May 8, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 52-040 & 52-041
	)	
(Turkey Point Units 6 and 7)	)	

NRC STAFF ANSWER TO "JOINT INTERVENORS' MOTION FOR LEAVE TO FILE A NEW CONTENTION CONCERNING THE NRC'S RELIANCE ON SPECULATIVE MITIGATION MEASURES AND FAILURE TO ADEQUATELY EXAMINE THE EFFECTIVENESS OF THESE PROPOSED MITIGATION MEASURES IN THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE TURKEY POINT NUCLEAR POWER PLANT UNITS 6 & 7"

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323 and 2.309 and the Atomic Safety and Licensing Board (Board) Orders dated March 30, 2011,[1] and March 25, 2015,[2] the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby responds to the Joint Intervenors' Motion for Leave to File a New Contention Concerning the NRC's Reliance on Speculative Mitigation Measures and Failure to Adequately Examine the Effectiveness of these Proposed Mitigation Measures in the Draft Environmental Impact Statement for the Turkey Point Nuclear Power Plant Units 6 & 7 (Joint Intervenors' Motion) dated April 13, 2015. The contention is inadmissible for failure to

[1] *Florida Power and Light Co.* (Turkey Point Units 6 and 7), Initial Scheduling Order and Administrative Directives (Mar. 30, 2011) (unpublished) (ADAMS Accession No. ML110890768) (Initial Scheduling Order).

[2] *Florida Power and Light Co.* (Turkey Point Units 6 and 7), Order (Granting Motion for Additional Time) (Mar. 25, 2015) (unpublished) (ADAMS Accession No. ML15084A225) (2015 Scheduling Order).

meet the requirements of 10 C.F.R § 2.309(f)(1)(iv)–(vi), as explained in more detail below, and the Staff opposes the motion.

BACKGROUND

The procedural history of this proceeding pertinent to the Joint Intervenors' Motion is as follows: On June 30, 2009, Florida Power and Light Company ("Applicant" or "FPL"), pursuant to the Atomic Energy Act of 1954, as amended ("AEA") and the Commission's regulations, submitted an application for combined licenses ("COL") for two AP1000 Pressurized Water Reactors ("PWRs") to be located adjacent to the existing Turkey Point Units 1 through 5, at the Turkey Point site near Homestead, Florida ("Application"). *See* Letter from Mano K. Nazar, FPL, to Michael Johnson, Office of New Reactors, NRC, dated June 30, 2009 (ADAMS Accession No. ML091830589). The Application designated the proposed units as Turkey Point, Units 6 & 7. Application Rev. 0, Part 1 at 1 (ML091870846).

On June 18, 2010, the NRC published a Notice of Hearing and Opportunity to Petition for Leave to Intervene, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. *See* "Florida Power & Light Company, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity for Leave to Petition to Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation," 75 Fed. Reg. 34,777 (June 18, 2010) ("Notice of Hearing").

In response to the Notice of Hearing, on August 17, 2010, Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and the National Parks Conservation Association ("Joint Intervenors") submitted Petitions through which they sought to intervene in this proceeding. *See* Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing (Aug.

17, 2010); Joint Intervenors' Petition for Intervention (Aug. 17, 2010) (ML102300582).[3] The Board found Joint Intervenors' Contention NEPA 2.1 admissible and admitted the Joint Intervenors as parties to this proceeding. *See Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-11-06, 73 NRC 149, 190-94, 226 (2011). Contention NEPA 2.1, as amended in 2012, remains pending before the Board. *See Florida Power & Light Co.* (Turkey Point Units 6 and 7), Memorandum and Order (Granting in Part and Denying in Part Motion for Summary Disposition of Amended Contention 2.1) (Aug. 30, 2012) (unpublished) (ML12243A323).

On March 5, 2015, the NRC published a notice of availability of a draft Environmental Impact Statement (EIS) on the Application. On April 13, 2015, in accordance with the Board's 2015 Scheduling Order, the Joint Intervenors submitted their Motion.

DISCUSSION

I. LEGAL STANDARDS

To be admissible, a newly proffered contention must satisfy: (1) the timeliness standards in 10 C.F.R. § 2.309(c)(1) for new and amended contentions; and (2) the general contention admissibility standards in 10 C.F.R. § 2.309(f)(1). *See Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-15, 73 NRC 629, 633 (2011).[4] New or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer upon a showing that

> (i) The information upon which the amended or new contention is based was not previously available;

---

[3] Citizens Allied for Safe Energy, Inc. ("CASE") and the Village of Pinecrest also submitted petitions to intervene. *See* Citizens Allied for Safe Energy, Inc. Petition to Intervene and Request for a Hearing (Aug. 17, 2010) (ML102300287); Petition by the Village of Pinecrest, Florida, for Leave to Intervene in a Hearing on [FPL's] [COL] Application For Turkey Point Units 6 & 7, or in the Alternative, Participate as a Non-Party Local Government (Aug. 16, 2010) (ML102280601).

[4] The Commission has consolidated its requirements for filing contentions after the deadline set in the Notice of Hearing in 10 C.F.R. § 2.309(c)(1). *See* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,591 (Aug. 3, 2012).

> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(1) (modifying requirements of former 10 C.F.R. § 2.309(f)(2)).

In addition to satisfying the requirements in 10 C.F.R. § 2.309(c)(1) for a new or amended contention filed after the deadline, the petitioner must set forth with particularity the reasons why the proposed contention satisfies the 10 C.F.R. § 2.309(f)(1) general contention admissibility requirements, which are that the contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
>
> (vi) . . . provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief . . . .

10 C.F.R. § 2.309(f)(1).

The 10 C.F.R. § 2.309(f)(1) requirements should "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate

for, and susceptible to, resolution in an NRC hearing." *Id*. The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). Attempting to meet these requirements by "[m]ere 'notice pleading' does not suffice." *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

Furthermore, the "'reach of a contention necessarily hinges upon its terms *coupled with* its stated bases.'" *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (citing *Public Service Co. of 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. 1991))(emphasis in original).

II. THE PROPOSED NEW CONTENTION IS INADMISSIBLE

Proposed New Contention:

> The DEIS for Turkey Point Units 6 & 7 does not comply with NEPA because its determination of the project's environmental impacts, rejection of other project alternatives, and staff's recommendation that the COL be issued, are based on impermissibly speculative mitigation measures, the effectiveness of which have not been adequately evaluated.

Motion at 2.

The Joint Intervenors assert five bases for the proposed contention. First, Joint Intervenors assert that the DEIS identifies "[a] number of 'proposed mitigation efforts,'" but "does not adequately evaluate how these programs may or may not offset the expected impacts." Motion at 3-4. In this regard, the Joint Intervenors further assert that "it is not clear what combination or suite of measures will be implemented" considering that the National Park Service (NPS) program is not approved for the U.S. Army Corps of Engineers (USACE). *Id*. at

4. Second, the Joint Intervenors assert that "[t]he DEIS is deficient because it merely lists 'potential' and 'possible' mitigation measures for terrestrial impacts (including impacts to wetlands) and does not adequately examine the effectiveness of these measures in offsetting the impacts of the proposed project." Motion at 3. Third, the Joint Intervenors assert that "the DEIS does not discuss whether, why, and how [measures assessed by the Applicant under Florida's Uniform Mitigation Assessment Method (UMAM)] will adequately offset the projected wetland loss." Motion at 5. Fourth, the Joint Intervenors claim that the NRC has deferred to the USACE "to evaluate 'possible' or 'potential' mitigation measures at some later date (*id*. at 7), and thus improperly delegated its NEPA responsibilities to the USACE (*id*. at 6-7). Fifth, the Joint Intervenors claim that it is "premature and inappropriate for the NRC to issue a DEIS . . . before the effectiveness of mitigation measures are evaluated" (*id*. at 6), and object to the issuance of the DEIS before the USACE has completed its review of the mitigation measures. *Id*. at 4.

Staff Response: As discussed in detail below, the proposed contention is inadmissible for three reasons. First, the Joint Intervenors fail to demonstrate that the issues raised in the proposed contention are material to the findings the NRC must make, and thus the contention does not satisfy 10 C.F.R. § 2.309(f)(1)(iv). Furthermore, the proposed contention fails to raise a genuine dispute with the NRC on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi). The proposed contention broadly challenges all mitigation measures discussed in the DEIS but does not refer to specific mitigation measures or portions of the DEIS that the Joint Intervenors dispute, as required by 10 C.F.R. § 2.309(f)(1)(vi), except with respect to mitigation measures directed to impacts on wetlands. Finally, even with respect to mitigation measures directed to impacts on wetlands, the proposed contention does not satisfy § 2.309(f)(1)(v) because it lacks factual or expert support.

A. The proposed contention does not satisfy the requirements of § 2.309(f)(1)(iv).

The contention fundamentally alleges that the NRC's analysis in the DEIS is "based on

impermissibly speculative mitigation measures." Motion at 2. For this claim, Joint Intervenors appear to rely primarily on the assertion that until the USACE has finalized its separate review of the mitigation measures under the Clean Water Act, any discussion of mitigation measures in the DEIS is speculative. They subsequently assert that it is "entirely premature and inappropriate for NRC to issue a DEIS, assign an impacts analysis to each affected resource, reject other project alternatives, and issue a preliminary recommendation that a COL should be issued, before the effectiveness of mitigation measures are evaluated." Motion at 6.

However, the Joint Intervenors provide no support for their claim that future USACE review renders the currently proposed mitigation measures "speculative," because, as explained below, the effectiveness of mitigation measures has indeed been evaluated in the DEIS. See DEIS at 4-69 to 4-75. The DEIS states the NRC staff's complete analysis of proposed mitigation measures and thus provides the "hard look" required by NEPA. The Joint Intervenors thus do not show that their assertions are material to the findings the staff must make. 10 C.F.R. § 2.309(f)(1)(iv).

The DEIS reflects the NRC's requisite "hard look" at the applicant's proposed wetland mitigation plan and its relevance for the impact conclusions. The DEIS refers to the applicant's mitigation plan, FPL 2011-TN1012, several times, throughout its analysis of the plan. DEIS at 4-69. The DEIS provides an overview of the applicant's proposed wetland mitigation. The Staff states that the proposed mitigation includes "removal of exotic vegetation, ditch removal and grading, planting of native wetland vegetation, in situ restoration, wetland creation through grading and planting, purchase of mitigation credits within approved mitigation banks, and preservation through conservation easements." *Id*. at 4-69. The DEIS then notes that the completion of all of the proposed mitigation measures "provide[s] functional lift equaling 509 wetland credits to offset direct impacts on 710 ac of 27 wetlands, secondary impacts on 48 ac, and temporary impacts on 50 ac." *Id.* The DEIS later analyzes the specific mitigation measures and how these actions correspond to specific amounts of mitigation credits. *Id.* at 4-69 to 4-72.

The review team also explains which proposed mitigation measures will be subject to compensatory mitigation that could be required under the Clean Water Act. DEIS at 4-69. The DEIS describes each of the four proposed major elements of the mitigation proposal, namely, the restoration of wetlands at the Northwest Restoration Site and the SW 320th Street restoration site, the purchase of credits through both the National Park Service's Hole-in-the-Donut Mitigation Bank and the Everglades Mitigation Bank, and the restoration of disturbance from pipeline installation. DEIS at 4-72. The DEIS concludes that "the functional lift provided by the various mitigation activities would amount to approximately a 1:1 mitigation ratio for the wetland function lost" in the context of the UMAM calculation. *Id*.

The Joint Intervenors provide no basis for concluding that more detail is necessary regarding the scope or effectiveness of these plans to support the NRC staff's analysis and conclusions in the DEIS. NEPA does not require that a "complete mitigation plan be actually formulated and adopted." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989). The Court stated:

> [s]ince it is those state and local governmental bodies that have jurisdiction over the area in which the adverse effects need be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that the Forest Service has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary.

Id.

As the Supreme Court recognized in *Methow Valley*, NEPA does not require a fully developed mitigation plan before an agency can act; all that is required is that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated. 490 U.S. 332, 352-53 (1989); *see also Citizens Against Burlington, Inc. v. Busey,* 938 F.2d 190, 205-06 (D.C. Cir. 1991) (agency not required to finish mitigation studies or execute mitigation plans before project begins), *cert. denied,* 502 U.S. 994 (1991). Furthermore, "'an EIS is required to furnish only such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-

encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.'" *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (quoting *Natural Res. Def. Council v. Callaway*, 524 F.2d 79, 88 (2d Cir.1975)); *see also Pilgrim*, CLI-10-11, 71 NRC at 315 (quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 11-13 (1st Cir. 2008)) (An EIS should not be a "research document."). These decisions illustrate that mitigation plans need not be fully developed, let alone address every conceivable detail, for an EIS to have adequately evaluated the potential impacts of the project and adequately considered potential means of mitigating them.

As the D.C. Circuit Court of Appeals noted, "NEPA regulations, therefore, require an agency to discuss possible mitigation measures in the EIS and Record of Decision. 40 C.F.R. §§ 1508.25(b)(3), 1502.14(f), 1502.16(h), 1505.2(c)." *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010). Not only has the NRC discussed and evaluated possible mitigation measures in the DEIS, the USACE will also be evaluating the mitigation measures "in the USACE's combined statement of findings and ROD." DEIS at 4-69. The D.C. Circuit noted that the agency's "discussion must include 'sufficient detail to ensure that environmental consequences have been fairly evaluated." *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010)(citing *Methow Valley*, 490 U.S. at 352). However, NEPA "does not require agencies to discuss any particular mitigation plans that they might put in place," nor does it "require agencies—or third parties—to effect any." *See Citizens Against Burlington*, 938 F.2d at 206 (citing *Methow Valley,* 490 U.S. at 353 and n. 16). *See also Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010).

The DEIS describes the currently proposed mitigation measures and their significance to the review team's impact conclusions; the mere possibility that additional measures may be considered or proposed by the USACE does not make the analysis in the DEIS "speculative" nor does it mean that the analysis of those measures has been deferred to a future USACE

review. As such, Joint Intervenors' assertion that "[t]o allow the NRC staff to defer to the Corps to evaluate the proposed mitigation until after an EIS is issued, contravenes the very purpose of NEPA and should be prohibited" does not accurately characterize the complete analysis that is indeed contained in the DEIS. Motion at 7.[5]

Like the Forest Service in *Methow Valley,* the NRC is not in a position to state definitively which mitigation measures will be taken, but the review team has identified a series of specific mitigation measures that have been proposed (and are thus reasonable to consider) and disclosed how they would mitigate the impacts of the proposed action. Under *Methow Valley* and related cases, EISs do not need to present mitigation plans that are legally enforceable, fully developed, or funded. *See Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010); *North Slope Borough v. Minerals Management Serv.*, 343 Fed. Appx. 272, 275 (9th Cir. 2009); *Nat'l Parks & Conservation Ass'n v. U.S. Dep't of Trans*., 222 F.3d 677, 681 n. 4 (9th Cir. 2000). Ultimately, the USACE and the State of Florida have control over the implementation of mitigation measures because "compensatory mitigation is required under both the Federal CWA Section 404 (33 USC Section 1344)(TN1019) and the Florida Environmental Resource Permitting processes." DEIS at 4-73. Likewise, the USACE would have the authority to enforce the Applicant's Wetland Mitigation Plan (*see* 33 C.F.R. Part 332, "Compensatory Mitigation for Losses of Aquatic Resources"). It would be incongruous to conclude that the NRC has no power to act until the USACE has reached a final conclusion on what mitigation measures it considers necessary, even if the USACE is a member of the review team.

The Joint Intervenors also appear to rely on a statement in the DEIS acknowledging that

---

[5] As discussed *supra,* to require the NRC to delay completion of its EIS until another agency completes its own required actions is not required by NEPA. To do so would prevent the NRC from ever being able to complete the requisite environmental analysis.

further mitigation for impacts to wetlands and listed species may be required. Motion at 4. However, in light of the mitigation measures already described in the DEIS, the Joint Intervenors do not explain why the possibility that further mitigation may eventually be employed would render the NRC's NEPA analysis inadequate. As explained in *Methow Valley,* "it would be inconsistent with NEPA's procedural mechanisms—as opposed to substantive, results-based standards—to demand the presence of a fully developed plan that will mitigate harm before an agency can act." 490 U.S. at 353. While the Joint Intervenors assert that the NRC's analysis in the DEIS of the applicant's wetland mitigation plan is a "material omission in the NRC staff's environmental review," the Joint Intervenors have failed to provide any support for this claim. Motion at 8.

The Joint Intervenors similarly assert that "[t]he NRC cannot delegate its NEPA responsibilities by deferring to the U.S. Army Corps of Engineers." Motion at 6-7. However, as explained above, the NRC is not delegating its NEPA responsibilities by simply acknowledging that additional review will be conducted by the USACE. The DEIS already states the NRC staff's complete analysis of proposed mitigation measures and thus provides the "hard look" required by NEPA. The nature of this future USACE role is discussed in the DEIS at pages 4-69 to 4-70. As noted in the DEIS,

> [t]he USACE will review the proposed discharges of fill material into jurisdictional wetlands pursuant to the CWA [Clean Water Act] Section 404(b)(1) Guidelines, which requires a sequential process of avoidance, minimization, and compensatory Construction Impacts at the Turkey Point Site. Any unavoidable impacts to waters of the United States, including jurisdictional wetlands, will require compensatory mitigation pursuant to 33 CFR Part 332, which may differ from State of Florida requirements. The USACE will conclude its Clean Water Act Section 404(b)(1) Guidelines and public interest analyses in its Record of Decision.

DEIS at 4-69 to 4-70. As such, while (consistent with *Methow Valley)* mitigation measures need not be final (or enforceable) to be evaluated in the DEIS, the mitigation measures ultimately imposed *will* be enforceable due to the USACE's role in the project. Accordingly, the Joint

Intervenors' assertions about the potential for future changes to the identified mitigation measures fail to articulate a material deficiency in the DEIS.

In sum, the Joint Intervenors fail to show that their complaints are material to the findings that the NRC must make in the DEIS.

B. The proposed contention does not satisfy the requirements of §2.309(f)(1)(vi).

The Joint Intervenors assert that the "DEIS is deficient because it merely lists 'potential' and 'possible' mitigation measures for terrestrial impacts (including impacts to wetlands) and does not adequately examine the effectiveness of these measures in offsetting the impacts of the proposed project. *See* DEIS at 4-3, 4-69-4-72." Motion at 3. However, in the very pages that the Joint Intervenors cite to in their Motion,[6] the DEIS not only describes the applicant's proposed mitigation measures, but explains how these proposed measures operate in the context of mitigation credits, as discussed *supra.* DEIS at 4-69 to 4-72.

The Motion states that the DEIS "does not adequately examine the effectiveness of these [mitigation] measures in offsetting the impacts of the proposed project" and that "NEPA requires more." Motion at 3, 4. However, "[a]n environmental impact statement is not intended to be a 'research document.'"….[W]hile there 'will always be more data that could be gathered,' agencies 'must have some discretion to draw the line and move forward with decisionmaking.'" See *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 72 NRC 202, 208-09 (2010) (quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 11-13 (1st Cir. 2008)). As the Commission has stated, "'[o]ur Boards do not sit to "flyspeck" environmental documents or to add details or nuances. If the ER (or EIS) on its face "comes to grips with all important considerations" nothing more need be done.'" *Clinton ESP,* CLI-05-29, 62 NRC at 811 (quoting

[6] The Intervenors also cite to DEIS at 4-3; however, much of that page is devoted to explaining the impacts that are factored into the impact categories assigned by the NRC and exactly what those impact categories are (e.g. SMALL, MODERATE, and LARGE). Motion at 6.

Systems Energy Resources, Inc. (Early Site Permit for Grand Gulf Site), CLI-05-04, 61 NRC 10, 13 (2005)). As discussed above, the DEIS has fully examined the available information regarding proposed mitigation measures and described their significance for the impacts of the proposed action.

The Joint Intervenors assert that "the DEIS does not discuss whether, why, and how these measures will adequately offset the projected wetland loss." Motion at 5. However, the Joint Intervenors do not provide any factual or expert support as to why such additional detail is necessary in order for the NRC's analysis to be complete when, as discussed above, the DEIS identifies the mitigation measures and their significance for the NRC staff's impact conclusions. A contention "will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'" *See Duke Energy Carolinas, LLC* (Combined License Application for William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 67 NRC 431, 432 (2008) (quoting *Fansteel, Inc*. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)).

The Joint Intervenors make other claims that likewise do not demonstrate a genuine dispute with the DEIS. In claiming that the DEIS's discussion of mitigation is insufficient, the Joint Intervenors also assert that "it is not clear what combination or suite of measures will be implemented, considering for example that proposed mitigation options such as the NPS Hole-in-the-Donut Mitigation Bank is not a federally approved mitigation bank or in-lieu-fee program for the U.S. Army Corps of Engineers". Motion at 4. However, the Joint Intervenors do not identify any legal requirement for wetland mitigation measures to be limited to a "federally approved mitigation bank" or an "in-lieu-fee program". As such, the Joint Intervenors provide no

basis for asserting the mitigation measures discussed are incomplete or unreasonable.[7]

The Joint Intervenors also assert that the NRC only lists "mitigation units" which were calculated using the State of Florida's Uniform Mitigation Assessment Model without adequately addressing the effectiveness of the applicant's proposed mitigation measures in the context of offsetting projected wetland loss. Motion at 5. Contrary to this claim, the NRC does not merely list mitigation units calculated by the applicant under the State of Florida's UMAM. Instead, the DEIS discussed that method within the context of the mitigation plan evaluation. *See, e.g.*, DEIS at 4-70 and 4-71. The DEIS also explains the significance of the UMAM approach within the context of the evaluation throughout section 4.3.1.6 of the DEIS. DEIS at 4-69 to 4-70. For example, "the UMAM approach includes consideration of relative location within the landscape, quantity and quality of water available within a wetland, and vegetation community structure to calculate functional value." DEIS at 4-72. The Motion also asserts that "there is also no explanation of why the expected 1:1 mitigation ratio is adequate." However, the DEIS provides analysis specifically related to wetland impacts, and in Section 4.3.1.6 it explains the relationship between the proposed mitigation and the USACE's evaluation required by the Clean Water Act. DEIS at 4-69 to 4-72. The NRC staff also analyzed the specific characteristics of the land to which FPL's proposed mitigation measures would apply by identifying their land-cover classifications and terrestrial cover types. DEIS at 4-72 to 4-72. The Joint Intervenors do not acknowledge that discussion, let alone identify any specific deficiency with it. They also provide no facts or expert opinion as to why the expected 1:1 mitigation ratio is inadequate, contrary to 10 CFR 2.309(f)(1)(v).

---

[7] Furthermore, mitigation associated with wetlands is the only category of mitigation measures even mentioned as a proposed basis in the Motion, whereas the contention itself sweepingly speaks of "speculative mitigation measures." Motion at 2. Accordingly, even if the Joint Intervenors' assertions regarding wetlands mitigation had been accompanied by factual or expert support, they would not support such a broadly stated contention. *Pilgrim*, CLI-10-11, 71 NRC at 309 citing *Seabrook*, ALAB-899, 28 NRC at 97.

In challenging the Staff's environmental review, the Joint Intervenors must identify, with some specificity, the alleged deficiencies in the Staff's NEPA analysis. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 13 (1999). The Joint Intervenors' unsupported implication that a future USACE review may result in mitigation measures other than those described in the DEIS does not identify a material dispute. Likewise, their assertions of deficiencies in the DEIS analysis either fail to contravene statements in the DEIS or call for detail that is not required under NEPA. Accordingly, the proposed contention fails to demonstrate a genuine dispute with the analysis in the DEIS on a material issue of law or fact.

CONCLUSION

In view of the foregoing, the proposed new contention is inadmissible and the Joint Intervenors' Motion should be denied.

Respectfully submitted,

/Signed (electronically) by/
Myrisha S. Lewis
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, D.C. 20555-0001
(301) 415-4067
(301) 415-3725 (fax)
Myrisha.Lewis@nrc.gov

Dated at Rockville, Maryland
this 8th day of May, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 52-040 & 52-041
	)	
(Turkey Point Units 6 and 7)	)	

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF ANSWER TO 'JOINT INTERVENORS' MOTION FOR LEAVE TO FILE A NEW CONTENTION CONCERNING THE NRC'S RELIANCE ON SPECULATIVE MITIGATION MEASURES AND FAILURE TO ADEQUATELY EXAMINE THE EFFECTIVENESS OF THESE PROPOSED MITIGATION MEASURES IN THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE TURKEY POINT NUCLEAR POWER PLANT UNITS 6 & 7'" has been filed through the E-Filing system and has been served upon the following person by electronic mail (e-mail) this 8th day of May, 2015:

Barry White
Citizens Allied for Safe Energy
10001 S.W. 129th Terrace
Miami, FL 33176
Email: bwtamia@bellsouth.net

/Signed (electronically) by/
Myrisha S. Lewis
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, D.C. 20555-0001
(301) 415-4067
(301) 415-3725 (fax)
Myrisha.Lewis@nrc.gov

Dated at Rockville, Maryland
this 8th day of May, 2015