

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**FLORIDA POWER & LIGHT COMPANY’S MOTION FOR SUMMARY
DISPOSITION OF JOINT INTERVENORS’ AMENDED CONTENTION 2.1**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.1205, Applicant Florida Power & Light Company (“FPL”) requests that the Atomic Safety and Licensing Board (the “Board”) grant summary disposition of Amended Contention 2.1 (also known as “NEPA Contention 2.1”) submitted by intervenors Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy, and National Parks Conservation Association (“Joint Intervenors”) in the above captioned proceeding.

FPL seeks summary disposition because no genuine issue of material fact exists, and FPL is entitled to a decision as a matter of law.¹ This Motion is supported by 1) the Statement of Material Facts as to which no Genuine Issue Exists (Attachment 2 hereto); 2) the Declaration of Mr. Thomas Helton, Jr. (“Helton Decl.”) (Attachment 3 hereto);² the Declaration of Mr. David McNabb (“McNabb Decl.”) (Attachment 4 hereto),³ and the Declaration and expert report of Mr. Richard Powell (“Powell Report”) (Attachment 5 hereto).

¹ 10 C.F.R. § 2.710(d).

² The Helton Declaration relies on Exhibits 1 through 6 and 10. For convenience of the reader, Attachment 1 contains a complete listing of the Exhibits supporting this motion.

³ The McNabb Declaration relies on Exhibits 7 and 8.

As required under the National Environmental Protection Act of 1978 (“NEPA”), the NRC’s draft Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point, NUREG-2176 (February 2015) (the “DEIS”), prepared by the NRC Staff in this proceeding took a “hard look” at the environmental impacts of injecting wastewater into the Boulder Zone using deep well injection, which is the matter at issue in Contention 2.1. The DEIS reasonably concluded that those impacts would be SMALL, due to (1) the Boulder Zone’s isolation from the Underground Source of Drinking Water (“USDW”); (2) the highly regulated design and testing of Turkey Point’s injection wells; and (3) the required monitoring of those wells during operation.⁴ There are no facts in dispute that could change this conclusion.

First, as demonstrated by FPL’s recently completed reclaimed water sampling program, there is no genuine factual dispute that the concentrations of ethylbenzene, heptachlor, tetrachloroethylene, and toluene (the “Constituents”) cited in the ER and DEIS are conservative and reliable. Second, the precise concentrations of the Constituents are, in any event, not relevant to an analysis of the environmental impacts of injecting Turkey Point’s wastewater into the Boulder Zone. As the DEIS concludes, the design of the deep injection wells and Turkey Point’s site hydrogeology will prevent migration of the Constituents from the Boulder Zone into the Upper Floridan Aquifer. Third, the DEIS considered the facts relied upon by Joint Intervenors to support Contention 2.1 but, based on the review team’s independent analysis, nevertheless concluded that “enhanced vertical flow through the confining units to the Upper Floridan aquifer is extremely unlikely, and if leakage

⁴ DEIS at pp. 2-55, 5-18, 5-29.

did occur it would be detected and mitigated as required by the [Florida Department of Environmental Protection Underground Injection Control (“FDEP UIC”)] program.”⁵

For these reasons, there is no genuine dispute on a material fact that would change the DEIS’s conclusion that the environmental impacts from Turkey Point’s proposed wastewater injection will be SMALL. Summary disposition should therefore be granted.

II. STATEMENT OF FACTS

In June 2009, FPL submitted its application for a combined license (“COL”) for two AP1000 pressurized water nuclear reactors to be located adjacent to the existing Turkey Point power plants, Units 1 through 5, at the Turkey Point site near Homestead, Florida. Relevant to this proceeding, FPL proposes to use reclaimed water provided by the South District Wastewater Treatment Plant (SDWWTP) in Miami-Dade County, Florida as a source of makeup water for the circulating cooling water system proposed at Turkey Point. FPL proposes to discharge Turkey Point’s wastewater, which would include the reclaimed water, through a pipeline system into deep wells that inject into the Boulder Zone of the Florida aquifer system.

On September 4, 2009, the NRC staff (“Staff”) accepted FPL’s application for docketing.⁶ On August 17, 2010, the Joint Intervenors filed a timely petition to intervene.⁷ The Board admitted for litigation a portion of Joint Intervenors’ proposed Contention 2, which it designated as

⁵ DEIS at p. 5-18.

⁶ Acceptance for Docketing of an Application, 74 Fed. Reg. 51,621 (Oct. 7, 2009).

⁷ Petition to Intervene and Request for Hearing by Mark Oncavage, Dan Kipnis, Southern Alliance for Clean Energy (“SACE”), and National Parks Service (“NPCA”), August 17, 2010 (“Initial Petition”).

Contention 2.1.⁸ Following a number of further submittals by the parties, on August 30, 2012 the Board reformulated Contention 2.1 to allege that:

The ER is deficient in concluding that the environmental impacts from FPL's proposed deep injection wells will be "small" because the chemical concentrations in ER Rev. 3 Table 3.6-2 for ethylbenzene, heptachlor, tetrachloroethylene, and toluene may be inaccurate and unreliable. Accurate and reliable calculations of the concentrations of those chemicals in the wastewater are necessary so it might reasonably be concluded that those chemicals will not adversely migrate from the Boulder Zone to the Upper Floridan Aquifer.⁹

In February 2015, the NRC published its DEIS for Turkey Point. The DEIS contains a thorough analysis of the potential impacts of injecting wastewater from Turkey Point into the Boulder Zone. The DEIS includes the same conservative and reliable data for the Constituents that FPL provided in ER Table 3.6-2.¹⁰

Importantly, however, the concentrations of the Constituents are irrelevant to the potential impacts on drinking water.¹¹ As the DEIS concludes, migration of the Constituents is "extremely unlikely" because of the hydrogeological confinement of the Boulder Zone, the design of the injection wells, and the FDEP regulations requiring monitoring and mitigation.¹² In reaching this conclusion, the review team met its NEPA obligation by taking a hard look at regional and site specific data, (including the reports cited by the Joint Intervenors to support Contention 2.1), and by examining the well design and FDEP requirements for design and permitting Turkey Point's wastewater injection system.

⁸ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 N.R.C. 149, 187 (Feb. 28, 2011).

⁹ Memorandum and Order (Granting In Part and Denying in Part Motion for Summary Disposition of Amended Contention 2.1) (Aug. 30, 2012) at p. 2-3 ("August 30, 2012 Memorandum and Order").

¹⁰ See DEIS Table 3-5, p. 3-39. As explained in note 35 *infra*, subsequent to the August 30, 2012 Memorandum and Order, the ER was revised to indicate that ethylbenzene was not detected above its method detection limit and the DEIS reflects the revised ER.

¹¹ McNabb Decl. at ¶¶ 10, 51.

¹² DEIS at p. 5-18.

III. STATEMENT OF THE LAW

A. Legal Standards for Summary Disposition

In ruling on motions for summary disposition in 10 C.F.R. Subpart L proceedings, the Board applies the standards in 10 C.F.R. Subpart G.¹³ Those standards provide that summary disposition is appropriate where the record demonstrates that no genuine dispute exists regarding any material fact and the moving party is entitled to a decision as a matter of law.¹⁴

When a summary disposition motion is supported by affidavits in accordance with 10 C.F.R. § 2.710(b), the “party opposing the motion may not rest upon . . . mere allegations or denials,” but must, by affidavit or as otherwise provided in the rule, set forth “specific facts showing that there is a genuine issue of fact” warranting a hearing.¹⁵ “Bare assertions or general denials are not sufficient. Although the opposing party does not have to show that it would prevail on the issues, it must at least demonstrate that there is a genuine factual issue to be tried.”¹⁶ “[Opponents] had to present contrary evidence that was so significantly probative as to create a material factual issue.”¹⁷

The Commission has encouraged Boards to use the summary disposition process where the proponent of a contention has failed to establish that a genuine issue exists, so that evidentiary hearing time is not unnecessarily devoted to such issues.¹⁸ The summary disposition procedures

¹³ 10 C.F.R. § 2.1205(c).

¹⁴ 10 C.F.R. § 2.710(d)(2).

¹⁵ 10 C.F.R. § 2.710(b); *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio, 44041), CLI-93-22, 38 N.R.C. 98, 102 (1993).

¹⁶ CLI-93-22, 38 N.R.C. at 102 (citations omitted).

¹⁷ *Id.* at n.13 (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-92-08, 35 N.R.C. 145, 154 (1992)).

¹⁸ Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 457 (1981).

“provide in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues”¹⁹

B. NEPA Standards

The National Environmental Policy Act (NEPA) requires agencies, including the NRC, to take a “hard look” at the environmental impacts of a proposed action and alternatives to that action.²⁰ This “hard look” is subject to a “rule of reason” such that the consideration of environmental impacts must address only those impacts that are reasonably foreseeable or have some likelihood of occurring.²¹ The agency has broad discretion over the thoroughness of the analysis, and may decline to examine issues the agency in good faith considers “remote and speculative” or “inconsequentially small.”²² Furthermore, NEPA does not call for a “worst-case” inquiry because it “creates a distorted picture of a project’s impacts and wastes agency resources.”²³

The Commission has found that NEPA serves a dual purpose: to ensure that officials fully take into account the environmental consequences of Federal Action before reaching major decisions, and to inform the public, Congress, and other agencies of those consequences.²⁴ NEPA does not mandate particular results, but prescribes the necessary process.²⁵

¹⁹ *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 550 (1980).

²⁰ *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-07, 69 N.R.C. 613, 719-20 (2009).

²¹ *Id.*

²² *Id.*; see also *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 44 (1989) (citing *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 739 (3d Cir. 1989)).

²³ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 352 (2002) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354-55)(1989)).

²⁴ *Private Fuel Storage, L.L.C.*, CLI-02-25, 56 N.R.C. at 348.

²⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

Moreover, an EIS is not intended to be a research document.²⁶ “NEPA does not call for ‘examination of every conceivable aspect of federally licensed projects.’”²⁷ Although “there ‘will always be more data that could be gathered,’” agencies “‘must have some discretion to draw the line and move forward with decisionmaking.’”²⁸ NEPA does not demand virtually infinite study and resources.²⁹

At bottom, NEPA “does not require a crystal ball inquiry.”³⁰ Nor does it call for certainty or precision. When faced with uncertainty, NEPA only requires “reasonable forecasting.”³¹ An agency is obligated to “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choices made.”³²

IV. ARGUMENT

A. The Data Disclosed in the DEIS in Table 3.5 for the Constituents are Conservative and Reliable

There is no genuine dispute in this proceeding as to whether FPL’s ER and the DEIS identify conservative and reliable concentrations for the Constituents that will be injected into the Boulder Zone using deep well injection pumps.³³ The data in ER Rev. 6, Table 3.6-2, and DEIS Table 3.5-2 for the Constituents, which Joint Intervenors challenge, is based on the concentrations for those Constituents taken from testing for the years 2007 through 2011 performed by SDWWTP, the

²⁶ *Entergy Nuclear Generation Co. et.al.* (Pilgrim Nuclear Power Station), CLI-10-22, 72 N.R.C. 202, 208 (2010).

²⁷ *Private Fuel Storage*, CLI-02-25, 56 N.R.C. at 349 (footnote omitted); *Louisiana Energy Services L.P. (Clairborne Enrichment Center)*, CLI-98-3, 47 N.R.C. at 102-03.

²⁸ *Entergy Nuclear Generation Co. et.al.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. 287, 315 (2010) (footnote omitted).

²⁹ *Id.* at 315.

³⁰ *Natural Res. Def. Council v. Morton*, 458 F.2d 827, 837 (1972) (internal quotations omitted).

³¹ *Scientists’ Inst. For Pub. Info., Inc. v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

³² *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (S. Ct. 1983) (internal quotation marks omitted).

³³ See ER Rev. 6 Table 3.6-2; DEIS Table 3.5-2.

operator of the very system from where the reclaimed water will originate.³⁴ As explained in FPL's July 2012 Motion, FPL selected as the source data the highest concentration of each of the Constituents found in SDWWTP's reports.³⁵ FPL then increased those concentrations by evaluating the path of the reclaimed water throughout its use in the Turkey Point units and accounting for the effects of concentration in the cooling system and dilution from other sources that combine with the reclaimed water.³⁶ These increased concentrations appear in the ER and the DEIS.

As FPL explained in its July 2012 Motion, and as further explained in the Powell Report and the DEIS, the Constituent concentrations in the ER and the DEIS are conservative. For example, as the DEIS recognizes, after the sampling at issue was performed the SDWWTP instituted a number of improvements to its treatment processes that would further reduce the Constituent concentrations.³⁷ Furthermore, the concentrations in the ER and the DEIS do not account for the fact that (in addition

³⁴ FPL also submitted detailed supporting data for the Constituents in response to an NRC Request for Additional Information ("RAI") on March 7, 2012, and submitted a clarification to this RAI on November 14, 2015. *See* Letter from W. Maher to U.S. Nuclear Regulatory Commission, re: Florida Power & Light Company Proposed Turkey Point Units 6 and 7, Docket Nos. 52-040 and 52-041, Clarification of Response to NRC Request for Additional Information Letter 1112081 (RAI 5765) Related to ESRP Section 4.2, Water-Related Impacts" (ADAMS Accession No. ML123250326)(The Attachment to this letter contains FPL's response to NRC's RAI and will be referred to herein as the "November 2012 RAI Response"); *See also* FPL Motion for Summary Disposition of Joint Intervenors' Amended Contention 2.1, dated July 19, 2012 at p. 8 ("FPL July 2012 Motion")(citing the Declaration of David M. Wagner in Support of Florida Power & Light's Motion for Summary Disposition of Joint Intervenors' Amended Contention 2.1 ("Wagner Decl.")).

³⁵ FPL July 2012 Motion at 8-10. As explained in the Wagner Declaration, however, the ER Rev. 3 concentration for ethylbenzene was inadvertently based on the highest observed method detection limit and ethylbenzene was not actually detected above its method detection limit. Wagner Decl. at ¶13. Therefore, the ER was revised to indicate that ethylbenzene was, in fact, not detected above its method detection limit and DEIS Table 3.5-2 is consistent with that revision. ER, Chapter 3: Plant Description, Rev. 4 at p. 3.6-7(ADAMS Accession No. ML13008A501). While FPL conservatively used the worst case values from the SDWWTP reports for the Constituent concentrations, its overall analysis of the impacts of deep well injection was not intended to be a "worst case" analysis and NEPA does not require a worst case analysis. *Private Fuel Storage L.L.C.*, CLI-02-25, 56 N.R.C. at 352. Consistent with NEPA, FPL's analysis provided an extremely conservative representation of the Constituent concentrations in the injectate and the impacts therefrom. Wagner Decl. at ¶¶ 7-16.

³⁶ *Id.*

³⁷ Powell Report at p. 3; DEIS at p. 5-87 *citing* Letter from W. Maher re: "Florida Power & Light Company Proposed Turkey Point Units 6 and 7, Docket Nos. 52-040 and 52-041, Response to Request for Additional Information Letter 120403 (RAI 6350 Rev. 1) Related to ESRP Section 5.8.1 – Etiological Agents", dated May 21, 2012 (Available at ADAMS Accession No. ML12143A356).

to treatment by industrial users and treatment at the SDWWTP), the reclaimed water will be further treated at Turkey Point's own reclaimed water treatment facility before it enters the plants' circulating water systems.³⁸ This process at Turkey Point will involve an integrated train consisting of flow equalization, continuous water quality monitoring, flow metering, dechlorination, nitrification, chemical phosphorous removal, clarification, pH adjustment, deep filter bed denitrification, chlorination, and water quality monitoring.³⁹ The nitrification and denitrification processes should remove any of the Constituents that might remain in the SDWWTP's reclaimed water.⁴⁰

The concentrations in the ER and DEIS are also conservative because they do not account for the fact that the design of the circulating water system cooling towers at Turkey Point should act to further remove or "strip" any of the volatile compounds (in the unlikely event any remain) from the water before it is piped from Turkey Point to the wells for injection into the Boulder Zone.⁴¹ In fact, the conservative analysis used in the ER treats the cooling towers as if they would concentrate the Constituents, which is the opposite of what would happen under operating conditions.⁴²

Ignoring these undisputed facts, Joint Intervenors challenged the reliability and accuracy of the Constituent concentrations in the ER and the DEIS based on the manner in which the wastewater

³⁸ In evaluating the impacts of etiological and chemical agents, the DEIS recognizes the FDEP treatment requirements for allowing the use of reclaimed water in open cooling towers. *See* DEIS p. 5-87. It also recognized that FPL's Reclaimed Water Treatment Facility would provide additional treatment beyond the FDEP requirements. *Id.* As a result, the DEIS concludes that etiological and chemical agents from the makeup-water source are expected to be eliminated or sufficiently minimized such that public health would be protected. DEIS at p. 5-89.

³⁹ Powell Report at p. 6; DEIS at p. 5-87 through 89.

⁴⁰ Powell Report at p. 6-7.

⁴¹ Powell Report at p. 7. The volatile Constituents, which tend to be expelled as they heat up, are toluene, ethylbenzene, and tetrachloroethylene. *Id.*

⁴² Powell Report at p. 3.

was sampled, collected, and analyzed for the SDWWTP.⁴³ Despite the fact that NEPA does not require the NRC or an applicant to conduct research projects or expend resources to pursue all possible data,⁴⁴ FPL nevertheless asked PACE Analytical Services, Inc. (“PACE”)⁴⁵ to perform an additional sampling campaign of the wastewater at the SDWWTP.⁴⁶ As explained below, that campaign confirmed the conservative nature of the ER’s data. The Constituents were not detected above the method detection limit (“MDL”) in any of the eight samples tested during PACE’s campaign.

Joint Intervenors specifically alleged that the Constituent concentrations set forth in the ER were not reliable or accurate because a single sample from a single day cannot be representative of a typical year’s waste water quality.⁴⁷ PACE’s recent sampling campaign, however, consisted of sampling events in each of the four quarters of the year between 2013 and 2014.⁴⁸ As explained in the Powell Report, this sampling program provides an accurate representation of the future reclaimed water that will be supplied to Turkey Point because the quarterly sampling was sufficient to capture the potential seasonal variability of the Constituents in the water.⁴⁹

⁴³ Joint Intervenors’ Answer to FPL’s Motion for Summary Disposition of Joint Intervenors’ Amended Contention 2.1 at p. 2 (Aug. 6, 2012)(“Joint Intervenors Response to FPL’s 2012 Motion”); Joint Intervenors Response to FPL’s 2012 Motion is supported by the August 3, 2012 declaration of Mark Quarles (“Quarles Declaration”).

⁴⁴ *Entergy Nuclear Generation Co. et. al.* CLI-10-22, 72 N.R.C. at, 208; *Entergy Nuclear Generation Co.et. al.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. 287, 315 (2010) (footnote omitted). NEPA does not demand virtually infinite study and resources. *Id.* at 315.

⁴⁵ The PACE facilities that performed the sampling campaign are State of Florida certified laboratories, and the sampling and testing were performed in accordance with FDEP procedures. Helton Decl. at ¶¶ 10-36.

⁴⁶ Helton Decl. at ¶ 7.

⁴⁷ Joint Intervenor Response to FPL’s 2012 Motion at 8.

⁴⁸ Helton Decl. at ¶ 13.

⁴⁹ Powell Report at p. 3. As explained in the Powell Report, the primary factor that affects such variability is temperature – specifically cold temperature. *Id.* at pp. 3-4. However, temperatures in South Florida do not vary significantly as they do in colder climates. *Id.*

PACE measured each of the four Constituents using the appropriate EPA Method and Standard Operating Procedures.⁵⁰ PACE took grab samples to test for the three volatile constituents and composite samples to test for heptachlor from each of two SDWWTP locations (east and west).⁵¹ Thus, PACE analyzed samples for each of the Constituents a total of eight times over an entire year.⁵² None of the four Constituents were found above the MDL in any of PACE's four sampling events.⁵³ In light of these results, and notwithstanding the Joint Intervenors' criticisms of the Constituent concentrations derived from the SDWWTP reports, the data obtained from those reports and cited in the Turkey Point ER and the DEIS are conservative.⁵⁴

As also explained in the Powell Report, the results obtained from PACE's sampling campaign are expected for several reasons.

First, as Joint Intervenors' expert recognizes, one of the Constituents, heptachlor, has not been used in the United States since 1999.⁵⁵ Indeed, only one of the samples (taken in 2008) relied on in the ER found the presence of heptachlor, and that amount was below the applicable MDL.⁵⁶

Second, the industrial users that would be the most likely source of the Constituents are subject to strict requirements that provide safeguards against introducing the Constituents into the SDWWTP. Specifically, those users must obtain a discharge permit from the Miami-Dade County Department of Regulatory and Economic Resources (the "Department"), and must comply with the Department's Industrial Wastewater Pretreatment Program (IWP) prior to discharging water into the

⁵⁰ Helton Decl. at ¶¶15-20, 26-28, 30-32; *See* Powell Report at p. 3.

⁵¹ Helton Decl. at ¶¶ 15, 30.

⁵² *Id.* at ¶ 13.

⁵³ *Id.* at ¶ 38.

⁵⁴ *Id.* at ¶ 40.

⁵⁵ Powell Report at p. 4. Joint Intervenors' own expert recognized that this substance has been banned for use in the United States for decades. Quarles Declaration at ¶ 27.

⁵⁶ Powell Report at p. 4; *See also* November 2012 RAI Response at p. 9.

SDWWTP.⁵⁷ The IWP establishes sewer discharge limitations and pre-treatment standards to prevent industrial users from discharging pollutants, such as the Constituents, into the SDWWTP.⁵⁸ Industrial dischargers are also subject to monitoring and inspection requirements that will test for the Constituents.⁵⁹

Third, the SDWWTP was required to obtain a permit from the Florida Department of Environmental Protection (“FDEP”) that requires daily monitoring of the influent and effluent concentrations of pollutants.⁶⁰ The SDWWTP also has its own treatment program that would strip out any remaining Constituents. Indeed, the SDWWTP implemented a number of improvements to its water treatment processes following the data collection relied on in the ER and cited in the DEIS. This included implementation of high-level disinfection of the reclaimed water, which consists of enhanced filtration and additional chlorination.⁶¹

For all these reasons, there is no disputing the fact that the Constituent concentrations set forth in the DEIS are conservative and reliable. As explained further below, however, the values of these Constituents are, in any event, irrelevant to the DEIS’s conclusion that the environmental impact from the deep well injection would be SMALL.⁶² As the DEIS explains in considerable detail, the confining characteristics of the Boulder Zone, the well design, and state-required monitoring, will ensure that, even if the Constituents are present in the injectate, the environmental impacts of their migration into the Upper Floridan Aquifer would be SMALL, if any.

⁵⁷ Powell Report at p. 5.

⁵⁸ *Id.* at p. 5.

⁵⁹ *Id.*

⁶⁰ *Id.* at p. 5-6.

⁶¹ *Id.* at 6; DEIS at pp. 5-87 through 89.

⁶² McNabb Decl. at ¶¶ 10, 51.

B. Wastewater from Turkey Point Will be Confined within the Boulder Zone

There is no genuine factual dispute regarding the DEIS’s conclusion that the environmental impacts from Turkey Point’s proposed wastewater injection would be SMALL due to: (1) the isolation of the Boulder Zone from the Underground Source of Drinking Water (“USDW”); (2) the highly regulated design and testing of the injection wells; and (3) the state-mandated monitoring of the wells during operation.⁶³ Joint Intervenors have not challenged these conclusions in the DEIS, and to do so now would be untimely.

1. The Middle Confining Unit Provides Confinement of Injected Wastewater

As explained in the DEIS, “[t]he FDEP has permitted around 180 Class I injection wells for injection of municipal and industrial wastewater into the Boulder Zone of the Florida[n] aquifer system.”⁶⁴ “The Boulder Zone of the Lower Floridan Aquifer is used for injection of municipal and industrial wastewater because of its isolation, high permeability, and salinity similar to seawater.”⁶⁵ The FDEP administers the underground injection control program (“UIC”) under which deep injection wells in Florida, including those contemplated at Turkey Point, are permitted.⁶⁶ The

⁶³ DEIS at pp. 2-55, 5-18, and 5-29.

⁶⁴ DEIS at 2-59. The subsurface geology in the vicinity of the Turkey Point site consists of three main hydrogeologic units: the Biscayne Aquifer, the Intermediate Confining Unit, and the Florida Aquifer System. These are described in detail in DEIS at pp. 2-47 through 2-57 and DEIS at pp. 2-202 through 2-204 of the DEIS, and are illustrated in DEIS Figure 2-17 at p. 2-48 and Figure 2-40 at p. 2-203. *See also* McNabb Decl. at ¶¶ 20-29. In south Florida, the Floridan Aquifer System is subdivided into three additional hydrogeologic units – the Upper Floridan Aquifer, the middle Floridan Aquifer (also known as the Middle Floridan Confining Unit), and the Lower Floridan Aquifer. DEIS at pp. 2-47 through 2-57 and Fig. 2-17 at p. 2-48; DEIS at pp. 2-202 through 2-204 and Fig. 2-40 at p. 2-203. McNabb Decl. at ¶ 23. The Boulder Zone is within the Lower Floridan Aquifer. McNabb Decl. at ¶ 27.

⁶⁵ DEIS at p. 2-59.

⁶⁶ McNabb Decl. at ¶ 8.

primary objective of the UIC program is to protect the Underground Source of Drinking Water (“USDW”).⁶⁷

As the DEIS recognizes, the FDEP has comprehensive and detailed regulations requiring that an applicant for a Class I injection well demonstrate that the hydrogeologic environment is suitable for wastewater injection.⁶⁸ These regulations also require that the applicant demonstrate there is a confining zone with sufficient areal extent, thickness, lithological, and hydraulic characteristics to prevent fluid migration into underground sources of drinking water.⁶⁹

FPL constructed an exploratory well, EW-1, to evaluate the site hydrogeology at Turkey Point and confirm the presence of an injection zone and appropriate confining intervals.⁷⁰ As described fully in the McNabb Declaration and the EW-1 Construction and Testing Report that was submitted in this proceeding in February of 2013,⁷¹ extensive sampling and testing took place during the construction of EW-1.⁷² The sampling program included collection of drill cutting rock samples and rock cores.⁷³ Water level data and water samples also were collected to provide information on hydraulic characteristics and water quality data of the test intervals.⁷⁴ A formation test was

⁶⁷ *Id.*

⁶⁸ DEIS at p. 3-36, 4-26, 5-6; FAC 62-528.405(1)(a).

⁶⁹ FAC 62-528.405(2)(a). The injection well applicant is to provide sufficient data such as geophysical logs, lithologic cores, physical core analysis, borehole video television surveys, water samples, and drill stem tests (also known as aquifer tests) to adequately demonstrate the confining characteristics of the bed. FAC 62-528.405(2)(c).

⁷⁰ McNabb Decl. at ¶ 14. Prior to constructing EW-1, FPL sought and received a permit from FDEP. This permit is included as Appendix A to the “Report on the Construction and Testing of Class V Exploratory Well EW-1 at the Florida Power & Light Company Turkey Point Units 6 & 7” (“EW-1 Construction and Testing Report” or Ex. 8).

⁷¹ The EW-1 Construction and Testing Report was submitted to the NRC on October 1, 2012 and a revised version was submitted on February 20, 2013.

⁷² McNabb Decl. at ¶ 16; Ex. 8 at p. 11.

⁷³ McNabb Decl. at ¶¶ 16-19; Ex. 8 at pp. 16 -22.

⁷⁴ McNabb Decl. at ¶¶ 16-18; Ex. 8 pp. 16-17.

performed to confirm the presence of the injection zone.⁷⁵ These data were used to identify and characterize the geologic formations and hydrogeologic units penetrated by the well bore.⁷⁶

The data collected during this testing confirmed the subsurface geology in the vicinity of the Turkey Point site.⁷⁷ Of significance, the data confirmed the presence of the Middle Floridan Confining Unit.⁷⁸ This confining unit is demonstrated by the existence of fine grained limestone, dolomitic limestone, and dolomite with low permeability, which act as a barrier preventing fluids that are injected below the interval from escaping the injection zone.⁷⁹ As the DEIS concludes, the data showed confinement at the Turkey Point site over the interval from approximately 1930 to 2915 feet, or a 985 feet thick confining unit.⁸⁰

Furthermore, the data confirmed that, at the Turkey Point site, the Boulder Zone is an adequate injection zone. The data showed that the Boulder Zone is extremely permeable (or transmissive) and is marked by cavernous often fractured rock.⁸¹

In addition to the data collection during well construction, injection testing required by the FDEP demonstrated: (1) the injection zone's ability to accept water at the intended injection rate; and (2) the absence of fluid connections from the injection zone through the confinement into the

⁷⁵ McNabb Decl. at ¶ 18; Ex. 8 at pp. 19-22.

⁷⁶ Ex. 8 at pp. 23-25.

⁷⁷ McNabb Decl. at ¶¶ 20-27.

⁷⁸ *Id.* at ¶ 26; DEIS at pp. 2-54 through 2-56.

⁷⁹ *Id.* at ¶ 25; DEIS at p. 5-28.

⁸⁰ *Id.* at ¶ 26; Ex. 8 at p. 29; DEIS at pp. 2-58 through 2-60 and Fig. 2-17 at p. 2-48; DEIS at pp. 2-202 through 2-204 and Fig. 2-40 at 2-203.

⁸¹ McNabb at ¶ 27; Ex. 8 at p. 15; DEIS at pp. 2-58 through 2-60 and Fig. 2-17 at p. 2-48; DEIS at pp. 2-202 through 2-204 and Fig. 2-40 at p. 2-203.

zones monitored.⁸² Similar testing is required for each of the Turkey Point injection wells prior to placing the wells into service.⁸³

The DEIS review team evaluated FPL’s data and concluded that it “confirmed the presence of confining layers and a lack of evidence for extensive vertical pathways through the [middle confining unit].”⁸⁴ The DEIS added that these site specific findings are consistent with statewide mapping of the Floridan aquifer, and with characterization data and conclusions presented in regional studies in South Florida and near the Turkey Point site.⁸⁵

2. Required Monitoring Will Detect any Leakage or Migration

As the DEIS also correctly concluded, “enhanced vertical flow through the confining units to the Upper Floridan aquifer is extremely unlikely, and if leakage did occur it would be detected and mitigated as required by the FDEP UIC program.”⁸⁶

The FDEP’s UIC program regulations require that the operator of a Class I injection system (such as will be used at Turkey Point) install and utilize monitor wells above the injection zone near an injection well to monitor for the absence of fluid movement adjacent to the well bore and the long term effectiveness of the confining unit.⁸⁷ FPL will rely on dual-zone monitor wells⁸⁸ to meet this requirement for Turkey Point.⁸⁹ The design of those wells, and FDEP sampling requirements, provide for an early warning system, allowing detection of any upward fluid movement before

⁸² McNabb Decl. at ¶ 35.

⁸³ McNabb Decl. at ¶¶ 35-37.

⁸⁴ DEIS at p. 5-28.

⁸⁵ DEIS at pp. 2-54, 2-55, 2-57.

⁸⁶ DEIS at p. 5-18.

⁸⁷ FAC 62-528.425(g); DEIS at p. 5-30.

⁸⁸ A dual-zone monitor well is a well that allows sampling and monitoring from two different depths. *See* McNabb Decl. at ¶ 37.

⁸⁹ DEIS at p. 5-30; McNabb Decl. at ¶ 37.

drinking water is impacted.⁹⁰ If fluid migration is identified, FDEP regulations require FPL to take remedial action.⁹¹ Thus, as the DEIS states: “Class 1 injection wells are monitored so that if migration of injected fluids were to occur it would be detected before reaching the USDW.”⁹²

Based on its review of these requirements, the DEIS review team reasonably concluded that the evidence of adequate isolation of the Boulder Zone, along with FDEP’s monitoring program, demonstrated that the Upper Floridan Aquifer would be protected from degradation.⁹³

3. Highly Regulated Design and Testing of the Wells Ensures Confinement of Wastewater

The DEIS also correctly concluded that well construction problems leading to wastewater leakage are “not expected at the Turkey Point Site.”⁹⁴ FDEP’s underground injection control regulations provide general design considerations for the wells to prevent movement of fluids into or between underground sources of drinking water, and to maintain the ground water quality in the aquifers above the injection zone.⁹⁵ The Turkey Point injection wells cannot be constructed or operated without satisfying these FDEP requirements.⁹⁶ The DEIS and the McNabb Declaration describe how the injection wells for Turkey Point will be constructed to prevent the leakage of wastewater from the wells into underground sources of drinking water.⁹⁷

⁹⁰ McNabb Decl. at ¶¶ 37-38, FAC 62-528.425(1)(g)(4).

⁹¹ *Id.* at ¶¶ 40-43.

⁹² DEIS at p. 4-26.

⁹³ DEIS at p. 5-29.

⁹⁴ DEIS at p. 2-55.

⁹⁵ FAC 62-528.410(1)(a).

⁹⁶ DEIS at pp. 5-6.

⁹⁷ DEIS at pp. 2-55, 3-10, 5-28 and Figure 3-8 at p. 3-13; McNabb Decl. at ¶ 46-47.

Importantly, as required by the FDEP, the wells will be continuously monitored and tested to ensure they are mechanically sound and are not leaking.⁹⁸ Furthermore, as the DEIS recognizes, the FDEP also requires that each Class I injection well undergo mechanical integrity testing a minimum of every five years.⁹⁹

Finally, the injection well permits are required to be renewed every five years.¹⁰⁰ Thus, at least every five years, the FDEP will review operating data from FPL's injection system to determine if the injection well system is operating in accordance with application regulations.

C. The DEIS Took a “Hard Look” at the Environmental Impacts of Injecting Reclaimed Water into the Boulder Zone

There can be no dispute as to whether the DEIS met its obligation to take a “hard look” at the environmental impacts of the proposed injection of wastewater into the Boulder Zone at the Turkey Point site.¹⁰¹ As previously explained, the DEIS disclosed conservative and reliable estimates of the Constituents in the reclaimed wastewater. But even more important for purposes of the relevant environmental analysis, the DEIS has taken a “hard look” at the Joint Intervenors’ allegation that the Constituents could migrate into the Upper Floridan Aquifer.

In its initial petition to intervene, Joint Intervenors challenged the ER on the grounds that the ER “neglect[ed] to mention that in some parts of southern Florida, municipal wastewater injected into the Boulder Zone has moved upward into the overlying layers and, in some cases, into the Upper Floridan Aquifer.”¹⁰² Joint Intervenors’ expert Mr. Quarles asserted that FPL’s ER is based on generalized data and assumed values, as opposed to actual geological subsurface data from the

⁹⁸ FAC 62-528.425(1)(b); See McNabb Decl. at ¶ 48.

⁹⁹ McNabb Decl. at ¶ 49; FAC 62-528.425(1)(d); DEIS §2.3.1.2 at p. 2-55.

¹⁰⁰ FAC 62-528.440(3).

¹⁰¹ *Vogtle ESP Site*, LBP-09-07, 69 N.R.C. at 719-20.

¹⁰² Initial Petition at p. 27.

Turkey Point site.¹⁰³ The Quarles affidavit relied on three studies to support his conclusion.¹⁰⁴ The DEIS, however, has disclosed and evaluated actual geological subsurface data based on its review of both regional and site specific studies, including the very studies that Joint Intervenors relied on to support Contention 2.1. Based on its review of that information, as explained below the DEIS concluded that the environmental impact of injectate from Turkey Point, including on the underground sources of drinking water, would be SMALL.

1. The DEIS took a Hard Look at the Turkey Point Site Hydrology

The DEIS provides a detailed description of the groundwater hydrology, including the aquifer system underlying the Turkey Point site.¹⁰⁵ The DEIS review team studied the results of the EW-1 construction and testing and found the results to be consistent with information on the Floridan Aquifer system presented in regional studies.¹⁰⁶

Specifically, the DEIS review team found that FPL's identification of a confining unit (at a depth of between 1930 ft to 2915ft) is consistent with a regional study of the Floridan Aquifer System performed by Reese and Richardson.¹⁰⁷ The DEIS also concluded that, consistent with

¹⁰³ Quarles Affidavit at ¶ 10.

¹⁰⁴ *Id.* Joint Intervenors relied on the following three studies (all of which are addressed in the DEIS) to support their contention that injected waste water could migrate into the Upper Floridan Aquifer, contaminating the groundwater: 1) *Determination of vertical and horizontal pathways of injected wastewater into a deep saline aquifer (Florida USA) using natural chemical traces*, Hydrogeology Journal, by Virginia Walsh and Renee Price (2010) ("Walsh & Price"); 2) *Evaluation of Confining Layer Integrity Beneath the South District Wastewater Treatment Plant, Miami-Dade Water and Sewer Department, Dade County Florida*, Idaho National Engineering and Environmental Laboratory, INEEL/EXT-01-00046 (2001) ("INEL Study") and 3) *Relative Risk Assessment of Management Options for Treated Wastewater in South Florida*, US EPA Office of Water, EPA 816-R-03-010 (2003) ("EPA Risk Assessment").

¹⁰⁵ See DEIS at pp. 2-58 through 2-60 and Figure 2-17 at p. 2-48; see also DEIS at pp. 2-202 through 2-204 and Figure 2-40 at p. 2-203.

¹⁰⁶ DEIS at p. 2-54; See also DEIS at pp. 2-56 through 2-57 (reviewing the hydraulic properties of the Floridan Aquifer System at Turkey Point).

¹⁰⁷ DEIS at p. 2-54 citing *Synthesis of the Hydrogeologic Framework of the Floridan Aquifer System and Delineation of a Major Avon Park Permeable Zone in Central and Southern Florida* by R. S. Reese and E. Richardson ("Reese and Richardson Study") U.S. Geological Survey Scientific Investigations Report 2007-5207 (2008).

regional studies, site-specific data from EW-1 construction and testing indicate that a thick low-permeable confining layer exists between the proposed injection point within the Boulder Zone and the overlying USDW aquifer.¹⁰⁸

2. The DEIS Discloses and Evaluates Prior Incidents of Injectate Migration

The DEIS also discloses and evaluates prior incidents where injected wastewater apparently migrated from the Boulder Zone, including the instances and studies cited by Joint Intervenors and relied upon by the Board when it admitted Contention 2.1. Based on its independent review of these events and site specific considerations, the DEIS reasonably concluded that, in Turkey Point’s case, “enhanced vertical flow through the confining units to the Upper Floridan aquifer is extremely unlikely, and if leakage did occur it would be detected and mitigated as required by the FDEP UIC program.”¹⁰⁹

The DEIS identified and evaluates an example where wastewater migrated from the Boulder Zone to the uppermost permeable zone within the Lower Floridan Aquifer at an injection well operated by the City of Sunrise, approximately 60 miles north of the Turkey Point site.¹¹⁰ The DEIS points out that “karst collapse structures” were implicated in this incident, but that there is no evidence of similar features at the Turkey Point site.¹¹¹

The DEIS also cites to upward migration of treated municipal wastewater injected into the Boulder Zone at the Miami-Dade SDWWTP, which is 12 miles north of the proposed Turkey Point

¹⁰⁸ DEIS at p. 2-57.

¹⁰⁹ DEIS at p. 5-18.

¹¹⁰ DEIS at p. 2-54.

¹¹¹ DEIS at pp. 2-54, 5-18; *See also* DEIS at p. 2-204 (stating that “FPL’s investigation of the site revealed no features or lineaments associated with faulting on the site and determined that a continuous horizontal stratigraphy is present with no faults or folds related to tectonic deformation within a 25 mi radius.”).

site.¹¹² This is another example upon which the Joint Intervenors' Contention 2.1 relied. According to the DEIS, studies of the cause and extent of the migration in this instance indicate that the migration was due to either natural geologic features or a well construction problem.¹¹³ One of those studies indicated that, when constructing a well, "if the reamed hole for a casing string diverged from the pilot hole, then the pilot hole may become a conduit for vertical fluid migration."¹¹⁴ The DEIS review team concluded that "such a construction problem is not expected at the Turkey Point site because the pilot hole would be cemented before reaming and tests would be performed every five years to verify well integrity."¹¹⁵

The DEIS also cites to studies of vertical migration at two wastewater facilities in South Florida, but points to modeling showing that "dolostones with sufficiently low vertical hydraulic conductivities can provide local confinement sufficient to prevent migration into the USDW, even if the underlying rock is fractured," suggesting that vertical migration took place due to a construction problem or the presence of vertically extensive fractures.¹¹⁶ The DEIS shows that the site-specific hydraulic conductivities for the middle confining unit at the Turkey Point site are in the range cited in this study and therefore, minimal vertical migration would be expected even if the underlying rock is fractured.¹¹⁷

The DEIS review team also evaluated all of the studies cited by Joint Intervenors expert Quarles, *see n. 103 supra*. The DEIS cites to the Walsh and Price studies (relied on by Quarles) and the conceptual model developed there, which postulates that vertical migration through the middle

¹¹² DEIS at p. 2-55.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*; *See also* DEIS at p. 5-28.

¹¹⁶ DEIS at p. 2-55.

¹¹⁷ DEIS at pp. 2-55 through 2-56.

confining units is density-driven due to salinity or temperature differences between the formation water and injection.¹¹⁸ The DEIS concludes that, if migration into the Avon Park Permeable Zone (“APPZ”) occurred as postulated in those studies, horizontal flow and mixing would likely diminish the buoyant forces and reduce the impact above the APPZ.¹¹⁹

In addition, the DEIS also discusses the EPA Risk Assessment cited by Joint Intervenors for the proposition that fluid movement underground is influenced by injection pressures.¹²⁰ The DEIS review team pointed out that injection pressures are influenced by geology and that based on Turkey Point’s specific circumstances, which were evaluated during drilling and completion of EW-1, there was no indication of vertically extensive or significant fracturing at intervals throughout the middle confining unit.¹²¹

Furthermore, the DEIS includes a review of the results of the short-term injection test performed on EW-1 following its conversion to a deep injection well (“DIW-1”). The DEIS concludes that this data “confirmed the presence of confining layers and a lack of evidence for extensive vertical pathways through the MCU.”¹²² Finally, the review team also noted that injection pressure is influenced by injection rates, and found that the lower injection rates planned for the Turkey Point site relative to the SDWWTP (20 MGD vs 97 MGD) would also aid in limiting the potential for vertical movement of effluent.¹²³

In sum, it is clear that the NRC’s review team disclosed and performed an exhaustive analysis of incidents and studies, including all of those cited by the Joint Intervenors in support of

¹¹⁸ DEIS at p. 2-55.

¹¹⁹ DEIS at p. 2-56.

¹²⁰ See DEIS at p. 2-56 citing 68 Fed. Reg. 23673.

¹²¹ *Id.*; See also DEIS at p. 5-28.

¹²² DEIS at p. 5-28.

¹²³ *Id.*

Contention 2.1. Based on the review team’s professional expertise, independent judgement, and site specific factors, the review team concluded that such events are extremely unlikely at the Turkey Point site.¹²⁴ Accordingly, the NRC properly exercised its “discretion to rely on the reasonable opinions of its own qualified experts”¹²⁵ NEPA does not require further research or study.¹²⁶

3. The DEIS reasonably relies on FDEP UIC Regulations

Although the DEIS concludes that “enhanced vertical flow through the confining units to the Upper Floridan aquifer is extremely unlikely,” it nonetheless acknowledges that “it is possible that an unknown vertical pathway could exist within the area of influence of the injection wells and could lead to eventual migration of wastewater into the USDW.”¹²⁷ The DEIS, however, relies on “the monitoring requirements of the FDEP UIC program” to conclude that “the impacts of upward migration that could occur before detection would be minor.”¹²⁸ Indeed, based on adequate isolation of the Boulder Zone from the USDW as explained above, coupled with the UIC monitoring requirements, the review team reasonably concluded that “the Upper Floridan aquifer USDW would be protected from degradation.”¹²⁹

In particular, the DEIS recognizes that the Turkey Point injection wells must receive Class I UIC well permits from the FDEP. Those permits require institutional controls and monitoring

¹²⁴ Despite the fact that NEPA does not require a “worst case” analysis, and despite the review team’s conclusion that migration of the injectate is extremely unlikely, the NRC nonetheless requested that FPL perform groundwater analysis of three hypothetical exposure scenarios. DEIS at pp. 5-17 through 5-18. The NRC reviewed these analyses and performed its own independent analyses confirming FPL’s results. DEIS at pp. 5-17 through 5-18. The results of these analyses are disclosed in the DEIS. *Id.*

¹²⁵ *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378 (1989).

¹²⁶ See, e.g., *Entergy Nuclear Generation Co.*, CLI-10-22, 72 N.R.C. at 208; *Private Fuel Storage*, CLI-02-25, 56 N.R.C. at 349; *Louisiana Energy Services*, CLI-98-3, 47 N.R.C. at 102-03; *Entergy Nuclear Generation Co.*, CLI-10-11, 71 N.R.C. at 315.

¹²⁷ DEIS at p. 5-28.

¹²⁸ DEIS at p. 5-29.

¹²⁹ *Id.*

programs to detect upward migration, and detection of contaminants would require remedial action.¹³⁰ And the NRC performed its own review of FPL's proposed monitoring program.¹³¹

As long as the NRC exercises its independent judgement, it may rely on requirements, analyses and data from State agencies.¹³² Here, the NRC staff independently reviewed the monitoring requirements imposed by FDEP and FPL's proposed monitoring plan. Based on that independent review, the DEIS review team concluded that the operational groundwater-quality impacts would be SMALL, and mitigation beyond FDEP requirements would not be warranted.¹³³

D. FPL is Entitled to a Favorable Decision as a Matter of Law

As demonstrated by the above discussion, there is no genuine, material fact in dispute that would change the DEIS's conclusion that the environmental impacts from the Constituents would be SMALL. The concentrations of the Constituents set forth in the ER, and now the DEIS, are conservative and reliable. Moreover, the amount of the Constituents is not relevant to a finding that environmental impacts from the Constituents will be SMALL. Following the DEIS's hard look at the facts, including those raised by Joint Intervenors, the DEIS concluded that the Constituents will be confined within the Boulder Zone and that FDEP requirements and regulations are in place to monitor

¹³⁰ DEIS at p. 5-29 *citing* Fla. Admin. Code 62-4; *See also* DEIS at p. 5-30 (describing monitoring program required for the FDEP UIC permits).

¹³¹ In response to an RAI, in September of 2011 FPL submitted its "FPL Turkey Point Power Plant, Deep Injection Well System, Proposed Monitoring Program," as input to the NRC Staff's environmental review. *See* Enclosure to Letter from W. Maher to USNRC, re: Florida Power & Light Company Proposed Turkey Point Units 6 and 7, Response to NRC Request for Additional Information Letter 1107271 (RAI 5767 Revision 2) Related to ESRP Section 5.2 – Water Related Impacts, dated September 12, 2011 (Available at ADAMS Accession No. ML11257A133).

¹³² *Calvert Cliffs' Coordinating Comm. v. U.S. AEC*, 449 F.2d 1109 (D.C. Cir. 1971); *Philadelphia Electric Company* (Limerick Generating Station, Units 1 and 2) ALAB-785, 20 N.R.C. 848, 868 n.65 (1984); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4) ALAB-490, 8 N.R.C. 234 (1978); *Memorandum and Order (Denying Joint Intervenors' Motion to Admit New Contention)*, LBP-15-23 (August 21, 2015)(stating that NRC met its NEPA obligation regarding evaluating the licensees' proposed mitigation measures where it completed its own independent review of those measures), slip op. at pp. 11-12.

¹³³ DEIS at p. 5-29.

and mitigate any migration of injected fluids before reaching the Upper Floridan Aquifer. NEPA does not require more. Accordingly, FPL is entitled to summary judgement dismissing Contention 2.1 as a matter of law.

V. CONCLUSION

For the reasons stated above, FPL respectfully requests that the Board grant FPL's Motion for Summary Disposition of Joint Intervenors' Amended Contention 2.1

VI. CERTIFICATION

In accordance with 10 C.F.R. §2.323(b), counsel for FPL has made a sincere effort to contact the other parties in this proceeding to resolve the issue raised in this motion but has not been successful. Joint Intervenors stated that they will oppose the motion. The NRC Staff indicated that it does not oppose the motion. The Staff will respond to the motion in accordance with 10 CFR 2.1205 and the Board's orders.

Respectfully submitted,
/Signed electronically by Michael Lepre/

William S. Blair
FLORIDA POWER & LIGHT
COMPANY
700 Universe Blvd.
Juno Beach, FL 33408
Telephone: 561-304-5238
E-mail: william.blair@fpl.com

Michael G. Lepre
Kimberly A. Harshaw
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, NW
Washington, DC 20036-3006
Telephone: 202-663-8193
E-mail: Michael.lepre@pillsburylaw.com
Counsel for FLORIDA POWER & LIGHT COMPANY

Steven Hamrick
FLORIDA POWER & LIGHT
COMPANY
801 Pennsylvania Avenue, NW Suite
220
Washington, DC 20004
Telephone: 202-349-3496
E-mail: steven.hamrick@fpl.com

December 15, 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-COL
)	52-041-COL
Turkey Point Units 6 and 7)	
(Combined License Application))	ASLBP No. 10-903-02-COL
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Florida Power & Light Company's Motion for Summary Disposition of Joint Intervenors' Amended Contention 2.1 has been served through the E-Filing system on the participants in the above-captioned proceeding, this 15th day of December, 2015.

/Signed electronically by Kimberly A Harshaw/

Kimberly A Harshaw