

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| 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 MOTION TO STRIKE PORTIONS OF  
CASE’S “INITIAL STATEMENT OF POSITION, TESTIMONY, AFFIDAVITS AND  
EXHIBITS” OR, IN THE ALTERNATIVE, MOTION *IN LIMINE* TO EXCLUDE IT  
AND ITS CITED DOCUMENTS FROM EVIDENCE**

Pursuant to 10 C.F.R. §§ 2.319, 2.323, and 2.337, and in accordance with the Licensing Board’s (“Board”) Scheduling Order of May 8, 2015, Florida Power & Light Company (“FPL”) files this motion to strike portions of the “Citizens Allied For Safe Energy [‘CASE’] Initial Statement of Position, Testimony, Affidavits and Exhibits” (the “CASE Statement”) and attached documents because they raise issues beyond the scope of Contention 1, include opinions and exhibits not properly sponsored by an expert, and include exhibits not properly disclosed or introduced into the record. In the alternative, FPL also files this motion *in limine* to exclude these materials from evidence.

Although captioned as including “testimony [and] affidavits,” the CASE filing is simply a statement of position and does not contain any sworn expert testimony. The CASE Statement and the documents referenced in and attached thereto are technical in nature and are not supported by a qualified witness and thus, should not be considered evidence. In addition, significant portions of the CASE Statement and its cited documents raise issues beyond the limited scope of Contention 1 as admitted by the Board in this proceeding. Because the

Commission's rules makes clear that arguments and exhibits that address matters beyond the scope of an admitted Contention or are unsupported by a qualified witness are inadmissible, or in the alternative should be excluded from the record, the Board should grant FPL's motion.

**I. NRC EVIDENCE ADMISSIBILITY STANDARDS**

**A. The Board's Authority to Regulate Arguments and Evidence**

Commission rules allow "[o]nly relevant, material, and reliable evidence" to be admitted into evidence."<sup>1</sup> Thus, the Board may "strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative."<sup>2</sup> And, in the alternative, the Board may restrict evidence or arguments for the same reasons.<sup>3</sup>

**B. Rules Governing Arguments and Evidence**

Technical opinion testimony must be sponsored by a qualified expert with the "knowledge, skill, experience, training, or education to testify."<sup>4</sup> Non-expert testimony on a technical issue is accorded no weight.<sup>5</sup> Further, a non-expert cannot sponsor technical analyses for admission as evidence.<sup>6</sup> Finally, exhibits submitted to support testimony should be either an original or a copy, not cut and pasted into another document.<sup>7</sup> These procedural standards are fully applicable to CASE, despite the fact the organization has chosen to proceed without an attorney. The Commission has previously held in another proceeding involving a *pro se* intervenor that parties in NRC proceedings must include as exhibits all documents that a party

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<sup>1</sup> 10 C.F.R. § 2.337(a).

<sup>2</sup> 10 C.F.R. § 2.319(d).

<sup>3</sup> 10 C.F.R. § 2.319(e).

<sup>4</sup> *Duke Energy Corporation* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004) (citations omitted), *citing Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982).

<sup>5</sup> *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-55, 20 NRC 1646, 1651 (1984).

<sup>6</sup> *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 367 (1983).

<sup>7</sup> *See* 10 C.F.R. § 2.337(d).

relies upon.<sup>8</sup> There, the Commission specifically provided guidance “[f]or future proceedings,” such as the one currently before the Board, to “make clear that documents or other evidence referenced in parties’ briefs must be available in the case record [because] Boards and the Commission should not be expected to consider items never provided on the record.”<sup>9</sup>

### C. Rules Governing the Scope of Issues Addressed in Arguments and Evidence

There are also significant limitations on the scope of the subject matter that a party may address at hearing. Intervenors cannot expand the scope of an admitted contention beyond the specific bases proffered and accepted by the Board.<sup>10</sup> As the Commission has explained, “[t]he scope of a contention is limited to issues of law and fact pled *with particularity* in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with [its] rules. Otherwise, NRC adjudications quickly would lose order.”<sup>11</sup> This standard allows both the parties and the Board to be on notice of the issues being litigated and ensures focused and fair proceedings.<sup>12</sup> In *Pilgrim*, the Commission reiterated that longstanding precedent requires a Board to examine a contention’s bases to determine the scope of a contention because the “reach of a contention necessarily hinges upon its terms *coupled with* its stated bases.”<sup>13</sup> Intervenors “may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset. . . . [The Commission does] not allow distinctly new complaints to be added at will as litigation progresses.”<sup>14</sup>

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<sup>8</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287 (slip op. at 25 n.97) (2010).

<sup>9</sup> *Id.*

<sup>10</sup> *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100-01 (2010).

<sup>11</sup> *Id.* (emphasis added).

<sup>12</sup> *Id.*

<sup>13</sup> *Pilgrim*, CLI-10-11 (slip op. at 28) (emphasis added).

<sup>14</sup> *Id.*

## **II. PORTIONS OF THE CASE STATEMENT AND ACCOMPANYING DOCUMENTS SHOULD BE STRICKEN**

The CASE Statement, despite being labeled by CASE as containing the Statement of Position, testimony, and exhibits, should not be considered pre-filed testimony or evidence of any kind because it consists entirely of unsupported argument and technical references not appropriately sponsored by a qualified expert with the “knowledge, skill, experience, training, or education to testify.”<sup>15</sup> CASE has provided no evidence that Mr. White is an expert in the technical areas that form the bases of the arguments advanced in the CASE Statement. Indeed, CASE readily admitted that it had provided absolutely no expert testimony whatsoever in support of its proffered opinions.<sup>16</sup> Accordingly, the entirety of the CASE Statement is merely CASE’s summation of its position and, because it does not meet established Commission standards, FPL objects to the admission of the CASE Statement or any of the documents excerpted therein as evidence in this proceeding.<sup>17</sup> For similar reasons, the Board should strike CASE Attachment 1 (ostensibly Exhibit INT-001), which appears to be a report prepared by Mr. White, as evidence in this proceeding, because it was not sponsored into evidence by an expert. CASE Attachments 2 and 3 (Exhibits INT-002 and INT-003) suffer from this same defect.<sup>18</sup>

Many of the documents CASE includes in its Statement were also not properly introduced as exhibits into the record.<sup>19</sup> Both the CASE Statement and its Attachment 1 reference numerous documents not contained in the record nor provided by CASE in its mandatory disclosures. Instead, the CASE Statement impermissibly cites by reference to multiple external, non-record documents, cutting and pasting from them liberally, often with no

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<sup>15</sup> See *Catawba*, CLI-04-21, 60 NRC at 27.

<sup>16</sup> CASE Statement at 5.

<sup>17</sup> See 10 C.F.R. § 2.319(d).

<sup>18</sup> FPL does not object to CASE Attachments 4 (Florida Department of Environmental Protection Administrative Order), 5 (Miami-Dade County Notice of Violation), and 6 (Consent Agreement Between Miami-Dade County and FPL), which are public records.

<sup>19</sup> See *Pilgrim*, CLI-10-11 (slip op. at 25 n.97).

clear indication where one excerpted passage ends and another begins. Similarly, the CASE Statement includes cut and pasted information from various emails and memoranda without providing the whole document to provide context for the parties and Board to determine their veracity and relevance. Admissible exhibits should either be an original or a copy, and cannot be simple cut and paste portions of other documents.<sup>20</sup> In its Scheduling Order, the Board provided specific, detailed instruction regarding the presentation of exhibits at hearing, and CASE has ignored both the Board’s instructions and the Commission’s rules. Further, as shown in more detail Table 1 below, CASE also failed to identify all of these external, non-record documents in its mandatory disclosures, forcing FPL to seek complete, original versions of some of the documents from alternative sources.

Any document CASE referenced or excerpted without properly offering into the record as an exhibit should be stricken from the record in this matter. Table 1 contains a listing of CASE’s improperly submitted documents.

**Table 1**  
**Documents Improperly Referenced or Reproduced in the CASE’s Submission**

| <b>Page #</b>              | <b>Document</b>  | <b>Identified in Mandatory Disclosures?</b> |
|----------------------------|--|---|
| CASE Statement (CS) at 8-9 | Email from Dr. Christopher Kelble  | No  |
| CS at 12-14                | “Origins and Delineation of Saltwater Intrusion in the Biscayne Aquifer and Changes in the Distribution of Saltwater in Miami-Dade County, Florida”  | Yes   |
| CS at 15                   | “Water, Water, Everywhere: Sea Level Rise in Miami University of Miami Rosenstiel School Of Marine and Atmospheric Science, Miami, <a href="http://www.rsmas.miami.edu/blog/2014/10/03/sea-level-rise-in-miami/">http://www.rsmas.miami.edu/blog/2014/10/03/sea-level-rise-in-miami/</a> ” | No  |

<sup>20</sup> See 10 C.F.R. § 2.337.

| <b>Page #</b>                                 | <b>Document</b>  | <b>Identified in Mandatory Disclosures?</b> |
|---|--|---|
| CS at 17-18, 51, 77; Attachment 1 (AT1) at 21 | USGS Ground Water Atlas Of The United States Alabama, Florida, Georgia, South Carolina   | No  |
| CS at 28-30                                   | Letter from C. Espinosa to M. Harris, "Application to Renew Turkey Point Industrial Wastewater Facility Permit number Fzl0001582"  | No  |
| CS at 32, 33                                  | Florida Power and Light Company Docket No. 50-251 Facility Operating License, License No. DPR-41 April; 10. 1973 ML013400438   | ADAMS                                       |
| CS at 33; AT1 at 20, 26-28                    | Knowledge Of Ground Water Responses - Critical Factor in Saving Florida's Threatened and Endangered Species Part I: Marine Ecological Disturbances Sydney T. Bacchus Applied Environmental Services, P. O. Box 174, Athens, GA 30603; appliedenvirserv@mindspring.com<br><a href="https://www.nirs.org/nukerelapse/levy/exhf2bacchus.pdf">https://www.nirs.org/nukerelapse/levy/exhf2bacchus.pdf</a> | No  |
| CS at 37                                      | Email from G. Burzycki, Subject "RE: FPL Cooling Canals"   | No  |
| CS at 38                                      | Email from E. Alvear, Subject "Cormorant colony closest to FPL cooling canals undergoing severe decline"   | No  |
| CS at 38-40                                   | Email from L. Otero, Subject "Uprate monitoring issues"  | Yes   |
| CS at 41                                      | Email from L. Otero, Subject "CCS Surface Water TKN"   | Yes   |
| CS at 41                                      | Email from C. Grossenbacher, Subject "FW:FPL Annual Crocodile Report"  | Yes   |
| CS at 42                                      | Email from L. Otero, Subject "RE: Turkey Point Units 3&4 Uprate Addendum – Tritium Attachments: 2014 Post Uprate Report MDC Draft Comments"  | Yes   |
| CS at 42                                      | Memorandum from L. Hefty L. to P. Coram  | Yes   |
| CS at 47                                      | Message from F. Mazzoti to J. Wrublik  | Yes   |
| CS at 47                                      | Ecology and Conservation of the American Crocodile ( <i>Crocodylus acutus</i> ) in Florida   | No  |
| CS at 47-48                                   | Message from M. Pearce to S. Scroggs   | Yes   |
| CS at 48                                      | Statement of P. Stoddard   | No  |
| CS at 48-50                                   | Comments of Miami-Dade County on Draft Environmental Impact Statement for Turkey Point Units 6&7   | ADAMS                                       |

| <b>Page #</b>             | <b>Document</b>   | <b>Identified in Mandatory Disclosures?</b> |
|---------------------------|---|---|
| CS at 56-57               | Meeting Minutes of the South Florida Water Management District  | No  |
| CS at 63                  | July 25, 2014 NRC letter to the FWS the NRC requested consultation on the subject EA (ADAMS Accession No. ML14206A800)  | ADAMS                                       |
| CS at 67-68               | Email from A. Gunderson   | No  |
| CS at 68-69               | Email to T. Hoeg; Email from T. Hoeg  | No  |
| CS at 75                  | Environmental Review Guidance for Licensing Actions Associated with NMSS Programs Division of Waste Management Office of Nuclear Material Safety and Safeguards (ML032450279)   | ADAMS                                       |
| CS at 79-80;<br>AT1 at 25 | Statement from National Park Service website  | No  |
| AT1 at 1-8                | What Is Saltwater Intrusion? Saltwater Intrusion of Coastal Aquifers in the U.S. James Spatafo Johnson State College Senior Seminar May 6, 2008T<br><a href="http://kanat.jsc.vsc.edu/student/spatafora/setup.htm">http://kanat.jsc.vsc.edu/student/spatafora/setup.htm</a> | Yes   |
| AT1 at 8                  | <a href="http://www.rsmas.miami.edu/blog/2014/10/03/sea-level-rise-in-miami/">http://www.rsmas.miami.edu/blog/2014/10/03/sea-level-rise-in-miami/</a>   | No  |
| AT1 at 8                  | Emergency Order No. 2015-034-DAO—WU [PDF] – South... <a href="http://www.sfwmd.gov/...sfwmd.../f">www.sfwmd.gov/...sfwmd.../f</a>   | Yes   |
| AT1 at 9, 28              | Dolan Study   | No  |
| AT1 at 9-10               | Borehole geophysical logging for the Florida Power & Light Turkey Point Plant groundwater, surface water, and ecological monitoring plan  | No  |
| AT1 at 10-12              | Origins and Delineation of Saltwater Intrusion in the Biscayne Aquifer and Changes in the Distribution of Saltwater in Miami-Dade County, Florida   | Yes   |
| AT1 at 14-18              | usgs summary and conclusions  | No  |
| AT1 at 18-20              | McNeill, Donald F., 2000. A Review of Upward Migration of Effluent Related to Subsurface Injection at Miami-Dade Water and Sewer South District Plant.  | No  |
| AT1 at 21-24              | Biological Assessment on the American Crocodile ( <i>Crocodylus acutus</i> ) Turkey Point Nuclear Generating Unit Nos. 3 and 4 Proposed License Amendment to Increase the   | ADAMS                                       |

| Page #    | Document  | Identified in Mandatory Disclosures? |
|-----------|---|--------------------------------------|
|           | Ultimate Heat Sink Temperature Limit July 2014  |                                      |
| AT1 at 24 | Hughes, J.D., Langevin, C.D., and Brakefield-Goswami, Linzy, 2010, Effect of hypersaline cooling canals on aquifer salinization: Hydrogeology Journal, v. 18, p. 25–38. | No                                   |
| AT1 at 24 | Turkey Point Unit 1 Eco System By Russ Finley On Mar 3, 2015 with 14 Responses  | Yes                                  |

**III. SIGNIFICANT PORTIONS OF THE CASE STATEMENT AND ITS EXHIBITS ARE BEYOND THE SCOPE OF CONTENTION 1 AND SHOULD BE STRICKEN**

Because the Board is empowered to “[r]estrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments,”<sup>21</sup> those portions of the CASE Statement and attachments that go beyond the limited scope of Contention 1, as admitted, should also, in addition to the reasons set forth above, be stricken as irrelevant and immaterial arguments.

CASE Contention 1, as reformulated and subsequently admitted by the Board, alleges that the NRC’s Environmental Assessment (“EA”) “does not adequately address the impact of increased temperature and salinity in the [cooling canal system (“CCS”)] *on saltwater intrusion* arising from: (1) migration out of the CCS; and (2) the withdrawal of fresh water from surrounding aquifers to mitigate conditions within the CCS.”<sup>22</sup> Essentially, the contention alleges that the increase in ultimate heat sink temperature allowed by the license amendment will lead to an increase in average temperature in the CCS and a resultant increase in CCS salinity. According to the contention, this heightened CCS salinity, in turn, will exacerbate saltwater intrusion both by direct migration out of the CCS and by operation of FPL’s CCS mitigation measures.

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<sup>21</sup> 10 C.F.R. § 2.319(e).

<sup>22</sup> LBP-15-13 (slip op. at 24) (emphasis added).



A. Biscayne Bay

The CASE Statement argues, for the first time, that CCS water may impact the water of Biscayne Bay, as opposed to the Biscayne Aquifer, which underlies both Biscayne Bay and the Turkey Point site.<sup>23</sup> Neither CASE’s Petition nor its Reply ever asserted that hypersaline water from the CCS would intrude into Biscayne Bay.<sup>24</sup> In its Petition, CASE cited a document discussing the “high salinity groundwater plume from the cooling canals as it moves to the east *under the Bay*.”<sup>25</sup> CASE certainly never argued that CCS water would affect Biscayne Bay. Thus, the scope of the CASE contention should exclude impacts to Biscayne Bay.

B. Need for Monitoring

The CASE Statement also devotes a considerable amount of attention to the alleged failure of the EA to properly address monitoring, including several pages of emails from Miami-Dade County representatives.<sup>26</sup> The CASE Petition and the admitted contention do not include consideration of this issue.

C. Impact of Algae Remediation on Crocodiles

The CASE Statement alleges that the EA failed to properly consider the impacts of copper sulfate on crocodiles.<sup>27</sup> Although this claim was raised in CASE’s original petition, the Board expressly rejected this allegation because the EA does, in fact, discuss this issue.<sup>28</sup>

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<sup>23</sup> See, e.g., CASE Statement at 8-9, 81.

<sup>24</sup> At the prehearing conference, Mr. White engaged in a lengthy discussion with Judge Kennedy regarding the results of FPL monitoring wells at location TPGW-10, shown in slide 8 to CASE Petition Exhibit 1. See Tr. at 109-115, discussing CASE Pet. Ex. 1 at 8. As demonstrated in that slide and in Mr. White’s discussion, the slide represents three wells at various depths in the ground near the Biscayne Bay shoreline, with the higher values of the dense hypersaline water in the deepest part of the aquifer as would be expected. None of these groundwater readings involved measurements in the Bay itself. See also Pet. Ex. 1 at 7 and 9 (providing “contours based on *deep well* tritium results”) (emphasis added).

<sup>25</sup> CASE Petition at 13 (emphasis added).

<sup>26</sup> CASE Statement at 35-43.

<sup>27</sup> *Id.* at 43.

<sup>28</sup> See Pet. at 15; LBP-15-13 (slip op. at 26-27).

D. Bacchus Paper

CASE excerpts the Abstract from a paper by Dr. Sydney Bacchus, entitled “Knowledge of Ground Water Responses - Critical Factor in Saving Florida's Threatened and Endangered Species Part I: Marine Ecological Disturbances.”<sup>29</sup> This paper discusses impacts to marine resources from activities such as the underground injection of wastewater, aquifer storage and recovery, and mining and impacts related to disease, pathogens, antagonistic evolution and endocrine disruptors. CASE raised none of these issues in its Petition and none was admitted by the Board as part of Contention 1.

E. General NEPA Considerations

Finally, CASE devotes a large section of its Statement to a discussion of general NEPA principles not presented in its Petition.<sup>30</sup> Among other out-of-scope issues, CASE discusses the NRC’s considerations of alternatives, evaluation of unresolved conflicts, consultation with other agencies, and the speed with which the NRC completed its review. None of these issues were raised by CASE or admitted by the Board.

F. Identification of Beyond-Scope Arguments

Table 2 provides a page-by-page identification of these beyond-scope arguments. Because these arguments were not included in Contention 1 as admitted, the Board should strike them as irrelevant.

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<sup>29</sup> CASE Statement at 33-35; Attachment 1 at 26-28.

<sup>30</sup> CASE Statement at 58-82.

**Table 2**  
**CASE Arguments and Exhibits Addressing Matters Beyond the Scope of Contention 1**

| <b>Beginning Location</b>  | <b>Ending Location</b>  | <b>Description of Beyond-Scope Argument</b>   |
|--|---|---|
| <b>CASE Statement</b>  |   |   |
| Top of page 8<br>("In one email...")                               | Top of Page 9<br>("...temperature of 35C")  | Email regarding fish habitat in Biscayne Bay  |
| Bottom of page 33<br>("Perhaps the strongest...")                  | Middle of Page 35<br>("Industrial Waste Facility (IWF).")                                       | Bacchus Report on impact on endangered species due to groundwater alterations with respect to pathogens, underground injection, endocrine disruptors, and microbes. |
| Bottom of Page 35<br>("Monitoring")                                | Middle of Page 37<br>("...could be monitored.")   | Discussion of need for NRC to require additional monitoring   |
| Beginning of Page 38   | Middle of Page 38<br>("...regularly monitored...")  | Alvear email regarding cormorants   |
| Beginning of Page 41   | End of Page 41  | Otero email regarding TKN (Total Kjeldahl Nitrogen);<br>Grossenbacher email regarding crocodiles  |
| Bottom of Page 42<br>("November 26, 2014...")                      | Top of page 43<br>("emphasis added")  | Hefty memorandum to Coram regarding sampling for trace metals and nutrients   |
| Top of page 43<br>("As the citations ...")                         | Bottom of page 43<br>("...specifically that it does.")  | Allegation that the NRC fails to discuss impacts of copper sulfate on crocodiles  |
| Top of Page 46<br>("Crocodiles and wildlife in the CCS")           | Middle of Page 50<br>("as a regulatory action?")  | Discussion of crocodiles and wildlife, including emails   |
| Bottom of Page 61<br>("NEPA: Consultation with Other Agencies")    | Middle of Page 64<br>("FPL statements accepted as fact.")                                       | Discussion of NRC consultation with other agencies, including US Fish and Wildlife Service  |
| Bottom of Page 64<br>"NEPA: Health and Welfare of Man")            | Middle of Page 65<br>("... did not consider these concerns.")                                   | Discussion of whether the EA addressed health and welfare   |
| Middle of Page 65<br>(NEPA: Consider Alternative Actions")         | End of Page 69; continuing at beginning of Page 71 to the middle of Page 72<br>("...be asked.") | Discussion of alternatives and grid reliability/shutting down reactors, including Gunderson and Hoeg emails.  |
| Bottom of Page 73<br>("NEPA: Unresolved Conflicts Over Resources") | Middle of Page 75<br>("...resource like freshwater.")   | Discussion of conflicts over resources  |

| <b>Beginning Location</b>                                    | <b>Ending Location</b>  | <b>Description of Beyond-Scope Argument</b>   |
|--|---|---|
| Middle of Page 75<br>("NEPA: Major Federal Actions")         | End of page 76  | Argument that the administration of the Cooling Canals is a major federal action  |
| Beginning of page 81   | Middle of page 81<br>("...2014 EA.")  | Discussion of impact on Biscayne Bay  |
| Bottom of Page 81<br>("Speed of the 2014 EA")                | Middle of page 82<br>("...18 day EA")   | Discussion of the speed of the NRC Staff's review   |
| Attachment 1   |   |   |
| Bottom of Page 18<br>("Dr. Donald McNeil")                   | Top of Page 20<br>("...Sierra Club – Miami Group. 30 p.)                                | McNeil Report on underground injection of effluents into the Boulder Zone of the Lower Floridan Aquifer                   |
| Bottom of Page 24<br>("Turkey Point Unit 1 Eco System")      | Middle of Page 25<br>("...see the real n")  | Blog post discussing impact on crocodiles   |
| Bottom of page 25<br>("The National Park website states...") | End of page 25  | Discussion of Biscayne Bay estuary  |
| Beginning of page 26   | Bottom of page 28<br>("Endeditableow_ThesepageEndeditableow_ThesepageGrid Reliability") | Bacchus Report on impacts to marine species from underground effluent injection, aquifer storage and recovery, and mining |
| Bottom of Page 28<br>("Tara Dolan study")                    | End of Page 28  | Thesis addressing impacts to mangroves and habitats   |

#### **IV. CONCLUSION**

For the foregoing reasons, significant portions of the cited references in the CASE Statement and Attachment 1 should be stricken because they were not properly included in the record as exhibits. Further, no portion of the CASE Statement or any of its technical attachments should be considered as evidence because they were not sponsored by an expert.<sup>31</sup> Finally, any argument or exhibit that addresses issues beyond the scope of CASE Contention 1 as pled and admitted, should be stricken. In the alternative, FPL moves the Board to limit these materials by excluding them from evidence.

<sup>31</sup> With the exception of CASE Attachments 4, 5, and 6, as noted above.

V. **CERTIFICATION**

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful. Counsel for the NRC Staff does not oppose the motion.

Respectfully Submitted,

*Signed (electronically) by Steven Hamrick*

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October 19, 2015

COUNSEL FOR  
FLORIDA POWER & LIGHT COMPANY

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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| (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 Motion to Strike Portions of CASE’s “Initial Statement of Position, Testimony, Affidavits and Exhibits” or, in the Alternative, Motion *in Limine* to Exclude it and its Cited Documents from Evidence,” 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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Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
Washington, DC 20555-0001  
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*Signed (electronically) by,*

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Dated at Washington, DC  
this 19th day of October, 2015