May 15, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO PETITION FOR LEAVE TO INTERVENE AND NEW CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323 and 2.309 and the Atomic Safety and Licensing Board ("Board") Scheduling Orders,[1] the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to the "Petition for Leave to Intervene in a Hearing on Florida Power & Light Company's Combined Construction and Operating License Application for Turkey Point Units 6 & 7 and File a New Contention," ("Petition") dated April 18, 2017. The Nuclear Regulatory Commission ("NRC" or "the Commission") referred the Petition to the Board on April 21, 2017 for "appropriate action."[2] As set forth in detail below, the Staff opposes the Petition, because

---

[1] *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) (Mar. 30, 2011) (unpublished) (ML110890768) (Mar. 2011 Scheduling Order); *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Memorandum and Order (Prehearing Conference Call Summary, Case Management Directives, and Scheduling Order) (Oct. 5, 2016) (unpublished) (ML16327A189) (Oct. 2016 Scheduling Order); *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Final Scheduling Order (Nov. 15, 2016) (unpublished) (ML16320A1248) (Nov. 15 2016 Scheduling Order); *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Order (Amending Final Scheduling Order) (Nov. 22, 2016) (unpublished) (ML16327A189) (Nov. 22 2016 Scheduling Order).

[2] *Florida Power & Light Co.* (Turkey Point Units 6 and 7), Order (Referring Petition to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel) (April 21, 2017) (unpublished) (ML17111A926).

the City of Miami ("the City"), the Village of Pinecrest ("Pinecrest") and the City of South Miami ("South Miami") (collectively, "Petitioners") have not met the requirements to intervene as parties in this proceeding under 10 C.F.R. § 2.309(h).

BACKGROUND

On June 30, 2009, the Florida Power and Light Company ("Applicant" or "FPL"), pursuant to the Atomic Energy Act of 1954, as amended ("AEA"), and the Commission's regulations, submitted an application for combined licenses ("COL") for Turkey Point Units 6 and 7 in Miami-Dade County, Florida.[3] The Staff published the Final Environmental Impact Statement ("FEIS") on October 28, 2016.[4] Pursuant to the November 2016 Scheduling Orders, the deadline for filing new or amended contentions on the FEIS was Tuesday, November 22, 2016.[5] The NRC published the Final Safety Evaluation Report ("FSER") on November 14, 2016.[6] Pursuant to the Board's November 2016 Scheduling Orders, the deadline for filing new or amended contentions on the FSER was Friday, December 9, 2016.[7]

On April 18, 2017, the Petitioners filed their Petition for leave to intervene as parties in this proceeding, in which they seek to raise one contention on the FSER. The Staff answers the Petition below.

---

[3] *See* Letter from M. K. Nazar, FPL, to M. Johnson, Office of New Reactors, NRC, dated June 30, 2009 (ML16277A469) ("application").

[4] NUREG-2176, "Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Nuclear Plant Units 6 and 7," (Final Report), (Oct. 28, 2016) (ML16300A104 (Vol. 1), ML16300A137 (Vol. 2), ML16301A018 (Vol. 3), and ML16300A312 (Vol. 4)).

[5] Nov. 15 2016 Scheduling Order at 2; Nov. 22 Scheduling Order at 2.

[6] Turkey Point Units 6 and 7 Final Safety Evaluation Report, Nov. 10, 2016 (ML16277A469).

[7] Nov. 15 2016 Scheduling Order at 2; Nov. 22 Scheduling Order at 2.

DISCUSSION

I. LEGAL STANDARDS

A. Standing to Intervene

In accordance with the Commission's Rules of Practice:

> [a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions that the person seeks to have litigated in the hearing.[8]

The regulations further provide that the Licensing Board "will grant the [petition] if it determines that the [petitioner] has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)].[9] The general standing requirements in 10 C.F.R. § 2.309(d)(1) set forth what a request for hearing or a petition for leave to intervene must state.[10]

In reactor licensing proceedings, licensing boards have typically applied a "proximity" presumption to persons "who reside in or frequent the area within a 50-mile radius" of the

---

[8] 10 C.F.R. § 2.309(a).

[9] *Id*.

[10] Pursuant to 10 C.F.R. § 2.309(d)(1), a request for leave to intervene must state:

> (i) The name, address and telephone number of the requestor or petitioner;
>
> (ii) The nature of the requestor's/petitioner's right under the [AEA] to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
>
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

proposed plant.[11] Specifically, "a municipality satisfies Commission standing requirements in a reactor licensing proceeding by showing either that its residents live within 50 miles of the facility, or that its boundaries extend to within 50 miles of the facility."[12] The Commission noted this practice with approval, stating that "[w]e have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto[.]"[13] The proximity presumption establishes standing without the need to establish the elements of injury, causation, or redress.[14] The Commission has affirmed that the 50-mile proximity presumption applies to applications for new nuclear power plants, including COL applications.[15]

If a local government body seeks to participate as a party in a proceeding, as set forth in 10 C.F.R. § 2.309(h), it must submit a request for hearing or a petition to intervene containing at least one admissible contention, and must designate a single representative for the hearing. An interested State, local governmental body, or Federally-recognized Indian Tribe that has not been admitted as a party under 10 C.F.R. § 2.309 may participate in a hearing pursuant to § 2.315(c).

---

[11] *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 147-48 (2001) (collecting cases and summarizing the development of the Commission's standing doctrine).

[12] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-06, 73 NRC 149, 170 (2011).

[13] *Florida Power & Light Co*. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) citing *Virginia Electric and Power Co*. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979).

[14] *Florida Power & Light Co.*, LBP-01-6, 53 NRC at 150.

[15] *Calvert Cliffs 3 Nuclear Project LLC & Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915-18 (Oct. 13, 2009).

B. Contention Admissibility

To be admissible, a newly proffered contention must satisfy: (1) the timeliness standards in 10 C.F.R. § 2.309(c)(1) for new and amended contentions; and (2) the general contention admissibility standards in 10 C.F.R. § 2.309(f)(1).[16] New or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer upon a showing that:

> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.[17]

A petitioner's failure to address the "good cause" standards for filing after the initial intervention deadline constitutes sufficient grounds for dismissing the contention.[18]

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

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within

---

[16] *See Florida Power and Light Co.* (Turkey Point, Units 6 & 7), LBP-11-15, 73 NRC 629, 633 (2011). The Commission has consolidated its requirements for filing contentions after the deadline set in the Notice of Hearing in 10 C.F.R. § 2.309(c)(1). *See* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,591 (Aug. 3, 2012).

[17] 10 C.F.R. § 2.309(c)(1).

[18] *See Florida Power & Light Co., FPL Energy Seabrook, LLC, FPL Energy Duane Arnold, LLC, Constellation Energy Group, Inc.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 33-34 (2006).

> the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
>
> (vi) . . . provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief . . . [19]

The 10 C.F.R. § 2.309(f)(1) requirements should "focus litigation on concrete issues and result in a clearer and more focused record for decision."[20] The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing."[21] The Commission has emphasized that the rules on contention admissibility are "strict by design."[22] Failure to comply with any of these requirements is grounds for the dismissal of a contention.[23]

---

[19] 10 C.F.R. § 2.309(f)(1).

[20] Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004).

[21] *Id*.

[22] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002).

[23] *Private Fuel Storage, L.L.C*. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Dominion Nuclear Connecticut, Inc*. (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 567-68 (2005).

Attempting to meet these requirements by "[m]ere 'notice pleading' does not suffice."[24]

II. PETITIONERS HAVE STANDING BUT HAVE NOT PROFFERED AN ADMISSIBLE CONTENTION AND THEREFORE CANNOT BE ADMITTED AS PARTIES TO THE PROCEEDING

Under 10 C.F.R. § 2.309(c)(4), parties that already satisfied the requirements for standing under § 2.309(d) in the same proceeding in which a new contention is filed need not do so again. The City and Pinecrest have both established standing to intervene in this proceeding,[25] have been recognized in this proceeding as interested governmental bodies under 10 C.F.R. § 2.315(c), and therefore do not need to establish standing again under 10 C.F.R. § 2.309(d). South Miami is new to this proceeding and the Staff agrees that they have standing because, like the City and Pinecrest, South Miami is located within 50 miles of the proposed Turkey Point Units 6 and 7 and thus meets the proximity presumption.[26]

As discussed more fully below, although the Petitioners have standing, they have failed, under 10 C.F.R. § 2.309(h), to submit a contention that meets the admissibility requirements of 10 C.F.R. § 2.309(f)(1), and therefore cannot be admitted to this proceeding as parties. The Staff does not, however, object to South Miami being recognized as an interested local governmental body in this proceeding, pursuant to 10 C.F.R. § 2.315(c), or the continued participation of the City and Pinecrest as interested local government bodies.

---

[24] *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

[25] *Florida Power & Light Co.*, LBP-11-06, 73 NRC at 248 (concluding Pinecrest has standing to intervene in this proceeding); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-15-19, 81 NRC 815, 819 (2015).

[26] Petition at 5.

III. THE PROPOSED NEW CONTENTION IS INADMISSIBLE

The Petitioners propose one new contention regarding funds necessary to cover estimated construction and fuel cycle costs. As explained below, although the Petition satisfies the 10 C.F.R. § 2.309(c) requirements for filings after the deadline, the contention is not admissible because the Petitioners have not satisfied the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).

Proposed Contention:

> *The FSER is deficient in concluding that FPL has demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs and FPL has failed to indicate source(s) of funds to cover these costs.*

In the proposed contention, the Petitioners challenge the Staff's finding regarding FPL's financial qualifications as documented in the FSER, claiming that, "despite the FSER's finding that FPL is financially qualified to carry out this project, as of March 29, 2017, a genuine dispute exists as to whether FPL is still financially qualified to carry out this project."[27] Citing the Chapter 11 bankruptcy petition that Westinghouse Electric Company, LLC ("Westinghouse") filed on March 28, 2017, among other things, as support for their position that FPL is no longer financially qualified, the Petitioners argue that "the FSER lacks sufficient information to demonstrate that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs."[28]

The Petitioners also discuss the process for a utility to obtain recovery costs related to construction of a nuclear power plant as support for their argument that such recovery will not be available to FPL because there are no construction agreements for the proposed units.[29]

---

[27] *Id.* at 11 (citing FSER at 1-38).

[28] *Id.* at 8, 11-12.

[29] *Id.* at 8, 10.

The Petitioners assert that, in order for FPL to receive cost recovery, FPL must petition the Florida Public Service Commission (FPSC) under Section 366.93 of the Florida Statutes ("F.S."), Nuclear Advanced Cost Recovery, and that FPSC will approve the petition if FPL demonstrates that its costs for the proposed units are "reasonable and prudent," and that the project "remains feasible."[30]

The Petitioners assert that FPSC will not allow FPL to recover costs, because, in their view, the FPSC will find that the construction costs for Turkey Point Units 6 and 7 are no longer reasonable and prudent or feasible, based on Westinghouse filing for bankruptcy and the lack of agreements for the construction of Units 6 and 7.[31] The Petitioners rely on the terminated Reservation Agreement, which featured reserving space for manufacturing components, and the lack of construction agreements for the proposed units to argue that there is no "guarantee that the nuclear reactors will get built and generate electricity and revenue."[32] Because of the lack of such a guarantee, according to the Petitioners, FPL will not be able to recover costs for the project, and other external funding will be difficult to secure, "if at all."[33] Thus, the Petitioners claim that the Staff's finding of reasonable assurance of FPL's financial qualifications is deficient.[34]

Staff Response:

The Petition satisfies the 10 C.F.R. § 2.309(c) requirements for filings after the deadline, but the contention is inadmissible because it does not meet the requirements of 10 C.F.R.

---

[30] *Id.*

[31] *Id.* at 10-11.

[32] *Id.* at 8, 11.

[33] *Id.*

[34] *Id*. at 12.

§ 2.309(f)(1)(vi) and (iv). As discussed at length below, the contention should be dismissed because it fails to provide information that raises a genuine dispute with the application, fails to raise a material issue of law or fact, and fails to demonstrate that Westinghouse's bankruptcy is material to the findings NRC must make to support the licensing action,[35] as required by 10 C.F.R. § 2.309(f)(1)(vi) and (iv). The Petition speculates that FPSC will deny FPL cost recovery based on Westinghouse's bankruptcy and the lack of any construction agreements, but fails to explain why this raises a genuine dispute with the financial information in FPL's application and why this information is material to the Staff's safety finding. Accordingly, the Board should find the proposed Contention inadmissible.

The Staff notes that the contention challenges the Staff's findings in the FSER; but, the Staff safety review is not subject to challenge in adjudicatory hearings.[36] The Petitioners' failure to refer to any portion of the application with which it disagrees is alone reason to reject the petition as failing to satisfy § 2.309(f)(1)(vi); nonetheless, the Staff is treating the Petition as a challenge to FPL's financial qualifications, based on information provided in the application.[37]

1. *Petitioners demonstrated good cause for filing after the deadline (10 C.F.R. § 2.309(c)(1)).*

As noted above, 10 C.F.R. § 2.309(c)(1) requires the Petitioners to demonstrate good cause for filing after the deadline by showing that new or amended contentions are based on information that was not previously available and is materially different from previously available information, and to file these contentions in a timely fashion based on the availability of the new

---

[35] Per 10 C.F.R. § 52.97(a)(1), "…the Commission may issue a combined license if the Commission finds that: … (iv) The applicant is technically and financially qualified to engage in the activities authorized."

[36] *In the Matter of Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237 (2008) ("the focus of a hearing on a proposed licensing action is the adequacy of the application to support the licensing action, not the nature of the NRC Staff's review.").

[37] Application, Part 1, Rev. 8 at 4-7 (ML16250A266).

information. The information presented in the Petition regarding the Westinghouse bankruptcy was not available prior to the December 9, 2016 deadline to file new contentions[38] because Westinghouse filed for Chapter 11 bankruptcy on March 29, 2017.

Although the Staff disagrees that the information in the Petition regarding the Westinghouse bankruptcy and subsequent termination of agreements is relevant to FPL's financial qualifications, the Staff does not dispute that the information in the Petition is materially different from previously available information, as discussed more fully below. Finally, the Petition was filed in a timely fashion based on when the subsequent information became available, because the Petitioners submitted the Petition containing this information within three weeks of Westinghouse filing for bankruptcy. [39]

2. Materiality

While the Staff does not object to the proposed contention on the basis of the requirements of 10 C.F.R. § 2.309(c), the proposed contention is not admissible because the Petitioners have not provided sufficient information to show a genuine dispute with the application on a material issue of law or fact. Staff notes that the term "material" has different meanings in these two contexts. As one licensing board described, "[m]ateriality in the context of section 2.309[(c)] differs from materiality in the context of section 2.309(f)(1). Whereas the former relates to the magnitude of the difference between previously available information and currently available information, the latter relates to the impact of the information on the proceeding at hand."[40] As such, though the Staff agrees that Westinghouse's bankruptcy is "materially different information" under 10 C.F.R. § 2.309(c) because of the magnitude of its

---

[38] Nov. 15 2016 Scheduling Order at 2; Nov. 22 Scheduling Order at 2.

[39] 10 C.F.R. § 2.309(c)(iii).

[40] *In the Matter of S. Nuclear Operating Co.*, (Vogtle Electric Generating Plant, Units 3 and 4) 71 N.R.C. 165, 171 (Jan. 8, 2010).

difference from previously available information, the Staff does not agree that this information raises a dispute with a material issue or is material to the findings the NRC must make to support the licensing action under 10 C.F.R. § 2.309(f)(2)(iv) and (vi), because the information has no impact on FPL's financial qualifications.

3. Petitioners do not show that there is a genuine dispute with the application on a material issue of law or fact (10 C.F.R. § 2.309(f)(1)(vi)).

As described further below, the Petitioners assert that the Westinghouse bankruptcy, terminated Reservation Agreement, and lack of construction agreements provide bases for their claim that construction of Unit 6 and 7 is no longer feasible and that FPSC will in turn deny a cost recovery petition from FPL. However, the Petitioners fail to demonstrate how these claims have any bearing on FPL's financial qualifications. The Petitioners' assumption that FPSC will deny FPL cost recovery is speculative, and the contention does not raise a genuine dispute on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi). As stated above, failure to comply with any of the requirements in 10 C.F.R. § 2.309(f)(1) is grounds for dismissal of a contention.[41]

The Petitioners' argument that "[w]ithout any agreements for the construction of Turkey Point Units 6 and 7, FPL will be unable to recover any costs for the construction of these nuclear units" is speculative of the FPSC's cost recovery determination.[42] At present, FPL's cost recovery petition for the proposed units is not even before the FPSC, which in July 2016

---

[41] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 567-68 (2005).

[42] Petition at 10.

issued an order granting FPL's Motion to Defer Consideration of Issues and Cost Recovery.[43] In its order, the FPSC stated that no portion of the Florida statute or code requires a utility to seek recovery of nuclear project costs in any given year, and that the FPSC has deferred consideration of particular issues in previous proceedings.[44] As such, until FPL submits a cost recovery petition, FPSC will not make any determination on cost recovery for Units 6 and 7. So, the Petitioners' statement that FPL will not be able to recover costs is speculative and thus fails to raise a genuine dispute with the application.[45]

Further, the Petition fails to explain how the lack of any construction agreements means that FPL's cost recovery option "has vanished, assuming FPL files such a petition."[46] As such, this argument does not raise a genuine dispute regarding FPL's financial qualifications. The Petitioners speculate that FPSC will find that the project is not reasonable and prudent because no construction agreements exist. The Petitioners also discuss the terminated Reservation Agreement, which set forth an agreement between Westinghouse and FPL to reserve space to manufacture components for the proposed units.[47] The Petition fails to explain how a lack of reserved manufacturing space affects FPL's ability to recover costs or its financial qualifications. Further, the Reservation Agreement stated that it "is not intended to be and shall not be construed as a contract for the purchase and sale of the components," and instead set forth the parties' intention to, at a future date, negotiate and execute a Definitive Agreement for the

---

[43] *In re Nuclear cost recovery clause* (Order Granting Florida Power and Light Company's Motion to Defer Consideration of Issues and Cost Recovery), Order No. PSC-16-0266-PCO-EI, Docket No. 160009-EI (available at http://www.psc.state.fl.us/library/filings/16/04478-16/04478-16.pdf).

[44] *Id.*

[45] Petition at 11-12.

[46] *Id.* at 11.

[47] *Id.* at 8-9; Reservation Agreement between Westinghouse Electric Company and Florida Power & Light Company ("Exhibit B") (note, components included steam generators and reactor vessels).

purchase and sale of the components.[48] Thus, neither a construction nor components agreement ever existed. The Petitioners fail to demonstrate how the Westinghouse bankruptcy in some other way affects any such agreement, or raises a genuine dispute on an issue that is material to FPL's financial qualifications.

The Petitioners state that they are aware of no construction agreements between FPL and Westinghouse, or any other entity.[49] The Petitioners have failed to demonstrate how the lack of construction agreements raises a genuine dispute that is material to FPL's financial qualifications. The Petitioners raise the terminated Reservation Agreement and lack of construction agreements to argue that the project is not feasible; but, the lack of such agreements has no bearing on the proposed project's feasibility. The Petitioners identify no NRC requirement for construction agreements, and indeed, there is no such NRC requirement.

The Petitioners also note that, though the Florida Administrative Code provides for recovery of nuclear power plant costs, FPL did not file a detailed analysis of the long-term feasibility of completing the power plant ("feasibility study"), as the Code requires.[50] Petitioners argue that, "due to FPL's failure to file a feasibility study, as of 2016 there has been no determination that the costs incurred by FPL for this project are reasonable or prudent, nor is there any indication that the project remains feasible."[51] Petitioners fail to show how the lack of a feasibility study has delayed an FPSC determination or how it indicates that the project is no longer feasible in the absence of a determination of that fact by the FPSC. Petitioners also do not show how the lack of a feasibility study has any impact on FPL's demonstration of its

---

[48] Exhibit B at 3.

[49] Petition at 9, 11.

[50] FLA. ADMIN. CODE r.25-6.0423(6)(c)(5).

[51] Petition at 10-11.

financial qualifications in the application. As such, this is not a genuine dispute with the application on a material issue of law or fact.

Further, the Petitioners fail to raise a genuine dispute with the application when arguing that "there is no evidence that an entity or entities are currently retained or readily available to construct a project that has high risk and that is already on the high-end of the estimated project cost range".[52] First, the Petition does not provide sufficient information to demonstrate that retention of entities that are readily available to construct Turkey Point Units 6 and 7 is relevant or material to FPL's financial qualifications. The Petitioners state that Toshiba and Westinghouse are moving away from construction of nuclear reactors.[53] Presumably, the Petitioners make this point to indicate that no entity remains that can construct the proposed units; but, again, the Petitioners have not demonstrated how this information raises a genuine dispute with the financial qualification information in FPL's application.

Second, the Petitioners fail to raise a genuine dispute when they neither define what they mean when they claim that the proposed project is "high risk," nor demonstrate that the project is such a "high risk" that FPSC might determine the project is not reasonable and prudent. The Petition only cites to a portion of a January 2017 Wall Street Journal article that reads, "[Toshiba] will let other companies handle the risk of building the facilities."[54] This article does not support a qualification on the level of risk. Finally, the Petition claims that a statement from FPL's Senior Director, Steven Scroggs, supports the assertion that the project is on the "high-end of the estimated cost."[55] But, the statement only indicates the amount FPL will have spent

---

[52] *Id.* at 11.

[53] *Id.* at 9.

[54] *Id.* at 11.

[55] *Id*.

through 2017 (as a percentage of the high end cost), and does not indicate that the project is actually on the high end.[56] Further, the Petition does not explain why Mr. Scroggs's statement could indicate that FPL's financial qualifications have been affected, much less impaired, by the Westinghouse bankruptcy. Again, the Petition uses unsupported arguments that ultimately have no bearing on FPL's financial qualifications and fail to raise a genuine dispute with the application on a material issue of law or fact.

Even if the Staff were to attempt to predict FPSC's future determination, the Petition fails to present support for the assertion that the Westinghouse bankruptcy or lack of construction agreements has any bearing on FPL's financial qualifications. Again, there is nothing in the regulations that requires an applicant to enter a construction agreement. The lack of a construction agreement does not indicate that the project is not feasible; further, FPL may secure a construction agreement with an entity other than Westinghouse, or can opt to construct the proposed units itself. And, the Reservation Agreement was not a purchase and sale agreement, but rather a reservation of manufacturing space. Thus, the automatic termination of the Reservation Agreement upon Westinghouse's bankruptcy does not affect FPL's ability to procure components or construct the proposed units. For these reasons, the Petitioners do not explain how the Westinghouse bankruptcy affects FPL's financial qualifications, and thus the Petitioners fail to raise a genuine dispute with the application on a material issue of law or fact under 10 C.F.R. § 2.309(f)(1)(vi).

---

[56] *Id*.

3. Petitioners have not shown that the issue raised is material to the findings the NRC must make to support the licensing action (10 C.F.R. § 2.309(f)(1)(iv)).

In addition to failing to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi), the Petitioners have also failed to demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the licensing action, pursuant to § 2.309(f)(1)(iv).

The Petition argues that that FPSC will deny FPL cost recovery based on Westinghouse's bankruptcy and the lack of agreements for constructing the proposed units. However, Westinghouse's bankruptcy is not material to the findings NRC must make because the bankruptcy has no bearing on the financial capabilities of FPL. As discussed above, the Petitioners fail to demonstrate the existence of a nexus between Westinghouse's bankruptcy and the financial capability of FPL. Westinghouse and FPL are two independent companies with no corporate ties to one another. The Petitioners have not explained why the bankruptcy of one necessitates the financial incapacity of the other. Because there is no nexus between the Westinghouse bankruptcy and FPL's financial qualifications, Westinghouse's bankruptcy has no material impact on any of the information in the application which Staff relied on in its financial qualifications findings in the FSER.

Further, the Staff's financial assurance finding is not based solely on the availability of cost recovery. Even if FPSC were to determine that FPL may not recover costs, other sources of construction funding are available to FPL. These sources include: internally generated operating cash flows, commercial paper and bank facilities, and long-term debt and equity capital markets.[57] Because FPL can draw from a diverse set of external funding options, Petitioners have failed to demonstrate that an impairment of FPL's ability to recover costs

[57] FSER at 1-38; Application, Part 1, Rev. 8 at 5 (ML16250A266).

adversely impacts FPL's financial qualifications. The Petitioners have provided only a speculative argument that cost recovery will not be granted, and have not established that, if in fact this were to come to pass, FPL could not draw on any of the other financial resources cited in the FSER. Finally, the terminated Reservation Agreement and lack of a construction agreement with Westinghouse or any other entity has no bearing on whether FPL is financially capable of funding this project, and therefore is not material to the NRC's financial assurance finding. Accordingly, the Petitioners have not raised an issue which would have a material impact on the findings the NRC must make to support the licensing action.

For these reasons, the contention also fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv).

CONCLUSION

In view of the foregoing, the Petition should be denied.

Respectfully submitted,

/Signed (electronically) by/
Megan A. Wright
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, D.C. 20555-0001
(972) 294-5792
(301) 415-3725 (fax)
Megan.Wright@nrc.gov

Executed in Accord with 10 C.F.R. § 2.304(d)
Maxine R. Segarnick
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, D.C. 20555-0001
(301) 287-9117
(301) 415-3725 fax
Maxine.Segarnick@nrc.gov

Dated at Rockville, Maryland
this 15th day of May, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF ANSWER TO PETITION FOR LEAVE TO INTERVENE AND NEW CONTENTION" has been filed through the E-Filing system this 15th day of May, 2017.

/Signed (electronically) by/

Megan A. Wright
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, D.C. 20555-0001
(972) 294-5792
(301) 415-3725 fax
Megan.Wright@nrc.gov

Dated at Rockville, Maryland
this 15th day of May, 2017