

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawken, Chairman
Dr. Michael F. Kennedy
Dr. Sue H. Abreu

In the Matter of

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Units 3 and 4)

Docket Nos. 50-250-SLR & 50-251-SLR

ASLBP No. 18-957-01-SLR-BD01

October 23, 2018

ORDER

(Denying FPL's Motions to Strike Portions of Replies, Granting FPL's Request to File Surreply,
Granting SACE and Joint Petitioners' Motion to File Response to Surreply,
and Authorizing NRC Staff to File Response)

I. BACKGROUND

As relevant here, on August 1, 2018, this Board received petitions to intervene from
(1) Southern Alliance for Clean Energy (SACE),¹ and (2) Friends of the Earth, Inc., Natural
Resources Defense Council, Inc., and Miami Waterkeeper, Inc. (collectively, Joint Petitioners).²

¹ See Southern Alliance for Clean Energy's [SACE] Request for Hearing and Petition to Intervene (Aug. 1, 2018) [hereinafter SACE Pet.].

² See Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper [Joint Petitioners] (Aug. 1, 2018) [hereinafter Joint Pet.].

On August 27, 2018, Florida Power & Light (FPL) and the NRC Staff filed answers to the petitions,³ and on September 10, 2018, SACE and Joint Petitioners filed replies to the answers.⁴

On September 20, 2018, FPL filed motions to strike portions of SACE's and Joint Petitioners' replies or, in the alternative, to file a surreply.⁵ On October 1, 2018, SACE and Joint Petitioners filed separate answers opposing FPL's motions to strike; however, although they did not oppose FPL's motion to file a surreply, they requested permission to file a joint response.⁶

³ See Applicant's Answer Opposing Request for Hearing and Petition to Intervene Submitted by Joint Petitioners (Aug. 27, 2018); Applicant's Answer Opposing SACE's Request for Hearing and Petition to Intervene (Aug. 27, 2018); NRC Staff's Corrected Response to Petitions to Intervene and Requests for Hearing Filed by (1) Joint Petitioners and (2) SACE (Aug. 27 2018) [hereinafter NRC Staff's Answer].

⁴ See Reply in Support of Request for Hearing and Petition to Intervene Submitted by Joint Petitioners (Sept. 10, 2018); SACE's Reply to Oppositions by Florida Power & Light [FPL] and NRC Staff to SACE's Hearing Request (Sept. 10, 2018).

⁵ See Applicant's Motion to Strike Portions of the Sept. 10, 2018 Reply Filed by Joint Petitioners or, in the Alternative, for Leave to File a Surreply (Sept. 20, 2018) [hereinafter FPL's Mot. to Strike Joint Petitioners' Reply]; Applicant's Motion to Strike a Portion of the Sept. 10, 2018 Reply Filed by SACE or, in the Alternative, for Leave to File a Surreply (Sept. 20, 2018) [hereinafter FPL's Mot. to Strike SACE's Reply]. FPL filed its surreply concurrently with its motion. See Applicant's Surreply to New Arguments Raised in Reply Pleadings (Sept. 20, 2018).

In its motions, FPL represented that the NRC Staff did not oppose FPL's motions to strike or its motion to file a surreply; however, the NRC Staff informed FPL that if the Board granted FPL permission to file a surreply and subsequently allowed petitioners to respond to the surreply, the NRC Staff would request an opportunity to file a brief response. See FPL's Mot. to Strike SACE's Reply at unnumbered p. 17 (Certificate of Consultation); FPL's Mot. to Strike Joint Petitioners' Reply at unnumbered p. 17 (Certificate of Consultation).

⁶ See Joint Petitioners' Answer in Opposition to Applicant's Motion to Strike Portions of the Sept. 10, 2018 Reply Filed by Joint Petitioners or, in the Alternative, for Leave to File a Surreply (Oct. 1, 2018); SACE's Response to FPL's Motion to Strike a Portion of SACE's Sept. 10, 2018, Reply or, in the Alternative for Motion for Leave to File a Surreply (Oct. 1, 2018); Mot. for Leave to Respond to Applicant's Surreply (Oct. 1, 2018) [hereinafter Petitioners' Mot. to Respond to FPL's Surreply]. SACE and Joint Petitioners filed their response to FPL's surreply concurrently with their joint motion. See Petitioners' Response to Applicant's Surreply (Oct. 1, 2018). FPL and the NRC Staff stated that they opposed SACE and Joint Petitioners' request to respond to FPL's surreply. See Petitioners' Mot. to Respond to FPL's Surreply at 5 (Certificate of Consultation).

On October 10, 2018, FPL filed an answer opposing SACE and Joint Petitioners' request to respond to FPL's surreply.⁷

II. ANALYSIS

1. FPL asserts that portions of the replies filed by SACE and Joint Petitioners should be stricken. Regarding SACE's reply, FPL urges this Board to strike section II.A in its entirety.⁸ This section contains SACE's argument that 10 C.F.R. § 51.53(c)(3) does not apply to subsequent license renewal (SLR) applications and, accordingly, that an environmental report accompanying an SLR application must contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in appendix B to subpart A of 10 C.F.R. Part 51 (Table B-1). FPL contends that this portion of the reply should be stricken because (1) it constitutes a new argument that could have been raised earlier, but was not;⁹ and (2) it amounts to an untimely new contention that was not pleaded in accordance with the Commission's contention admissibility rules and late-filing requirements.¹⁰

For similar reasons, FPL urges this Board to strike portions of Joint Petitioners' reply. Specifically, FPL asserts that Joint Petitioners' argument regarding the non-applicability of section 51.53(c)(3) to SLR applications should be stricken because (1) it does not amplify arguments advanced in Joint Petitioners' petition;¹¹ and (2) it "amounts to an untimely new proposed contention."¹²

⁷ See Applicant's Answer Opposing Petitioners' Motion for Leave to File Response to Applicant's Sept. 20, 2018 Surreply (Oct. 10, 2018).

⁸ FPL's Mot. to Strike SACE's Reply at 1, 3.

⁹ Id. at 1, 7. Relatedly, FPL argues that SACE's reply fails to amplify a previous argument, as required by the Commission's rules for replies. Id. at 11.

¹⁰ Id. at 9–14.

¹¹ FPL's Mot. to Strike Joint Petitioners' Reply at 9–11.

¹² Id. at 7–9.

In NRC proceedings, “a reply cannot expand the scope of the arguments set forth in the original hearing request. Replies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it.”¹³ Guided by the above principle, we deny FPL’s motion to strike for two independent reasons. First, we conclude that SACE and Joint Petitioners raised the challenged argument in their original petitions,¹⁴ enough so that the NRC Staff’s answer specifically and extensively addressed the interpretation of section 51.53(c)(3) and the applicability of Table B-1 to SLR applications.¹⁵ Second, and in any event, we conclude that the argument challenged by FPL is a permissibly focused response to “legal . . . arguments . . . raised in the [NRC Staff’s] answer[]” to the petitions.¹⁶

2. The interpretation of section 51.53(c)(3), including the corollary issue regarding the applicability of Table B-1 to SLR applications, appears to be a legal issue of first impression. As FPL correctly observes, resolution of this issue will “have significant implications for the scope and orderly disposition of this proceeding as well as future [SLR application] proceedings.”¹⁷ Consistent with our duty to compile a full, fair, and adequate record and to conduct a fair adjudicatory proceeding,¹⁸ we grant FPL’s unopposed request to file a surreply, and we grant SACE and Joint Petitioners’ request to respond to FPL’s surreply. Further, pursuant to the NRC Staff’s request, see supra note 5, we authorize it to file a response to these pleadings on or before Friday, November 2, 2018.

¹³ Nuclear Mgmt. Co. (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) (footnote omitted).

¹⁴ See SACE Pet. at 5–6; Joint Pet. at 16 n.71.

¹⁵ See NRC Staff’s Answer at 18–28.

¹⁶ Palisades, CLI-06-17, 63 NRC at 732.

¹⁷ FPL’s Mot. to Strike SACE’s Reply at 15.

¹⁸ See Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 18–19 (1998); Statement on Policy on Conduct of Adjudicatory Proceedings, CLI-81-08, 13 NRC 452, 453 (1981); 10 C.F.R. § 2.319.

III. CONCLUSION

For the foregoing reasons, we (1) deny FPL's motions to strike, but grant its request to file a surreply; (2) grant SACE and Joint Petitioners' request to respond to FPL's surreply; and (3) authorize the NRC Staff to file a response to these pleadings on or before Friday, November 2, 2018.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 23, 2018

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying FPL's Motions to Strike Portions of Replies, Granting FPL's Request to File Surreply, Granting SACE and Joint Petitioners' Motion to File Response to Surreply, and Authorizing NRC Staff to File Response)** have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk (*).

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Turkey Point, Units 3 & 4, Docket Nos. 50-250 and 50-251-SLR

ORDER (Denying FPL's Motions to Strike Portions of Replies, Granting FPL's Request to File Surreply, Granting SACE and Joint Petitioners' Motion to File Response to Surreply, and Authorizing NRC Staff to File Response)

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[Original signed by Clara Sola]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of October, 2018