

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

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

**JOINT INTERVENORS' ANSWER TO FPL'S MOTION TO DISMISS JOINT
INTERVENORS' CONTENTION 2.1 AS MOOT, AND ALTERNATIVELY,
JOINT INTERVENORS' MOTION TO AMEND CONTENTION NEPA 2.1**

Pursuant to 10 C.F.R. § 2.323(c), and the Atomic Safety and Licensing Board's January 5, 2012 Order, SOUTHERN ALLIANCE FOR CLEAN ENERGY, NATIONAL PARKS CONSERVATION ASSOCIATION, DAN KIPNIS, and MARK ONCAVAGE (collectively, "Joint Intervenors"), hereby file their answer in opposition to Florida Power & Light Company's ("FPL") Motion to Dismiss Joint Intervenors' Contention 2.1 as Moot, filed January 3, 2012 (the "Motion to Dismiss"). This answer is supported by the Affidavit of Mark Quarles (January 23, 2012) (the "Quarles Affidavit").

For the reasons set forth below, FPL's Motion to Dismiss is without merit and must be denied. The limited, incomplete, and unverifiable data regarding the

concentration of constituents in the reclaimed wastewater as set forth in Table 3.6-2 of the Environmental Report, Revision 3 (the “ER”), coupled with the conclusory and unsupported statement that the impact of these constituents on the environment is SMALL, are grossly insufficient to render Contention NEPA 2.1 moot. Because Contention NEPA 2.1 is a contention of adequacy, FPL must discuss and analyze these constituents and their impact – merely listing them, without any attribution to the source of the new data, is insufficient. To the extent the Atomic Safety and Licensing Board (the “Board”) finds that an unsupported list of estimated concentrations of certain constituents is nevertheless sufficient to render Contention NEPA 2.1 moot, Joint Intervenors respectfully request permission to amend their contention.

BACKGROUND

JOINT INTERVENORS’ CONTENTION NEPA 2.1

On February 28, 2011, the Board admitted Joint Intervenors’ Contention NEPA 2.1 as follows:

[T]he ER fails to analyze and discuss the potential impacts on groundwater quality of injecting into the Floridan Aquifer via underground injection wells heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene, which have been found in injection wells in Florida but are not listed in FPL’s ER as wastewater constituent chemicals.

Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC ___, slip op. at 36 (Feb. 28, 2011) (the “Order”).

In admitting the contention, the Board found that Joint Intervenors “have asserted (with adequate supporting information, as discussed below) that certain specified chemicals might be in the wastewater discharged via deep injection wells into the Boulder Zone of the Lower Floridan Aquifer, and that the wastewater could possibly

migrate into the Upper Floridan Aquifer, contaminating the groundwater (including potential drinking water) with these chemicals.” Order at 37. The Board went on to explain that “[a]lthough FPL’s ER discusses other chemicals in the wastewater (ER at tbl. 3.6-2), it fails to address the particular chemicals identified by Joint [Intervenors], let alone analyze the likely impact of those particular chemicals on the groundwater . . . FPL has an obligation to discuss in the ER any such environmental impact caused by these chemicals in proportion to their significance. The ER is silent, however, with respect to these particular chemicals and their resulting impact.” *Id.* The Board further noted that Contention NEPA 2.1 provided alleged facts or expert opinions (in the form of two sections from an EPA Relative Risk Assessment (the “EPA Risk Assessment”) and an EPA Final Rule as well as FPL’s ER at 2.3-15) to support the claims that the wastewater contains chemical contaminants that are not discussed in the ER, and that when FPL discharges the wastewater via the deep injection wells, the chemicals might migrate from the Boulder Zone to the Floridan Aquifer. Order at 37-8.

The Board concluded that a genuine dispute exists “as to (1) whether the wastewater used by FPL will, like other wastewater found in Miami-Dade County, contain heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene, which are not listed in FPL’s ER as wastewater constituent chemicals; and (2) whether the wastewater discharged via deep well injection will, along with these particular contaminants, migrate from the Boulder Zone to the Upper Floridan Aquifer. The ER fails to discuss these chemicals or their impact on the groundwater.” Order at 39 (internal citations omitted).

FPL'S MOTION TO DISMISS

On January 3, 2012, FPL filed a Motion to Dismiss Joint Intervenors' Contention 2.1 as Moot. FPL contends that the Board should dismiss Contention NEPA 2.1 because FPL has amended its ER to include information whose omission was the basis for the contention, and the potential environmental impact of the injection of the chemicals listed in Contention NEPA 2.1 is "negligible." FPL Motion to Dismiss at 1-2, 5.

On January 5, 2012, the Board granted Joint Intervenors' request for a ten-day extension of time (until January 23, 2012) in which to file an answer to FPL's Motion to Dismiss.

ARGUMENT

I. FPL'S MOTION TO DISMISS FAILS TO ESTABLISH A BASIS FOR RENDERING JOINT INTERVENORS' CONTENTION MOOT.

A. FPL's Revision to the Environmental Report is Not Supported By Complete and Verifiable Data.

FPL contends that Contention NEPA 2.1 is rendered moot by the addition to Table 3.6-2 in Revision 3 to the ER of estimated concentrations of heptachlor, ethylbenzene, toluene, and tetrachloroethylene. FPL Motion to Dismiss at 5. Despite the addition of these constituents, FPL refuses to reconsider its initial conclusion that the environmental impact of the chemicals discharged via deep injection wells is SMALL. FPL Motion to Dismiss at 5; ER at 5.2-25.

Revision 3 of the ER does not provide a sufficient basis to render Joint Intervenors' contention moot. First, FPL fails to identify and describe the source(s) of the data, or the method(s) of data collection, used to generate its revised list of constituent concentrations in Table 3.6-2. Quarles Affidavit at 8. Surprisingly, no information was

given to determine the date of sample(s), which plant(s) were used to develop the list of constituents, whether the concentrations were based on a single sampling event, when the sample(s) were collected, if the values represent the arithmetic or geometric means, or the maximum and minimum concentrations of the constituents. *Id.* As a result, there is no way to verify or assess FPL's findings. *Id.* See also *id.* at 9 (explaining that the wastewater constituent concentrations are highly variable and a comprehensive sampling plan using long-term data is required to accurately determine constituent concentrations. Because FPL provided no information regarding its sampling methods, it is impossible to verify the accuracy of the concentrations set forth in Table 3.6-2.). Table 3.6-2 is nothing more than a list of numbers on a page.

The importance of accurate and verifiable data regarding the concentration of constituents in the reclaimed wastewater cannot be understated – two of the constituents may be carcinogens and all six constituents may have harmful effects on humans in minute concentrations, including vomiting, diarrhea, and damage to the kidneys, lungs, nervous system, and heart. Quarles Affidavit at 27-31. Heptachlor was banned for commercial sale by the Environmental Protection Agency (the “EPA”) in 1988 because it is a possible human carcinogen. *Id.* at 27. A breakdown constituent of heptachlor, heptachlor epoxide, is a more dangerous carcinogen, having an even lower safe drinking water concentration (0.0002 mg/L) than heptachlor. *Id.* Nevertheless, the revised ER makes no mention of the carcinogenic nature of heptachlor and fails to consider heptachlor epoxide altogether. *Id.* Tetrachloroethylene is a probable human carcinogen. *Id.* at 28. Tetrachloroethylene breaks down in the environment and becomes other human carcinogens, vinyl chloride and trichloroethene. Vinyl chloride can cause cancer at an

even lower concentration (0.002 mg/L) than tetrachloroethylene. *Id.* The revised ER makes no mention of the carcinogenic nature of tetrachloroethylene and fails to mention trichloroethene and vinyl chloride altogether. *Id.*

A further evaluation of the concentrations of the constituents listed in Table 3.6-2 reveals that, when compared to results reported by the EPA in its Risk Assessment, the concentrations of thallium and tetrachloroethylene exceed the EPA maximum contaminant level (“MCL”), and the concentration for selenium nearly exceeds the MCL. *Id.* at 30. The EPA has established MCLs for some metal and organic constituents to protect public health by limiting concentrations in drinking water. *Id.* at 29. Any concentration above an MCL is considered to be unsafe for human ingestion. *Id.* FPL intends to inject 90 million gallons a day of wastewater containing hazardous chemicals into the Boulder Zone in an area that relies on groundwater to supply potable water to the public. *Id.* Until FPL considers the effects of these constituents on human health and the environment, impacts of contamination may be underestimated. *Id.* at 25 and 32.

Unsurprisingly, the National Environmental Policy Act (“NEPA”) prohibits the use of unverified data in an effort to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24. To this end, agencies must “identify any methodologies used and . . . make explicit reference by footnote to the scientific and other sources relied upon for conclusions” in their environmental impact statements. *Id.* As the U.S. Court of Appeals for the Ninth Circuit ruled in *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998), NEPA requires that an agency provide the public with “a basis for evaluating the impact” of a proposed action, including “hard data” relied upon by the agency’s

experts. The purpose of this requirement is two-fold: (a) to protect “a plaintiff’s ability to challenge an agency action,” and (b) to allow a court to review an agency’s NEPA decision without “second guessing” the agency’s “scientific conclusions.” *Id.* See also *Earth Island Inst. v. United States Forest Ser.*, 351 F.3d 1291, 1300-31 (9th Cir. 2003), citing *Marsh v. Ore. Natural Res. Council, Inc.*, 490 U.S. 360, 377 (1989) (a reviewing court must be able to independently review the record in order to satisfy itself that the agency has made a reasoned decision based on its evaluation of the evidence). Consistent with these judicial interpretations of NEPA, NRC regulations require that environmental impact statements “identify any methodologies used and sources relied upon” and “be supported by evidence that the necessary environmental analyses have been made.” 10 C.F.R. § 51.70(b). See also 10 C.F.R. § 51.30 (a)(2) (requiring an environmental assessment to provide a “list of agencies and persons consulted, and identification of sources used”).

Revision 3 to the ER does not comply with NEPA because it fails to describe the methodologies or to provide the underlying data on which it relies. In turn, the scant information submitted by FPL makes it virtually impossible for the NRC to comply with NEPA and the NRC regulations when the time comes to prepare its draft environmental impact statement. See 10 C.F.R. § 51.45 (c) (“The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis”). NEPA demands more than what FPL has proffered.

Accordingly, the revised ER fails to provide a sufficient basis for rendering Contention NEPA 2.1 moot.

B. FPL's Revised ER Fails to Adequately Analyze and Discuss Whether the Wastewater Discharged via Deep Well Injection Could Migrate into the Upper Floridan Aquifer, Contaminating the Groundwater.

Notwithstanding FPL's failure to provide complete and verifiable data concerning the estimated concentrations of heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene in the proposed wastewater injectate, Revision 3 of the ER also fails to adequately analyze and discuss whether the wastewater discharged via deep well injection could migrate into the Upper Floridan Aquifer and contaminate the groundwater with these chemicals. Quarles Affidavit at 10-24.

As explained above, the Board found in its February 28, 2011 Order that a genuine dispute of fact exists not only as to "whether the wastewater used by FPL will, like other wastewater found in Miami-Dade County, contain heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene, which are not listed in FPL's ER as wastewater constituent chemicals," but also as to "whether the wastewater discharged via deep well injection will, along with these particular contaminants, migrate from the Boulder Zone to the Upper Floridan Aquifer." Order at 39 (internal citations omitted). Instead of assessing the potential for groundwater contamination, FPL maintains its blanket assertion that any impacts of such migration will be SMALL. FPL relies on no expert, analysis, or study in determining that its conclusion in the ER need not be modified. Quarles Affidavit at 25.

This conclusion, however, runs counter to three independent studies confirming that deep well wastewater injection operations can contaminate aquifers and negatively impact the environment. *Id.* at 10-20. Studies by the Miami-Dade Water and Sewer Department, Idaho National Engineering Laboratory, and the Environmental Protection

Agency reveal that chemical constituents injected into the Boulder Zone of the Lower Floridan Aquifer can migrate upward into the drinking water aquifer. *Id.* At the very least, these studies demonstrate that as a matter of sound public policy, complete, accurate, and verifiable data and analyses are needed before a decision is made that FPL's plans will not result in the harmful release of the six constituents into the groundwater.

Despite this need, FPL has not performed any independent investigation. *Id.* at 19 and 25. Instead, FPL continues to rely on earlier studies that failed to investigate the geologic and hydrogeologic conditions at the Turkey Point site at a depth sufficient to determine aquifer conditions, confining layer characteristics, influence on tidal conditions associated with the Strait of Florida connection to the Boulder Zone, or the occurrence of a circular flow pattern in the deep groundwater. *Id.* at 19-24. FPL also relies upon a number of unsupported or generalized assumptions about the impenetrability of the middle confining layer (*Id.* at 20), the flow rate of injected wastewater (*Id.* at 21), and the presence of vertical joints (*Id.* at 22-24).

FPL's reliance on such unjustified and misleading assumptions will impair the NRC from considering the true adverse environmental effects of deep well injection and thus violates NEPA. *See South Louisiana Env'tl. Council v. Sand*, 629 F.2d 1005, 1011 (5th Cir. 1980) (finding that in order to determine whether an agency has complied with NEPA, the court must assess whether certain considerations made by the agency were so distorted as to impair fair consideration of environmental consequences.). *See also Johnston v. Davis*, 698 F.2d 1088, 1094 (10th Cir. 1983) (holding that misleading or unqualified statements that do not represent a realistic assessment of environmental

impacts violate NEPA) and *Hughes Watershed Conservancy v. Glickman*, 81 F.3d 437, 446 (4th Cir. 1996) (rejecting an environmental impact statement that contained misleading projections of a proposed project's economic benefits). Moreover, these unjustified assumptions and lack of supporting data call into question FPL's conclusion that the impacts would be SMALL and suggest that FPL's calculations may significantly underestimate the extent of these chemicals' migration into potential sources of drinking water. Quarles Affidavit at 10-26 and 32.

C. Contention NEPA 2.1 is a Contention of Adequacy, Not Omission, and Therefore a Motion to Dismiss the Contention as Moot Based Solely on the Submittal of Estimated and Unsupported Concentrated Levels is Improper.

In its Motion to Dismiss, FPL attempts to re-characterize Joint Intervenors' Contention NEPA 2.1 (as modified by the Board) as a contention of omission, suggesting that so long as it revises Table 3.6-2 to include concentrations for the six constituents, FPL's work is done and the contention is rendered moot. This is evidenced by its reliance on *McGuire*, CLI-02-28, 56 NRC 373, 382-83 (2002) (finding that where "a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot"). FPL sees no need to discuss the new constituents or devote even a single sentence to explaining its conclusion that impacts to groundwater will not be altered by the presence of these harmful chemicals.

No fair reading of Contention NEPA 2.1 and its underlying bases¹ could lead to the conclusion that, absent discussion, the contention is now mooted. To the contrary, in

¹ Where an issue arises over the scope of an admitted contention, Boards have long referred back to the bases set forth in support of the contention. *See Public Serv. Co. of*

admitting Contention NEPA 2.1, the Board found that Joint Intervenors contention asserts “that there has been migration of fluid between the Boulder Zone and the Upper Floridan Aquifer and FPL *improperly fails to discuss the impact* to the Upper Floridan Aquifer of the above-specified chemicals that have been typically found in Florida wastewater.” Order at 36 (emphasis added). The Board went on to explain that “[a]lthough FPL’s ER discusses other chemicals in the wastewater (ER at tbl. 3.6-2), it fails to address the particular chemicals identified by Joint Petitioners, *let alone analyze the likely impact* of those particular chemicals in the groundwater . . . FPL has an *obligation to discuss* in the ER any such environmental impact caused by these chemicals in proportion to their significance.” *Id.* at 37 (emphasis added). The Board concluded that a genuine dispute exists, as “the ER fails to discuss these chemicals or their impact on the groundwater.” *Id.* at 38.

The plain language of Contention NEPA 2.1, coupled with the Board’s discussion of the bases for admitting Joint Intervenors’ contention, demonstrate that the contention is one of adequacy, not omission. The mere submission of estimated concentrations of four constituents and FPL’s unmodified assertion that the environmental impacts of the constituents will be SMALL – without any attempt at discussion or analysis – does not render the contention moot.

II. JOINT INTERVENORS’ MOTION TO AMEND CONTENTION NEPA 2.1

Joint Intervenors strenuously maintain that Contention NEPA 2.1 is a contention of adequacy and, as such, FPL’s Motion to Dismiss the contention as moot merely

New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), cert denied, 502 U.S. 899 (1991). *See also Private Fuel Storage*, LBP-01-23, 54 NRC 163, 171 (2001).

because FPL has revised its ER to include certain additional constituent concentrations (without any supporting data or accompanying analysis) is improper and should be denied. Therefore, Joint Intervenors would respectfully submit that Contention NEPA 2.1 remains ripe and should not be modified, amended, or replaced with a new contention at this time. *See generally Private Fuel Storage*, LBP-01-26, 54 NRC 199, 208 (2001) (explaining that a contention “initially framed as a challenge to the substance of an applicant’s ER analysis of particular matters would not necessarily require a late-filed revision or substitution to constitute a litigable issue statement relative to the substance of the Staff’s DEIS (or final environmental impact statement) analysis of the same matter”).

To the extent, however, that the Board finds Contention NEPA 2.1 to be a contention of omission, and not a contention of adequacy, Joint Petitioners hereby move to amend Contention NEPA 2.1 to read as follows:²

The ER fails to adequately analyze and discuss the potential impacts on groundwater quality of injecting into the Floridan Aquifer via underground injection wells heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene, which have been found in injection wells in Florida but are not accurately listed in FPL’s ER as wastewater constituent chemicals.

For the reasons explained below, Joint Intervenors’ amended contention satisfies the requirements of 10 C.F.R. § 2.309(f)(1) and (2) and should be admitted. *See Florida Power & Light Co.*, Memorandum and Order (Initial Scheduling Order and Administrative Directives) (March 2, 2011) (the “Scheduling Order”); *see also Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 160-61 (2005).

² *See McGuire*, CLI-02-28, 56 NRC 373 at 383 (providing that where a contention is deemed to be moot, Intervenors must timely file a new or amended contention).

A. Joint Intervenors' Amended Contention NEPA 2.1 Satisfies the Requirements of 10 C.F.R. § 2.309(f)(1).

Joint Intervenors submit that, because Revision 3 to the ER contains no new analysis of the concentration levels of the constituents identified in Contention NEPA 2.1, the bases for admitting Contention NEPA 2.1 in the Board's February 28, 2011 Order remain relevant and applicable to Joint Intervenors' Amended Contention NEPA 2.1 (the "Amended Contention"). *See* Order at 36-40.

First, the Amended Contention presents "a specific statement of the issue of law or fact to be raised or controverted" (10 C.F.R. § 2.309(f)(1)(i)) as it essentially mirrors the original contention but is modified to take issue with the accuracy of FPL's latest revision to the ER and the adequacy of its analysis of the six constituents' impacts to the environment.

Second, the Amended Contention includes a "brief explanation of its basis" (10 C.F.R. § 2.309(f)(1)(ii)) insofar as Joint Intervenors continue to assert that there has been migration of fluid between the Boulder Zone and the Upper Floridan Aquifer and the ER fails to adequately discuss the impact of the six chemical constituents on the Upper Floridan Aquifer.

Third, the Amended Contention remains within the scope of this proceeding (10 C.F.R. § 2.309(f)(1)(iii)) as it concerns FPL's COL Application for Turkey Point Units 6 and 7 and challenges FPL's revised ER.

Fourth, the Amended Contention satisfies the materiality requirement (10 C.F.R. § 2.309(f)(1)(iv)) as FPL's revised ER fails to describe the reasonably foreseeable environmental impacts of the six constituents on the groundwater, which must be discussed in proportion to their significance. FPL simply lists the purported

concentration levels without discussing the source of the data or its significance. This is improper, particularly when at least two constituents are potential human carcinogens and exceed the EPA MCL, and all six constituents are harmful to humans in minute concentrations. Quarles Affidavit at 26-31. Additionally, FPL fails to adequately discuss the impact of these constituents on the groundwater, and instead simply asserts the impact will be SMALL without providing any explanation, discussion, or analysis.

Fifth, the Amended Contention provides alleged facts or expert opinions (10 C.F.R. § 2.309(f)(1)(v)) as it is accompanied by the affidavit of Mark Quarles and the references he discusses and cites therein.

Finally, a genuine dispute exists (10 C.F.R. § 2.309(f)(1)(vi)) as to (1) whether the wastewater used by FPL will contain heptachlor, ethylbenzene, toluene, selenium, thallium, and tetrachloroethylene in the concentrations reflected on Table 3.6-2 of the ER; and (2) whether the wastewater discharged via deep well injection will, along with these particular contaminants, migrate from the Boulder Zone to the Upper Floridan Aquifer. The ER fails to adequately discuss these chemicals or their impact on the groundwater.

Accordingly, Joint Intervenors' Amended Contention satisfies the requirements of 10 C.F.R. § 2.309(f)(1).

B. Joint Intervenors' Amended Contention NEPA 2.1 Satisfies the Requirements of 10 C.F.R. § 2.309(f)(2).

Pursuant to 10 C.F.R. § 2.309(f)(2), contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that (1) the information upon which the amended or new contention is based was

not previously available; (2) the information upon which the amended or new contention is based is materially different than information previously available; and (3) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

(1) *The Information Upon Which the Amended Contention is Based Was Not Previously Available.*

The Amended Contention is based upon the contents of Revision 3 to the ER. Thus, the information upon which it is based was not available until that revision was published – on January 3, 2012.

(2) *The Information Upon Which the Amended Contention is Based Is Materially Different than Information Previously Available.*

Revision 3 to FPL's ER contains the estimated concentration of additional chemical constituents that may be in the reclaimed wastewater stream and could migrate into potential drinking water sources when the wastewater is injected into underground injection wells. This information (as incomplete and unverifiable as it may be) differs significantly from the original ER, which wholly failed to list these constituents.

(3) *The Amended Contention Has Been Submitted In A Timely Fashion Based on the Availability of the Subsequent Information.*

The revised ER was purportedly filed on December 16, 2011. Motion to Dismiss at 5. As previously explained in Joint Intervenors' Unopposed Motion for Extension of Time, Joint Intervenors did not receive a copy of the revised ER until January 3, 2012, when it was delivered to their counsel's office via mail. The revised ER was made available through the Agencywide Documents Access and Management System ("ADAMS") later that day. Joint Intervenors have filed the Amended Contention within thirty (30) days of the revised ER becoming publically available. Thus, Amended

Contention 2.1 is timely. *See* Scheduling Order at 8 (providing that “a motion and proposed new or amended contention . . . shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available.”).

C. Certification.

Pursuant to 10 C.F.R. 2.323(b), Joint Intervenors certify that on January 20, 2012, we contacted counsel for FPL and the NRC staff in an attempt to obtain their consent to this motion to amend Contention NEPA 2.1. Counsel for FPL opposed the motion. While the NRC staff did not object to the filing of the motion on procedural grounds, it reserved judgment on the motion and will respond in due course.

CONCLUSION

For all the aforementioned reasons, FPL's Motion to Dismiss should be denied. Alternatively, if FPL's Motion is granted, mootng Contention NEPA 2.1, the Board should admit Joint Intervenors' Contention NEPA 2.1 as amended.

Respectfully submitted this 23rd day of January, 2012.

/signed electronically by/

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 6 and 7)

Docket Nos. 52-040-COL and 52-041-COL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **JOINT INTERVENORS' ANSWER TO FPL'S MOTION TO DISMISS JOINT INTERVENORS' CONTENTION 2.1 AS MOOT, AND ALTERNATIVELY, JOINT INTERVENORS' MOTION TO AMEND CONTENTION NEPA 2.1** were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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