

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of |) | |
| |) | |
| FLORIDA POWER & LIGHT COMPANY |) | Docket Nos. 50-250-SLR |
| |) | 50-251-SLR |
| (Turkey Point Nuclear Generating, |) | |
| Unit Nos. 3 and 4) |) | |

NRC STAFF'S RESPONSE TO PETITION TO INTERVENE
AND REQUEST FOR HEARING FILED BY ALBERT GOMEZ

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I. TABLE OF CONTENTS

TABLE OF CONTENTSii

INTRODUCTION 1

BACKGROUND 2

DISCUSSION 6

I. Standing to Intervene..... 6

 A. Applicable Legal Requirements 6

 B. Mr. Gomez’s Standing to Intervene 8

II. Admissibility of the Petitioner’s Proffered Contentions 9

 A. Legal Requirements for Contentions 9

 1. General Requirements for Admissibility 9

 2. Scope of License Renewal Proceedings 14

 3. Subsequent License Renewal Proceedings 16

 4. Environmental Review of License Renewal and SLR Applications..... 21

 B. Analysis of Mr. Gomez’s Petition 26

CONCLUSION 44

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i), the Staff of the U.S. Nuclear Regulatory Commission (“Staff”) hereby files its response to the petition for leave to intervene and request for hearing filed by Mr. Albert Gomez,¹ concerning the subsequent license renewal application (“SLRA”) submitted by Florida Power & Light Company (“FPL” or “Applicant”) for Turkey Point Nuclear Generating Unit Nos. 3 and 4 (“Turkey Point Units 3 and 4”). For the reasons set forth below, the Staff respectfully submits that while Mr. Gomez has established his standing to intervene in this proceeding, he has not filed an admissible contention. Accordingly, his Petition should be denied.

In the following discussion, the Staff provides, *first*, a brief description of the background of this proceeding; *second*, a discussion of Mr. Gomez’s standing to intervene; *third*, a discussion of the legal principles governing contention admissibility, license renewal, and subsequent license renewal; and *fourth*, a discussion of Mr. Gomez’s proposed contentions.

¹ See “Proposed Petition to Intervene and for Hearing under 10 C.F.R. § 2.206, for Docket ID # NRC-2018-0074” (undated) (“Petition”) (ML18219A900) (Staff Attachment 1).

BACKGROUND

This proceeding concerns the application submitted by FPL on January 30, 2018, as later supplemented and revised,² for subsequent license renewal of Renewed Facility Operating License Nos. DPR-31 and DPR-41 to permit an additional 20 years of operation for Turkey Point Units 3 and 4.³ Turkey Point Units 3 and 4 consist of two Westinghouse pressurized water reactors, each of which is licensed to operate at a power level of 2,644 megawatts-thermal (MWt), with a net maximum output of approximately 811 megawatts electric (MWe) and 821 MWe, respectively.⁴ The current renewed operating licenses for Turkey Point Units 3 and Unit 4 expire at midnight on July 19, 2032, and on April 10, 2033, respectively.⁵ FPL's subsequent license renewal application seeks to extend the Turkey Point Units 3 and 4 operating licenses for an additional 20 years, until July 19, 2052, and April 10, 2053, respectively.⁶

² See (1) Letter from Mano K. Nazar (FPL) to NRC Document Control Desk (Jan. 30, 2018) (ML18037A812); (2) Letter from William D. Maher (FPL) to NRC Document Control Desk (Feb. 9, 2018) (ML18044A653); (3) Letter from William D. Maher (FPL) to NRC Document Control Desk (Feb. 16, 2018) (ML18053A123); (4) Letter from William D. Maher (FPL) to NRC Document Control Desk (Mar. 1, 2018) (ML18072A224); and (5) Letter from William D. Maher (FPL) to NRC Document Control Desk (Apr. 10, 2018) (ML18102A521 and ML18113A132) (transmitting a revised SLRA).

³ Turkey Point is owned and operated by FPL, which is a subsidiary of NextEra Energy, Inc. (formerly FPL Group, Inc.), and the third largest electric utility in the United States. SLRA, Appendix E, Applicant's Environmental Report, Subsequent Operating License Renewal Stage ("ER") (ML18113A145), at 1-7.

⁴ ER at 2-2.

⁵ The construction permits for Turkey Point Units 3 and 4 were issued on April 27, 1967; the initial operating licenses for Units 3 and 4 were issued on July 19, 1972 and April 10, 1973, respectively; and the licenses for both Units were renewed for an additional 20 years on June 6, 2002. ER at 1-1 and 2-1.

⁶ *Id.* Turkey Point Units 3 and 4 are the only nuclear plants at the site. The site is also occupied by two retired natural gas/oil steam-generating units (Units 1 and 2), which have been repurposed to support transmission reliability but which do not generate power or process water; and one 1,150 MW combined-cycle natural gas-fired steam-generating unit. (Unit 5). *Id.* at 2-1. Recently, the Commission issued combined licenses ("COLs") for two Westinghouse AP1000 (1,117 MWe) nuclear plants (Turkey Point Units 6 and 7) to be built at the site. See Florida Power & Light Co.; Turkey Point Units 6 and 7; Combined licenses and record of decision; issuance, 83 Fed. Reg. 18,091 (Apr. 25, 2018).

Turkey Point is located on a 3,300-acre site adjacent to Biscayne Bay in Miami-Dade County, approximately two miles east of Homestead, Florida (the closest community to the site), and approximately 20 miles south of Miami, Florida (the largest population center in the region).⁷ Turkey Point Units 3 and 4 utilize a closed-cycle circulating water system (the cooling canal system or “CCS”), with a circulating water flow of 1,872 million gallons per day (MGD).⁸

The NRC published a notice of receipt of the Turkey Point SLRA on April 18, 2018.⁹ On May 2, 2018, the NRC issued a determination of acceptability and sufficiency for docketing of the SLRA, along with a notice of opportunity for hearing on the application.¹⁰ The Hearing Opportunity Notice required that petitions for leave to intervene and requests for hearing be filed within 60 days of publication of the Notice (*i.e.*, by July 2, 2018) and specified the manner by which they must be filed (*i.e.*, by electronic submission).¹¹ The Commission subsequently extended the deadline for filing petitions to intervene by thirty days, until August 1, 2018, in response to requests for extension of time filed by other petitioners.¹²

On May 22, 2018, some 20 days after the Hearing Opportunity Notice was published, the NRC published a notice of its intent to publish an environmental impact statement (“EIS”)

⁷ ER at 3-1.

⁸ *Id.* at 2-5. The CCS is licensed by the State of Florida as an industrial wastewater (IWW) facility. *Id.* at 2-4, 3-82, 3-87 – 3-88.

⁹ Florida Power & Light Co.; Turkey Point Nuclear Generating Unit Nos. 3 and 4; License renewal application; receipt, 83 Fed. Reg. 17,196 (Apr. 18, 2018).

¹⁰ Florida Power & Light Co.; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; License renewal application; opportunity to request a hearing and to petition for leave to intervene, 83 Fed. Reg. 19,304 (May 2, 2018) (“Hearing Opportunity Notice”).

¹¹ *Id.* at 19,305-06.

¹² *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, Order (June 29, 2018) (unpublished Order by the Acting Secretary of the Commission) (“Extension Order”) (ML18180A185).

and to conduct an environmental scoping process for the Turkey Point SLRA.¹³ The Scoping Notice provided an opportunity for members of the public to participate in the scoping process, to attend public scoping meetings, and to submit comments on environmental issues and the scope of the Turkey Point EIS.¹⁴ The Scoping Notice requested that public scoping comments be submitted by June 21, 2018.¹⁵

In response to the Scoping Notice, on June 21, 2018, Mr. Gomez transmitted a document to www.regulations.gov.¹⁶ In this document, Mr. Gomez provided a “General Comment” concerning the SLRA, stating that he was submitting “10 contentions . . . with related requests that explain why the current Turkey Point [SLRA] should be withheld, withdrawn and rejected by the NRC.”¹⁷ Mr. Gomez attached a “Proposed Petition to Intervene under 10 C.F.R. 103”; in that document, Mr. Gomez stated his address; described the nature of his right to intervene and his “interest” in the proceeding; and set out ten “Petitioners Concerns” which he filed as “comments [related to] withholding, withdrawing, rejecting or contestation of the current Turkey Point [SLRA].”¹⁸ On August 2, 2018, following an unsuccessful attempt to

¹³ *Florida Power & Light Co.*; Turkey Point Nuclear Plant Units 3 and 4; Intent to conduct scoping process and prepare environmental impact statement; public meeting and request for comment, 83 Fed. Reg. 23,726 (May 22, 2018) (“Scoping Notice”).

¹⁴ *Id.*

¹⁵ *Id.* at 23,726. The Scoping Notice further stated that comments received after June 21 “will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.” *Id.*

¹⁶ “Public Submission, Docket: NRC-2018-0101, Turkey Point Nuclear Plant Units 3 and 4” (June 22, 2018) (ML18177A193) (Staff Attachment 2).

¹⁷ *Id.* at [unnumbered] 1.

¹⁸ *Id.* at [unnumbered] 2 and 3-7.

guide Mr. Gomez to file his document in accordance with the directions in the Hearing Opportunity Notice, the Staff transmitted his filing to the Hearing Docket.¹⁹

Petitions for leave to intervene and requests for hearing were timely filed by other petitioners on August 1, 2018,²⁰ and an Atomic Safety and Licensing Board (“Licensing Board” or “Board”) was established on August 8, 2018, to preside over any adjudicatory proceeding that may be held.²¹ On August 9, 2018, following unsuccessful attempts to assist Mr. Gomez in filing and serving his petition through the NRC’s Electronic Information Exchange, the Secretary of the Commission referred Mr. Gomez’s petition to the Atomic Safety and Licensing Board Panel.²² On August 15, 2018, the Board designated to preside in this proceeding issued an Order directing that answers to Mr. Gomez’s petition be filed by September 4, 2018.²³

¹⁹ See (1) E-mail message from Lois James (NRC) to Albert Gomez (July 6, 2018); (2) E-mail message from Albert Gomez to Lois James (Aug. 2, 2018); and (3) E-mail message from Lois James to Hearing Docket (Aug. 2, 2018) (ML18219A900) (Staff Attachment 1).

²⁰ See “Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper” (“Joint Petition”) (Aug. 1, 2018) (ML18213A417), and “Southern Alliance for Clean Energy’s Request for Hearing and Petition to Intervene” (“SACE Petition”) (Aug. 1, 2018) (ML18213A528). Answers to these petitions were timely filed by the Applicant and Staff on August 27, 2018. See “NRC Staff’s Corrected Response to Petitions to Intervene and Requests for Hearing Filed by (1) Friends of the Earth, Natural Resources Defense Council and Miami Waterkeeper, and (2) Southern Alliance for Clean Energy” (Aug. 27, 2018) (ML18239A458); “Applicant’s Answer Opposing Southern Alliance for Clean Energy’s Request for Hearing and Petition to Intervene” (Aug. 27, 2018) (ML18239A449); and “Applicant’s Answer Opposing Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper” (Aug. 27, 2018) (ML18239A445).

²¹ Establishment of Atomic Safety and Licensing Board; Florida Power & Light Co., 83 Fed. Reg. 40,360 (Aug. 14, 2018).

²² Memorandum from Annette L. Vietti-Cook (Secretary) to E. Roy Hawken, Chief Administrative Judge (ASLBP), “Request for Hearing from Mr. Albert Gomez Regarding the Application for Subsequent License Renewal from the Florida Power & Light Company for Turkey Point Nuclear Generating, Units 3 and 4, Docket Nos. 50-250 and 50-251” (Aug. 9, 2018) (ML18221A265) (Staff Attachment 3).

²³ See *Florida Power & Light Co.* (Turkey Point Units 3 and 4), Order (Clarifying Briefing Schedule Regarding Gomez Petition) (Aug. 15, 2018) (unpublished).

DISCUSSION

I. Standing to Intervene

A. Applicable Legal Requirements

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 which the person seeks to have litigated in the hearing."²⁴ The regulations further provide that the Licensing Board "will grant the request/petition if it determines that the requestor/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)]."²⁵

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition 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 Act 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.

The regulations state that in ruling on a request for hearing or petition to intervene, the Commission, presiding officer, or Licensing Board "must determine, among other things,

²⁴ 10 C.F.R. § 2.309(a).

²⁵ *Id.*

whether the petitioner has an interest affected by the proceeding considering the factors enumerated in [§ 2.309(d)(1)].”²⁶

As the Commission has observed, the NRC has “long applied ‘contemporaneous judicial concepts of standing’” which require a “‘concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.’”²⁷ As the Commission has stated, “[a]t the heart of the standing inquiry is whether the petitioner has ‘alleged such a personal stake in the outcome of the controversy’ as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues.”²⁸

In construction permit and operating license proceedings, standing to intervene has been found to exist based upon a proximity presumption, for persons who reside or frequent an area within approximately 50 miles of the facility.²⁹ As the Commission has noted, the Atomic Safety and Licensing Boards have also found the proximity presumption to establish standing to intervene in license renewal proceedings.³⁰

²⁶ 10 C.F.R. § 2.309(d)(2). The presiding officer may also consider a request for discretionary intervention in the event that a petitioner is determined to lack standing to intervene as a matter of right, where a sufficient showing is made with respect to the factors enumerated in 10 C.F.R. § 2.309(e).

²⁷ *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Servs., LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009), *quoting Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993).

²⁸ *Sequoyah Fuels Corp. and Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994), *citing Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978) and *quoting Baker v. Carr*, 369 U.S. 186, 204 (1962).

²⁹ *See, e.g., Calvert Cliffs*, CLI-09-20, 70 NRC at 915-16. The proximity presumption establishes standing to intervene without the need to establish the elements of injury, causation, or redressability.

³⁰ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15 (noting that the Board in *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-06, 53 NRC 138, 150, *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001), was “applying [the] proximity presumption in [a] reactor operating license renewal proceeding”).

B. Mr. Gomez's Standing to Intervene

In his Petition, Mr. Gomez stated that he is a resident of Miami, and that his address is 3566 Vista Court, Miami, FL.³¹ Mr. Gomez did not specify whether that is his home or office address, and did not provide the distance from his home or office to the Turkey Point site. The Staff has determined, however, through the use of online mapping tools, that the stated address is a home, situated approximately 21 miles NE of Turkey Point (32.5 miles by car).³² Mr. Gomez did not describe the nature of his specific activities in the area, but generally explained the nature of his "interest" as follows:

Citizen of the U.S., Home owner, business owner, resident of Miami, FL USA, sitting City of Miami Sea Level Rise Committee member, manufacturing and technology expert supporting many industries including the power industry, ecological activist and conservationist, resilience leader and advisor in South Florida.³³

In his Petition, Mr. Gomez provided no other information regarding the location of his residence, business, or activities in the area, and did not show that he would suffer any concrete or particularized injury caused by the challenged action that would be redressed by a favorable decision in this proceeding. Nonetheless, the Staff is satisfied that Mr. Gomez has established his standing to intervene in this proceeding, inasmuch as his Petition demonstrates that he

³¹ Petition at [unnumbered] 1.

³²

<https://www.google.com/maps/dir/3566+Vista+Ct,+Miami,+FL+33133/Turkey+Point+Nuclear+Generating+Station,+Homestead,+FL/@25.5448082,-80.4039507,11z/data=!4m34!4m33!1m25!1m1!1s0x88d9b649caf5a29d:0xe49a0cd73327f790!2m2!1d-80.2239185!2d25.7370681!3m4!1m2!1d-80.3256351!2d25.6341884!3s0x88d9c6868c97f34f:0x867a5dfea7da9188!3m4!1m2!1d-80.3319089!2d25.5823565!3s0x88d9c45765b98de7:0x484bab5f6dd03a23!3m4!1m2!1d-80.3314771!2d25.5628161!3s0x88d9c4e5915e6e63:0x4850d8a74ebbd506!3m4!1m2!1d-80.3641326!2d25.5252968!3s0x88d9dca82c500547:0x9a6cbb62b6ec743e!1m5!1m1!1s0x88d9d97d20f0bb61:0x7bb701b44ddb8265!2m2!1d-80.3312588!2d25.43533!3e0>

³³ Petition at [unnumbered] 1.

resides within 50 miles of Turkey Point. As such, Mr. Gomez has shown that he has standing to intervene, based on the proximity presumption.³⁴

II. Admissibility of the Petitioner's Proffered Contentions

A. Legal Requirements for Contentions

1. General Requirements for Admissibility

The legal requirements governing the admissibility of contentions are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice (formerly 10 C.F.R. § 2.714(b)).³⁵ Specifically, in order to be admitted, a contention must satisfy the following requirements:

(f) *Contentions*. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition 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;³⁶

³⁴ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15; *Turkey Point*, LBP-01-06, 53 NRC at 150.

³⁵ These requirements substantially reiterate the requirements stated in former § 2.714, published in revised form in 1989. See Statement of Consideration, "Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168 (Aug. 11, 1989), as corrected, 54 Fed. Reg. 39,728 (Sept. 28, 1989). While former § 2.714 was revised in 1989, those revisions did not constitute "a substantial departure" from then existing practice in licensing cases. 54 Fed. Reg. at 33,170-71. Thus, the prior standards governing the admissibility of contentions remain in effect to the extent that they do not conflict with the 1989 amendments. *Arizona Public Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991).

³⁶ The requirement that a petitioner provide an explanation of the basis for its contention helps to define the scope of a contention – "[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases." *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991); *accord Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002).

- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;³⁷
- (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;³⁸
- (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;³⁹ [and]
- (vi) . . . [P]rovide 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. . . .⁴⁰

³⁷ The scope of any particular proceeding is defined by the Commission in its initial hearing notice and Order referring the proceeding to the Board. *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, ALAB-825, 22 NRC 785, 790-91 (1985). Contentions may only be admitted if they fall within the scope of issues set forth in the *Federal Register* Notice and comply with the requirements of former § 2.714(b) (restated in § 2.309(f)), and applicable case law. *Public Serv. Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-316, 3 NRC 167, 170-71 (1976); *Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, ALAB-216, 8 AEC 13, 20 (1974).

³⁸ "Materiality" requires that the petitioner show why the alleged error or omission is of possible significance to the result of the proceeding, demonstrating a "significant link between the claimed deficiency and the agency's ultimate determination." *Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant)*, LBP-15-20, 81 NRC 829, 850 (2015).

³⁹ It is the petitioner's obligation to present the factual information and expert opinions necessary to support its contention. See *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 457 (2006) (moreover, it is the Proponent's responsibility to satisfy the basic contention admissibility requirements; Boards should not have to search through a petition to "uncover" arguments and support for a contention, and "may not simply 'infer' unarticulated bases of contentions"). See also *Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3)*, CLI-91-12, 34 NRC 149, 155 (1991).

⁴⁰ All contentions must "show that a genuine dispute exists" with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute. This requires the Petitioner to read the entire

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. . . .

10 C.F.R. § 2.309(f)(1)-(2) (emphasis added).

As has often been observed, the contention admissibility rules exist to "focus litigation on concrete issues, and result in a clearer and more focused record for decision."⁴¹ In this regard, the Commission has explained that the rules governing the admissibility of contentions are "strict by design."⁴² Failure to comply with any of the requirements set forth in the regulations is grounds for the dismissal of a contention.⁴³ As further stated by the Commission, the rules require "a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the

application, state both the applicant and petitioner's views, and explain the disagreement, and if Petitioner believes an issue is not addressed, to explain the deficiency. Basic assertions that an application is insufficient or inadequate is insufficient to meet this standard. *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Power Plant), LBP-06-10, 63 NRC 314, 340-42 (2006).

⁴¹ See e.g., *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, NE), LBP-15-15, 81 NRC 598, 601 (2015), citing "Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

⁴² *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016), citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) and *South Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010). The Commission further 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." Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004).

⁴³ *Indian Point*, CLI-16-5, 83 NRC at 136. See also *Oconee Nuclear Station*, CLI-99-11, 49 NRC at 334-35 (the heightened contention admissibility rules are designed to preclude contentions "based on little more than speculation"). The requirements are intended, *inter alia*, to ensure that a petitioner reviews the application and supporting documents prior to filing contentions; that contentions are supported by at least some facts or expert opinion known to the petitioner at the time of filing; and that there exists a genuine dispute before a contention is admitted for litigation, to avoid the practice of filing contentions which lack any factual support and seeking to flesh them out later through discovery. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-35, 34 NRC 163, 167-68 (1991).

validity of the contention." "Mere 'notice pleading' does not suffice."⁴⁴ "A petitioner's issue will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'"⁴⁵

It is well established that the purpose for the "basis" requirements is (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose.⁴⁶ Determining whether the contention is adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; a petitioner does not have to prove its contention at the admissibility stage,⁴⁷ or provide all the evidence required to withstand a summary disposition motion.⁴⁸ Nonetheless, the Petitioner must provide some support for its contention, either in the form of facts or expert testimony, and "[f]ailure to do so requires that the contention be rejected."⁴⁹

⁴⁴ *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006) (footnotes omitted).

⁴⁵ *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003), citing *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 192, 208 (2000).

⁴⁶ *Peach Bottom*, ALAB-216, 8 AEC at 20-21.

⁴⁷ *Private Fuel Storage L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004).

⁴⁸ *Compare with* 10 C.F.R. § 2.710(c). "[A]t the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." 54 Fed. Reg. at 33,171.

⁴⁹ *Palo Verde*, CLI-91-12, 34 NRC at 155; *accord, Indian Point*, CLI-16-5, 83 NRC at 136. See "Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process," 54 Fed. Reg. at 33,170 ("This requirement does not call upon the intervener to make its case at this stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention.").

If a petitioner neglects to provide the requisite support for its contentions, the Board should not make assumptions of fact that favor the petitioner, or search for or supply information that is lacking.⁵⁰ Moreover, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny.⁵¹ Likewise, providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention.⁵² In short, the information, facts, and expert opinions provided by the petitioner are to be examined by the Board to confirm that they do indeed supply adequate support for the contention.⁵³

Finally, the *Peach Bottom* decision requires that a contention be rejected if it constitutes an attack on applicable statutory requirements; challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;⁵⁴ is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be; seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or seeks to raise an issue which is not concrete or litigable.⁵⁵

⁵⁰ See *American Centrifuge Plant*, CLI-06-10, 63 NRC at 457 (2006).

⁵¹ *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), LBP-10-7, 71 NRC 391, 421 (2010); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996).

⁵² See *Fansteel*, CLI-03-13, 58 NRC at 205.

⁵³ *Bellefonte Nuclear Plant*, LBP-10-7, 71 NRC at 421.

⁵⁴ As set forth in 10 C.F.R. § 2.335(a), "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding," in the absence of a waiver petition granted by the Commission. See also *Millstone*, CLI-03-14, 58 NRC at 218. Further, any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected. *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982), citing *Peach Bottom*, ALAB-216, 8 AEC at 20-21.

⁵⁵ *Peach Bottom*, ALAB-216, 8 AEC at 20-21.

2. Scope of License Renewal Proceedings

As stated in 10 C.F.R. § 2.309(f)(1)(iii), *supra*, a petitioner must demonstrate that the “issue raised in the contention is within the scope of the proceeding”; any contention that falls outside the scope of the proceeding must be rejected.⁵⁶ The scope of a license renewal proceeding is limited, under the Commission’s regulations in 10 C.F.R. Part 54, to the specific matters that must be considered for the license renewal application to be granted.⁵⁷

Pursuant to 10 C.F.R. § 54.29, the following standards are considered in determining whether to grant a license renewal application:

10 C.F.R. § 54.29 Standards for issuance of a renewed license:

A renewed license may be issued by the Commission up to the full term authorized by § 54.31 if the Commission finds that:

(a) Actions have been identified and have been or will be taken with respect to the matters identified in Paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB [current licensing basis], and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations. These matters are:

(1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1); and

(2) time-limited aging analyses that have been identified to require review under § 54.21(c).

(b) Any applicable requirements of Subpart A of 10 C.F.R. Part 51 have been satisfied.

(c) Any matters raised under § 2.335 have been addressed.

⁵⁶ *Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979); *Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-12-18, 76 NRC 127, 157 (2012).

⁵⁷ *Oyster Creek*, CLI-06-24, 64 NRC at 118-19.

These standards, along with other regulations in 10 C.F.R. Part 54, and the environmental regulations related to license renewal set forth in 10 C.F.R. Part 51 and Appendix B thereto, establish the scope of issues that may be considered in a license renewal proceeding.⁵⁸ The failure of a proposed contention to demonstrate that an issue is within the scope of the proceeding is grounds for its dismissal.⁵⁹

The NRC conducts a technical review pursuant to 10 C.F.R. Part 54, to assure that pertinent public health and safety requirements have been satisfied.⁶⁰ Regardless of whether a license renewal application has been filed for a facility, the Commission has a continuing responsibility to oversee the safety and security of ongoing plant operations, and it routinely oversees a broad range of operating issues under its statutory responsibility to assure the protection of public health and safety for operations under existing operating licenses. Therefore, for license renewal, the Commission has found it generally unnecessary to include a review of issues already monitored and reviewed in ongoing regulatory oversight processes.⁶¹ Rather, the NRC's license renewal safety review focuses on "plant systems, structures, and components for which current [regulatory] activities and requirements *may* not be sufficient to

⁵⁸ See *generally*, Final rule, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943 (Dec. 13, 1991); Final rule, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461 (May 8, 1995).

⁵⁹ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 567 (2005).

⁶⁰ See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 6 (2001).

⁶¹ *Id.* at 8-10. For example, the Commission has held that "[i]ssues like emergency planning – which already are the focus of ongoing regulatory processes – do not come within the NRC's safety review at the license renewal stage." *Turkey Point*, CLI-01-17, 54 NRC at 10; *accord*, *Millstone*, CLI-05-24, 62 NRC at 565, 567.

manage the effects of aging in the period of extended operation.”⁶² Adjudicatory proceedings on license renewal applications are bounded by the same rules and scope.⁶³

3. Subsequent License Renewal Proceedings

The Atomic Energy Act provides no limit on the number of times that a nuclear power plant’s operating license may be renewed; rather, Section 103(c) of the Act provides that each license “shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years . . . and may be renewed upon the expiration of such period.”⁶⁴ Likewise, the Commission’s regulations do not limit the number of times that an operating license may be renewed. The NRC has long recognized the potential that nuclear power plant licensees might seek to extend their operating licenses to permit plant operation beyond 60 years, *i.e.*, after the expiration of a renewed license. Prior to 1991, the Commission’s regulations provided only that operating licenses may be issued for up to 40 years and “may be renewed by the Commission upon the expiration of the period.”⁶⁵ Upon adopting 10 C.F.R. Part 54 in 1991, the Commission provided, in 10 C.F.R. § 54.31(d), that “[a] renewed license may be subsequently renewed upon expiration of the renewal term, in accordance with all applicable requirements.”⁶⁶

⁶² *Turkey Point*, CLI-01-17, 54 NRC at 10, *quoting* 60 Fed. Reg. at 22,469.

⁶³ As the Commission stated, “[a]djudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review; for our hearing process (like our Staff’s review) necessarily examines only the [safety] questions our safety rules make pertinent.” *Id.* at 10.

⁶⁴ Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133.c.

⁶⁵ 10 C.F.R. § 50.51 (1991).

⁶⁶ 10 C.F.R. § 54.31(d) (1992). This provision has continued in effect, with minor revisions, until the present; § 54.31(d) currently states, “[a] renewed license may be subsequently renewed in accordance with all applicable requirements.” 10 C.F.R. § 54.31(d) (2018). This formulation of the regulation appeared in the Commission’s 1995 revision of the license renewal regulations. See “Nuclear Power Plant License Renewal; Revisions,” Final rule, 60 Fed. Reg. 22,461, 22,494 (May 8, 1995).

In determining which requirements are “applicable” to subsequent license renewal, the Commission’s statements in adopting the license renewal rules in 1991 are instructive. Thus, in responding to comments regarding proposed § 54.31(d), the Commission observed as follows:

m. Subsequent Renewals

Section 54.31(d) allows a renewed license to be further renewed upon expiration of the renewal term. . . . [A] subsequent renewal application may be submitted prior to expiration of the previous renewal term However, § 54.31(d) makes clear that a renewed license may be further renewed in accordance with “applicable requirements,” which would include the provisions of part 54 (unless the Commission subsequently adopts special provisions applicable only to subsequent renewals). . . .

Another commenter observed that the concept of subsequent renewals is not developed in the supporting documentation for the proposed rule. The Commission does not believe that further exposition of this concept is necessary at this time. If experience with renewals discloses a previously unknown aging or other time-dependent issue, appropriate regulatory action, including modifying the requirements for obtaining subsequent renewals, can be implemented. Further discussions of the concept are not likely to be fruitful at this time.⁶⁷

Notably, the license renewal regulations adopted in 1991 contained no specific requirements that are unique to subsequent license renewal, and no such provisions have been adopted at any time since the license renewal regulations were enacted.⁶⁸ Similarly, the requirements in 10 C.F.R. Part 51, concerning the consideration of license renewal environmental impacts,

⁶⁷ “Nuclear Power Plant License Renewal,” Final rule, 56 Fed. Reg. 64,943, 64,964-65 (Dec. 13, 1991) (emphasis added).

⁶⁸ See generally, NUREG-1850, “Frequently Asked Questions on License Renewal of Nuclear Power Reactors” (March 2006), Question 1.3.10 (“There are no specific limitations in the Atomic Energy Act or the NRC’s regulations restricting the number of times a license may be renewed. However, an applicant has to meet all of the applicable requirements for each subsequent renewal. Any subsequent renewal would require a review similar to that required for the first renewal.”).

apply as well to subsequent license renewal;⁶⁹ no requirements have been adopted by the Commission for subsequent license renewal beyond those pertaining to license renewal.⁷⁰

In early 2014, the Staff submitted SECY-14-0016 to the Commission.⁷¹ Therein, the Staff provided an assessment of the license renewal regulatory process and regulations, and presented four options for consideration by the Commission regarding potential regulatory approaches to subsequent license renewal:

Option 1: No change to the existing 10 C.F.R. Part 54 regulations

Option 2: Minor clarifications to existing 10 C.F.R. Part 54 regulations for current and subsequent renewals

⁶⁹ To be sure, 10 C.F.R. § 51.53(c)(3) states that an applicant for an “initial renewed license” must submit certain information in its environmental report; the regulation does not state whether similar or different information must be submitted by applicants for subsequent license renewal. No similar language appears in any other provision of 10 C.F.R. Part 51 or Part 54, nor was there any discussion of the word “initial” in the Statement of Considerations for the final rule. See Final rule, “Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,” 61 Fed. Reg. 28,467 (June 5, 1996); *but see* Proposed Rule, “Environmental Review for Renewal of Operating Licenses,” 56 Fed. Reg. 47,016, 47,017 (Sept. 17, 1991) (“The Part 54 rule could be applied to multiple renewals of an operating license for various increments. However, the part 51 amendments apply to one renewal of the initial license for up to 20 years beyond the expiration of the initial license.”). As discussed *infra* at 19-20, the Commission has determined that the existing license renewal safety and environmental regulatory framework applies to subsequent license renewal, and no new rulemaking for subsequent license renewal is needed.

⁷⁰ The 1996 GEIS observed that “Operating licenses may be renewed for up to 20 years beyond the 40-year term of the initial license. No limit on the number of renewals is specified.” NUREG-1437 (May 1996), Vol. 1, at 1-1. Similarly, the 2013 revision of the GEIS observed:

The Atomic Energy Act of 1954 authorizes the [NRC] to issue commercial nuclear power plant operating licenses for up to 40 years. The 40-year length of the original license period was imposed for economic and antitrust reasons rather than the technical limitations of the nuclear power plant. NRC regulations allow for the renewal of these operating licenses for up to an additional 20 years, depending on the outcome of an assessment determining whether the nuclear power plant can continue to operate safely and protect the environment during the 20-year period of extended operation. There are no specific limitations in the Atomic Energy Act or the NRC’s regulations restricting the number of times a license may be renewed.

NUREG-1437, Rev. 1 (June 2013), at 1-1.

⁷¹ SECY-14-0016, “Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal” (Jan. 13, 2014) (ML14050A306).

Option 3: Update 10 C.F.R. Part 54 regulations for current and subsequent renewals and pursue Option 2 clarifications

Option 4: Pursue rulemaking for subsequent renewal-specific changes and Option 2 and 3 changes.

Upon evaluating these options, the Staff recommended that the Commission select Option 4:

The staff recommends the Commission direct the staff to begin the rulemaking process to address all of the proposed topics in Option 4. Addressing these topics through rulemaking would provide additional assurance that aging-management activities would be effectively implemented and provide regulatory clarity, transparency, stability, and efficiency by defining requirements at the outset of the subsequent license renewal process rather than on a case-by-case basis during license renewal reviews.⁷²

On August 29, 2014, the Commission issued its Staff Requirements Memorandum (“SRM”) in response to SECY-14-0016.⁷³ Therein, the Commission *declined* to approve the Staff’s recommendation to initiate rulemaking for subsequent license renewal. Rather, the Commission directed the Staff to (a) “continue to update license renewal guidance, as needed, to provide additional clarity on the implementation of the license renewal regulatory framework”; (b) “address emerging technical issues and operating experience through alternative vehicles (e.g., issuance of generic communications, voluntary industry initiatives, or updates to NUREG-1801 [the GALL Report]”;⁷⁴ (c) implement inspection enhancements identified in the

⁷² *Id.* at 9. Although the Staff recommended in SECY-14-0016 that the Commission initiate rulemaking for subsequent license renewal with respect to aging management issues, the Staff concluded that its license renewal environmental review process is adequate for consideration of the environmental impacts of subsequent license renewal. In this regard, the Staff observed, “[t]he GEIS describes the most common environmental impacts to nuclear power facilities and allows applicants and the NRC to focus on important environmental issues specific to each site pursuing license renewal. The staff revised the GEIS in June 2013, and believes that the update is adequate for a future subsequent license renewal application.” SECY-14-0016, at 3.

⁷³ “Staff Requirements – SECY-14-0016 – Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal” (Aug. 29, 2014) (ML14241A578).

⁷⁴ Guidance concerning the preparation and review of initial license renewal applications is provided in NUREG-1800, “Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,” Rev. 2 (“SRP-LR”) (Dec. 2010); and NUREG-1801, “Generic Aging Lessons Learned (GALL) Report,” Rev. 2 (Dec. 2010).

Reactor Oversight Process Enhancement Project related to aging management, and implement the “Inspection Procedure (IP) Operating Experience (OpE) Update Process”; and (d) keep the Commission informed on various specified matters and emphasize to the industry the need for resolution of these issues.⁷⁵

Following the Commission’s issuance of its SRM, the Staff met with industry and other interested stakeholders to discuss subsequent license renewal-related issues, acted upon the Commission’s instructions, briefed the Commission on its progress in addressing subsequent license renewal-related issues, and updated its regulatory guidance to specifically address subsequent license renewal. In particular, the Staff issued two regulatory guidance documents, updating and revising the GALL Report and SRP-LR, for use in the preparation and review of SLRAs. These guidance documents are:

(1) NUREG-2191, “Generic Aging Lessons Learned for Subsequent License Renewal (GALL-SLR) Report,” Vols. 1 and 2 (July 2017) (ML17187A031 and ML17187A204); and

(2) NUREG-2192, “Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants” (“SRP-SLR”) (July 2017) (ML17188A158).⁷⁶

In sum, the Atomic Energy Act and the Commission’s regulations provide no limit on the number of times that a nuclear power plant’s operating license may be renewed. The regulations in 10 C.F.R. Parts 51 and 54 establish the applicable requirements for nuclear power plant license renewals and, as the Commission made clear in 2014, the existing license

⁷⁵ Staff Requirements – SECY-14-0016 – Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal” (Aug. 29, 2014) (ML14241A578).

⁷⁶ See “Final Guidance Documents for Subsequent License Renewal,” 82 Fed. Reg. 32,588 (July 14, 2014). Subsequently, the Staff issued two other documents concerning the GALL-SLR and SRP-SLR: (a) NUREG-2221, “Technical Bases for Changes in the Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG-2192” (Dec. 2017) (ML17362A126), and (b) NUREG-2222, “Disposition of Public Comments on the Draft Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG-2192” (Dec. 2017). See “Supplementary Guidance Documents for Subsequent License Renewal,” 83 Fed. Reg. 16,133 (Apr. 13, 2018).

renewal regulatory framework and regulatory process apply, as well, to subsequent license renewal. That regulatory framework and process are set out in 10 C.F.R. Parts 51 and 54, as supported by guidance in (a) the GALL-SLR Report (NUREG-2191); (b) the SRP-SLR (NUREG-2192), (c) the GEIS (NUREG-1437, Rev. 1), and (d) the “Standard Review Plan for Environmental Review of Nuclear Power Plants – Operating License Renewal” (“ESRP-LR”) (NUREG-1555, Supp. 1, Rev. 1).⁷⁷ Indeed, those are the regulatory requirements and guidance documents that will primarily frame the Staff’s evaluation of the Turkey Point SLRA.⁷⁸

4. Environmental Review of License Renewal and SLR Applications

The National Environmental Policy Act of 1969, as amended (“NEPA”), 42 U.S.C. § 4321 *et seq.*, requires Federal agencies to include in any recommendation or report on proposals for major Federal actions significantly affecting the quality of the human environment, a detailed statement on:

⁷⁷ Additional guidance for the preparation of a subsequent license renewal application is provided in NEI-17-01, “Industry Guideline for Implementing the Requirements of 10 CFR Part 54 for Subsequent License Renewal” (ML17339A599) and NEI 17-04, “Model SLR New and Significant Assessment Approach for SAMA, Revision 0” (ML17181A470), both of which the Staff approved for interim use on December 20, 2017 (ML17341B105), as corrected on January 31, 2018 (ML18029A368).

⁷⁸ The Commission recently summarized these matters as follows:

In August 2014, the Commission affirmed that no revisions to either the safety or environmental regulations are needed to support the assessment of a SLR application. However, the Commission directed the staff to update license renewal guidance, as needed, to provide additional clarity on the implementation of the license renewal regulatory framework. . . .

The staff determined that no revisions were needed to the NRC guidance document entitled, “Standard Review Plans for Environmental Reviews for Nuclear Power Plants,” to support environmental reviews from 60 to 80 years. However, the staff determined that the GALL Report and the SRP-LR should be updated to facilitate more effective and efficient reviews of SLR applications.

Letter from Kristine L. Svinicki (Chairman, NRC) to Hon. John A. Barrasso (Chairman, U.S. Sen. Committee on Environment and Public Works) (July 19, 2018) (ML18170A241), Enclosure (ML18170A284), at 45-46.

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.⁷⁹

In accordance with NEPA, the NRC is required to take a “hard look” at the environmental impacts of a proposed major Federal action that could significantly affect the environment, as well as reasonable alternatives to that action.⁸⁰ This “hard look” is tempered by a “rule of reason” that requires agencies to address only impacts that are reasonably foreseeable – not remote and speculative.⁸¹ “NEPA does not call for certainty or precision, but an *estimate* of anticipated (not unduly speculative) impacts.”⁸² Neither does NEPA call for Federal agencies to do the impossible.⁸³ Further, “NEPA gives agencies broad discretion to keep their inquiries within appropriate and manageable boundaries.”⁸⁴ As the Commission has observed, “NEPA requires consideration of ‘reasonable’ alternatives, not all conceivable ones.”⁸⁵ Further, the

⁷⁹ NEPA, Section 102(2)(C), 42 U.S.C. § 4332.

⁸⁰ *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998).

⁸¹ See, e.g., *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 836 (1973).

⁸² *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005).

⁸³ The Supreme Court has observed that where it is not possible for an agency to analyze the environmental consequences of a proposed action or alternatives to it, requiring such analysis would have “no factual predicate” and under those circumstances an EIS is not required. *Kleppe v. Sierra Club*, 427 U.S. 390, 401-02 (1976).

⁸⁴ *LES*, CLI-98-3, 47 NRC at 103 (citation omitted).

⁸⁵ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012).

Staff's EISs "need only discuss those alternatives that . . . will bring about the ends of the proposed action – a principle equally applicable to Environmental Reports."⁸⁶

The NRC has adopted regulations in 10 C.F.R. Part 51, implementing its NEPA responsibilities, pursuant to which the Staff performs an environmental review for license renewal to assess the potential impacts of 20 additional years of operation.⁸⁷ In 1996, the Commission amended the environmental review requirements in 10 C.F.R. Part 51 to address the scope of environmental review for license renewal applications;⁸⁸ as part of that rulemaking, Appendix B was added to Part 51, delineating the issues that are to be considered in a license renewal environmental review.⁸⁹ The regulations in Part 51 and Appendix B were further amended in 2013, updating the Commission's 1996 findings; in particular, the 2013 amendment redefined the number and scope of the environmental impact issues that must be addressed during license renewal environmental reviews, and incorporated lessons learned and knowledge gained during previous license renewal environmental reviews.⁹⁰

The regulations in 10 C.F.R. Part 51, Appendix B divide the license renewal environmental review into (1) generic issues, and (2) plant-specific issues. The generic impacts of operating a plant for an additional 20 years that are common to all plants, or to a specific subgroup of plants, were addressed in the Commission's "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" ("GEIS"), NUREG-1437 (May 1996), as later

⁸⁶ *Id.* at 339 (footnotes and quotation marks omitted).

⁸⁷ *Turkey Point*, CLI-01-17, 54 NRC at 6-7.

⁸⁸ Final rule, "Environmental Review of Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 28,467 (June 5, 1996).

⁸⁹ The 1996 rule added Appendix B to Subpart A of 10 C.F.R. Part 51, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant"; Appendix B included Table B-1, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," which summarized the findings of the 1996 GEIS.

⁹⁰ Final rule, "Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 78 Fed. Reg. 37,281 (June 20, 2013).

revised in 2013.⁹¹ The findings and analyses contained in the GEIS were used by the Commission as the technical basis for its revisions of 10 C.F.R. Part 51, defining the scope of its review of the environmental impacts of license renewal under NEPA.

Generic impacts analyzed in the GEIS are designated as "Category 1" issues, whereas site-specific issues are designated as "Category 2" issues. A license renewal applicant is generally not required to discuss generic Category 1 issues in its Environmental Report, but instead may reference and adopt the Commission's generic findings set forth in 10 C.F.R. Part 51 and the GEIS.⁹² In addition, pursuant to 10 C.F.R. § 51.53(c)(3)(iv), an applicant's environmental report "must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware." Thus, an applicant must provide a plant-specific review of the non-generic "Category 2" issues in its Environmental Report, and must address any *new and significant* information which might render the Commission's generic Category 1 determinations incorrect in that proceeding.⁹³

The Staff's license renewal environmental review is guided by the 2013 GEIS (NUREG-1437, Rev. 1) (June 2013), and by the "Standard Review Plan for Environmental Review of Nuclear Power Plants – Operating License Renewal" ("ESRP-LR") (NUREG-1555, Supp. 1, Rev. 1) (June 2013). Like the applicant, the NRC Staff is not required to address

⁹¹ See NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Rev. 1 (June 2013), Vols. 1-3 (ML13106A241, ML13106A242, and ML13106A244).

⁹² *Turkey Point*, CLI-01-17, 54 NRC at 11. The Commission has emphasized that generic analysis is an appropriate method of meeting the agency's statutory obligations under NEPA. *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-09-10, 69 NRC 521, 523-25 (2009), citing *Massachusetts v. NRC*, 522 F.3d 115 (1st Cir. 2008).

⁹³ See, e.g., *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-07, 78 NRC 199, 212-13 (2013); *Turkey Point*, CLI-01-17, 54 NRC at 11-12; *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-09-10, 69 NRC 521, 527 (2009).

generic (Category 1) impacts in its plant-specific EIS, which it publishes as a supplement to the GEIS ("SEIS").⁹⁴ The Staff must, however, address any new and significant information of which it becomes aware, which might affect the applicability of the Commission's generic Category 1 determinations in the proceeding.⁹⁵

Contentions raising environmental issues in a license renewal proceeding are limited to those issues which are affected by license renewal and have not been addressed by rulemaking or on a generic basis.⁹⁶ As the Commission has stated, Category 1 issues "are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings."⁹⁷ Thus, the Commission has stated:

The license renewal GEIS determined that the environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be "not significant." Accordingly, this finding was expressly incorporated into Part 51 of our regulations. Because the generic environmental analysis was incorporated into a regulation, the conclusions of that analysis may not be challenged in litigation unless the rule is waived by the

⁹⁴ The 1996 GEIS identified 92 license renewal environmental issues, of which 69 were determined to be generic (*i.e.*, Category 1), 21 were determined to be plant-specific (*i.e.*, Category 2), and two did not fit into either category (*i.e.*, uncategorized). The 2013 revision to the GEIS modified this list, identifying 78 environmental impact issues for license renewal, of which 59 were determined to be generic for all sites, 2 are uncategorized, and 17 are site-specific Category 2 issues. NUREG-1437, Rev. 1, Vol. 1, at 1-36. The findings of the environmental impact analyses conducted for the GEIS (as revised in 2013) are listed in Table B-1 of Appendix B, which lists each issue and its category level.

⁹⁵ See, *e.g.*, *Limerick*, CLI-13-07, 78 NRC at 216-17; *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-16-8, 83 NRC 417, 439 (2016). Following publication of a site-specific supplement to the GEIS, further supplementation is required only "if there are 'significant new circumstances or information' . . . [that] paint[s] a dramatically different picture of impacts compared to the description of impacts in the EIS." *Massachusetts v. NRC*, 708 F.3d at 68-69, quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 7, 12 (1st Cir. 2008); accord, *Limerick*, CLI-13-07, 78 NRC at 211, 216-17.

⁹⁶ *Turkey Point*, CLI-01-17, 54 NRC at 11-12; see 10 C.F.R. § 51.53(c)(3)(i)-(ii).

⁹⁷ *Id.* at 12; see 10 C.F.R. § 51.53(c)(3)(i)-(ii). In *Turkey Point*, the Commission recognized that the rules "provide a number of opportunities for individuals to alert the Commission to new and significant information that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule." *Turkey Point*, CLI-01-17, 54 NRC at 12. No such waiver has been requested in this proceeding.

Commission for a particular proceeding or the rule itself is suspended or altered in a rulemaking proceeding.⁹⁸

B. Analysis of Mr. Gomez's Petition

1. Mr. Gomez's Petition Should Be Denied
Because It Was Late and Was Improperly Filed and Served

As discussed *supra* at 3, the Commission's Hearing Opportunity Notice for this proceeding required that any petitions for leave to intervene must be filed by July 2, 2018 (later extended by Commission Order to August 1, 2018), and must be filed through the NRC's Electronic Information Exchange (EIE), in accordance with the agency's Rules of Practice. Mr. Gomez did not comply with any of those requirements. Rather, he first submitted his Petition on June 21, as a "comment" in response to the Staff's separate Scoping Notice, which he appears to have sent electronically to the agency's Federal Rulemaking website.⁹⁹ In response, the Staff's Project Manager (Lois James) sent a copy of the Hearing Opportunity Notice to Mr. Gomez, informed him that the deadline for filing petitions to intervene had been extended to August 1, and directed him to re-file his petition in accordance with provisions in the Hearing Opportunity Notice.¹⁰⁰ That effort did not succeed; instead of following the procedures set out in the Hearing Opportunity Notice, Mr. Gomez simply re-sent his proposed petition by E-mail to Ms. James, at 12:00 AM on August 2, 2018.¹⁰¹ Later that day, Ms. James forwarded

⁹⁸ *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-03, 65 NRC 13, 17 (footnotes omitted), reconsid. denied, CLI-07-13, 65 NRC 211, 214 (2007). This approach has been found to comply with NEPA. See, e.g., *Massachusetts v. NRC*, 708 F.3d at 68-69.

⁹⁹ See Staff Attachment 2, at 1.

¹⁰⁰ See E-mail message from Lois James (NRC) to Albert Gomez (July 6, 2018) (Staff Attachment 1) at 2.

¹⁰¹ *Id.*

his message to the NRC's Hearing Docket,¹⁰² and one week later, on August 9, the Secretary referred Mr. Gomez's Petition to the ASLBP.¹⁰³

Commission regulations in 10 C.F.R. § 2.302¹⁰⁴ require that documents filed in NRC adjudicatory proceedings "shall be electronically transmitted through the E-filing system, unless the Commission or presiding officer grants an exemption permitting an alternative filing method" Where an exemption is sought, the Commission may approve alternative filing methods by any of several specified methods. In particular, as pertinent here, 10 C.F.R. § 2.302(b)(1)-(2) would permit the filing of documents by first class mail, addressed to the Secretary; or by courier, express mail, and expedited delivery services. Further, all documents (even those filed pursuant to an exemption from the electronic filing requirements) must comply with the electronic formatting requirements in 10 C.F.R. § 2.302(g)(1), as set forth in 10 C.F.R. § 2.302(g)(2). Filings must be signed by the participant, signifying, in part, that the signer has read and knows the contents, that the statements in it are true, and that it is not interposed for delay.¹⁰⁵ Finally, all documents filed in a proceeding must be served upon the Secretary, the presiding officer, and participants in the proceeding,¹⁰⁶ accompanied by a certificate of service stating the names and addresses of the persons served, and the date and manner of service.¹⁰⁷

In addition, the *Federal Register* Hearing Opportunity Notice for this proceeding specifically required that any requests for hearing or petitions to intervene "shall be filed in accordance with the Commission's 'Agency Rules of Practice and Procedure' in 10 CFR part 2";

¹⁰² *Id.* at 1.

¹⁰³ See Staff Attachment 3.

¹⁰⁴ See Statement of Consideration, "Use of Electronic Submissions in Agency Hearings," 72 Fed. Reg. 49,139 (Aug. 28, 2007).

¹⁰⁵ 10 C.F.R. § 2.304(d).

¹⁰⁶ 10 C.F.R. § 2.305.

¹⁰⁷ 10 C.F.R. § 2.305(c).

advised that “[i]nterested persons should consult a current copy of 10 CFR 2.309”; and pointed to electronic and physical repositories where those rules can be accessed.¹⁰⁸ In addition, the Hearing Opportunity Notice explicitly instructed petitioners that “[a]ll documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene . . . must be filed in accordance with the NRC’s E-filing rule,”¹⁰⁹ and it then provided specific instructions regarding compliance with the NRC’s electronic filing requirements, how to obtain assistance in complying with these requirements, and how to obtain a request for exemption from the E-filing requirements.¹¹⁰

Notwithstanding these procedural requirements, Mr. Gomez did not comply with any of the requirements for filing and service of a petition to intervene or request for hearing, set forth in the Commission’s Rules of Practice and the Hearing Opportunity Notice. He did not file his Petition with the NRC’s Electronic Information Exchange; did not seek an exemption from the agency’s E-filing requirements; did not serve his Petition on the Commission, the Board, or other parties to this proceeding, by any method; did not file a certificate of service; and did not sign his Petition. Indeed, only through the Staff’s intercession was Mr. Gomez’s Petition brought to the attention of the Secretary, and only through the Secretary’s efforts was his Petition served upon the Board and parties.

Proper filing of a request for hearing, petition to intervene or, indeed, any pleading, is a fundamental requirement that applies to all persons involved in any type of litigation;¹¹¹ indeed, failure to comply with the NRC’s filing requirements in 10 C.F.R. § 2.304 may be grounds for a

¹⁰⁸ 83 Fed. Reg. at 19,305.

¹⁰⁹ *Id.* (emphasis added).

¹¹⁰ *Id.* at 19,305-06.

¹¹¹ See generally, *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-29, 68 NRC 899, 901-03 (2008) (affirming the dismissal of a party, due to its repeated failures to comply with NRC procedural requirements for filing and service of documents).

refusal to accept that document for filing.¹¹² In addition, proper service of documents upon other parties in a proceeding is a fundamental obligation of any litigant, to ensure that other parties become aware of and can properly address, in a timely manner, the matters stated in those documents. A litigant's failure to serve a pleading upon a party may provide grounds for dismissal of that pleading.¹¹³

In sum, Mr. Gomez's failure to properly file and serve his Petition in accordance with the Commission's requirements, and to file his Petition on or before the deadline of August 1, 2018, warrant that his petition to intervene and request for hearing be denied.

2. Mr. Gomez's Petition Should Be Denied Because
It Does Not Proffer an Admissible Contention

In his Petition, Mr. Gomez presented 10 contentions, in which he expressed concerns regarding: (1) the amount of time that has been available for review of the Applicant's SLRA and for the submission of hearing requests and comments thereon (Contentions 1-3); (2) the need for further metallurgical analysis of the reactor vessel (Contention 3); (3) the need for cleanup of contaminated and hypersaline groundwater (Contention 4); (4) the need for further analysis of alternative energy sources (Contention 5); (5) the possibility that FPL may seek a further uprate, leading to additional CCS impacts (Contention 6); (6) the potential impact of sea level rise on the safety of Turkey Point Units 3 and 4 (Contentions 7 and 10); (7) the environmental impacts of the plants' groundwater plume (Contention 8); and (8) ongoing discussions between FPL and Miami-Dade County regarding the CCS (Contention 9). As discussed below, none of the statements presented in Mr. Gomez's Petition satisfy the

¹¹² 10 C.F.R. § 2.304(f). *Cf. Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 741 n.6 (2005).

¹¹³ *See, e.g., Monticello*, LBP-05-31, 62 NRC at 743 n.13; *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 2), LBP-92-26, 36 NRC 191, 194-95 (1992).

contention admissibility requirements of 10 C.F.R. § 2.309(f)(1); accordingly, his Petition should be denied.

General Considerations

As an initial matter, the Staff notes that Mr. Gomez's Petition contains a number of errors concerning the applicable regulatory framework for this proceeding. Thus, Mr. Gomez requests a hearing under "10 CFR 52.103(b)" and argues that his proposed contentions "will demonstrate that one or more of the acceptance criteria in the combined license have not been, or will not be met,"¹¹⁴ and he raises several concerns with respect to the Applicant's compliance with regulatory requirements in 10 C.F.R. Part 52. However, while those concerns and arguments might apply to a proceeding for a combined license ("COL"), they do not apply to the instant proceeding concerning the application for subsequent license renewal of Turkey Point Units 3 and 4. Similarly, while Mr. Gomez titled his petition as a "Proposed Petition to Intervene and for Hearing under 10 C.F.R. § 2.206," that regulation pertains to requests for enforcement action, rather than requests for hearing on a licensing action, and is inapplicable here.

Finally, as explained in detail below, Mr. Gomez did not provide any specific facts or expert opinions in support of his contentions, and did not cite any specific statement in the SLRA or Environmental Report to show that a genuine dispute exists with the Applicant on a material issue of fact or law. Moreover, to the extent that his contentions raise safety issues, the issues he raises are operating license issues that are beyond the scope of subsequent license renewal under 10 C.F.R. Part 54. Accordingly, as more fully discussed below, Mr. Gomez's Petition does not satisfy the Commission's standards governing the admissibility of contentions, set forth in 10 C.F.R. § 2.309(f)(1), and should be denied.

¹¹⁴ Petition at [unnumbered] 1.

Contention 1

In Contention 1, Mr. Gomez requests an extension of time to file hearing requests, from the initial deadline¹¹⁵ of July 2, 2018,¹¹⁶ which was later extended by the Commission to August 1, 2018 in response to several other petitioners' requests.¹¹⁷ This request, however, does not constitute a contention challenging the Applicant's SLRA or Environmental Report, and it does not comply with any of the requirements of 10 C.F.R. § 2.309(f). The contention therefore should be rejected.

Moreover, insofar as this "contention" constitutes a request for extension of time, it should be denied. Generally, a request must be made no later than ten days after the occurrence or circumstance from which the request arises.¹¹⁸ Consistent with this requirement, the Commission's extension of the deadline to August 1, 2018 was granted in response to requests filed more than 10 days in advance of the original July 2, 2018 deadline. In contrast, Mr. Gomez did not request an extension of time from the Commission or the Board, and did not file his petition until August 2, 2018, when he sent it to the Staff – after the deadline for filing petitions to intervene had passed.¹¹⁹ Therefore, his request is untimely and should be denied.

Mr. Gomez's extension request should also be denied because it is not supported by good cause as required by 10 C.F.R. § 2.307. The entirety of Mr. Gomez's argument is that "[t]he application in question has only been available to the public since March 21st, 2018" and the amount of time provided "does not reasonably accommodate the public with adequate

¹¹⁵ *Id.* at [unnumbered] 1-2.

¹¹⁶ See Florida Power & Light Company; Turkey Point Nuclear Generating, Unit Nos. 3 and 4, 83 Fed. Reg. 19,304, 19,304 (May 2, 2018).

¹¹⁷ Extension Order at 1-2.

¹¹⁸ See 10 C.F.R. § 2.323(a)(2).

¹¹⁹ See Order (Clarifying Briefing Schedule Regarding Gomez Petition) (Aug. 15, 2018), at 1.

review of the license renewal application”¹²⁰ This argument is insufficient because, unlike the requests that the Commission found to be persuasive in its previous extension of the deadline,¹²¹ Mr. Gomez did not provide any specific reasons in support of his request for a 90-day extension. His request for an extension of time should therefore be denied.

Contention 2

In Contention 2, Mr. Gomez requests “an extension to public comments”¹²² Like Contention 1, this “contention” does not constitute a challenge to the Applicant’s SLRA or Environmental Report, and it should therefore be rejected. Moreover, insofar as this “contention” constitutes a request for additional time to submit public scoping comments, due to Mr. Gomez’s asserted need for further consultations with the City of Miami, that request should be presented to the Staff, rather than the Licensing Board in this adjudicatory proceeding. Inasmuch as this “contention” raises a matter that is beyond the scope of the instant proceeding, Contention 2 should be rejected.

Contention 3

In Contention 3, Mr. Gomez asserts that additional metallurgical analysis is needed for components such as the reactor vessel, and he requests an extension of time “in order to have sufficient opportunity to submit formal environmental scoping comments on issues arising under the National Environmental Policy Act includ[ing] concerns related to metallurgical safety review within public comments.”¹²³ He further states:

¹²⁰ Petition at [unnumbered] 1.

¹²¹ Extension Order at 1-2 (granting only a 30-day extension from the original filing deadline despite one request for a 120-day extension and one request for a 91-day extension).

¹²² Petition at [unnumbered] 2.

¹²³ *Id.*

Within the metallurgical analysis section 10 CFR 54.21, it states

“(c), such that there is reasonable assurance - fatigue flaw growth analyses that are based on cyclical loading assumptions; and (e) fracture mechanics analyses that are based on cycle-based loading assumptions.”¹²⁴

Mr. Gomez then asserts, in part, that “[i]f the current application renewal process is advance [sic] prior to qualification of said assumptions and critical metallurgical analysis, such analysis will be incomplete, nor validated as certain”; that “[t]his will leave in question any Quality Assurance standards[,] . . . any certainty that metallurgical embrittlement will not exceed acceptable levels[, and] . . . the Structural integrity of critical operating members such as the reactor vessel”¹²⁵ He then asserts that “said metallurgical analysis [must be] completed by FPL and reviewed by a third party certified metallurgical analysis firm,” and he requests that the SLRA be “withheld and withdrawn” until that metallurgical analysis is completed.¹²⁶

Mr. Gomez’s arguments should be rejected. First, the contention, as written, is excessively vague and confusing, and conflates numerous entirely distinct regulatory standards – including NEPA, the environmental scoping process, quality assurance, fracture toughness, and COL standards under 10 C.F.R. Part 52. It is therefore highly difficult to discern the issues that Mr. Gomez seeks to litigate in this contention, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(i)-(ii). Further, while Mr. Gomez cites 10 C.F.R. § 54.21, the text that he quotes does not exist in this regulation, and the source of that text is unclear.¹²⁷

Second, to the extent that the contention may seek to challenge the application, there is no explanation of how Mr. Gomez disputes the application, which states the Applicant’s position

¹²⁴ *Id.*

¹²⁵ *Id.* at [unnumbered] 2-3.

¹²⁶ *Id.* at [unnumbered] 3.

¹²⁷ Nor is there any obligation for other parties or the Board to search for that language. See, e.g., *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 332 (2012).

that the existing Turkey Point fatigue monitoring aging management program provides an acceptable basis for managing fatigue of components and verifies the continued acceptability of existing analyses through manual cycle counting.¹²⁸ In addition, while Mr. Gomez also states that there is no “certainty that metallurgical embrittlement will not exceed acceptable levels” or for “the Structural integrity of critical operating members such as the reactor vessel” because “the license renewal process [is put] ahead of a formal and completed metallurgical aging study”;¹²⁹ he provides no support for any of these statements and fails to controvert the application, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v)-(vi).

Third, insofar as Contention 3 seeks to raise a safety issue pertaining to subsequent license renewal of Turkey Point Units 3 and 4, it fails to raise a cognizable issue. The scope of safety issues that may be addressed in a license renewal (or subsequent license renewal) proceeding are defined in 10 C.F.R. Part 54. While Mr. Gomez cites regulations in 10 C.F.R. Part 54 in support of this contention, it is difficult to discern precisely which regulation he contends is not satisfied by the SLRA, or which provision of the SLRA is asserted to be deficient. Indeed, the contention is unsupported by any facts or expert opinion, and it nowhere cites any specific portion of the SLRA with which he takes issue, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v)-(vi).

Finally, while Mr. Gomez requests that “said metallurgical analysis” be “reviewed by a third party certified metallurgical analysis firm,”¹³⁰ this request must be rejected, in that it fails to present a concrete issue for litigation, is not within the scope of this proceeding, and does not raise a genuine dispute with the application. Additionally, Mr. Gomez’s reference to “the

¹²⁸ SLRA at B-25 – B-26.

¹²⁹ Petition at [unnumbered] 2-3.

¹³⁰ *Id.* at [unnumbered] 3.

acceptance criteria in the combined license”¹³¹ pertains to the COL for Turkey Point Units 6 and 7, and is neither material to the findings the Commission must make here nor within the scope of this proceeding, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii) and (iv).

For all of the above reasons, Contention 3 is inadmissible and should be rejected.

Contention 4

In Contention 4, Mr. Gomez asserts that the unlined cooling canals “are leaking a host of caustic poisonous chemicals and highly saline waste water into our water supply, already affecting wells and contaminating our aquifer.”¹³² Mr. Gomez asserts that a “clean up regime” has been agreed to by FPL and Miami-Dade County “via” the Department of Environmental Resource Management (“DERM”) – which he contends is inadequate.¹³³ He then requests that the SLRA “be withheld and withdrawn until the current clean up of the poisonous and high salinity plume is completed” and “any law suits related to potential clean water act violations stated within ongoing FPL law suits . . . [are] settled”; and he requests “that a pre-determined non-pollution probationary time frame be set before any existing or future renewal applications be accepted”¹³⁴

Contention 4 should be rejected, in that Mr. Gomez’s concerns do not present a concrete issue that is capable of being redressed in this proceeding, do not constitute a challenge to any specific statement or analysis in the SLRA or Environmental Report, and do not present a material issue that is properly within the scope of this proceeding. Mr. Gomez cites to the Atomic Energy Act of 1954, as amended, and the Commission’s regulations at

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at [unnumbered] 3-4.

10 C.F.R. Part 54; however, neither that law nor that regulation provides a basis for the requested relief. Instead, the Commission's safety review with respect to license renewal is specifically limited to the aging management of certain structures and components and time-limited aging analyses¹³⁵ and does not include cleanup of the environment resulting from past operations.

Additionally, although 10 C.F.R. § 54.29 requires the satisfaction of the requirements of 10 C.F.R. Part 51, those provisions are NEPA-implementing regulations,¹³⁶ whose two goals are forcing agencies to take a hard look at the environmental consequences of proposed actions and making relevant analyses openly available to the public¹³⁷ and do not require that any action be taken to cleanup or redress environmental conditions. Therefore, the relief requested by Mr. Gomez, related to cleanup of the environment, is not within the scope of this proceeding. Similarly, Mr. Gomez's challenge to the "clean up agreement" between FPL and DERM¹³⁸ is not within the scope of this proceeding.

Finally, Contention 4 is based solely on Mr. Gomez's personal opinion; he provides no specific facts or expert opinions in support of this contention as required by 10 C.F.R. § 2.309(f)(1)(v).¹³⁹ Therefore, Contention 4 is inadmissible, pursuant to 10 C.F.R. § 2.309(f)(iii)-(v).

¹³⁵ 10 C.F.R. § 54.29.

¹³⁶ 10 C.F.R. § 51.1.

¹³⁷ See, e.g., *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87 (1998).

¹³⁸ Petition at [unnumbered] 3 (stating that the "clean up regime . . . has not been qualified").

¹³⁹ For example, although Mr. Gomez states that the "clean up regime has already been reviewed by several outside scientific bodies and institutions and has shown to be unsatisfactory and non-
efficacious for the desired results," this statement is not supported by alleged facts or expert opinions, nor has Mr. Gomez provided any references to specific sources.

Contention 5

In Contention 5, Mr. Gomez asserts that FPL's Environmental Report section "8.2 Alternative Energy Sources review" is incomplete, because it does not "include solar nor wind power" ¹⁴⁰ As such, Contention 5 appears to be a contention of omission.

Contention 5 should be rejected, in that it does not demonstrate a genuine dispute with the Applicant. Mr. Gomez bases his claim that the ER omits discussion of wind and solar power alternatives solely on his own assertions, without citing any specific discussion in the ER which he disputes. In fact, however, the Environmental Report does discuss solar and wind power, either alone or in combination with another alternative. ¹⁴¹ Mr. Gomez does not indicate that he disagrees with the Applicant's analysis of those alternatives, and he provides no facts or expert opinions to demonstrate a genuine dispute of material fact with the Applicant, as required by 10 C.F.R. § 2.309(f)(v)-(vi). Finally, while Mr. Gomez states that "the necessary information required by [10 C.F.R.] § 52.99(c)" is not present; the cited regulation, however, pertains to COL applications rather than license renewal, and is not relevant to this proceeding.

For all of these reasons, Contention 5 is inadmissible pursuant to 10 C.F.R. § 2.309(f)(iii)-(vi), and should be rejected.

Contention 6

In Contention 6, Mr. Gomez states that FPL may seek to obtain a power uprate for Turkey Point Units 3 and 4, based on unidentified statements made during the SEIS public scoping meetings. Mr. Gomez contends that such an uprate (should it be requested) could cause the plant's "safe maximum operating temperature" to be exceeded and would cause

¹⁴⁰ Petition at [unnumbered] 4.

¹⁴¹ ER at 7-4, 7-6 – 7-7, 7-9 – 7-10 (discussing as an energy alternative considered to be "reasonable" the combination of natural gas-fired generation and solar photovoltaic facilities, and discussing as energy alternatives not considered to be "reasonable" wind energy and solar photovoltaic and concentrated solar power).

further expansion of the high salinity plume in groundwater.¹⁴² Based on this assertion, Mr. Gomez requests that the application “be withheld and withdrawn based on the risk of further expanding the poisonous and high salinity plume and potential [sic] putting the public in danger by operating Turkey Point Nuclear Plant, Units 3 & 4 beyond safe operating temperatures . . .”¹⁴³

Contention 6 should be rejected. As stated above, this request to withhold and withdraw the SLRA based on environmental cleanup concerns is not within the scope of this proceeding. Additionally, Mr. Gomez does not raise any genuine dispute with the SLRA or Environmental Report, and he provides no support for his assertion that the Applicant will seek a power uprate for Turkey Point Units 3 and 4, or for his assertions regarding the effects of the operation of Turkey Point on the environment – either with respect to subsequent license renewal or any postulated future power uprate. Also, Mr. Gomez’s claim that FPL may submit a future “request for uprating of Turkey Point”¹⁴⁴ is speculative and is beyond the scope of the instant proceeding. Similarly, Mr. Gomez’s assertion that future operation with a power uprate would endanger the public constitutes an issue that would be considered in connection with a power uprate license amendment request and is not within the scope of this proceeding.¹⁴⁵ Finally, while Mr. Gomez refers to 10 C.F.R. § 52.99(c),¹⁴⁶ that regulation pertains to COL applications and is not relevant to this proceeding. Therefore, Contention 6 should be rejected, pursuant to 10 C.F.R.

§ 2.309(f)(iii)-(vi).

¹⁴² Petition at [unnumbered] 4-5.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at [unnumbered] 4.

¹⁴⁵ Moreover, even if this issue were in scope, the contention does not demonstrate a genuine dispute with the Applicant, because Turkey Point Technical Specification 3/4.7.4 requires the shutdown of the plant if average supply water temperature is greater than 104°F. See Florida Power & Light Company, Docket No. 50-250, Turkey Point Nuclear Generating Unit No.3, Renewed Facility Operating License No. DPR-31, at Appendix A, 3/4 7-17 (ML052790649).

¹⁴⁶ Petition at [unnumbered] 5.

Contention 7

In Contention 7, Mr. Gomez asserts that an unidentified individual had made statements which Mr. Gomez believes show that there is “a gap in certainty within NRC related to operating a reactor beyond its original design life” and cites what he claims is an excerpt from “the current EIS, GEIS and SEIS” in support of this assertion.¹⁴⁷ Further, he claims that the quoted language shows that “the NRC may not be incorporating the latest government authorized sea level rise projections and how that impacts its high level waste and spent fuel onsite storage.”¹⁴⁸ He then requests that the SLRA “be withheld and withdrawn based on the egregious misrepresentation and sheer lack of local governing sea level rise projections within [it].”¹⁴⁹

While Mr. Gomez provides a purported quotation in support of this contention, the quoted statement, in fact, provides no support for his assertions. First, the quoted statement refers to an unidentified Category 1 issue in the GEIS; it does not discuss or appear to refer to sea level rise. Second, the statement is unattributed, and its reliability or meaning cannot be discerned. Third, the contention presents no facts or expert opinions in support of Mr. Gomez’s conclusions, and it nowhere challenges any statement in the SLRA or Environmental Report.

In addition, at the end of his pleading, Mr. Gomez included a “[s]upplemental page,” which consists of a highlighted excerpt from the Commission’s decision on FPL’s application for combined licenses for Turkey Point Units 6 and 7).¹⁵⁰ This excerpt states, in pertinent part:

[S]ea level at the Miami Beach station [the nearest tide gauge station to the Turkey Point site] is rising at a rate of 0.78 feet per century. Using the observed data and NRC guidance, FPL estimated a sea level rise of 1.0 feet over the life of Turkey Point Units 6 and 7. Although recent scientific reports discuss the

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 6 and 7)*, CLI-18-1, 87 NRC 39, 59 (Apr. 5, 2018) [citing slip op. at 25-26].

potential for more than one foot of sea level rise by 2100, the multiple conservatisms in other aspects of the storm surge calculation provide a significant safety margin in the event that sea level rise at the site exceeds one foot. Moreover, “the Staff will proactively, routinely, and systematically seek, evaluate, and respond to new information on natural hazards,” including flooding due to sea level rise pursuant to the framework that we approved last year for ongoing assessment of natural hazard information.¹⁵¹

Mr. Gomez states that “[t]hese assumptions were also included in the current Turkey Point . . . License Renewal Application.”¹⁵²

The Commission’s decision in CLI-18-01 – even if cited by FPL in its SLRA, as alleged by Mr. Gomez – does not support an admissible contention. First, to the extent that Contention 7 is a safety contention, in which Mr. Gomez discusses the impact of sea level rise on “operating” Turkey Point and on the “high level waste and spent fuel onsite storage,”¹⁵³ it is inadmissible. Safety contentions in license renewal proceedings are limited to the aging management of certain structures and components and time-limited aging analyses;¹⁵⁴ in contrast, safety issues resulting from projected sea level rise, such as flooding, are current operating issues that are not within the scope of license renewal under 10 C.F.R. § 54.30.¹⁵⁵

Second, to the extent that Contention 7 is an environmental contention, Mr. Gomez does not explain how sea level rise, in combination with the effects of the continued operation of Turkey Point, will impact the environment. Additionally, Mr. Gomez does not provide sufficient information to show that his assertions raise a genuine dispute with the Applicant’s

¹⁵¹ *Id.* (footnotes omitted); see Petition at [unnumbered] 8.

¹⁵² Petition at [unnumbered] 7.

¹⁵³ *Id.* at [unnumbered] 5.

¹⁵⁴ 10 C.F.R. § 54.29.

¹⁵⁵ See, e.g., *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 NRC 1, 11-14 (2013) (finding that a proposed contention that a license renewal application fails to adequately address the risk of flooding is inadmissible because it has to do with whether the applicant is in compliance with its current licensing basis – an issue which, consistent with 10 C.F.R. § 54.30, is not within the scope of license renewal).

Environmental Report. Therefore, Contention 7 is inadmissible, pursuant to 10 C.F.R. § 2.309(f)(iii)-(vi).

Contention 8

In Contention 8, Mr. Gomez requests that the SLRA “be withheld and withdrawn” because “[w]ithin the current EIS, GEIS and SEIS and related supplements and appendixes, the NRC states that: Environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource” but at the same time, “a federal law suit is in play related to potential EPA violations, [and] an increasing plume migrates and expands both easterly and westerly from the current position threatening both our water supply and our federally protected bay.”¹⁵⁶

These assertions fail to establish an admissible contention. First, the statement cited by Mr. Gomez appears to be the NRC’s general definition of a “SMALL” impact, as presented in its environmental impact statements prepared pursuant to NEPA, without reference to any particular environmental issue.¹⁵⁷ Contention 8 does not specify which issue it suggests is mischaracterized as having a “small” impact, or whether it challenges a Category 1 or Category 2 issue. Second, Mr. Gomez does not cite to any portion of the SLRA or Environmental Report with which he takes issue; therefore, this contention does not show a genuine dispute of material fact or law with the Applicant. Finally, there is no explanation of the relevance of the asserted “federal law suit . . . related to potential EPA violations” to this SLRA proceeding; therefore, Mr. Gomez has not demonstrated that this contention is within the scope of or material to the proceeding. Consequently, Contention 8 is inadmissible pursuant to 10 C.F.R. § 2.309(f)(iii)-(vi).

¹⁵⁶ Petition at [unnumbered] 5.

¹⁵⁷ See, e.g., GEIS (NUREG-1437, Vol. 1, Rev. 1), at 1-6.

Contention 9

In Contention 9, Mr. Gomez states that FPL is currently engaged in negotiations with Miami-Dade County regarding the use of wastewater to recharge the cooling canal system. Mr. Gomez requests that the SLRA “be withheld and withdrawn until the water demand issue is resolved between Miami-Dade [County] and FPL for safe operation of the plant without further threatening our bay or drinking and agricultural water supply” through the use of “waste water” to “recharge the current cooling canals,” which Mr. Gomez states is “a critical unknown to continued safe operations of the plant.”¹⁵⁸ Insofar as Contention 9 is concerned with the safety of Turkey Point, it presents an operating license issue rather than an issue that is appropriate for consideration in a license renewal proceeding under 10 C.F.R. Part 54. As such, the issue raised in this contention is not within the scope of this license renewal proceeding. Additionally, Mr. Gomez does not discuss the SLRA or Environmental Report anywhere in this contention, and the contention nowhere establishes a genuine dispute of material fact with the Applicant. Therefore, Contention 9 fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(iii), (v), and (vi).

Contention 10

In Contention 10, Mr. Gomez faults the SLRA for projecting a sea level rise of one foot by 2100, which he contends is inconsistent with other projections of sea level rise by the United Nations, the U.S. Army Corps of Engineers, and the National Oceanic and Atmospheric Administration, of 31”, 61”, and 81”, respectively.¹⁵⁹ Mr. Gomez then goes on to assert that such an inconsistency is impermissible because “FPL does not follow the POANHI - Process for Ongoing Assessment of Natural Hazard Information - SECY-15-0137 part of the Post - Fukushima Near-Term Task Force Recommendations 2.2.”¹⁶⁰

¹⁵⁸ Petition at [unnumbered] 6.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

These assertions do not establish an admissible contention. First, while Mr. Gomez asserts that the SLRA, similar to the Turkey Point Units 6 and 7 COL application, projects a one foot sea level rise by 2100,¹⁶¹ he does not explain where this projection actually appears in the SLRA, if at all, and does not cite the Applicant's actual statement in this regard; the contention, therefore, does not establish a genuine dispute of material fact. Second, insofar as this contention raises a safety issue, it is not within the scope of this license renewal proceeding. As previously discussed, license renewal safety issues are specifically limited to the aging management of certain structures and components and time-limited aging analyses.¹⁶² The POANHI process which Mr. Gomez asserts should be used by FPL is an "ongoing" assessment at current operating plants concerning *plant safety* with respect to flooding hazards, and does not involve an aging management issue. Further, to the extent that Contention 10 raises an environmental issue, it is also not within the scope of this proceeding, because it does not explain how sea level rise, in combination with the effects of the continued operation of Turkey Point, will impact the environment. Finally, while Mr. Gomez refers to 10 C.F.R. § 52.103(b),¹⁶³ that regulation pertains to COLs and is not relevant to this proceeding. Therefore, Contention 10 is inadmissible, pursuant to 10 C.F.R. § 2.309(f)(iii) and (vi).

¹⁶¹ *Id.*

¹⁶² 10 C.F.R. § 54.29.

¹⁶³ Petition at [unnumbered] 6.

CONCLUSION

For the reasons set forth above, Mr. Gomez has standing to intervene in this proceeding. However, his Petition does not present at least one admissible contention; and it was submitted late and in violation of the Commission's requirements governing the filing and service of petitions to intervene. Accordingly, the Staff respectfully submits that the Petition should be denied.

Respectfully submitted,

/Signed (electronically) by/

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Executed in Accord with 10 C.F.R. § 2.304(d):

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Dated at Rockville, Maryland
this 4th day of September 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

| | | |
|-----------------------------------|---|------------------------|
| In the Matter of |) | |
| |) | |
| FLORIDA POWER & LIGHT COMPANY |) | Docket Nos. 50-250-SLR |
| |) | 50-251-SLR |
| (Turkey Point Nuclear Generating, |) | |
| Unit Nos. 3 and 4) |) | |

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC STAFF’S RESPONSE TO PETITION TO INTERVENE AND REQUEST FOR HEARING FILED BY ALBERT GOMEZ,” dated September 4, 2018, along with Attachments 1-3 thereto, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 4th day of September, 2018.

Copies of the foregoing have also been sent to (1) Mr. Albert Gomez (3566 Vista Court, Miami, FL 33133), by E-mail to albert@icassemblies.com; and (2) Richard E. Ayres, Esq. (2923 Foxhall Road, N.W., Washington D.C. 20016), by E-mail to ayresr@ayreslawgroup.com, this 4th day of September, 2018.

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