whereupon, the proceedings went off the  
24 record at 4:23 p.m.)

25

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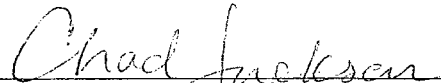
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Name of Proceeding: Oral Argument

Docket Number: 52-040-COL & 52-041-COL

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