UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250-SLR and 50-251-SLR
FLORIDA POWER & LIGHT COMPANY	)	ASLBP No. 18-957-01-SLR-BD01
(Turkey Point Nuclear Generating Units 3 and 4)	)	September 20, 2018

APPLICANT'S SURREPLY TO NEW ARGUMENTS RAISED IN REPLY PLEADINGS

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I. INTRODUCTION

For the reasons set forth in its accompanying Motions to Strike Portions of Replies or Alternatively for Leave to File a Surreply ("Motions"),[1] Florida Power & Light Company ("FPL" or "Applicant") files this Surreply to the Replies filed by (1) Southern Alliance for Clean Energy ("SACE") and (2) Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper ("Joint Petitioners") (collectively, "Petitioners") on September 10, 2018.[2] This Surreply specifically addresses new arguments presented by SACE in Section II.A of its Reply and Joint Petitioners on pages 4-5, 11-13, and 53 of their Reply.

The above-referenced Motions describe the history of this proceeding, which concerns FPL's subsequent license renewal ("SLR") application ("SLRA") for Turkey Point Nuclear Generating Units 3 & 4 ("Turkey Point"). In brief, in their respective Petitions to Intervene

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1 *See* Applicant's Motion to Strike Portion of Southern Alliance for Clean Energy's Reply or, in the Alternative, for Leave to File a Surreply (Sept. 20, 2011); Applicant's Motion to Strike Portions of the September 10, 2018 Reply Filed by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper, or in the Alternative File a Surreply (Sept. 20, 2018). FPL has sought leave to file this Surreply in the event the Board does not grant FPL's concurrent motions to strike portions of SACE's and Joint Petitioners' Replies.

2 Southern Alliance for Clean Energy's Reply to Oppositions by Florida Power & Light and NRC Staff to SACE's Hearing Requests (Sept. 10, 2018) (ML18253A282) ("SACE Reply"); Reply in Support of Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Sept. 10, 2018) (ML18253A280) ("Joint Petitioners' Reply").

("Petitions") in this proceeding, SACE proffered two proposed contentions, and Joint Petitioners proffered five proposed contentions, challenging specific aspects of the Environmental Report ("ER") submitted by FPL to the Nuclear Regulatory Commission ("NRC") as Appendix E to the Turkey Point SLRA.[3] The proposed contentions challenge the ER's compliance with the National Environmental Policy Act ("NEPA") and NRC environmental regulations in 10 C.F.R. Part 51. However, none of the proposed contentions specifically alleges—as SACE and Joint Petitioners now do in their Replies in direct contravention of Section 2.309(f)(1)'s strict pleading requirements—that the NRC's "Category 1" generic environmental impact findings codified in 10 C.F.R. Part 51, Appendix B, Table B-1 ("Table B-1) do not apply to the Turkey Point SLRA.

SACE argues that the plain language of 10 C.F.R. § 51.53(c)(3) is "dispositive" and allows only "applicants seeking an initial renewed license" to apply for license renewal under § 51.53(c)(3) and thereby rely on the Category 1 designations of Table B-1.[4] Likewise, Joint Petitioners assert that § 51.53(c)(3) is "unambiguous," that "[b]y its clear terms . . . applies only to a request for an '*initial* renewed license,'" and that, consequently, "[t]he prohibition in § 51.53(c)(3)(i) against challenging Category 1 issues does not apply" here.[5] SACE further asserts that the regulatory history of the NRC's 1996 Part 51 rulemaking and associated Generic Environmental Impact Statement ("GEIS") for license renewal "confirms that the Commission did not intend to expand the scope of [the Table B-1] findings beyond initial license renewal applications."[6] In making these arguments, SACE describes the NRC's 2013 revised GEIS as

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3 *See generally* Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018) (ML18213A529) ("SACE Petition"); Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 1, 2018) (ML18213A417) ("Joint Petitioners' Petition").

4 SACE Reply at 3.

5 Joint Petitioners' Reply at 4 (emphasis in original).

6 SACE Reply at 4-5.

providing only a "limited" update to its 1996 precursor, and disregards more recent Commission-level documents addressing the SLRA review process because they are not formal rulemaking documents that "change the substantive terms of an existing regulation."[7]

As demonstrated below, Petitioners' arguments are inconsistent with Part 51's language, structure, requirements, and regulatory history—including the history of the NRC's June 2013 revisions to the GEIS and Table B-1. They also disregard key statements made by the NRC Staff and the Commission in the course of agency efforts to prepare for the review of SLRAs. The end result is the erroneous conclusion that FPL must fully address all environmental impacts designated by Table B-1 as Category 1 in its SLRA.[8]

II. ARGUMENT

A. The Plain Language and Structure of the NRC's Part 51 Regulations Do Not Support Petitioners' Interpretation of 10 C.F.R. § 51.53(c)(3)

In its Reply, SACE asserts that the plain language of 10 C.F.R. § 51.53(c)(3) "allows only 'applicants seeking an initial renewed license' to apply for license renewal under § 51.53(c)(3) and thereby rely on the Category 1 designations of Table B-1."[9] In support of that argument, SACE cites case law holding that the interpretation of a regulation may not conflict with the plain meaning of the wording used in that regulation.[10] Joint Petitioners make a similar

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7 *Id.* at 6-7.

8 *Id.* at 9.

9 *Id.* at 3 (quoting 10 C.F.R. § 51.53(c)(3)). Section 51.53(c)(3) refers to "applicants seeking an initial renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995." Neither Part 51 nor its regulatory history explains the significance of the June 30, 1995 date or the phrase "initial." However, that date coincides roughly with the June 7, 1995 effective date of the NRC's 1995 Part 54 license renewal rule. *See* Nuclear Power Plant License Renewal; Revisions; Final Rule, 60 Fed. Reg. 22,461 (May 8, 1995). Notably, the preamble to Table B-1 in Appendix B states: "The Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995." Thus, it does not include the word "initial" before "renewed operating license."

10 *See* SACE Reply at 3-4 (citing *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 288 (1988)).

argument in their Reply.[11] On closer scrutiny, however, it is clear that this argument is both greatly oversimplified and critically flawed.

Petitioners' argument rests on the plain meaning rule. That rule of statutory construction holds that the starting point in construing a statute (or a regulation) is the language of the statute or regulation itself, and that if that language is plain and unambiguous, then it must be applied according to its terms.[12] There is, however, one generally recognized exception to that rule: the plain meaning is rejected if it would produce an "absurd" or "unintended" result.[13] That exception applies here because Petitioners' interpretation of Section 51.53(c)(3) yields such a result. The NRC obviously intended for the substantial efficiencies gained by the *reevaluated* generic environmental impact findings contained in the *revised* GEIS and codified in Table B-1 to apply to plants seeking subsequent license renewals.[14]

Indeed, it would be an absurd result, if not arbitrary and capricious action, for the NRC to forego reliance on the Table B-1 conclusions (as amplified by the GEIS's supporting discussion) in reviewing the Turkey Point SLRA, particularly given the NRC's reliance on the same regulatory framework in its review of the initial Turkey Point license renewal application. In

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[11] *See* Joint Petitioners' Reply at 4-5, 12-13.

[12] *See*, *e.g.*, *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-10, 53 NRC 353, 361 (2001) (citation omitted) ("As with all rules, its interpretation begins with the language and structure of the provision itself."); *Hydro Res., Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-04-11, 63 NRC 483, 491 (2004) (citations omitted) ("Courts construe regulations in the same manner as they do statutes: by ascertaining the plain meaning of the regulation.").

[13] *See*, *e.g.*, *United States v. Granderson*, 511 U.S. 39, 47 n.5 (1994) (dismissing an interpretation said to lead to an absurd result); *Pub. Citizen v. Dep't of Justice*, 491 U.S. 440, 454 (1989) ("Where the literal reading of a statutory term would compel 'an odd result,' ... we must search for other evidence of congressional intent to lend the term its proper scope."); *United States v. Mendoza*, 565 F.2d 1285, 1288 (5th Cir. 1978) (citation omitted) ("[I]f a literal construction of the words of a statute would lead to an absurd, unjust, or unintended result, the statute must be construed so as to avoid that result.").

[14] *See*, *e.g.*, NUREG-1437, Rev. 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Main Report" (Final Report), vol. 1 at 7 (June 2013) (ML13106A241) ("This GEIS reviews and reevaluates the issues and findings of the 1996 GEIS in compliance with the requirement to review the material in Appendix B to Subpart A of 10 CFR Part 51 and update it on a 10-year cycle, if necessary. . . . The purpose of the review for this GEIS was to determine if the findings presented in the 1996 GEIS remain valid.").

that proceeding, the Commission emphasized that it "sought to develop license renewal requirements in Part 51 that were both *efficient and more effectively focused*," by "divid[ing] the environmental requirements for license renewal into generic and plant-specific components."[15] It further noted that "[u]nderlying Part 51 is an extensive, systematic study of the potential environmental consequences of operating a nuclear power plant for an additional 20 years"—*i.e.*, the 1996 GEIS.[16] As discussed below, although the NRC reevaluated and updated the GEIS findings in 2013 to account for lessons learned from prior license renewals, operating experience, and other new information, it did *not* alter the fundamental regulatory framework codified in 10 C.F.R. Part 51, including Table B-1's bifurcated treatment of generic and site-specific issues. Moreover, the NRC concluded that no changes to Part 51 and related regulatory guidance were necessary to support the agency's review of SLRAs. *See* Section III.C, *infra*.

Petitioners focus on the phrase "applicants seeking an initial renewed license" in Section 51.53(c)(3). That phrase can be traced back to the NRC's 1996 Part 51 rulemaking, in which it amended its environmental regulations to establish new requirements for the environmental review of reactor license renewal applications.[17] At that time, the Commission understandably was focused on initial operating license renewals, as it did not initiate a program to develop license renewal regulations and associated regulatory guidance until the late-1980s, and the first license renewal application was not submitted until 1998.[18] Thus, there is nothing "dispositive"

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[15] *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 11 (2001) (emphasis added).

[16] *Id.* (citing NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Final Report, vol. 1 (May 1996)).

[17] *See* Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rule, 61 Fed. Reg. 28,467, 28,467, 28,487 (June 5, 1996) ("1996 Part 51 Rulemaking").

[18] The Commission nevertheless recognized at that time the possibility of subsequent license renewal applications. *See* Nuclear Power Plant License Renewal Final Rule, 56 Fed. Reg. 64,943, 64,964-65 (Dec. 13, 1991) ("Section 54.31(d) allows a renewed license to be further renewed upon expiration of the renewal term. . . . The

or remarkable about the fact that Section 51.53(c)(3) contains what is most logically viewed as a residual reference to "initial" renewed licenses, particularly in light of the more recent Part 51 and SLR-related administrative histories discussed in Sections II.B and II.C below.

SACE notes in its Reply that the preamble to the 1991 *proposed* revisions to Part 51 "explicitly states that 'the part 51 amendments apply to one renewal of the initial license for up to 20 years beyond the expiration of the initial license.'"[19] It further states that "[n]o change to that representation is made in the final rule."[20] That argument is specious. Indeed, what is more noteworthy and significant is the fact that the preamble to the 1996 Part 51 *final* rulemaking *omits* any similar representation; *i.e.*, it does not use the phrases "one renewal of the initial license" or "up to 20 years beyond the expiration of the initial license." Instead, the 1996 rulemaking consistently refers to an "additional 20 years" of plant operation or operating life, and in no way limits that additional 20-year operating period to the 20 years following the expiration of a plant's initial operating license.[21] Importantly, the 1996 Part 51 rulemaking—like the current GEIS and Table B-1—reflects the Commission's intent to review the material in Appendix B and update it on a 10-year cycle, if necessary.[22] The Commission's decision to retain the 10-year GEIS review and update provision in its 2013 revisions to Part 51 would make no sense if it had intended for the GEIS and Table B-1 to apply only to initial operating license renewals. If that were the case, the Commission presumably would have said so. Further, as

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Commission agrees that a subsequent renewal application may be submitted prior to expiration of the previous renewal term (under § 54.17(c), up to 20 years prior to that expiration).").

19 SACE Reply at 4 (quoting Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Proposed Rule, 56 Fed. Reg. 47,016, 47,017 (Sept. 17, 1991)).

20 *Id.*

21 *See* 1996 Part 51 Rulemaking, 61 Fed. Reg. at 28,467, 28,471, 28,475, 28,480, 28,482.

22 *See id.* at 28,470-71 ("[T]he NRC has concluded that it is adequate to formally review the rule and the GEIS on a schedule that allows revisions, if required, every 10 years."). *See also* GEIS, Rev. 1, vol. 1 at S-2, 1-7; 10 C.F.R. pt. 51, subpt. A, app. B, tbl. B-1 (preamble) ("On a 10-year cycle, the Commission intends to review the material in this appendix and update it if necessary.").

discussed in Section II.B below, the regulatory analysis supporting the 2013 Part 51 rulemaking reflects the NRC's conclusion that Table B-1 and the GEIS would apply to SLRAs.

In any event, Petitioners' interpretation of Section 51.53(c)(3) is not facially consonant with the overall purpose and structure of the Part 51 regulations governing license renewal environmental reviews. First, in arguing that Section 51.53(c)(3) does not apply to SLRAs, SACE suggests that Section 51.53(c)(2) and Section 51.53(c)(3) are mutually exclusive.[23] That is not the case. Both provisions apply to the SLRA; *i.e.*, an applicant must meet the requirements in Section 51.53(c)(2), subject to the "conditions and considerations" specified in Section 51.53(c)(3)(i)-(iv).[24] In fact, this is reflected in ER Table 1.0-1, which indicates the specific ER sections that address each applicable Part 51 regulation—including 10 C.F.R. § 51.45(b)-(e), 10 C.F.R. § 51.53(c)(2), *and* 10 C.F.R. § 51.53(c)(3).[25]

Second, it is a cardinal rule of construction that the whole statute should be drawn upon as necessary, with its constituent parts being construed within their broader statutory context in a manner that furthers statutory purposes.[26] Similarly, "[i]n construing a regulation's meaning, it

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[23] *See* SACE Petition at 5 ("Section 51.53(c)(2) establishes general requirements for reactor license renewal applicants, and § 51.53(c)(3) establishes requirements for applicants 'seeking an initial renewed license.' Because FPL is seeking a subsequent renewed license, § 51.53(c)(2) applies in this proceeding."); SACE Reply at 9 (asserting that 10 C.F.R. § 51.53(c)(3) "is not applicable to FPL's SLR application" and that FPL must meet the requirements of 10 C.F.R. § 51.53(c)(2)").

[24] 10 C.F.R. § 51.53(c). *See also* 1996 Part 51 Rulemaking, 61 Fed. Reg. at 28,484 ("Pursuant to 10 CFR 51.45(c), 10 CFR 51.53(c)(2) requires the applicant to consider possible actions to mitigate the adverse impacts associated with the proposed action. This consideration is *limited* to designated Category 2 matters." (emphasis added)). *Cf. Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 206 n.26 (2013) ("For example, the provision in section 51.53(c)(3)(ii)(L) [concerning analysis of severe accident mitigation alternatives] could come into play in a proceeding on an application for a *second license renewal term* under 10 C.F.R. § 54.31(d) . . .") (emphasis added).

[25] *See* ER at 1-3 to 1-7 (Table 1.0-1, "Environmental Report Responses to License Renewal Environmental Regulatory Requirements").

[26] *See*, *e.g.*, *United Savings Ass'n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (citations omitted) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.").

is necessary to examine the agency's entire regulatory scheme."[27] Thus, one must view Section 51.53(c) in concert with other Part 51 regulations governing the Staff's license renewal environmental reviews. On this point, it bears emphasis that the preamble to Table B-1 refers to the Commission's assessment of "the environmental impacts associated with granting a renewed operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995." Unlike Section 51.53(c)(3), on which Petitioners' entire "plain language" argument hinges, Table B-1 does *not* refer to "initial" renewed licenses.

Also important here are 10 C.F.R. §§ 51.71 and 51.95. Section 51.71 governs the content of the Staff's draft (and ultimately final) supplemental environmental impact statement ("SEIS"). Section 51.71(d) provides that "[t]he draft [SEIS] for license renewal prepared under § 51.95(c) *will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1* in appendix B to subpart A of this part."[28] Section 51.95(c) provides, among other things, that the license renewal SEIS "shall address those issues as required by § 51.71,"[29] and "shall integrate the conclusions in the [GEIS] for issues designated as Category 1 with information developed for those Category 2 issues applicable to the plant under § 51.53(c)(3)(ii) and any new and significant information."[30]

The claim that Section 51.53(c)(2) requires FPL, as an SLR applicant, to fully address "all environmental impacts designated by Table B-1 as Category 1" cannot be reconciled with

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27 *Millstone*, CLI-01-10, 53 NRC at 366; *see also U.S. Dep't of Energy* (High-Level Waste Repository), LBP-04-20, 60 NRC 300, 335 (quoting 2A Norman J. Singer, *Sutherland Statutory Construction* § 46.05 (6th ed. 2000)) (stating that "provisions are not to be read in isolation without regard to the regulatory scheme in its totality," and "must be 'construed in connection with every other part or section so as to produce a harmonious whole'").

28 10 C.F.R. § 51.71(d) (emphasis added).

29 *Id.* § 51.95(c)(1).

30 *Id.* § 51.95(c)(4).

the plain language of Section 51.71(d) and Section 51.95(c), which clearly directs the Staff to use the GEIS generic impact findings for Category 1 issues. It makes no sense to conclude that an SLR applicant must perform a full site-specific environmental impact evaluation for "all" Category 1 issues, when the Staff is explicitly directed to rely on the GEIS analyses and impact findings for those same issues. Similarly, it is illogical to conclude that Petitioners can proffer contentions challenging Category 1 issues based on the ER, when Sections 51.71(d) and 51.95(c) clearly foreclose such challenges at the draft and final SEIS stages. This is precisely why the pertinent Part 51 regulations must be read holistically—in relation to each other and as part of a coherent regulatory scheme.

Finally, Petitioners' interpretation of Section 51.53(c)(3) also makes no practical sense when viewed in light of the factors underlying the Commission's longstanding decision to rely on generic environmental impact determinations in Part 51. As the First Circuit observed:

> Producing an EIS containing adequate discussion of all the environmental issues relevant to licensing the operation of a nuclear power plant poses a significant task for the NRC. In an effort to streamline the license renewal process, the NRC in 1996 conducted a study to determine which NEPA-related issues could be addressed generically (that is, applying to all plants) and which need to be determined on a plant-by-plant basis. The agency characterizes the first group of issues as Category 1, and the second as Category 2 issues. . . . Category 1 issues are common to all nuclear power plants, or to a sub-class of plants. As such, the NRC does not analyze generic Category 1 issues afresh with each individual plant operating license application. Instead, the agency conducted an extensive survey and generated findings, contained within a [GEIS], that answer Category 1 issues as to all nuclear power plants.[31]

The First Circuit further noted that where environmental impacts of an NRC action are not plant-specific, the Supreme Court has endorsed the generic method as "clearly an appropriate method of conducting the hard look required by NEPA," and that "[a]dministrative efficiency and

[31] *Massachusetts v. United States*, 522 F.3d 115, 119-120, 127 (1st Cir. 2008).

consistency of decision are both furthered by a generic determination of these effects."[32] In short, the NRC's "divergent treatment of generic and site-specific issues is reasonable and consistent with the purpose of *promoting efficiency* in handling license renewal decisions."[33] The argument that the "Category 1 exemptions" in Table B-1 do not apply to FPL's SLRA is inconsistent with that purpose and the overall structure of Part 51, because it would require the NRC to analyze generic Category 1 issues afresh for each SLRA. That is exactly the inefficient result the Commission has sought to avoid through its initial development and subsequent updates of the GEIS and Table B-1.

B. The Regulatory History Associated with the NRC's 2013 Revisions to the GEIS and Part 51 Makes Clear That the Revised GEIS and Table B-1 Apply to SLRAs

While SACE's Reply dwells largely on statements made by the NRC more than two decades ago, far more recent agency statements and actions leave no doubt that SACE's reading of Section 51.53(c)(3) is incorrect. For example, when the NRC issued the revised GEIS in 2013, it acknowledged therein that "[t]here are no specific limitations in the Atomic Energy Act or the NRC's regulations restricting the number of times a license may be renewed.[34] Notwithstanding this recognition, the revised GEIS and Table B-1 draw no distinction between initial and subsequent license renewals with regard to the analysis of environmental impacts.

On the contrary, the GEIS states that it "documents the results of the systematic approach NRC used to evaluate the environmental consequences of renewing the licenses of commercial nuclear power plants and operating the plants for an additional 20 years beyond the *current* license term."[35] It further explains that the GEIS is intended to support decisions on "whether or

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[32] *Id.* at 127 (quoting *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 101 (1983)).

[33] *Id.* (emphasis added).

[34] GEIS, Rev. 1, vol. 1 at S-1, 1-1.

[35] *Id.* at S-4 (emphasis added).

not to renew the operating licenses of individual commercial nuclear power plants for an additional 20 years," and "to serve as a basis from which future NEPA analyses for the license renewal of individual nuclear power plants would tier."[36]

The revised GEIS's references to "current license term" and "an additional 20 years" plainly encompass subsequent 20-year renewals, especially given the Staff's recognition in the GEIS that more than 70 operating reactors at over 40 sites already had obtained initial license renewals from the NRC (thus leaving few remaining prospective applicants for initial license renewals).[37] It is nonsensical to assume that the NRC would expend considerable time and agency resources on the 2013 revisions to the GEIS and associated rulemaking, and not intend for the GEIS findings, as codified in Table B-1, to apply to subsequent license renewals.

Notably, the Regulatory Analysis associated with SECY-12-0063,[38] which supported the NRC's 2013 revisions to 10 C.F.R. Part 51 based on the updated GEIS, reinforces the logical conclusion that the GEIS findings and Table B-1 apply to SLRAs. Specifically, the Regulatory Analysis included prospective SLR applicants as "Affected Licensees," stating that:

> Some plants will become eligible for a second 20-year license extension after FY 2013. … The NRC estimates that a total of 30 license renewal applications (including applications for a *second* license renewal) will be received in the 10-year cycle following the effective date of the rule. [39]

Thus, the NRC clearly expected and accounted for prospective submittals of SLRAs in issuing the revised version of 10 C.F.R. Part 51 in 2013.[40] In fact, the NRC's decision to move forward

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36 *Id.* at 1-7 to 1-8.

37 *Id.* at 1-7. 1-37, 4-145.

38 *See* SECY-12-0063, "Final Rule: Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses" (Apr. 20, 2012) (ML110760033).

39 *Id.*, encl. 2 (Regulatory Analysis) at 25 (ML110760321) (emphasis added).

40 As such, SACE's discussion of the scoping notice and scoping report for the 2013 revised GEIS lends no support to its argument that the revised GEIS reflects only a limited "update" that was not intended to encompass SLR environmental impacts. *See* SACE Reply at 7-8.

with the 2013 rulemaking was premised on a cost-benefit analysis that calculated the dollar value of efficiencies to be gained by generic resolution of environmental issues for those 30 applications—some of which were expected to be SLR applications.[41] In essence, the NRC's *decision* to promulgate the update to Part 51 was based on its *distinct understanding* that 10 C.F.R. § 51.53(c)(3), Table B-1, and the GEIS were applicable to SLR.

C. The NRC's Efforts to Prepare for SLRA Reviews Confirm the Commission's and Staff's Intent to Apply the Revised GEIS and Table B-1 to Such Applications

NRC actions taken in preparation for review of anticipated SLRAs further confirm the applicability of the aforementioned Part 51 regulations to such applications. On January 31, 2014, the Staff issued SECY-14-0016 to inform the Commission of ongoing Staff activities to prepare for the anticipated receipt and review of SLRAs, and to request Commission approval to initiate the rulemaking process to update the Part 54 (but not Part 51) regulatory framework.[42] As especially relevant here, the Staff stated in SECY-14-0016:

> Several options for proceeding with rulemaking, along with the advantages and disadvantages of each option, are summarized below. A detailed discussion of Options 2 through 4 is provided in Enclosure 2. The staff does *not* recommend updating the environmental regulatory framework under 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function," *because environmental issues can be adequately addressed by the existing GEIS and through future GEIS revisions*.[43]

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41 SECY-12-0063, encl. 2 (Regulatory Analysis) at 25 (expecting 9 of the 30 applications to be for initial renewals from 2013 to 2015, and the remaining 21 applications to be for SLRs from 2016 to 2022); *id* at 26-66 (calculating the NRC and industry cost savings to be realized from the Part 51 rulemaking).

42 SECY-14-0016, "Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal," at 1 (Jan. 31, 2014) (ML14050A306).

43 *Id.* at 5 (emphasis added). *See also id.* at 3 ("The 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*.") (emphasis added).

In Enclosure 1 to SECY-14-0016, the Staff reiterated its position that "the revised GEIS is adequate for subsequent license renewal."[44] In support, the Staff noted that it had revised the GEIS "to update and reevaluate the potential environmental impacts arising from the renewal of an operating license for an additional 20 years."[45] In doing so, the Staff "considered the need to modify, add to, consolidate, or delete any of the environmental issues evaluated in the 1996 GEIS," and drew from "[t]he lessons learned and the knowledge gained during previous license renewal environmental reviews, along with public comments received during previous reviews."[46] These statements—and the content of the revised GEIS itself—contravene the argument that the 2013 GEIS represents only a "limited" update of the original 1996 GEIS.[47]

On August 29, 2014, the Commission issued a Staff Requirements Memorandum ("SRM") for SECY-14-0016.[48] The Commission disapproved the Staff's recommendation to initiate rulemaking for power reactor subsequent license renewal. It instead directed the Staff to continue to update license renewal guidance, as needed, to provide additional clarity on the implementation of the license renewal regulatory framework. Specifically, the Commission directed the Staff to address emerging technical issues and operating experience through alternative vehicles (*e.g.*, issuance of generic communications, voluntary industry initiatives, or updates to the Generic Aging Lessons Learned ("GALL") Report).[49]

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44 *Id.*, encl. 1 at 2.

45 *Id.* at 1.

46 *Id.* at 1-2.

47 *See* SACE Reply at 7-8. The revised GEIS itself reflects a robust review. As noted therein, "new research, findings, and other information were considered when the significance of impacts associated with license renewal was being evaluated," and the 78 environmental impact issues carried forward by the Staff for further review were subjected to "detailed consideration in this GEIS." GEIS, Rev. 1, vol. 1 at 1-7.

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

49 *See id.* at 1.

The Commission's SRM and associated Voting Sheets do not explicitly discuss the applicability of Table B-1 or the GEIS to SLRAs.[50] However, if the Commission had disagreed with the foregoing statements in SECY-14-0016 or otherwise perceived the need for clarification regarding the applicability of the GEIS and Table B-1 to SLRAs, then it presumably would have said so in the SRM and/or Voting Sheets. Thus, it reasonably can be inferred that the Commission agreed with the Staff's statements in SECY-14-0016 that "environmental issues can be adequately addressed by the existing GEIS and through future GEIS revisions," and that "the revised GEIS is adequate for subsequent license renewal."[51]

Indeed, in a July 2018 status report on NRC licensing and regulatory activities submitted by Chairman Svinicki to the U.S. Senate Committee on Environment and Public Works, the Commission addressed developments related to the NRC's review of subsequent license renewal applications.[52] The status report specifically notes that 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."[53] It further states that "[t]he staff determined that no revisions were needed to the NRC guidance document entitled, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants [("ESRP-LR")]," *to support environmental*

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50 *See id.*; Commission Voting Record, SECY-14-0016, Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal (Aug. 29, 2014).

51 SACE attempts to diminish the significance of SECY-14-0016 and the Commission's associated SRM by stating that "[n]either of these documents rises to the level of a rulemaking notice or other decision to change the substantive terms of an existing regulation." SACE Reply at 7. That argument, however, incorrectly presupposes that rulemaking is necessary in this case to make a "substantive" change to the NRC's Part 51 regulations. As discussed herein, the NRC Staff and Commission already have considered whether revisions to Part 51 and the Staff's related environmental review guidance to support SLRA review are necessary, and concluded that no such changes are required. SACE's argument thus rings hollow.

52 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.

53 *Id.*, encl. at 45 (emphasis added).

reviews from 60 to 80 years."[54] Contrary to Petitioners' arguments, these Commission statements of record to the U.S. Senate constitute more than a "scintilla" of evidence that the Commission views the current Part 51 regulatory framework—including Table B-1 and the ESRP-LR—as applicable to SLRAs like the one submitted by FPL for Turkey Point.

The NRC Staff appropriately has followed the Commission's directives in the SRM for SECY-14-0016 by, among other things, issuing the Standard Review Plan for SLRAs ("SRP-SLR") in July 2017.[55] Consistent with SECY-14-0016 and the Commission's related SRM, the NRC did not issue any further revisions to Part 54, Part 51, or the GEIS in connection with subsequent license renewal. Significantly, the SRP-SLR states that SLR environmental reports should be prepared in accordance with the guidelines in the NRC's June 2013 ESRP-LR.[56] The ESRP-LR lists Table B-1, among other Part 51 regulations, as containing the "acceptance criteria" that the Staff must use in reviewing license renewal applications. It also repeatedly cites Table B-1 and distinguishes between Category 1 and Category 2 issues, noting that "for issues that meet the three Category 1 criteria, no additional plant-specific analysis is required in future SEISs unless new and significant information is identified."[57] Additionally, in internal agency memoranda issued before and after FPL filed its SLRA, the NRC Staff—including the Chief of the Environmental Review and NEPA Branch within the Division of Materials and License Renewal—expressly recognized the applicability of Table B-1 to SLRAs.[58]

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54 *Id.* at 46 (emphasis added).

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

56 *See id.* at 1.1-2 (citing NUREG-1555, Supp. 1, Rev. 1, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal – Final Report" (June 2013) (ML13106A246)).

57 NUREG-1555, Supp. 1, Rev. 1 at 6.

58 *See* NRC Internal Memorandum from Nancy Martinez to Benjamin Beasley, "Summary of September 19, 2017, Preapplication Meeting with Exelon Regarding the Peach Bottom, Units 2 and 3 Subsequent License Renewal Application," at 2 (Oct. 16, 2017) (ML17275A522) ("Exelon should ensure that a full accounting is provided in

III. CONCLUSION

For the foregoing reasons, there is no legal or factual basis for Petitioners' argument that 10 C.F.R. § 51.53(c)(3) and Table B-1 do not apply to the Turkey Point SLRA, such that FPL must perform full site-specific analyses of environmental impacts designated by Table B-1 as Category 1. Accordingly, that argument should be accorded no weight by the Board in its ruling on the admissibility of Petitioners' proposed environmental contentions.

Respectfully submitted,

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Dated in Washington, D.C.
this 20th day of September 2018

its environmental report for all generic (Category 1) and site-specific (Category 2) issues currently listed in Table B-1 of Appendix B to Subpart A of 10 CFR Part 51."); Memorandum to File from Benjamin G. Beasley, Chief, Environmental Review and NEPA Branch, Division of Materials and License Renewal, NRR, "License Renewal and Subsequent License Renewal Environmental Review Guidelines," Enclosure 3 at 1 (Apr. 5, 2018) (ML18095A183) (stating that SLR applicants "should be certain" to "provide adequate and recent information for all new and revised Category 1 (generic) and Category 2 (site-specific) National Environmental Policy Act issues contained in Table B-1 in Appendix B to Subpart A of the revised 10 CFR Part 51").