

April 12, 2016

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

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**FLORIDA POWER & LIGHT COMPANY'S  
REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**FLORIDA POWER & LIGHT COMPANY’S  
REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the schedule established by the Atomic Safety and Licensing Board (“Board”) at the conclusion of the contested hearing in this proceeding on January 12, 2016, Florida Power & Light Company (“FPL”) submits its reply findings of fact and conclusions of law concerning Contention 1. Citizens Allied for Safe Energy (“CASE”) submitted its proposed findings on March 28, 2016.<sup>1</sup> FPL and the NRC Staff also filed proposed findings of fact and conclusions of law the same day.<sup>2</sup> These FPL Reply Findings of Fact and Conclusions of Law are based on the evidentiary record in this proceeding, and are set out in numbered paragraphs, with corresponding citations to the record of this proceeding.

**I. FPL REPLY TO THE CASE FINDINGS**

1. The CASE Findings are without merit and offer no reasoned basis to alter the proposed findings of fact and conclusions of law submitted by FPL and the NRC Staff.

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<sup>1</sup> Citizens Allied for Safe Energy Proposed Findings of Fact and Conclusions of Law Regarding the August 14, 2014 EA and FONSI (March 28, 2016) (“CASE Findings”).

<sup>2</sup> FPL Proposed Findings of Fact and Conclusions of Law, (March 28, 2016) (“FPL Findings”); NRC Staff’s Proposed Findings of Fact and Conclusions of Law Concerning CASE Contention 1 (March 28, 2016) (“NRC Staff Findings”).

2. Under 10 C.F.R. § 2.1209, proposed findings of fact and conclusions of law in Subpart L proceedings should conform with the requirements of 10 C.F.R. § 2.712(c) in Subpart G and so “must be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding.” As discussed below, the CASE Findings ignore this directive and include discussion of numerous issues beyond the scope of CASE Contention 1 and cite to documents not admitted as exhibits or discussed in testimony. These portions of the CASE Findings, identified below, should be disregarded.

3. CASE proposes few, if any, findings of fact regarding material issues within the scope of Contention 1. CASE offers no findings of fact regarding the impact of the ultimate heat sink (“UHS”) license amendment on cooling canal system (“CCS”) salinity or on subsequent interaction with aquifers.<sup>3</sup> CASE offers no findings of fact regarding the impact of FPL’s withdrawals of water from the Biscayne or Upper Floridan Aquifers, or from the L-31 E canal on saltwater intrusion. CASE offers no findings of fact linking any of these withdrawals to the license amendment. This is expected, as it is consistent with CASE’s failure to present any testimony or other evidence on any of these issues.<sup>4</sup> CASE simply infers that the amendment must make

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<sup>3</sup> In fact, the CASE Findings readily admit that the increases in CCS salinity are the result of the long term operation of the plant and not the recent UHS amendment. CASE Findings at 17.

<sup>4</sup> Because CASE did not provided any witness with relevant expertise to provide testimony within the scope of its contention, none of the exhibits that were admitted into evidence are supported or have been used to identify any deficiency in the UHS EA. *See* 10 C.F.R. § 2.337(a). Technical opinion testimony must be sponsored by a qualified expert with the “knowledge, skill, experience, training, or education to testify.” *Duke Energy Corporation* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004) (citations omitted),

things worse, or lead to further water withdrawals.<sup>5</sup> But that inference is contradicted by the unrebutted expert testimony of FPL and the NRC Staff's witnesses. As a result, CASE's proposed findings of fact do not support any of its proposed conclusions of law. The CASE Findings are without merit and should be disregarded.

**A. Material Issues Not Disputed by CASE**

4. In its proposed findings, CASE did not substantively address the central topics at issue in this proceeding: (1) whether the increased temperatures allowed by the UHS amendment noticeably affect salinity in the CCS; (2) whether the increased temperatures allowed by the UHS amendment lead to a significant increase in saltwater leaving the CCS and affecting the local Biscayne Aquifer; and (3) whether FPL's withdrawals of saltwater from the Biscayne Aquifer, brackish water from the Upper Floridan Aquifer, or excess storm water from the L-31 E canal have any impact on saltwater intrusion in the Biscayne Aquifer. The unrebutted testimony of the FPL and NRC Staff expert witnesses and FPL's unchallenged Statement of Material Facts Not in Dispute that accompanied its Motion for Summary Disposition,<sup>6</sup> address each of these questions and establish that the UHS license amendment<sup>7</sup> and FPL's water withdrawals<sup>8</sup> will have no significant impact. CASE offered no testimony or evidence to the contrary.

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*citing Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982).*

<sup>5</sup> See e.g., CASE Findings at 10, 45.

<sup>6</sup> Florida Power & Light Company's Motion to Dismiss CASE Contention 1 or, in the Alternative, for Summary Disposition (Dec. 3, 2015).

<sup>7</sup> See e.g., FPL Testimony (Exh. FPL-001) at 57-58 (A97-A98), 61-62 (A103-A104); Tr. at 397-99 (Ford); NRC Staff Testimony (Exh-NRC-001) at 52 (A80).

<sup>8</sup> FPL Testimony at 42 (A70), 45-46 (A76), 47-48 (A79), 48-51 (A81-A82), at 54-55 (A92); NRC Staff Testimony at 48 (A68), 49 (A70), 49-50 (A72).

5. The rest of CASE's proposed findings, like its statements of position, are an attempt to create the impression of a material dispute, where none actually exists. For instance, CASE cites to several of its exhibits that discuss saltwater intrusion.<sup>9</sup> But CASE does not address the materiality of this information—it does not dispute (or even acknowledge) the NRC Staff testimony regarding its previous analyses that discuss the impacts of highly saline water migrating from the CCS on the Biscayne Aquifer and were incorporated into the NRC's Environmental Assessment for the UHS license amendment ("UHS EA").<sup>10</sup>
6. In fact, the CASE Findings demonstrate the fundamental weakness of Contention 1. CASE has cited to various historical documents describing saltwater intrusion or describing the effects of the CCS on the movement of saline water in the aquifer. But these issues (generally) are not in dispute. FPL and the NRC Staff addressed this issue extensively in their testimony and the NRC has addressed this issue in several of its previous NEPA analyses involving Turkey Point, as described in the NRC Staff's testimony. But CASE has offered no testimony and no evidence regarding the impact of *this license amendment*, or of FPL's water withdrawals, on saltwater intrusion. The unrebutted testimony of the FPL and NRC Staff expert witnesses has established that the UHS license amendment will not measurably exacerbate saltwater intrusion.<sup>11</sup> And the unrebutted testimony of the FPL and NRC Staff expert witnesses has demonstrated that

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<sup>9</sup> CASE Findings at 21-25 (citing Exhibits INT-044, INT-047, INT-013, INT-016).

<sup>10</sup> See, e.g., Tr. at 427, 518.

<sup>11</sup> See FPL's Proposed Findings Of Fact and Conclusions of Law at 42 (citing FPL Testimony at 62 (A104)). See also *id.* ("the reasonably foreseeable impact of the license amendment on CCS salinity is somewhere between nothing (as in the 2015 experience with no temperatures above 100°F) and negligible (based on temperatures exceeding 100°F for a few short periods of time)").

FPL's water withdrawals are not caused by the UHS license amendment and in any event will not cause saltwater intrusion.<sup>12</sup> Thus, based on the evidence in this proceeding, the Board can only conclude that the UHS amendment will not have a significant environmental impact with respect to saltwater intrusion, which is the only environmental impact within the scope of Contention 1.

7. As a result, ultimately, the only reasonable and record-supported conclusion is that the NRC's Finding of No Significant Impact is correct, and that no Environmental Impact Statement was necessary. For this reason, CASE's argument that the UHS EA should have addressed the general topic of saltwater intrusion in greater detail ultimately is immaterial. The Commission has defined a "material" issue as one where "resolution of the dispute would make a difference in the outcome of the licensing proceeding."<sup>13</sup> NRC regulations explain that impacts should be discussed in proportion to their significance.<sup>14</sup> Where there are no significant impacts, a discussion can be minimal. And the purpose of an EA is to determine whether an Environmental Impact Statement is necessary.<sup>15</sup> Because the unrebutted testimony in this proceeding is that the amendment will not have a significant environmental impact, no Environmental Impact Statement is necessary. NRC adjudications on environmental issues are not editing

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<sup>12</sup> See *id.* at 45-51 (discussing impacts of Biscayne Aquifer withdrawals, L-31 E canal withdrawals, Upper Floridan Aquifer withdrawals, and whether the withdrawals are caused by the UHS license amendment).

<sup>13</sup> Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989)

<sup>14</sup> 10 C.F.R. § 51.45(b)(1). See also 40 C.F.R. § 1502.2(b).

<sup>15</sup> 40 C.F.R. § 1508.9.

sessions.<sup>16</sup> And Boards do not sit to “flyspeck” an EA or to add minor details or nuances to the analysis.<sup>17</sup> Without seriously challenging the NRC Staff’s “no significant impact” conclusion, CASE’s recitation of historical reports regarding saltwater intrusion cannot make a difference in the outcome of the proceeding.

8. CASE also does not challenge that the FPL and NRC Staff witnesses are qualified to testify as experts on the issues on which they were offered.

**B. CASE Raises Issues Beyond the Scope of the Contention**

9. CASE’s proposed findings present numerous issues that are beyond the scope of CASE Contention 1, as admitted by the Board and narrowed by the Commission. As admitted, CASE Contention 1 reads:

The NRC’s environmental assessment, in support of its finding of no significant impact related to the 2014 Turkey Point Units 3 and 4 license amendments, does not adequately address the impact of increased temperature and salinity in the 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>18</sup>

Therefore, the only matters relevant to this proceeding are: (1) the impact of the license amendment on saltwater intrusion; (2) the impact of FPL’s water withdrawals on saltwater intrusion; and (3) the NRC’s consideration of these issues in the UHS EA. The Board should disregard all other issues raised in CASE’s Findings.

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<sup>16</sup> *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003).

<sup>17</sup> *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 71 (2001).

<sup>18</sup> *Florida Power & Light Company* (Turkey Point Units 3 and 4), LBP-15-13, 81 NRC 456 (2015) ( slip op. at 24).

10. First, CASE attempts to revive its argument that the EPU is to blame for the rise in CCS salinity.<sup>19</sup> As the Licensing Board and the Commission have both made clear in this case, the focus of Contention 1 is on the UHS license amendment, not on the EPU or previous operation of the facility.<sup>20</sup> This discussion is immaterial and should be disregarded.
11. Second, CASE discusses impacts to wildlife and marine life, with citations to Dr. Stoddard's testimony.<sup>21</sup> Impacts to wildlife and marine life are unrelated to saltwater intrusion and therefore are immaterial to CASE Contention 1. In fact, none of Dr. Stoddard's testimony addressed in-scope matters of saltwater intrusion. This discussion is immaterial and should be disregarded.
12. Third, CASE argues that tritium levels show CCS water moving east under and into Biscayne Bay.<sup>22</sup> FPL's Motion to Strike challenged aspects of CASE Contention 1 that addressed impacts to Biscayne Bay because CASE's petition never asserted potential impacts to the Bay itself.<sup>23</sup> The Board did not rule on that aspect of the motion.<sup>24</sup> However, the Board did recently clarify that the "contention, as admitted by the Board, concerns possible saltwater intrusion into groundwater and movement of the

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<sup>19</sup> CASE Findings at 15-17.

<sup>20</sup> LBP-15-13, slip op. at 16; *Florida Power & Light Company* (Turkey Point Units 3 and 4), CLI-15-25 82 NRC \_\_\_, slip op. at 13-14 (Dec. 17, 2015) ("We are not revisiting the issuance of previous environmental analyses for Turkey Point (including the environmental assessment for the extended power uprate)").

<sup>21</sup> CASE Findings at 8, 12-13, 25-28.

<sup>22</sup> CASE Findings at 31-32.

<sup>23</sup> FPL'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" (Oct. 19, 2015) at 9.

<sup>24</sup> *See generally* Order ((Denying Application for Subpoenas, Denying Motion for Summary Disposition, and Granting in Part and Denying in Part Motions to Strike) (Dec. 22, 2015) ("December 22 Order").

freshwater/saltwater interface” and not impacts regarding tritium or the Bay.<sup>25</sup> Because this contention is about saltwater intrusion, discussion of CCS water moving east, under or into the bay, is outside its scope.<sup>26</sup> This discussion is immaterial and should be disregarded.

13. Fourth, CASE discusses a paper by McNeil that describes the potential for migration from the Lower Floridan Aquifer (Boulder Zone) to the Upper Floridan Aquifer.<sup>27</sup> CASE argues that this shows the “permeability of the confining layer is less than perfect.”<sup>28</sup> But this has no relevance to the matters at issue in this case, which does not involve the Lower Floridan Aquifer at all. The un rebutted testimony in this case is that there is no significant communication between the Upper Floridan Aquifer and the overlying Biscayne Aquifer due to the confining layer between them.<sup>29</sup> Regardless, the potential for pathways through the confining layer *below* the Upper Floridan Aquifer has no bearing on the potential for pathways through the confining layer *above* the Upper Floridan Aquifer. This discussion is immaterial and should be disregarded.

14. Fifth, the CASE Findings devote several pages to a discussion of FPL’s treatments to control algae in the CCS.<sup>30</sup> But this also has nothing to do with saltwater

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<sup>25</sup> Order (Clarifying Scope of Proposed Findings of Fact and Conclusions of Law and Amending Initial Scheduling Order) (March 11, 2016) at 2 n.3.

<sup>26</sup> Moreover, this discussion is based on the testimony of a biologist regarding the movement of groundwater and so is unreliable.

<sup>27</sup> CASE Findings at 39 (citing McNeill, Donald F. 2000. A Review of Upward Migration of Effluent Related to Subsurface Injection at Miami-Dade Water and Sewer South District Plant. Prepared for Sierra Club – Miami Group).

<sup>28</sup> CASE Findings at 40.

<sup>29</sup> FPL Testimony at 20 (A32); Tr. at 431-34 (Ford, Andersen).

<sup>30</sup> CASE Findings at 40-43.

intrusion and was, in fact, specifically excluded from Contention 1 at the outset because the UHS EA discusses these impacts.<sup>31</sup> This discussion is immaterial and should be disregarded.

15. Sixth, the CASE Findings discuss the emergency nature of FPL's license amendment request and criticizes the speed of NRC's review.<sup>32</sup> This also has nothing to do with saltwater intrusion, or the contention as admitted. Moreover, these claims are the same that CASE raised originally in its Contention 2, which were rejected by the Board.<sup>33</sup> And CASE did not offer any evidence or testimony addressing the emergency nature of the license amendment request, so there is no basis for its proposed findings in any event. This discussion is immaterial and should be disregarded.

16. Seventh, CASE criticizes the EA's consideration of alternatives.<sup>34</sup> The Board has already stricken this argument because it is not included within the scope of CASE Contention 1.<sup>35</sup> This discussion is immaterial and should be disregarded.

17. Eighth, CASE criticizes the NRC Staff's communication with local state agencies. CASE Findings at 67-68, 70. This claim has been rejected by the Commission and is not within the scope of CASE Contention 1.<sup>36</sup> This discussion is immaterial and should be disregarded.

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<sup>31</sup> LBP-15-13, slip op. at 26-27.

<sup>32</sup> CASE Findings at 47-51.

<sup>33</sup> LBP-15-13, slip op. at 24-26.

<sup>34</sup> CASE Findings at 57-59.

<sup>35</sup> December 22 Order at 15.

<sup>36</sup> CLI-15-25, slip op. at 23-24, n.110.

C. **CASE Mischaracterizes the Record and Misstates Controlling Law**

18. CASE's Findings also demonstrate its continued confusion over the basic facts of this case. For instance, CASE still confuses groundwater with surface water.<sup>37</sup> CASE refers to withdrawals of surface water from the L-31 E canal as water "withdrawn from the (Biscayne) aquifer."<sup>38</sup> Of course, the water in the L-31 E canal, which flows on the surface, is surface water.<sup>39</sup> CASE continues to mischaracterize the facts on the next page where it claims that the EA refers to the L-31 E canal withdrawals as saltwater.<sup>40</sup> This is simply not true. The EA does not refer to the L-31 E canal withdrawals at all because the NRC Staff concluded that its use was not reasonably foreseeable.<sup>41</sup>

19. The CASE Findings also lists several statements from the UHS EA and asserts that "not one" of them "is accurate or uncontroversial."<sup>42</sup> But CASE offers no evidentiary basis for its conclusions and each of them is, in fact, supported by record evidence. The Biscayne Aquifer is salty in the vicinity of Turkey Point.<sup>43</sup> FPL's aquifer withdrawals were considered as potential cumulative impacts in the NRC's UHS EA.<sup>44</sup> The CCS is closed to direct interaction with other surface water bodies and so impacts to

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<sup>37</sup> See e.g., CASE Findings at 33.

<sup>38</sup> *Id.*

<sup>39</sup> FPL Testimony at 53 (A87 n.3), 53 (A88). See also Exh. FPL-033 (April 10, 2015 Final Order of South Florida Water Management District regarding FPL's Consumptive Use Permit) at 4 ¶11, 5 ¶16, 6 ¶17, 9 ¶29, 11 ¶40, 12 ¶42a.

<sup>40</sup> CASE Findings at 34.

<sup>41</sup> Tr. at 391 (Grange).

<sup>42</sup> CASE Findings at 19.

<sup>43</sup> FPL Testimony at 16 (A27), 19-20 (A32), 22 (A35) (citing Exhs. FPL-017, FPL-018, and FPL-019).

<sup>44</sup> NRC Staff Testimony at 43-44 (A52); UHS EA (Exh. NRC-009) at 44,468, col. 2.

the CCS are not likely to impact surface water.<sup>45</sup> FPL's aquifer withdrawals will result in beneficial impacts to the CCS.<sup>46</sup> And the withdrawals will help to reduce CCS salinity and moderate temperatures over the longer term.<sup>47</sup>

20. CASE also cites to several documents that were neither offered as exhibits in the record or discussed in witness testimony. In several places CASE refers to documents that it cited in its original petition to intervene, but never raised again.<sup>48</sup> These documents, and the discussion thereof, should be disregarded.

21. CASE also misstates the law governing NEPA. CASE quotes the testimony of NRC Staff expert witness Briana Grange explaining that the Staff did not perform a worst-case scenario analysis, but instead looked at what was likely to happen.<sup>49</sup> CASE wonders whether Ms. Grange is qualified to make such "policy decisions."<sup>50</sup> But of course Ms. Grange and the NRC Staff are perfectly capable of understanding NEPA policy and guidance set by the Commissioners of the Nuclear Regulatory Commission,<sup>51</sup> the Council on Environmental Quality,<sup>52</sup> and the Supreme Court of the United States,<sup>53</sup>

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<sup>45</sup> See FPL Testimony at 11-12 (A21), 35 (A57); NRC Staff Testimony at 17 (A10). Of course, this argument about surface waters is beyond the scope of CASE Contention 1, which involves impacts to groundwater.

<sup>46</sup> FPL Testimony at 42 -43 (A70-A71). But CASE's extension of this concept to impacts on "aquatic resources and crocodiles" is beyond the scope of the contention.

<sup>47</sup> FPL Testimony at 19 (A31), 44 (A73).

<sup>48</sup> See CASE Findings at 7 (citing Petition at 8-9, 12), at 24 (citing Petition at 18-19), at 33 (citing Petition at 16-17), at 34 (citing Petition at 18-19) at 36-37 (citing Petition at 6).

<sup>49</sup> CASE Findings at 55.

<sup>50</sup> *Id.* at 56.

<sup>51</sup> *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 56-7 (2012).

<sup>52</sup> *Robertson v. Methow Valley*, 490 U.S. 332, 354 (1989) (citing 40 CFR § 1502.22 (1985 and 1987)).

<sup>53</sup> *Id.*

each of whom has made abundantly clear that NEPA does not require a worst-case analysis. Instead, NEPA requires agencies to look at the reasonably foreseeable impacts of federal action.<sup>54</sup>

**D. CASE Failed to Substantively Address the Three Issues Identified by the Board**

22. Finally, the Board directed the parties to address three issues in their proposed findings.<sup>55</sup> While CASE identified these issues, CASE has proven unable to respond meaningfully to the Board's inquiries.

23. With respect to segmentation, CASE simply asserts that "it would seem" that segmentation applies.<sup>56</sup> There is no basis in the record for CASE's assertion. The record clearly reflects that the need for a UHS license amendment was not foreseen at the time of the extended power ("EPU") uprate license amendment (and that amendment is not the subject of this proceeding in any case).<sup>57</sup> Nor did the EPU amendment dictate the NRC's action in the UHS license amendment, the NRC Staff maintained authority to reject that amendment if FPL could not demonstrate its safety. Regardless, the record in this case reflects that the NRC Staff properly included the contemporary state of the

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<sup>54</sup> *Id.*

<sup>55</sup> See Tr. at 553, 556, 563; Order (Taking Official Notice and Ordering Briefing), dated February 26, 2016.

<sup>56</sup> CASE Findings at 64.

<sup>57</sup> See Tr. at 554 (Grange) (The potential likelihood of having to increase the ultimate heat sink water temperature limit "was not an action that was foreseeable at that time"); at 556 (Grange) ("The increase [in salinity] that we have seen in the past couple of years, and that was part of the reason that FPL submitted the license amendment at hand, we did not foresee that happening."). See also CLI-15-25, slip op. at 13-14 n.66.

CCS into the environmental baseline in the UHS EA, including any effect of the EPU, regardless of whether that effect was predicted at the time of the EPU.<sup>58</sup>

24. In response to the Board's inquiry regarding reliance on state action, CASE interprets *Idaho v. ICC* as requiring the NRC to observe "how the state is exercising its NRC-given franchise."<sup>59</sup> CASE's misunderstanding of this legal decision does not provide any basis to question the NRC Staff's consideration of the Florida Department of Environmental Protection ("FDEP")'s regulation of the CCS and its expectation that FPL will comply with the state regulatory framework. State oversight was only one factor that went in to the NRC Staff's analysis.<sup>60</sup> As a result, the Staff did not ignore its duty to exercise "independent judgment with regard to its ultimate conclusions about the environmental impacts of the project."<sup>61</sup>

25. In response to the Board's questions regarding the effect of the recent Recommended Order issued in the state challenge to the FDEP's Administrative Order CASE simply observes that "it will be interesting to see how [the FDEP] respond[s]" to the Recommended Order.<sup>62</sup> CASE ignores the testimony of the NRC Staff that state regulation was only "one factor"<sup>63</sup> they considered and did not consider the Administrative Order itself (which had not yet been issued) but the regulatory

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<sup>58</sup> NRC Staff Testimony at 41-42 (A47, A48).

<sup>59</sup> CASE Findings at 67 (citing 35 F.3d 585, 595 (D.C. Cir. 1994)).

<sup>60</sup> Tr. at 551 (Grange).

<sup>61</sup> *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 868 n.65 (1984); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), ALAB-490, 8 NRC 234, 241 (1978).

<sup>62</sup> CASE Findings at 73.

<sup>63</sup> Tr. at 405-06 (Grange) (the anticipated state action "was one thing we considered.")

framework under which that order was to be issued.<sup>64</sup> The recent Recommended Order, even if upheld, does not change the regulatory framework under which the Administrative Order was issued or the need to address CCS salinity under State and local regulation, and binding permit conditions and agreements.<sup>65</sup>

## **II. REPLY TO THE NRC STAFF FINDINGS**

26. FPL does not object to the NRC Staff Findings. The NRC Staff's ultimate conclusions, that the UHS EA comports with NEPA and that the Staff's analysis was reasonable, are correct and fully supported by the record.<sup>66</sup>

## **III. CONCLUSION**

27. For the foregoing reasons, and those expressed in the NRC Staff's and FPL's Findings, the NRC Staff and FPL carried their burdens of proof, and, based on the entire evidentiary record of this proceeding, the NRC has satisfied its NEPA obligations under 10 C.F.R. Part 51 with respect to CASE Contention 1. The preponderance of the evidence shows that the UHS license amendment will not materially increase saltwater intrusion either through movement of hypersaline water out of the CCS or by way of FPL's water withdrawals and that the NRC's UHS EA properly accounts for these non-

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<sup>64</sup> NRC Staff Testimony at 55-56 (A90).

<sup>65</sup> See Exh. Int-006, Consent Agreement Between FPL and Miami-Dade County (October 6, 2015); Exh. NRC-033, S. Fla. Water Mgmt. Dist., Resolution 2009-1000, Fifth Supplemental Agreement Between the S. Fla. Water Mgmt. Dist. and Florida Power & Light Company (October 16, 2009); Exh. NRC-034, Fla. Dep't. of Env'tl. Protection, Conditions of Certification for Florida Power & Light Company: Turkey Point Plant, Units 3 and 4 Nuclear Power Plant, Unit 5 Combined Cycle Plant, PA 03-45D (June 19, 2009).

<sup>66</sup> NRC Findings at 70.

impacts. Nothing in CASE's Findings alters these conclusions. The Board should therefore resolve CASE Contention 1 in favor of the NRC Staff and FPL.

Respectfully Submitted,

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April 12, 2016

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Florida Power & Light Company’s Reply Findings of Fact and Conclusions of Law” were provided to the E-Filing system for service to those individuals on the service list in this proceeding.

*Signed (electronically) by,*

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Dated at Washington, DC  
this 12th day of April, 2016