April 17, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket No. 50-250-LA
	)	50-251-LA
(Turkey Point Units 3 and 4)	)	
	)	ASLBP No. 15-935-02-LA-BD01

FLORIDA POWER & LIGHT COMPANY'S
NOTICE OF APPEAL OF LBP-15-13

Pursuant to 10 C.F.R. §§ 2.311(a) and (d), Florida Power & Light Company files this Notice of Appeal of the Atomic Safety and Licensing Board's Memorandum and Order, dated March 23, 2015, which admitted a single contention in the above-captioned proceeding proffered by Citizens Allied For Safe Energy. Attached hereto is a brief in support of this appeal.

Respectfully Submitted,

Signed (electronically) by Steven Hamrick

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BRIEF IN SUPPORT OF FLORIDA POWER & LIGHT COMPANY'S APPEAL OF LBP-15-13

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Judicial Authority **Page**

Commission Adjudicatory Authority

Licensing and Appeal Board Cases

Florida Department of Environmental Protection

Statutes and Regulations

Federal Register

I. INTRODUCTION

On March 23, 2015, the Atomic Safety and Licensing Board ("Board") in the above captioned proceeding admitted one contention ostensibly raised by Citizens Allied for Safe Energy, Inc. ("CASE") in its Petition to Intervene and Request for a Hearing (Oct. 14, 2014) ("Petition"). Pursuant to 10 C.F.R. § 2.311(a) and (d), Florida Power & Light Company ("FPL") respectfully requests that the Commission reverse the Board's decisions that CASE demonstrated standing in this proceeding and that CASE submitted an admissible contention, and find that CASE's Petition should have been wholly denied.

II. BACKGROUND

A. NRC Procedural History

This proceeding pertains to FPL's License Amendment Request to amend certain Technical Specifications ("TS") for Turkey Point Nuclear Generating Units Nos. 3 and 4 ("Turkey Point") to increase the ultimate heat sink ("UHS") water temperature limit specified in TS 3.7.4 from 100 °F to 104 °F, add a surveillance requirement to monitor the UHS water temperature once per hour whenever the temperature exceeds 100 °F, and increase the frequency of a component cooling water ("CCW") heat exchanger performance test.[1]

Turkey Point Units 3 and 4 are pressurized water reactors located in Miami-Dade County, Florida, approximately 25 miles south of Miami and bordering Biscayne Bay. The nuclear units are co-located with three fossil-fueled units (Units 1, 2, and 5). The two nuclear units and fossil Unit 1 are cooled by a 6,100 acre closed loop Cooling Canal

[1] Letter from M. Kiley, FPL to NRC Document Control Desk "License Amendment Request No. 231, Application to Revise Technical Specifications to Revise Ultimate Heat Sink Temperature Limit," dated July 10, 2014 (ADAMS Accession No. ML14196A006).

System ("CCS").[2] For the two nuclear units, the CCS serves as coolant for the circulating water system, which provides cooling to the secondary side main condensers, and acts as the UHS for the safety-related intake cooling water system. Heated water discharges into the CCS at one end, flows through the canal system, and is withdrawn from the other end for reuse as cooling water. Rainfall, stormwater runoff, and groundwater exchange replenish evaporative losses.[3]

In the summer of 2014, environmental conditions, including extraordinary algae growth in the CCS and unseasonably dry weather, among other factors, resulted in UHS temperatures approaching the 100 °F TS limit. Consequently, on July 10, 2014, FPL requested the NRC to increase the UHS temperature limit in TS 3.7.4.[4] The NRC published an Environmental Assessment of the license amendment and Finding of No Significant Impact in the *Federal Register* on July 31, 2014. Having also determined that the amendment involved no significant hazards considerations and the criteria for exigent consideration were met, the NRC issued the amendment on August 8, 2014.[5] On August

[2] Unit 2 was also cooled by the CCS but has recently retired. Unit 5, a combined cycle natural gas fired plant, uses mechanical draft cooling towers for cooling, draws makeup water from the Upper Floridan Aquifer, and discharges its cooling tower blowdown to the CCS.

[3] *See* Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4, Environmental Assessment and Finding of No Significant Impact; Issuance, 79 Fed. Reg. 44,464 (July 31, 2014) ("EA").

[4] While the NRC reviewed its amendment request, FPL also took other steps outside the jurisdiction of the NRC to avoid shutdown by reducing the CCS temperature, including obtaining permission from the Florida Department of Environmental Protection ("FDEP") for temporary use of chemical treatments to reduce the algae concentrations, obtaining permission from the South Florida Water Management District ("SFWMD") to withdraw a portion (approximately 5 MGD) of the Unit 5 withdrawal allowance from the Floridan aquifer for use in the CCS, and obtaining temporary approval to withdraw 30 MGD from the shallower, saltwater Biscayne aquifer. *See* EA, 79 Fed. Reg. at 44,468. Soon thereafter, FPL sought SFWMD approval to utilize excess surface water from the nearby L-31 E canal.

[5] Letter from A. Klett, NRC to M. Nazar, FPL, Turkey Point Nuclear Generating Units Nos. 3 and 4 – Issuance of Amendments under Exigent Circumstances Regarding Ultimate Heat Sink and Component Cooling Water Technical Specifications (TAC Nos. MF4392 and MF4393) dated August 8, 2014 (ADAMS Accession No. ML14199A107).

14, the NRC published a notice of issuance of the license amendment and a supplemental notice of opportunity for hearing in the *Federal Register*.[6]

In response to the NRC's Hearing Notice, CASE requested a hearing on October 14, 2014. FPL and the NRC Staff opposed CASE's hearing request.[7] CASE filed a reply on November 17, 2014.[8] The Board held a prehearing conference on January 14, 2015 in Homestead.[9] On March 23, 2015, the Licensing Board issued LBP-15-13,[10] ruling that CASE had demonstrated standing and had submitted a single admissible contention. FPL seeks review of both of those rulings.

B. Recent Local Environmental Regulatory History

As is discussed in the NRC's Environmental Assessment issued several years ago for the previous Turkey Point Extended Power Uprate ("EPU") license amendment, the CCS water is hyper-saline.[11] For this reason, the Florida Department of Environmental Protection ("FDEP"), the state agency solely responsible for environmental protection in Florida, in response to concerns about saltwater intrusion, imposed numerous Conditions of Certification when approving FPL's EPU in 2012. FDEP's conditions require FPL to implement an "ongoing program" to monitor and assess the potential direct and indirect

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[6] Florida Power & Light Company; Turkey Point, Units 3 and 4; License Amendment, Issuance, Opportunity to Request a Hearing, and Petition for Leave to Intervene, 79 Fed. Reg. 17,689 (Aug. 14, 2014) ("Hearing Notice").
[7] FPL's Answer to Citizens Allied for Safe Energy, Inc.'s Petition to Intervene and Request for a Hearing (Nov. 10, 2014) ("FPL Answer"); NRC Staff's Answer to Citizens Allied for Safe Energy, Inc.'s Petition for Leave to Intervene and Request for Hearing (Nov. 10, 2014) ("NRC Staff Answer").
[8] CASE Reply to FPL and to NRC Staff Answers to Its Petition to Intervene and Request for a Hearing (Nov. 17, 2014).
[9] Transcript ("Tr.") Oral Argument in the Matter of Florida Power and Light Turkey Point Nuclear Generating Units 3 and 4 (Jan. 14. 2014).
[10] LBP-15-13, 81 NRC __ (March 23, 2015).
[11] *See* Florida Power & Light Company, Turkey Point, Units 3 and 4; License Amendment To Increase the Maximum Reactor Power Level, Final Environmental Assessment and Finding of No Significant Impact, 77 Fed. Reg. 20,059, 20,062 (Apr. 03, 2012) ("EPU EA").

impacts to ground and surface water from the proposed EPU, including potential saltwater intrusion. EPU EA, 77 Fed. Reg. at 20,062. This mandatory program requires FPL to measure water temperature and salinity in the CCS, and monitor the ground and surface water surrounding the Turkey Point site. *Id*. The conditions also allow FDEP, in consultation with the South Florida Water Management District ("SFWMD") and Miami-Dade County, to impose additional measures if the data indicates degradation to aquatic resources. These additional measures may include imposing further requirements to reduce and mitigate salinity levels in groundwater, operational changes to the CCS, and other necessary actions to reduce any potential environmental impacts. *Id*.

Based on the data provided by FPL to FDEP under the EPU monitoring program, and in accordance with the Conditions of Certification, the FDEP issued an Administrative Order in late 2014, requiring FPL to propose a salinity management plan that would reduce the salinity in the CCS by adding water that is less saline than that currently in the CCS. *In re Florida Power & Light Company*, Administrative Order (Dec. 23, 2014) (available at ML15035A227). This Order was anticipated in the NRC's EA for the instant license amendment. EA, 79 Fed. Reg. at 44,468; *see also* Tr. at 55, 59-60. The FDEP issued the Administrative Order based on its determination that the high salinity levels in the CCS may be one factor affecting saltwater intrusion and that reducing CCS salinity has the potential to moderate westward migration of CCS water. Under this Order, FPL will be required to take water from available sources to mitigate CCS salinity.[12]

[12] The FDEP Order has been stayed while it is administratively challenged by third parties. A hearing is tentatively scheduled for this summer. Nonetheless, FPL is actively working to address CCS salinity with the oversight of the FDEP and the SFWMD and in consultation with local non-governmental organizations and neighboring property owners.

III. STATEMENT OF LAW

A. Standing

Any person who seeks to intervene in a Commission proceeding bears the burden of demonstrating standing. 10 C.F.R. § 2.309(a); *U.S. Enrichment Corp*. (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001). The Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). In *Lujan,* the Court identified the three elements[13] comprising the "irreducible constitutional minimum" of standing:

(1) an injury in fact that is "concrete and particularized" as well as "actual or imminent, not conjectural or hypothetical";

(2) that can fairly be traced to the challenged action and not the result of "the independent action of some third party not before the court"; and

(3) that is "likely, as opposed to merely speculative" to be redressed by a favorable decision.

504 U.S. at 560 (internal quotations and citations omitted). *See also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998).

B. Contention Admissibility

A petitioner must also propose at least one contention that satisfies the admissibility criteria set forth in 10 C.F.R. § 2.309(f)(1). This regulation specifies that a

[13] The Commission "uses the same three-part analytical framework in analyzing standing" expressed in *Lujan,* which "provides a reasonably concise statement of the conceptual framework used to analyze standing (injury in fact, causal connection, and redress by a favorable decision)." *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services*, (Calvert Cliffs, Unit 3) CLI-09-20, 70 NRC 911 (2009).

hearing request "must set forth with particularity the contentions sought to be raised." In addition, each contention must:

(1) provide a specific statement of the legal or factual issue sought to be raised;
(2) provide a brief explanation of the basis for the contention;
(3) demonstrate that the issue raised is within the scope of the proceeding;
(4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
(5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and
(6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.

Licensing boards must reject a proposed contention that fails to comply with any one of these six admissibility criteria. *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

The Commission designed its current contention pleading requirements to avoid the admission of "frivolous contentions" where the petitioner "may not fully understand a contention" or does not "adequately identify the issues that [it] seeks to litigate." Proposed Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 51 Fed. Reg. 24,365, 24,366 (July 3, 1986). It has made clear that "'contentions shall not be admitted if at the *outset* they are not described with reasonable specificity or are not supported by some alleged fact or facts *demonstrating* a genuine material dispute' with the applicant. We properly 'reserve our hearing process for genuine, material controversies between knowledgeable litigants.'" *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 307 (2012). (citations omitted, emphases in original). Allowing boards "to entertain contentions grounded on little more than guesswork would waste the scarce adjudicatory resources of all involved." *Crow Butte Res. Inc.* (N. Trend Expansion Project), CLI-09-12, 69 NRC

535, 552 (2009); *see also Crow Butte Res., Inc.* (License Renewal for In Situ Leach Facility, Crawford, Neb.), CLI-09-9, 69 NRC 331, 363-364 (2009).

IV. STANDARD OF REVIEW

The Commission's rules of practice at 10 C.F.R. § 2.311 allow an appeal as of right on the question of whether a hearing request should have been wholly denied. *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 379 (2012). The Commission generally defers to board rulings on contention admissibility in the absence of an error of law or abuse of discretion. *Id.* at 380; *Seabrook*, 75 NRC at 307. And it gives a Board's ruling on standing "substantial deference" except where the Board has clearly misapplied the facts or law. *Private Fuel Storage*, 49 NRC at 323.

V. SUMMARY OF ARGUMENT

The Board clearly erred by basing its standing and contention admissibility decisions on its own theory, raised *sua sponte*, rather than the bases set forth by CASE. But demonstrating standing is the Petitioner's burden. *USEC,* 54 NRC at 272. And the NRC's "contention admissibility rules require that contentions be raised with sufficient detail to put the parties on notice of the issues to be litigated."[14] *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 437 (2011). For both of its analyses, the Board relied on CASE's incorrect and unsupported claims that FPL is withdrawing freshwater from local aquifers and reached its own unsupported conclusions regarding the potential impact of withdrawals from a local canal, both actions outside of the NRC's jurisdiction. Further, the Board incorrectly

[14] Because the Board's reasoning differed significantly from CASE's, this brief includes some arguments in addition to those FPL raised below. To the extent this brief contains new arguments, they respond to the Board's reasoning, not arguments raised by CASE.

posited a connection, never identified by CASE nor supported by the record, between these withdrawals and the NRC license amendment at issue. Because these arguments were not raised by CASE, are contradicted by jurisdictional regulatory authorities, or are impermissibly speculative, they cannot serve as support for either the Board's standing or contention admissibility rulings. CASE's Petition should be wholly denied.

VI. ARGUMENT

A. CASE Has Not Demonstrated Standing in this Proceeding

CASE's claims regarding withdrawals from aquifers are insufficient to demonstrate standing to challenge the NRC's license amendment. CASE has not shown that the NRC approved any water withdrawals, that the NRC-approved increase in the UHS temperature limit would result in additional withdrawals or exacerbate ongoing saltwater intrusion in any way, that FPL is withdrawing any fresh water from aquifers, or that the canal water FPL has withdrawn has any effect on saltwater intrusion. Therefore, CASE cannot show any injury attributable to the NRC action and redressable in this proceeding.

Other than a claim for proximity-based standing, CASE's assertion of standing rested solely on an allegation that drawing excessive water from the aquifer would harm its members.[15] Pet. at 4. During the prehearing conference, CASE stated that the alleged impact on its members was "all about freshwater" (Tr. at 21, 31, 35, 45) and explained that freshwater in the aquifers holds back salt-water intrusion and any withdrawals of

[15] FPL and the NRC Staff argued that the proximity presumption did not apply and the Board did not consider that argument. FPL and the NRC Staff argued that the aquifer withdrawals cited by CASE were not caused by the NRC action or redressable in this proceeding. FPL Answer at 11; Staff Answer at 6, 8. Further, FPL argued that CASE had not clearly specified an injury because it failed to indicate how withdrawals of brackish or salty water from an aquifer would have any impact on CASE or its members. FPL Answer at 11-12.

freshwater increases such intrusion. Tr. at 31-32, 47. Despite repeated opportunities during the prehearing conference, however, CASE never explained how any groundwater withdrawal was connected to the license amendment increasing the temperature limit in the technical specifications (*see* Tr. at 36-37, 71, 74-75) and instead merely asserted that FPL had not addressed "increases in all factors" related to the CCS following the uprate. Tr. at 74.

Despite CASE's complete failure to relate any aquifer withdrawals to the increase in the TS limit, the Board modified CASE's argument to conclude that the NRC's approval of the amendment:

> enables Turkey Point Units 3 and 4 to continue operating at the same power level and with elevated CCS temperatures, which *could* effectively require additional aquifer withdrawals and lead to additional saltwater intrusion in the future. After all, absent NRC action, FPL would have been forced to shut down or at least reduce power at Turkey Point Units 3 and 4, a result that *could have potentially* obviated any need for more extensive aquifer withdrawals, at least during periods when CCS intake temperatures exceed 100°F.

LBP-15-13, slip op. at 11 (emphases added). As discussed below, this sua sponte rationale is not only speculative and unsupported but also incorrect. Increasing the TS limit decreases any need to add water to the CCS to avoid shutdowns, rather than increasing it. Moreover, the Biscayne aquifer water FPL has withdrawn is clearly not freshwater (*see* NRC Staff Answer Attachment B). And CASE admitted during the prehearing conference that the groundwater in the much deeper Floridian aquifer is brackish (Tr. at 33) and separated from the Biscayne aquifer by a confining formation (Tr. at 44, 66, 68), and that CASE does not know whether it is critical to holding back salt water (Tr. at 66). Regardless, additions to the CCS pursuant to the salinity management

plan required by the FDEP's Administrative Order will occur regardless of the increase in the TS limit.

1. The Board Misapplied Contemporary Judicial Standing Factors

Essentially, the Board concluded that CASE demonstrated an injury-in-fact based on *potential* additional saltwater intrusion that *may* result from increased water withdrawals that *may* be required due to increased heat load in the CCS that *may* result from increased operation during summer days when peak CCS temperature *may* exceed 100° F but remain below the new limit of 104° F. LBP-15-13, slip op. at 11. Under *Lujan* and contemporary standing doctrine, such a hypothetical and conditional injury simply cannot support standing as a matter of law. *See Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). A standing determination "must be something more than an ingenious academic exercise in the conceivable. A plaintiff must allege that he has been or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action." *United States v. Students Challenging Regulatory Agency Proce*dures, 412 U.S. 669, 688-89 (1973).

Importantly, the purported injury-in-fact identified by the Board appears absolutely *nowhere* in CASE's Petition, its Reply, or its statements at the prehearing conference.[16] The Board therefore, "committed legal error by supplying a legal basis not argued" by CASE. *See Seabrook,* 75 NRC at 348. And precisely because CASE never

[16] In its discussion of causation, the Board never cited to CASE's Petition. Instead it cited only to the prehearing conference. *See* LBP-15-13, slip op. at 10-11, n. 54-56 (citing to Tr. at 25). At the prehearing conference, the Board asked CASE on no less than seven occasions to identify an injury stemming from the license amendment or how such an injury could be redressed in this proceeding. *See, e.g.,* Tr. at 20, 23, 36-37 (note the incorrect references to Mr. Blair here – Mr. White was speaking for CASE at this point), 74-76, 121-23, 125. CASE never identified the injury requested by the Board.

made this argument, there is no evidence in the record to support this speculative hypothesis. In fact, the Board's conclusion is almost certainly backwards. To the extent that FPL can or would choose to utilize more or less water on a day-to-day basis based on contemporaneous CCS temperature (a concept for which there is no evidence in the record) logic dictates that FPL would be forced to use more water if the amendment had not been issued and it had to strive to keep the temperature under the previous limit of 100° F. But with the amendment, FPL is not under quite the same pressure to add water when the temperature nears 100° F. *See e.g.* FPL Answer at 11; Tr. at 126-129. At best, the Board's theory is speculative. But *Lujan* and contemporary judicial standing doctrine instruct that the injury must be concrete and not hypothetical and that its potential redress must be likely and not speculative. There is simply no factual basis in the record upon which to conclude that the absence of the amendment would affect the rate of FPL's water withdrawals in any way.

Lujan also instructs that the injury must be "fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party." 504 U.S. at 560 (internal quotations omitted). Though CASE's Petition asserts vaguely that the "Commission has authorized measures" (Pet. at 4), it is indisputable that the NRC has not (and could not have) authorized any withdrawals of state waters. And while the Board's hypothetical attempts to trace the alleged injury back to the NRC action, it does so in a manner that ignores the independent intervening steps not only of FPL, but the state and local regulators who must first authorize the Board's hypothetical withdrawals. FPL, in consultation with and subject to the approval of its local water regulators, decides where to withdraw water, how much water to withdraw, and when to

withdraw it. These variables are completely outside the hands of the NRC. Moreover, the Board's *sua sponte* hypothetical ignores the effects of rainfall, temperature, and FPL's ongoing state-mandated mitigation activities in the CCS.

In fact, much of the Board's standing analysis was effectively mooted by the recent action of the FDEP to address saltwater intrusion, which FDEP has concluded is exacerbated by the high salinity levels in the CCS. As discussed in the EA and at the prehearing conference, the FDEP's Administrative Order requires FPL to propose a salinity management plan that would reduce the hypersalinity in the CCS by adding water that is less saline than that currently in the CCS. Tr. at 55, 59-60. *See also* EA, 79 Fed. Reg. at 44,468. Under this Order, FPL will be required to take water from certain sources to address CCS *salinity* in a regulatory scheme under the state's jurisdiction that is completely separate from the NRC's action with regard to the CCS *temperature*.[17] Ironically, some of the very measures CASE argues exacerbate saltwater intrusion when used to address CCS temperature are among those identified by FDEP to mitigate saltwater intrusion by addressing CCS salinity.[18] For this reason, even if CCS temperatures do not approach 100° F (or 104° F) during the summer, FPL will still need to make the same water withdrawals to address CCS salinity, in order to comply with

[17] CASE had an opportunity to challenge the Administrative Order but did not do so.

[18] The Administrative Order requires FPL to "reduce and maintain the average annual salinity of the CCS at a practical salinity of 34" (comparable to the salinity of the nearby Biscayne Bay) within four years. FDEP Admin. Order at 5-6. To achieve this end, FPL may:

> 1) utilize the existing unused allocation of water for Unit 5 from the Floridan aquifer; 2) license and construct new Floridan wells; 3) utilize water from the L-31 E canal consistent with District water reservation and consumptive use rule criteria; 4) utilize water from the Card Sound Canal consistent with Department and District rule criteria; 5) remove organic and sediment biomass within the CCS, and/or 6) remove hypersaline water from within and/or beneath the CCS through use of an Underground Injection Control ("UIC") well.

Id. The local Biscayne aquifer water is less valuable for salinity reduction due to its high salinity levels, but still could be used for this purpose because it is less saline than the hypersaline CCS.

FDEP's Order. By the same token, even under the Board's hypothetical, where the reactors were shut down or reduced power due to elevated CCS temperatures, FPL would still need to add water to the CCS in order to comply with FDEP's salinity mitigation requirements. Because the use of this water is not regulated by the NRC and has been mandated by the state regulator, it is not possible to conclude that future withdrawals may somehow be caused by the NRC's approval of the license amendment now at issue.

The Board cited *Massachusetts v. EPA* for the proposition that even small contributions to resolving larger complex issues can satisfy standing requirements. LBP-15-13, slip op. at 11 (citing 549 U.S. 497, 526 (2007)). But the injuries alleged in *Massachusetts* were not speculative or hypothetical and were based on "unchallenged affidavits" (the EPA did not dispute the concept of anthropogenic climate change). 549 U.S. at 521-23. Moreover, unlike here, the plaintiff in *Massachusetts* actually argued that it would be harmed in this small manner by the EPA's (lack of) action.[19] Had CASE alleged (with some factual basis) that the potential operation of the reactors between the old and new thermal limits would exacerbate saltwater intrusion in an incremental way that would be redressed by a different outcome of the NRC proceeding, *Massachusetts* might be applicable. But it did not. The Board's *sua sponte* argument, with no support in the record, cannot serve to support its standing determination.

The Board acknowledges that redress of CASE's injury is unlikely in this proceeding, but appears to conclude that addressing CASE's claims regarding alleged deficiencies in the EA can serve to meet the redressability requirement. LBP-15-13, slip

[19] Massachusetts' expert opined that "[a]chievable reductions in emissions of CO2 and other [greenhouse gases] from U.S. motor vehicles would . . . delay and moderate many of the adverse impacts of global warming." 549 U.S. at 515.

op. at 12. Once again, CASE never raised this argument. Regardless, a procedural injury (such as a claim under NEPA) alone is not sufficient to demonstrate standing. "[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create [standing]." *Summers v. Earth Island Inst*., 555 U.S. 488, 496 (2009) (citing *Lujan,* 504 U.S. at 572, n.7). Thus, even under this analysis, we must return to square one and determine whether CASE has identified a concrete and particularized injury arising from the NRC's issuance of the license amendment. CASE has alleged no such injury.

Regardless, the Board's reliance on *Massachusetts* is inconsistent with its determination that CASE's concerns are redressable through further NEPA evaluation. Procedural relief affording further evaluation of groundwater impacts in the NRC's Environmental Assessment will not make "even a small contribution to resolving a larger, more complex injury." *See* LBP-15-13, slip op. at 11. Nor is there any reason to believe that what the Board considers to be a "small contribution" to a larger, complex problem would be sufficient to call into question the NRC's relevant finding that the amendment would cause no *significant* impact. In other words, if the redress is procedural, then *Massachusetts* appears inapposite. And if the incremental contribution of the license amendment is small, then there is likely no procedural remedy available through a finding of a significant impact and the preparation of an Environmental Impact Statement ("EIS"). [20]

[20] A "*concise*" EA is sufficient unless the contemplated action is a "major Federal action *significantly* affecting the quality of the human environment, which would require an EIS. *Pacific Gas and Electric Co*. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, 68 NRC 509, 514 (2008) (emphases in original).

2. The Board Relied on an Injury with No Support in the Record

The Board's standing analysis rests on CASE's assertion that FPL will withdraw freshwater from the Biscayne and Floridan aquifers, a claim for which CASE offers only unfounded assertions. By contrast, unchallenged facts in the record demonstrate that CASE's asserted injury is unrealistic and without basis. While Boards generally will accept a petitioner's assertions regarding standing, there is a fundamental difference between, for instance, an affidavit attesting to the location of an individual's own residence near a nuclear plant and a *pro se* representative's unsworn and contradicted assertions as to a utility's activities.[21] Boards certainly may weigh standing claims that have been controverted. *See Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 82 (1993). And while Boards may afford greater latitude to a pleading submitted by a *pro se* petitioner, the petitioner ultimately bears the burden of providing facts sufficient to establish standing. *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010).

CASE argued in its Reply, for the first time, that the water FPL withdraws from the Biscayne aquifer wells is fresh.[22] CASE Reply at 8-10. Regardless of the timing of raising this issue, it is simply incorrect. As is demonstrated in Attachment B to the NRC Staff's Answer, the SFWMD letter authorizing FPL to withdraw groundwater from the

[21] It generally is the practice for participants making factual claims regarding the circumstances that establish standing to do so in an affidavit or sworn statement. *See Atlas Corporation* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 427 n.4 (1997).

[22] FPL filed a motion to strike the introduction of this freshwater withdrawal argument in CASE's Reply. The Board concluded that efforts to remedy standing may be made in a reply. LBP-15-13, slip op. at 5. Had FPL had an opportunity to rebut these claims in writing, it would have done so. Much of this dispute has to do with confusion over CASE's reply claim that the L-31 E canal is part of the Biscayne aquifer. Its discussion of FPL's L-31 E withdrawals is the only topic in its Petition where CASE arguably asserted that FPL's Biscayne withdrawals are fresh (*see e.g.* Pet. at 16-17). In that section, CASE and its cited exhibit were clearly referring to surface water withdrawals. CASE never asserted in its Petition that the water taken from the Biscayne aquifer *wells* (groundwater) was fresh.

Biscayne aquifer is entirely premised on the fact that the water has "a chloride concentration at or above 19,000 milligrams per liter" and so qualifies as "seawater." *See also* Tr. at 60; FPL Answer at 11, 29. This is consistent with the NRC's EA, which described the Biscayne withdrawals as saltwater. *See* EA, 79 Fed. Reg. at 44,468. The NRC's description, together with the fact that this water is so salty that the local water management district disclaims any regulatory authority over it ought to at least create a presumption that the water actually is saltwater. *See Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-13-4, 77 NRC 107, 217 (2013) ("NRC may rely on competent and professionally developed data and studies performed by the applicant or by appropriate federal, state, and local governmental entities"). In light of this State documentation, CASE must rely on more than just the speculative assertions of its lay representative to meet its burden of demonstrating an injury. The Commission "require[s] fact-specific standing allegations, not conclusory assertions." *Consumers Energy Co*. (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 410 (2007). But there is simply no evidence in the record to support a finding of an injury to CASE arising from FPL's withdrawal of water from its Biscayne aquifer wells.

Furthermore, CASE's new argument contradicts itself. CASE's entire Petition rests on the existence of saltwater intrusion into the inland portions of the Biscayne aquifer, yet it maintains that the water FPL will take from the Biscayne aquifer at its coastal location, behind the saltwater intrusion line, is fresh. FPL does not dispute that that the surficial Biscayne aquifer is a source of fresh drinking water further inland. But even CASE makes clear that the saltwater/freshwater interface is several miles inland from the Biscayne aquifer wells at Turkey Point. *See* CASE Reply at 8-9 at 9 (citing

USGS - Delineation of Saltwater Intrusion in the Biscayne Aquifer, Eastern Dade County, Florida, 1995). Figure 1 of CASE's cited USGS document shows the 1995 saltwater interface line far west of the Turkey Point site and Figure 3 shows the significant presence of saltwater in the Biscayne aquifer at depth along the coast. And as CASE pointed out in discussing this same document, "[s]altwater intrusion is more severe today, nineteen years later, when the saltwater line at the base of the aquifer has moved well west of the [cooling canal system].") *Id*.

According to the Board, CASE also claimed that the Floridan aquifer contains freshwater and withdrawals from it would lead to further saltwater intrusion. LBP-15-13, slip op. at 10. But CASE actually acknowledged that the Floridan aquifer is brackish, which is consistent with the EA. *See e.g.* Tr. at 33. Moreover, CASE specifically disclaimed knowing whether withdrawals from the Floridian aquifer would have any effect on saltwater intrusion.

> [N]ow the Floridan aquifer is down pretty far and I'm not so sure quite honestly that that is critical to holding back saltwater.

Tr, at 66.[23] Even assuming arguendo, that the Floridan aquifer is fresh and somehow affects saltwater intrusion locally, CASE simply has not shown that the Floridan aquifer is a local source of fresh water.[24]

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[23] Of course, since saltwater is denser than freshwater, it is hard to identify a mechanism by which intrusion into the Floridan aquifer would impact freshwater resources in the shallower Biscayne aquifer, even if there wasn't a confining layer. Certainly CASE never identified one.

[24] At the prehearing conference, CASE asserted that the Floridan aquifer is used for drinking water at the Ocean Reef community on Key Largo-an island on the other side of Biscayne Bay, and at Hialeah, Florida, nearly thirty miles away. In addition to failing to allege how FPL's actions would affect these far off locations in two different directions, CASE also failed to acknowledge that these localities currently use reverse osmosis technology to desalinate the Floridan aquifer water because it is already brackish. *See e.g.,* http://www.hialeah-water.com/project/;http://www.miamiherald.com/news/local/community/miami-dade/hialeah/article1972939.html

The other claim CASE sets forth (and on which the Board seems to rely) is that FPL has withdrawn surface water from the L-31 E Canal, which, CASE asserted in its Reply, is a part of the Biscayne aquifer. CASE Reply at 10. CASE argues that surface water withdrawals from the canal have some (unspecified) impact on saltwater intrusion in the Biscayne aquifer. While FPL disagrees with the classification of surface water as part of an aquifer, the relevant inquiry is whether CASE has provided any reason to believe that, absent FPL's use of the L-31 E water, it would remain in the L-31 E canal and somehow serve to mitigate saltwater intrusion in the surficial aquifer.[25] In fact, as explained in FPL's Answer, the surface water withdrawals from the L-31 E canal approved by the SFWMD were limited to excess storm water that would otherwise be discharged to the ocean and were in excess of flows reserved for protection of fish and wildlife. *See* FPL Answer at 30-31 (citing Exhibit 1, SFWMD "Emergency Final Order Issued To Florida Power and Light for the Purpose of Authorizing Temporary Pump Installation and Water Withdrawal Along and From the L-31 E Canal System; Miami-Dade County, Florida," August 28, 2014).[26] Neither CASE nor the Board identified a mechanism whereby this water, if released to the ocean, would have served to mitigate inland saltwater intrusion.

Additionally, any argument that FPL's withdrawal of water from local canals or aquifers to supplement CCS water will adversely impact saltwater intrusion flies in the

[25] Nowhere in CASE's Petition did it claim or provide evidence that the excess storm water taken from the L-31 E canal would affect saltwater intrusion. The Petition's sole reference to the L-31 E Canal withdrawals was a quote from the Superintendent of Biscayne National Park who raised, more understandably, concerns about the impact of less fresh water being made available to aquatic resources in Biscayne Bay. Pet. at 16-17 (citing CASE Pet. Ex. 4).

[26] FPL's application for the emergency L-31 E withdrawal authorization and the SFWMD's subsequent approval occurred after the NRC's issuance of the license amendment. FPL included the authorization with its Answer because it was first addressed in CASE's Petition.

face of the FDEP's Administrative Order, which reflects FDEP's position that the addition of water from these sources to the CCS will serve to *mitigate* saltwater intrusion by reducing CCS salinity. As with the SFWMD's determination regarding the saltiness of the Biscayne aquifer withdrawals, it is theoretically possible that the FDEP is wrong. But CASE cannot rely on the speculative assertions of its lay representative to make that case.

The Board considered these issues "disputed facts" and viewed the evidence "in a light favorable to CASE." LBP-15-13, slip op. at 10. But there is no genuine dispute here. CASE's unsworn and unsupported assertions regarding the salinity of the Biscayne aquifer withdrawals at Turkey Point and the impact of the withdrawals of surface water from the L-31 E canal are flatly contradicted by documentary evidence in the record from the local regulator, which confirms that the Biscayne aquifer withdrawals are "seawater" (NRC Staff Attachment B) and that "the only water available" from the L-31 E surface water canal is stormwater that would "otherwise be discharged to tides" (FPL Exhibit 1 at 14). And even CASE agrees that the separate Floridan aquifer water is brackish and has an unknown, if any, effect on saltwater intrusion. Without offering any reason to believe FPL is withdrawing fresh groundwater, CASE has not identified any facially plausible mechanism by which FPL's withdrawals could exacerbate saltwater intrusion and so has not shown an injury from FPL's activities, whether or not they are authorized by the NRC. Similarly, there are no allegations and there is no evidence in the record to support the Board's supposition that the increased CCS maximum temperature would have an appreciable impact on FPL's rate of water withdrawal or on saltwater intrusion.

B. The Board Erred in Admitting Contention 1

As shown below, the Board plainly erred in finding CASE fully complied with requirements of Section 2.309(f)(1) and controlling Commission precedent. Contention 1, which alleged that "the uprate of Turkey Point reactors 3 and 4 has been concurrent with alarming increases in salinity, temperature, tritium and chloride in the CCS area" (Pet. at 5) was explicitly an out-of-scope challenge to FPL's 2012 EPU application and not to this UHS temperature license amendment. 10 C.F.R. § 2.309(f)(1)(iii). Because CASE's contention focused on the EPU, it did not provide any of the requisite information necessary to support a different contention challenging this license amendment or the evaluation in the NRC's EA. It was supported by no facts regarding the quality of water FPL withdraws from local sources (only unsupported assertions) and no expert opinion regarding the impact of those withdrawals or regarding the impact of slightly elevated temperature in the CCS. Section 2.309(f)(1)(v). Further, it failed to address the NRC's evaluation of groundwater impacts in the EA or explain why its disputes that evaluation. Section 2.309(f)(1)(vi). Finally, CASE failed to show that further evaluation of saltwater intrusion or aquifer withdrawals in the EA would be material, that is, have the potential to change the outcome of the NRC's EA to a conclusion that the environmental impact of the license amendment is significant. Section 2.309(f)(1)(vi).

1. The Board Improperly Reformulated CASE's Out-of-Scope Challenge to the EPU to a Challenge to the CCS Temperature License Amendment

Contention 1, as submitted by CASE, is inadmissible because it challenged the 2012 EPU amendment, a topic outside the scope of this proceeding. 10 C.F.R.

§ 2.309(f)(1)(iii). In admitting Contention 1, the Board erred by replacing CASE's out-of-scope challenge to the EPU with a challenge to the NRC's environmental review of the CCS temperature license amendment. A Board may reformulate contentions to "eliminate extraneous issues or to consolidate issues for a more efficient proceeding." *Crow Butte,* 69 NRC at 552. But a Board "must not redraft an inadmissible contention to cure deficiencies and thereby render it admissible." *Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 720-21 (2006). The Commission has "urged the licensing boards to exercise caution" and to "adhere to this standard when reformulating contentions." *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc*. (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 464 n.80 (2010).

CASE repeatedly stated that Contention 1 was focused on two issues: the impacts of FPL's 2012 EPU on salinity and temperature and the need for further study to determine the cause of the CCS salinity increase. *See e.g.* Pet. at 7-9; Tr. at 125, 188. In its Order, the Board quotes CASE's representative providing "as a basic summation of CASE's contention" that "[w]e saw the solutions to mitigate the problem which we considered evasive and problematic. And their failure to consider other options as causes." LBP-15-13, slip op. at 23-24. And yet the Board, without explanation, "narrowed and reformulated" this "basic summation" to an entirely new contention addressing the NRC's evaluation of saltwater migration and fresh water withdrawals in its EA. *Id*. at 24. Contrary to the Board's characterization, its reformulation inappropriately broadened the contention to raise issues CASE simply did not raise—it reformulated CASE's retrospective challenge to the EPU into a challenge to the EA's

evaluation of salinity issues caused by the current UHS temperature limit license amendment.

Nowhere (in Contention 1 or elsewhere) did CASE mention the environmental effects (cumulative or otherwise) of the NRC's amendment of the maximum UHS temperature.[27] Only a single sentence in Contention 1 bears any resemblance to the admitted contention, but without any reference to the relevant license amendment or its impacts. *See* Pet. at 6 ("[T]he NRC document (Docket ID NRC-2014-0181) relating to the Amendments to Renewed Facility Operating License Nos. DPR-31 and DPR-41, there does not seem to be any mention of the impact the matter of salinity in the CCS or regarding saltwater intrusion into the Florida Aquifer, only the concern with temperature"). But CASE certainly did not tie the issue of saltwater intrusion to the potential increased heat associated with the license amendment, either in this lone sentence or anywhere else. *See* Pet. at 6-9. In fact, CASE's Petition barely mentioned the license amendment at all and *never* mentioned the increased temperature limit or any environmental affect therefrom. Nevertheless, the Board "improperly sought to establish a nexus" between the instant license amendment and the environmental issues that aggrieve CASE. *See Diablo Canyon*, CLI-11-11, 74 NRC at 437. The Board's hypothetical scenario where saltwater intrusion is caused by temporary CCS temperature increases represents "legal error" because it supplies a basis not argued by CASE. *Seabrook*, CLI-12-5, 75 NRC at 348.

[27] The Board considered arguments CASE made regarding saltwater intrusion and aquifer withdrawals in Contention 3 as supportive of Contention 1. LBP-15-13, slip op. at 14 n. 69. However, at no point in Contention 3 did CASE identify a link between either saltwater intrusion or aquifer withdrawals and the UHS temperature license amendment.

2. Contention 1 Is Not Supported by a Basis of Fact or Expert Opinion

In LBP-15-13, the Board reasoned that, since the CCS is unlined and exchanges water with the surrounding aquifer, "it is reasonable to assume that CCS migration could significantly impact surrounding ground and surface water." LBP-15-13, slip op. at 20. While that may be a reasonable assumption, crucially, CASE never made this claim in its Petition. In fact, CASE's Petition barely mentioned the license amendment at all and *never* mentioned any environmental affect from the increased temperature limit. While the Board reads CASE's petition in a favorable light due to its *pro se* representation, such a reading cannot provide a missing basis for CASE's contention. In order for a contention to argue that the increased UHS temperature limit could exacerbate saltwater intrusion, it must at least mention the increased temperature limit and posit a connection between temporarily higher CCS temperature and appreciable saltwater intrusion. But CASE never even attempted to make that argument.[28] The Board may not cure CASE's failure to supply adequate supporting information through its own unwarranted technical inferences. *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001) (*rev'd on other grounds*) (citing *Ariz. Pub. Serv. Co*. (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), CLI-91-12, 34 NRC 149, 155-56 (1991)) ("A licensing board is not free to supply missing information or draw factual inferences on the petitioner's behalf."). As a result, Contention 1 must fail because it is not supported by a basis, or, in fact, by any alleged facts or expert opinion. 10 C.F.R. § 2.309(f)(1)(ii), (v).

[28] Even in its Reply, after FPL and the NRC Staff pointed out the lack of any link to the temperature increase, CASE did not identify any mechanism whereby the proposed action would impact groundwater resources.

As to the issue of fresh water aquifer depletion, Contention 1 must fail for the same reason that CASE did not demonstrate standing, as discussed, *supra* at Section V.A.2. There are no facts or expert opinion to show that FPL will withdraw fresh water from either the Biscayne or the Floridan aquifers or that its withdrawal of surface water from the L-31 E canal would affect the aquifers, only CASE's unsupported assertions, which are flatly contradicted by the record. Nor are there any facts or expert opinion to show that FPL will utilize more water in response to the increased heat that may result from the UHS license amendment. Without facts or expert opinions to tie the license amendment (or even FPL's reasonably foreseeable yet unrelated actions) to the alleged environmental harm, Contention 1 is nothing but a single unsupported sentence asking for more analysis in the NRC's EA. 10 C.F.R. § 2.309(f)(1)(v).

3. Contention 1 Fails to Demonstrate the Existence of a Genuine Dispute with the NRC's Environmental Assessment

Contention 1 also flatly fails to engage with the NRC's evaluation and identify its specific deficiencies, as is required by 10 C.F.R. § 2.309(f)(1)(vi). The Board's conclusion that the EA "does not even appear to have considered whether continued operation of the CCS, at an elevated temperature and salinity level, would impact ground and surface waters outside of the canals" is at odds with the text of the EA. LBP-15-13, slip op. at 20-21. In fact, the EA concluded that:

> Under the proposed action, the CCS could experience temperatures between 100 °F and 104 °F at the TS monitoring location near the north end of the system for short durations during periods of peak summer air temperatures and low rainfall. Such conditions may not be experienced at all depending on site and weather conditions. Temperature increases would also increase CCS water evaporation rates and result in higher salinity levels. This effect would also be temporary and short in duration because salinity would again decrease upon natural freshwater recharge of the system (i.e., through rainfall, stormwater runoff, and groundwater

> exchange). No other onsite or offsite waters would be affected by the proposed UHS temperature limit increase.

EA, 79 Fed. Reg. at 44,466-67. Here, the EA has evaluated exactly what the Board's reformulated contention alleges that it has not. Neither CASE nor the Board discuss this relevant aspect of the NRC's EA and so cannot demonstrate the existence of a genuine dispute with it.

As reformulated by the Board, CASE alleges that the EA "did not adequately consider the current and reasonably foreseeable environmental impacts of FPL's planned actions in the CCS for mitigating rising temperature and salinity levels." LBP-15-13, slip op. at 17. But that contention is not supported by any reasoned statement why such impacts would be cumulative to those of this license amendment. The EA concluded that "the proposed action would result in no significant impact on land use, visual resources, air quality, noise, the geologic environment, *groundwater resources*, terrestrial resources, historic and cultural resources, socioeconomic conditions including minority and low income populations (environmental justice), or waste generation and management activities." 79 Fed. Reg. at 44,466 (emphasis added). As a result, "cumulative impacts would not occur for these environmental resources." *Id*. at 44,467. For this reason, the NRC's EA "focuse[d] on the environmental resources that could be affected by the change in the CCS thermal limit: Surface water resources, aquatic resources, and Federally protected species and habitats." *Id*. at 44,466. Therefore, because the proposed action—the change in the CCS thermal limit—would have no impact on groundwater resources, it also could not have a *cumulative* impact on those resources, when coupled with the impacts of past, present, or reasonably foreseeable activities. *Id*. at 44,467. Because Contention 1 does not address the NRC Staff's analysis on this point, it fails to

show a genuine dispute with the EA on a material issue, including reference to "specific portions" that the petitioner disputes and the reasons for the petitioner's dispute. 10 C.F.R. § 2.309(f)(1)(vi).

4. Contention 1 Fails to Demonstrate That the Issues it Raises Are Material

Licensing boards "do not sit to 'flyspeck' environmental documents or to add details or nuances." *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005). Instead, they are only to review issues demonstrated to be "material." 10 C.F.R. § 2.309(f)(1)(iv). A material issue is one where "resolution of the dispute would make a difference in the outcome of the licensing proceeding." Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (1989). Here, where the NRC's EA concluded that the license amendment posed no significant environmental impact, a material issue is one that might call into question that determination and potentially necessitate the preparation of a full EIS. As the Commission has repeatedly explained in the context of severe accident mitigation alternatives analyses, "[u]nless a contention, with support, raises a credible potential *material* deficiency in the analysis, there is no genuine dispute with the application, and therefore no demonstration of a material issue for hearing. Contentions challenging [an environmental evaluation] therefore must identify a deficiency that plausibly could alter the overall result of the analysis in a material way." *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc*. (Pilgrim Nuclear Power Station, CLI-12-15, 75 NRC 704, 714 (2012) (emphasis in original). And, at the contention admissibility stage, "it is [*the Petitioner's*] *burden* to provide support for why the further

'analyses' . . . it seeks credibly could make a material difference to the [NRC environmental] conclusions, not simply that the analysis might change in some fashion." *Id.* at 719 (emphasis in original).

But even under the Board's reformulation, there is no suggestion that this potential temporary increase in CCS salinity attributable to the amendment would be significant enough to affect this proceeding—that is, potentially lead to the abandonment of the NRC's finding of no significant impact and to the conclusion that an EIS is necessary. Neither CASE nor the Board considered the materiality of this information. By failing to acknowledge this discussion in the EA, Contention 1 fails to demonstrate that its concerns regarding saltwater intrusion or aquifer depletion are material to the issues before the NRC. 10 C.F.R. § 2.309(f)(1)(iv).

The Board also faults the EA for not addressing "actual environmental impacts that have been observed since the 2012 [EPU] EA or that are now reasonably foreseeable." LBP-15-13, slip op. at 17-18. Here the Board nods to CASE's original Contention 1, which challenged the EPU, but fails to acknowledge that the NRC's EA is intended to discuss the environmental impacts of the proposed action. In reviewing a license amendment under NEPA, the NRC need only consider "the extent to which the action under the proposed amendment will lead to environmental impacts beyond those previously evaluated." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-81-14, 13 NRC 677, 684-685 (1981) (citing *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB–455, 7 NRC 41, 46 n.4 (1978)). In other words, the NRC's EA need not consider the environmental impact of the previous operation of the plants, but instead need only consider the

incremental impact caused by the potential increase in the ultimate heat sink temperature limit:

> Nothing in NEPA or in those judicial decisions to which our attention has been directed dictates that the same ground be wholly replowed in connection with a proposed [license] amendment. . . . Rather, it seems, manifest to us that all that need be undertaken is a consideration of whether *the amendment itself* would bring about significant environmental consequences beyond those previously assessed . . .

Prairie Island, ALAB–455, 7 NRC at 46 n. 4 (emphasis added).

The Board further faults the EA for not discussing the L-31 E canal withdrawals. *Id*. at 21. As stated in FPL's Answer, it did not even apply for the original temporary authorization until nearly a month after the EA was published. FPL Answer at 30-31. And the permanent request for L-31 E withdrawal authorization was made less than two months ago. LBP-15-13, slip op. at 21-22. The Board rightly notes that federal agencies are obligated to supplement NEPA documents under certain circumstances. But only if that information is both new *and* significant—the Commission has explained that it will address any new information presenting "a seriously different picture of the environmental impact of the proposed project" than previously assessed. *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999) (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989); *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987)). Following publication of an EA and FONSI, to be significant, new information would need to call into question the NRC's finding of no significant impact. Among its numerous allegations, CASE never alleges that, had the NRC evaluated the L-31 E withdrawals, it would have concluded that the license amendment may have a significant environmental

impact necessitating an EIS. As such, CASE has not shown that this concern raises a material issue.

VII. CONCLUSION

For all of the foregoing reasons, LBP-15-13 should be overturned. The Board's standing determination should be reversed, CASE's sole proffered Contention should be rejected, and its Petition should be wholly denied.

Respectfully Submitted,

Signed (electronically) by Steven Hamrick

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April 17, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket No. 50-250-LA
	)	50-251-LA
(Turkey Point Units 3 and 4)	)	
	)	ASLBP No. 15-935-02-LA-BD01

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light Company's Notice of Appeal of LBP-15-13," and "Brief in Support of Florida Power & Light Company's Appeal of LBP-15-13," were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, and via e-mail to those marked with an asterisk.

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Dated at Washington, DC
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