

November 2, 2018

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 THE APPLICANT'S SURREPLY  
AND THE PETITIONERS' RESPONSE, REGARDING  
THE APPLICABILITY OF 10 C.F.R. § 51.53(c)(3) TO  
SUBSEQUENT LICENSE RENEWAL APLICATIONS

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's ("Board") Order of October 23, 2018,<sup>1</sup> the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby provides its views regarding the applicability of 10 C.F.R. § 51.53(c)(3) to subsequent license renewal applications ("SLRAs"), in response to the "Applicant's Surreply to New Arguments Raised in Reply Pleadings," filed September 20, 2018, and the "Petitioners' Response to Applicant's Surreply," filed October 1, 2018.

As more fully discussed below, the Staff submits that (a) the regulatory history of the license renewal regulations in 10 C.F.R. Part 51 demonstrates the Commission's intent to apply those regulations (including Appendix B, Table B-1) to subsequent license renewal ("SLR") applications, (b) the Petitioners' literal construction of the regulation, when read in conjunction with the other regulations in 10 C.F.R. Part 51, is inconsistent with those regulations and would

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<sup>1</sup> 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) (Oct. 23, 2018).

lead to an absurd result, and (c) the Petitioners' arguments constitute an impermissible challenge to the Commission's regulations.

### BACKGROUND

This proceeding concerns the application submitted by Florida Power & Light Company ("FPL" or "Applicant") on January 30, 2018, as later supplemented and revised, 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 Nuclear Generating Unit Nos. 3 and 4 ("Turkey Point").<sup>2</sup> The NRC published a notice of receipt of the Turkey Point SLRA on April 18, 2018,<sup>3</sup> and on May 2, 2018, the NRC published a determination of acceptability and sufficiency for docketing of the SLRA, along with a notice of opportunity for hearing on the application.<sup>4</sup>

Timely petitions to intervene were filed by (1) Friends of the Earth ("FOE"), Natural Resources Defense Council ("NRDC"), and Miami Waterkeeper (collectively, "Joint Petitioners"), (2) Southern Alliance for Clean Energy ("SACE"), and (3) Mr. Albert Gomez.<sup>5</sup> The Applicant and Staff filed responses to those petitions,<sup>6</sup> and the Joint Petitioners and SACE then filed

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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").

<sup>5</sup> See (1) 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 Petition"), and (2) Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018) (ML18213A528) ("SACE Petition"). An additional petition to intervene was submitted on August 2, 2018, by Mr. Albert Gomez. Proposed Petition to Intervene and for Hearing under 10 C.F.R. § 2.206, for Docket ID # NRC-2018-0074 (undated) (ML18219A900) ("Gomez Petition").

<sup>6</sup> See (1) NRC Staff's Corrected Response to Petitions to Intervene and Requests for Hearing Filed by . . . Friends of the Earth, Natural Resources Defense Council and Miami Waterkeeper, and . . . Southern Alliance for Clean Energy (Aug. 27, 2018) (ML18239A458) ("Staff Response"); (2) Applicant's

replies to the Applicant's and Staff's responses to their Petitions.<sup>7</sup>

On September 20, 2018, the Applicant filed motions to strike portions of the Joint Petitioners' and SACE's Replies, or in the alternative, for leave to file a Surreply to those filings,<sup>8</sup> to which it attached its proposed Surreply.<sup>9</sup> The Joint Petitioners and SACE (collectively, "Petitioners") filed answers in opposition to the Applicant's motions,<sup>10</sup> and simultaneously filed a joint motion for leave to respond to the Applicant's Surreply together with their proposed

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Answer Opposing Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 27, 2018) (ML18239A449) ("Applicant's Answer to SACE Petition"); and (3) 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) ("Applicant's Answer to Joint Petition"). The Applicant and Staff filed responses to Mr. Gomez's petition on September 4, 2018. See (1) Applicant's Opposition to Albert Gomez's Petition to Intervene (Sept. 4, 2018) (ML18247A569); and (2) NRC Staff's Response to Petition to Intervene and Request for Hearing Filed by Albert Gomez (Sept. 4, 2018) (ML18247A518).

<sup>7</sup> 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"); Southern Alliance for Clean Energy's Reply to Oppositions by Florida Power & Light and NRC Staff to SACE's Hearing Request (Sept. 10, 2018) (ML18253A282) ("SACE's Reply").

<sup>8</sup> See (1) 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, for Leave to File a Surreply (Sept. 20, 2018) (ML18263A284) ("Motion to Strike Joint Petitioners' Reply"); and (2) Applicant's Motion to Strike a Portion of the September 10, 2018 Reply Filed by Southern Alliance for Clean Energy or, in the Alternative, for Leave to File a Surreply (Sept. 20, 2018) (ML18263A285) ("Motion to Strike SACE's Reply").

<sup>9</sup> Applicant's Surreply to New Arguments Raised in Reply Pleadings (Sept. 20, 2018) (ML18263A286) ("Applicant's Surreply").

<sup>10</sup> See (1) Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper's Answer in Opposition to 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, for Leave to File a Surreply (Oct. 1, 2018) (ML18274A396) ("Joint Petitioners' Answer to Motion to Strike"); and (2) Southern Alliance for Clean Energy's Response to Florida Power & Light's Motion to Strike a Portion of SACE's September 10, 2018, Reply, or, in the Alternative, for Motion for Leave to File a Surreply (Oct. 1, 2018) (ML18274A409) ("SACE's Answer to Motion to Strike").

“Response” thereto (as later corrected on October 4, 2018).<sup>11</sup> The Applicant then filed an answer opposing the Petitioners’ request to respond to its Surreply.<sup>12</sup>

On October 23, 2018, the Board issued an Order in which it (a) denied the Applicant’s motions to strike portions of the Petitioners’ Replies, (b) granted the Applicant’s request for leave to file a Surreply, (c) granted the Petitioners’ motion for leave to file a response to the Applicant’s Surreply, and (d) authorized the Staff to file a response to the Applicant’s Surreply and the Petitioners’ response thereto.<sup>13</sup> In accordance with the Board’s Order, the Staff hereby provides its views regarding the matters addressed in the Applicant’s Surreply and the Petitioners’ response thereto.

#### DISCUSSION

The issues addressed in the Applicant’s and Petitioners’ filings concern the applicability of 10 C.F.R. § 51.53(c)(3) to a subsequent license renewal application. That regulation provides, in pertinent part, as follows:

(c) *Operating license renewal stage.* (1) Each applicant for renewal of a license to operate a nuclear power plant under part 54 of this chapter shall submit with its application a separate document entitled "Applicant's Environmental Report—Operating License Renewal Stage."

(2) . . . This report must describe in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents, and any planned refurbishment activities. In addition, the applicant shall discuss in this report the environmental impacts of alternatives and any other matters described in § 51.45. . . .

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<sup>11</sup> See (1) Motion for Leave to Respond to Applicant’s Surreply (Oct. 1, 2018) (ML18274A410); (2) Petitioners’ Response to Applicant’s Surreply (Oct. 1, 2018) (ML18274A411); and (3) Petitioners’ Corrected Response to Applicant’s Surreply (Oct. 4, 2018) (ML18277A318).

<sup>12</sup> Applicant’s Answer Opposing Petitioners’ Motion for Leave to File Response to Applicant’s Sept. 20, 2018 Surreply (Oct. 10, 2018) (ML18283B006).

<sup>13</sup> 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) (Oct. 23, 2018) (ML18296A673), at 5.

(3) For those applicants seeking an initial renewed license and holding an operating license . . . as of June 30, 1995, the environmental report shall include the information required in paragraph (c)(2) of this section subject to the following conditions and considerations:

(i) The environmental report for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in appendix B to subpart A of this part.

(ii) The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in appendix B to subpart A of this part. . . .

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(iii) The report must contain a consideration of alternatives for reducing adverse impacts, as required by § 51.45(c), for all Category 2 license renewal issues in Appendix B to subpart A of this part. No such consideration is required for Category 1 issues in appendix B to subpart A of this part.

(iv) The environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.<sup>14</sup>

In its filings, the Applicant contends that the provisions of 10 C.F.R. § 51.53(c)(3) apply to environmental reports submitted in support of any license renewal application, while the Petitioners generally contend that the regulation's reference to applications for "an initial renewed license" renders it inapplicable to environmental reports submitted in support of subsequent license renewal applications.

As more fully set forth below, the Staff considers the Commission's rules governing initial license renewal to apply, in full, to the NRC's consideration of subsequent license renewal applications. Accordingly, the Staff expects that SLR applicants – like the Staff and the Commission, itself – may rely upon the generic determinations set forth in 10 C.F.R. Part 51,

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<sup>14</sup> 10 C.F.R. § 51.53(c) (emphasis added).

Appendix B, Table B-1, and the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” NUREG-1437, Rev. 1 (June 2013) (“GEIS”), subject to the consideration of any “new and significant information” that may render such generic determinations inapplicable or insufficient for a plant-specific license renewal/SLR application, in accordance with 10 C.F.R. § 51.53(c)(3)(iv).<sup>15</sup> Further, as set forth in the Staff’s response to the Joint Petitioners’ and SACE’s petitions to intervene, a person who seeks to set aside those generic determinations in a specific licensing proceeding may not do so without obtaining a waiver of those determinations by the Commission, pursuant to 10 C.F.R. § 2.335.<sup>16</sup>

The Staff has previously provided its views regarding the applicability of 10 C.F.R. Part 51, Table B-1, and the GEIS to SLR applications.<sup>17</sup> In the following discussion, the Staff responds to the Applicant’s and Petitioners’ arguments concerning these matters. For the reasons set forth below, the Staff submits that the Petitioners’ arguments should be rejected, and the assertions in their contentions which challenge the Applicant’s reliance on the generic determinations in 10 C.F.R. Part 51, Appendix B, Table B-1, should be dismissed as an impermissible challenge to the Commission’s regulations governing license renewal.

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<sup>15</sup> As the Staff stated previously, 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. 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. Staff Response, at 26-27, *citing Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 11 (2001). As the Staff noted, the Commission has emphasized that generic analysis is an appropriate method of meeting the agency’s statutory obligations under NEPA. *Id.* at 26 n.99, *citing 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).

<sup>16</sup> See Staff Response at 16 n.61, 20-23, 27-28, 54-56 (Joint Petitioners’ Contention 5-E), and 62-63 (SACE Contention 1).

<sup>17</sup> *Id.* at 20-23 and 27-28.

I. The Regulatory History of the License Renewal Provisions in 10 C.F.R. Part 51 Demonstrates That Those Regulations (Including § 51.53(c)(3) and the Generic Determinations in Appendix B, Table B-1) Apply to SLR Applications.

In 1991, anticipating the receipt of nuclear power plant license renewal applications, the NRC published a proposed rule<sup>18</sup> and a draft generic environmental impact statement for license renewal.<sup>19</sup> In the Statements of Consideration (SOC) for the proposed rule, the Commission noted that “[t]he 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.”<sup>20</sup> Consistent with this approach, the proposed rule in 10 C.F.R. § 51.53(c)(3) provided that “[f]or those applicants seeking an *initial* renewal license . . . the scope of issues to be addressed in the supplemental report will be limited” to only certain issues.<sup>21</sup> Neither the proposed rule nor the draft GEIS included any specific requirements for applicants seeking license renewal beyond the initial license renewal term.

The NRC adopted the final rule and published the final GEIS in 1996.<sup>22</sup> In the final rule, the Commission left in place much of the language in proposed § 51.53(c)(3), including the direction that environmental reports associated with initial license renewal applications may rely

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<sup>18</sup> Proposed Rule, Environmental Review for Renewal of Operating Licenses, 56 Fed. Reg. 47,016 (Sept. 17, 1991) (“1991 Proposed Rule”).

<sup>19</sup> Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437 (Aug. 1991).

<sup>20</sup> See Staff Response at 20 n.76, *citing* 1991 Proposed Rule, 56 Fed. Reg. at 47,017. Elsewhere in the SOC, the Commission similarly observed that the proposed revision to 10 C.F.R. Part 51 and the draft GEIS considered the environmental impacts of license renewal for 20 years beyond the initial 40-year operating license term. See *id.* at 47,019, 47,020.

<sup>21</sup> *Id.* at 47,027-28 (emphasis added).

<sup>22</sup> Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,” 61 Fed. Reg. 28,467 (June 5, 1996) (“1996 Final Rule”). In adopting the final rule, the Commission committed to review the regulation and to update it as necessary, on a 10-year cycle. *Id.* at 28,490.

on the Commission's generic determinations regarding the environmental impacts for the Category 1 issues listed in 10 C.F.R. Part 51, Appendix B, Table B-1.<sup>23</sup> Like the 1991 proposed rule, the final rule and GEIS included no specific requirements for applicants seeking subsequent license renewal beyond the initial license renewal term.<sup>24</sup>

In July 2009, the Commission issued a proposed revision to the license renewal-related environmental regulations in 10 C.F.R. Part 51<sup>25</sup> and a draft revised GEIS.<sup>26</sup> Concurrently, the Commission issued for comment a draft Regulatory Analysis,<sup>27</sup> draft Regulatory Guide 4.2,<sup>28</sup> and draft Environmental Standard Review Plan ("ESRP").<sup>29</sup> In the draft Regulatory Analysis accompanying the proposed rule, the Commission noted that it expected to receive subsequent license renewal applications:

Some plants will become eligible for a second 20-year license extension after FY 2013. While the NRC understands that the possibility exists for license holders to submit a second 20-year

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<sup>23</sup> *Id.* at 28,487.

<sup>24</sup> In its Surreply, the Applicant suggests that the Commission intended the 1996 rule to apply to license renewals following the initial license renewal term. See Applicant's Surreply at 6. The Staff is unable to conclude whether the Applicant's view is correct. However, as discussed below, the Regulatory Analyses for the 2013 rulemaking demonstrate the Commission's intent to apply its regulatory framework for the consideration of license renewal environmental impacts, to all license renewal applications – including SLRAs. See discussion *infra* at 9-15. In this regard, the Staff shares the Applicant's view that the Commission drew no distinction between initial license renewal applications and SLRAs in its 2013 rulemaking. See Applicant's Surreply at 10-12.

<sup>25</sup> Proposed Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 74 Fed. Reg. 38,117 (July 31, 2009). The SOC for the proposed rule provided, in the Section-by-Section Analysis, that the revisions to 10 C.F.R. § 51.53(c)(3)(ii)(A), (B), and (E) pertained to "those applicants seeking an initial license renewal." *Id.* at 38,128.

<sup>26</sup> Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Draft for Comment, NUREG-1437, Rev. 1 (July 2009) (ML090220654) ("2009 Draft GEIS").

<sup>27</sup> Enclosure 2, "Regulatory Analysis," to SECY-09-0034, "Proposed Rulemaking – Environmental Protection Regarding the Update of the 1996 Generic Environmental Impact Statement for Nuclear Power Plant License Renewal" (Mar. 3, 2009) (ML083460087) ("Draft Regulatory Analysis").

<sup>28</sup> Draft Regulatory Guide DG-4015, Proposed Revision 1 of Regulatory Guide 4.2, Supplement 1 (July 2009) (ML091620409) ("2009 Draft Regulatory Guide").

<sup>29</sup> Standard Review Plans for Environmental Reviews of Nuclear Power Plants, Draft Report for Comment, NUREG-1555, Supp. 1, Rev. 1 (July 2009) (ML090230497) ("Draft ESRP").

license renewal application, no letters of intent have been received as of the issuance date of this document. The NRC conservatively estimates receiving 4 applications per year from FY 2014 through FY 2020.<sup>30</sup>

In 2013, the NRC issued the revised GEIS<sup>31</sup> and revised final rule.<sup>32</sup> In addition, the Commission issued revised Regulatory Guide 4.2 and a revised ESRP,<sup>33</sup> as well as a final Regulatory Analysis.<sup>34</sup> In the final Regulatory Analysis, the Commission estimated 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.”<sup>35</sup>

In sum, the term “initial renewed license” in 10 C.F.R. § 51.53(c)(3) first appeared in a proposed rule published in September 1991.<sup>36</sup> This language carried forward into the 1996 final

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<sup>30</sup> Draft Regulatory Analysis at 15. As indicated, the Commission expected to receive four license renewal applications per year for seven years, or 28 applications in total. Inasmuch as there were 104 reactor units at the time, of which 71 units had received initial license renewals and 15 other applications were then under review, it appears that only 18 reactor units remained eligible for initial license renewal – revealing that the Commission expected to receive SLR applications for 10 nuclear power reactors among the expected 28 license renewal applications.

<sup>31</sup> Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Final Report, NUREG-1437, Revision 1 (June 2013) (ML13107A023) (“2013 GEIS”).

<sup>32</sup> Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37281 (June 20, 2013) (“2013 Final Rule”).

<sup>33</sup> See (1) Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications, Regulatory Guide 4.2, Supp. 1, Rev. 1 (June 2013) (ML13067A354) (“Reg. Guide 4.2”); and (2) NUREG-1555, Supp. 1, Rev. 1, “Standard Review Plans for Environmental Reviews for Nuclear Power Plants”, Final Report (June 2013) (ML13106A246) (“2013 ESRP”).

<sup>34</sup> Enclosure 2, “Regulatory Analysis,” to SECY-12-0063, “Final Rule: Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses” (Apr. 4, 2012) (ML110760321) (“Final Regulatory Analysis”).

<sup>35</sup> *Id.* at 25. Thus, considering the limited number of reactors that had not yet received an initial license renewal, the Regulatory Analysis supporting the final 2013 rule appears to reflect the Commission’s belief that approximately 12 of the 30 license renewal applications it expected to receive and consider under the revised rule would be SLR applications.

<sup>36</sup> See 1991 Proposed Rule, 56 Fed. Reg. at 47,027; see also Staff Response at 20 n.76, *citing* the 1991 Proposed Rule.

rule (which included Appendix B, Table B-1),<sup>37</sup> as well as into the 2013 revisions to 10 C.F.R. Part 51 and the GEIS.<sup>38</sup> However, while the Commission has not disturbed the language in 10 C.F.R. § 51.53(c)(3), requiring applicants for an “initial” license renewal to conform their environmental reports to the requirements set out in 10 C.F.R. Part 51, Table B-1 (thereby allowing them to rely on the analyses in the GEIS and Table-B-1 for Category 1 issues),<sup>39</sup> the Commission has not promulgated any other requirements that specifically apply to an environmental report submitted for an SLRA.<sup>40</sup>

The absence of any regulatory requirements that would pertain specifically (and only) to SLRAs is not unintended. As the Applicant explained in its Surreply (and the Staff explained previously), in 2014 the Staff prepared recommendations for consideration by the Commission (SECY-14-006) concerning the regulatory treatment of SLRAs. Therein, the Staff stated:

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

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<sup>37</sup> 1996 Final Rule, 61 Fed. Reg. 28,467. 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.

<sup>38</sup> 2013 Final Rule, 78 Fed. Reg. 37,281.

<sup>39</sup> The Commission did make certain other changes in the subsections of 10 C.F.R. § 51.53(c)(3) in the 2013 rulemaking. See *id.* at 37,316 (amending several subparagraphs of § 51.53(c)(3)(ii), without changing the “initial” language in the introductory paragraph of § 51.53(c)(3). In addition to directing initial license renewal applicants to rely on the generic determinations for Category 1 issues, § 51.53(c)(3) requires applicants for initial license renewal to submit plant-specific analyses of applicable Category 2 issues, and to analyze any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.

<sup>40</sup> See *generally*, NUREG-1850, “Frequently Asked Questions on License Renewal of Nuclear Power Reactors” (March 2006) (ML ML061110022), Question 1.3.10, at 1-12 (“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*”) (emphasis added).

2013, and believes that the update is adequate for a future subsequent license renewal application.<sup>41</sup>

Significantly, the Commission agreed with the Staff's assessment in its subsequent Staff Requirements Memorandum ("SRM"), concluding that no additional rulemaking was needed for the consideration of subsequent license renewal applications.<sup>42</sup> Rather, the Commission directed the Staff to undertake other efforts, such as to "continue to update license renewal guidance, as needed, to provide additional clarity on the implementation of the license renewal regulatory framework."<sup>43</sup>

In the Petitioners' view, SLRAs must comply with 10 C.F.R. § 51.53(c)(2) and may not rely upon the generic determinations in 10 C.F.R. Part 51, Appendix B and the GEIS.<sup>44</sup> However, they point to no language in the regulations indicating that the Commission intended some *other* regulatory approach to apply uniquely to SLR applicants. Nor has the Staff identified any regulatory basis for such a view.

Contrary to the Petitioners' assertions, the history of the 2013 rulemaking and the Commission's adoption of the 2013 revision of the GEIS, demonstrates the Commission's intent to apply the revised regulations and the revised GEIS to subsequent license renewal applications, rather than limit them solely to initial license renewal applications. For instance, the 2013 GEIS observed 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."<sup>45</sup> Further, the

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<sup>41</sup> See (1) Staff Response at 21 n.79, citing SECY-14-0016, "Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal" (Jan. 13, 2014) (ML14050A306), at 3; and (2) Applicant's Surreply at 12-15

<sup>42</sup> "Staff Requirements – SECY-14-0016 – Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal" (Aug. 29, 2014) (ML14241A578) ("SRM").

<sup>43</sup> *Id.*

<sup>44</sup> Petitioners' Corrected Response to Applicant's Surreply, at 19.

<sup>45</sup> 2013 GEIS, at S-1 and 1-1.

NRC explicitly considered the potential receipt of SLR applications in both the draft and final regulatory analyses supporting the 2013 rulemaking.<sup>46</sup>

In particular, the final Regulatory Analysis considered SLR applicants in its cost-benefit analysis, implying that the 2013 rule and GEIS would apply to both initial and subsequent license renewal applicants; in this regard, it stated:

Some plants will become eligible for a second 20-year license extension after FY 2013. While the NRC understands that the possibility exists for license holders to submit a second license renewal application, no letters of intent have been received as of the issuance date of this document. The NRC estimates receiving 3 applications per year from FY 2015 through FY 2022. 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.<sup>47</sup>

Apart from the 1991 SOC's statement that the proposed "part 51 amendments apply to one renewal of the initial license for up to 20 years,"<sup>48</sup> nowhere in the regulatory history for the 1996 rule was there any discussion suggesting that the regulations would only apply to initial license renewal applications. Moreover, nowhere in the regulatory history of the 2013 rulemaking was any such limitation imposed – in either SECY-09-0034 or the related SRM;<sup>49</sup> the draft Regulatory Analysis;<sup>50</sup> the *Federal Register* notice for the proposed rule;<sup>51</sup> the draft

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<sup>46</sup> See discussion *supra* at 9.

<sup>47</sup> Final Regulatory Analysis, at 25 (emphasis added).

<sup>48</sup> 56 Fed. Reg. at 47,017.

<sup>49</sup> SECY-09-0034, "Proposed Rulemaking – Environmental Protection Regarding the Update of the 1996 Generic Environmental Impact Statement for Nuclear Power Plant License Renewal," at 1 (Mar. 3, 2009) (ML091050197) (explaining that the subject of the rulemaking is environmental issues that must be addressed in "a *license renewal* application") (emphasis added); Staff Requirements – SECY-09-0034 – Proposed Rulemaking – Environmental Protection Regarding the Update of the 1996 Generic Environmental Impact Statement for Nuclear Power Plant License Renewal (May 4, 2009) (ML091240582); SECY-09-0034 Commission Voting Record (ML091260122).

<sup>50</sup> Draft Regulatory Analysis at 15.

<sup>51</sup> 2009 Proposed Rule, 74 Fed. Reg. at 38,117 (providing notice that the NRC proposes to amend the environmental issues that must be addressed in "applications for *license renewal*") (emphasis added).

revised GEIS;<sup>52</sup> SECY-12-0063 or the related SRM;<sup>53</sup> the final Regulatory Analysis;<sup>54</sup> the *Federal Register* notice for the final rule;<sup>55</sup> the final revised GEIS;<sup>56</sup> the draft or final revision of Regulatory Guide 4.2;<sup>57</sup> or the draft or final revised ESRP.<sup>58</sup> To the contrary, each of these documents discusses license renewal *in general*, and does not differentiate between initial and subsequent license renewal.

The Commission's determination, in its 2014 SRM, that no additional rulemaking was needed for subsequent license renewal, confirms the applicability of the existing environmental regulatory framework to SLR applications. Taking into consideration this extensive regulatory history, and the Commission's determination in 2014 that specific regulatory requirements for subsequent license renewal are not needed, it is reasonable to conclude that the 2013 GEIS and revised Table B-1 apply to both initial and subsequent license renewal applications.<sup>59</sup> The

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<sup>52</sup> 2009 Draft GEIS (stating 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").

<sup>53</sup> SECY-12-0063, "Final Rule: Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," at 1 (Apr. 20, 2012) (ML110760045) ("The final rule will redefine the number and scope of the environmental impact issues that must be addressed by the NRC and applicants during *license renewal* environmental reviews") (emphasis added); Staff Requirements – SECY-12-0063 – Final Rule: Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (Dec. 6, 2012) (ML12341A134) (same); SECY-12-0063 Commission Voting Record (ML12341A250).

<sup>54</sup> Final Regulatory Analysis at 25.

<sup>55</sup> 2013 Final Rule, 78 Fed. Reg. at 37,282 ("The final rule redefines the number and scope of the environmental impact issues that must be addressed by the NRC during *license renewal* environmental reviews") (emphasis added).

<sup>56</sup> 2013 GEIS at S-1, 1-1 (stating 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").

<sup>57</sup> Regulatory Guide 4.2, Supplement 1, Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications, at 1 (June 2013) (ML13067A354) (providing that "[t]his regulatory guide provides general procedures for the preparation of environmental reports . . . submitted as part of an application for *the renewal* of a nuclear power plant operating license") (emphasis added). *Accord*, 2009 Draft Regulatory Guide, at 1.

<sup>58</sup> 2013 ESRP at 1 (providing instructions for Staff use in "conducting an environmental review for *the renewal* of a nuclear power plant operating license(s)") (emphasis added). *Accord*, Draft ESRP at 1.

<sup>59</sup> As the Staff noted previously, the Commission recently confirmed that "no revisions to either the safety or environmental regulations are needed to support the assessment of a SLR application." See Staff Response at 23 n.84, *citing* Letter from Kristine L. Svinicki (Chairman, NRC) to Hon. John A.

Petitioners' argument that the NRC's fundamental regulatory scheme for license renewal (including the determinations in 10 C.F.R. Part 51, Appendix B, Table B-1 and the GEIS) does not apply to subsequent license renewal applications, based on the continued presence of the term "initial renewed license" in § 51.53(c)(3), should be rejected.

This conclusion is not disturbed by the Petitioners' argument that the 2013 GEIS, in several instances, discusses the impact of operating for 60 years, intimating that the GEIS therefore does not apply to operation for 80 years.<sup>60</sup> In this regard, they observe, for example, that (a) the 2013 GEIS estimates the cumulative increase in fatal cancer to an individual worker or to the maximally exposed individual as a "50 percent increase" over that for 40 years of operation;<sup>61</sup> and (b) for decommissioning purposes, "an additional 20 years of operations would increase the amount of [long-lived radionuclides] by 50 percent" above their contribution to dose for 40 years of operation (i.e., under 0.2 person-rem), so that the incremental dose during decommissioning "after 20 additional years of operations would be less than 0.1 person-rem."<sup>62</sup> These arguments do not render the analyses in the GEIS inapplicable to SLR. Rather, the analyses in the GEIS concern the *incremental* effects of an additional 20 years of operation – regardless of whether the plant had operated for 40 years or 60 years prior to the requested

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Barrasso (Chairman, U.S. Sen. Committee on Environment and Public Works) (July 19, 2018) (ML18170A241), Enclosure (ML18170A284), at 45-46.

<sup>60</sup> Petitioners' Corrected Response to Applicant's Surreply, at 7-8.

<sup>61</sup> See 2013 GEIS at 4-138 – 4-139 (radiation exposures to plant workers); *id.* at 4-144 – 4-146 (radiation exposures to the public).

<sup>62</sup> *Id.* at 4-217 (radiation exposures to plant workers and to the public from decommissioning). See also *id.* at 4-170 (waste management).

license renewal.<sup>63</sup> Accordingly, the Petitioners' arguments do not establish that the 2013 GEIS is inapplicable to subsequent license renewal.<sup>64</sup>

II. The Petitioners' Interpretation of 10 C.F.R. § 51.53(c)(3) Conflicts with the Regulatory Framework of 10 C.F.R. Part 51 and Would Have an Absurd Result.

In their arguments to the Board, the Petitioners assert that the language in 10 C.F.R. § 51.53(c)(3), directing "applicants seeking an initial renewed license" to include only certain information in their environmental reports (and may rely on the generic determinations in Table B-1), signifies that other license renewal applicants are not addressed in § 51.53(c)(3) and therefore may not rely on the generic determinations in Table B-1.<sup>65</sup> This interpretation of the regulation must be rejected, in that it (a) is inconsistent with the Commission's environmental regulatory framework for license renewal, and (b) would lead to an absurd result.

First, the Petitioners fail to recognize that the Commission's regulations in 10 C.F.R. Part 51 are intended to implement the agency's responsibilities under the National Environmental Policy Act of 1969, as amended ("NEPA"). As stated in the Staff's response to their petitions to intervene, NEPA 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:

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<sup>63</sup> Similarly, the statement in the GEIS that "the accumulated quantity of waste material needing long-term storage or disposal is expected to be approximately 50 percent larger" than the "amount generated during the current licensed term," 2013 License Renewal GEIS at 4-170, applies equally to a 20-year extension from 60 to 80 years as to a 20-year extension from 40 to 60 years (*i.e.*, in each case there will be *an additional* amount of waste equal to approximately 50 percent of the waste generated during the 40-year operating license).

<sup>64</sup> Moreover, as the Commission observed previously, "even where the GEIS has found that a particular impact analysis applies generically (Category 1), the applicant must still provide additional analysis in its [ER] if new and significant information may bear on the applicability of the Category 1 finding at its particular plant." Turkey Point, CLI-01-17, 54 NRC at 11. See discussion *supra* at 6 n.15.

<sup>65</sup> Petitioners' Corrected Response to Applicant's Surreply, at 19.

- (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.<sup>66</sup>

Significantly, nowhere does NEPA impose any requirement on a license applicant. Rather, the NRC, in adopting its regulations in 10 C.F.R. Part 51, established requirements for applicants, to assist the NRC in fulfilling its NEPA responsibilities – including specific requirements for applicants to submit environmental reports and information to assist the Commission in its review of various categories of license applications. The same approach was followed in the NRC's revisions to 10 C.F.R. Part 51 for license renewal: The Commission set forth requirements governing the Staff's environmental review of license renewal applications, as well as requirements to be followed by applicants for license renewal.

The Commission's regulations in 10 C.F.R. § 51.95(c) govern the NRC's environmental evaluations "[i]n connection with the renewal of an operating license." Pursuant to this regulation, the Staff is directed to prepare a final supplemental environmental impact statement ("SEIS") for license renewal, *as "a supplement to the [GEIS],"*<sup>67</sup> in which it is to "address those issues as required by 10 C.F.R. § 51.71."<sup>68</sup> The regulation directs that "the NRC staff, adjudicatory officers, and Commission shall integrate the conclusions in the [GEIS] for issues designated as Category 1 with information developed for those Category 2 issues applicable to

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<sup>66</sup> NEPA, Section 102(2)(C), 42 U.S.C. § 4332.

<sup>67</sup> 10 C.F.R. § 51.71(c) (emphasis added).

<sup>68</sup> 10 C.F.R. § 51.71(c)(1).

the plant under § 51.53(c)(3)(ii) and any new and significant information.” Further, “the NRC staff, adjudicatory officers, and Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable” – based on site-specific information on applicable Category 2 issues, the generic determinations on Category 1 issues set out in 10 C.F.R. Part 51, Appendix B, Table B-1, and the GEIS. Similarly, the regulation in 10 C.F.R. § 51.71(d) requires that the NRC’s draft supplemental environmental impact statement “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 [10 C.F.R. Part 51],*” in addition to considering applicable Category 2 issues.

The NRC looks to the applicant for a requested licensing action to supply relevant information for consideration by the NRC in preparing its NEPA-mandated environmental evaluations. As pertinent here, 10 C.F.R. § 51.53(c)(1) requires “[e]ach applicant for renewal” of an operating license to submit an “Environmental Report – Operating License Renewal Stage [(ER)].” Section 51.53(c)(2) requires, in part, that the ER describe the affected environment around the plant, modifications to the plant and any planned refurbishment activities, and the environmental impacts of alternatives. Section 51.53(c)(3) provides specific instructions regarding the “conditions and considerations” governing the scope of the information that must be provided by a license renewal applicant.<sup>69</sup>

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<sup>69</sup> The “conditions and considerations” in 10 C.F.R. § 51.53(c)(3) provide, *inter alia*, that “[t]he environmental report for *the operating license renewal stage* is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in Appendix B to [10 C.F.R. Part 51]”; and the ER must contain “analyses of the environmental impacts of the proposed action . . . associated with license renewal and the impacts of operation during the renewal term.” Notably, this language refers to the “operating license renewal stage” and “license renewal” generally, and does not specify the *initial* operating license renewal stage or distinguish between initial versus subsequent license renewal. Similarly, the remaining subparagraphs of 10 C.F.R. § 51.53(c)(3), refer to “license renewal issues” and “license renewal” generally, and do not specify initial license renewal issues or initial license renewal. Likewise, 10 C.F.R. Part 51, Appendix B, addresses “the environmental impacts associated with granting a renewed operating license”; and Table B–1 “summarizes the Commission’s findings on the scope and magnitude of environmental impacts of renewing the operating license for a

The NRC's requirements governing the information to be provided in an applicant's environmental report are designed to assist the NRC in preparing its environmental evaluation. As the Commission has explained, an environmental report "is essentially the applicant's proposal" for the Staff's environmental impact statement.<sup>70</sup> Accordingly, 10 C.F.R. § 51.41 calls for an applicant for a license, license amendment, or license renewal "to submit such information to the Commission as may be useful in aiding the Commission in complying with section 102(2) of NEPA."<sup>71</sup>

Inasmuch as the Commission has determined that its evaluation of the environmental impacts of license renewal will include reliance on the generic determinations in 10 C.F.R. Part 51, Appendix B, Table B-1 and the GEIS, the regulations require license renewal applicants to provide such further information as is needed to support the NRC's evaluation. Accordingly, pursuant to 10 C.F.R. § 51.53(c)(3), license renewal applicants must address Category 2 issues and any "new and significant information" of which they are aware, regarding the environmental impacts of the requested license renewal.<sup>72</sup>

While the Petitioners argue that § 51.53(c)(3) does not apply to SLR applicants, they provide no substantial reason to support the view that SLR applicants should be required to provide any information in their environmental reports different from the information that is

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nuclear power plant" and "represents the analysis of the environmental impacts associated with renewal of any operating license . . . ."

<sup>70</sup> See Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) ("1989 Final Rule").

<sup>71</sup> See 10 C.F.R. §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, and 51.62; see also 10 C.F.R. §§ 50.90, 51.21, and 51.22.

<sup>72</sup> As the Staff observed previously, the Commission has 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." Staff Response at 28 n.104, citing *Turkey Point*, CLI-01-17, 54 NRC at 12.

required of initial license renewal applicants. Indeed, the regulations establish no other requirements for SLR applicants beyond those established for initial license renewal applicants. Moreover, the effect of the Petitioners' interpretation of 10 C.F.R. § 51.53(c)(3) would be that SLR applicants would be entirely prohibited from relying upon Table B-1, while the Staff, on the contrary, would be *required* by other regulations in 10 C.F.R. Part 51 to rely on the Category 1 determinations. This would have the absurd result of requiring SLR applicants to expend substantial resources to develop and provide information in an ER that, contrary to 10 C.F.R. § 51.41, would *not* be useful to the Staff in preparing its evaluation, and would *not* "be useful in aiding the Commission in complying with section 102(2) of NEPA."<sup>73</sup> Nor do the Petitioners' arguments concerning the absurd results doctrine warrant a different outcome.<sup>74</sup>

The Petitioners' interpretation of 10 C.F.R. § 51.53(c)(3) would have the effect that, for subsequent license renewal – unlike any other agency action – the applicant would be required to submit an environmental report that addresses environmental issues in a manner that differs from the way in which the NRC evaluates those impacts, and therefore the ER would not serve as a "proposal" for the Staff's environmental impact statement and would not be of assistance to the Staff in preparing its evaluation.

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<sup>73</sup> The Staff shares the Applicant's view that the Commission intended to gain efficiencies by applying the 2013 GEIS and Table B-1 to SLRAs; further, the Commission did not intend to waste applicants' and the Staff's resources by requiring SLR applicants to submit an ER that is of little use to the Staff. See Applicant's Surreply, at 4-5 and 9-10 (observing that the purpose of a GEIS is to realize efficiencies in considering environmental impacts that are not plant-specific).

<sup>74</sup> See Petitioners' Corrected Response to Applicant's Surreply, at 4 ("[T]he result produced by the plain meaning canon must be *truly absurd* before [the absurd results] principle trumps it.") (emphasis in original). In making this assertion, the Petitioners' appear to urge the Board to determine the degree to which their literal interpretation of the regulation renders it absurd; they do not explain, however, how the Board should proceed to perform that evaluation. Further, regarding their discussion of the rule against "surplusage" (*see id.* at 2-3), it should be noted that words may be rejected as surplusage if they are repugnant to the rest of the statutory scheme. See *Lamie v. U.S. Trustee*, 540 U.S. 526, 536 (2004) (courts may reject words that are included inadvertently or that are repugnant to the rest of the statute), citing *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001).

Further, as the Applicant observed, statutes must be interpreted within the broader context of the statutory scheme as a whole.<sup>75</sup> Thus, words must be read “in their context and with a view to their place in the overall statutory scheme.”<sup>76</sup> A statute must be construed in connection with every other part or section to produce a “harmonious whole.”<sup>77</sup> Moreover, “departure from a literal construction is justified” to avoid an absurd, unreasonable, unworkable, or odd result that is clearly inconsistent with the purpose and policies of the act in question.<sup>78</sup> The language in Table B-1, by its own terms, states that the regulation pertains to the “renewal of *any* operating license.”<sup>79</sup> Therefore, although 10 C.F.R. § 51.53(c)(3) uses the term “initial,” the Staff shares the Applicant’s view that when this regulation is read in the context of the overall regulatory scheme and is construed in conjunction with every other relevant section, the only way to read this regulation as part of a harmonious whole is to interpret it as applying to license renewal in general, including subsequent license renewal.<sup>80</sup>

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<sup>75</sup> See Applicant’s Surreply at 7-8 (noting that this rule of statutory construction requires that § 51.53(c)(3) be interpreted “in concert with other Part 51 regulations governing the Staff’s license renewal environmental reviews”).

<sup>76</sup> *FDA v. Brown & Williamson*, 529 U.S. 120, 133 (2000).

<sup>77</sup> *Id.* at 133 (quoting *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)).

<sup>78</sup> *Pub. Citizen v. Dep’t of Justice*, 491 U.S. 440, 454-55 (1989). If a literal interpretation produces an odd result, or requires a result that is “difficult to fathom” or “seems inconsistent” with legislative intent, courts look for other evidence of intent to properly define a term. *Id.* (citations omitted). While the Petitioners argue that § 51.53(c)(3) must be interpreted according to its plain meaning, they ignore the broader regulatory context of this regulation. See Petitioners’ Corrected Response to Applicant’s Surreply, at 3. Further, the cases cited in support of the Petitioners’ argument that the Board “may not construe the regulation ‘in a way that negates its plain text,’” *id.*, ignores the fact that those cases did not address the absurd results doctrine. See *id.*, citing *Honeycutt v. United States*, 137 S. Ct. 1626, 1635 n.2 (2017); *Nat’l Ass’n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, 668-69 (2007); *Gardebring v. Jenkins*, 485 U.S. 415, 430 (1988).

<sup>79</sup> 10 C.F.R. Part 51, Appendix B (emphasis added).

<sup>80</sup> See Applicant’s Surreply at 8-9 (asserting that a plain language interpretation of the term “initial” in 10 C.F.R. § 51.53(c)(3) conflicts with the requirements of 10 C.F.R. §§ 51.71(d) and 51.95(c), which do not contain the word “initial” and direct the Staff to apply Table B-1 to license renewal proceedings).

For the reasons discussed above, the Petitioners' proposed interpretation of 10 C.F.R. § 51.53(c)(3) is inconsistent with the NRC's regulations governing the agency's evaluation of the environmental impacts of license renewal, would not serve the underlying purpose for the NRC's requirements governing the submittal of environmental reports for license renewal, and would produce an absurd result. The Petitioners' arguments in support of their proposed interpretation of 10 C.F.R. § 51.53(c)(3) should therefore be rejected.

III. The Petitioners' Arguments Constitute an Impermissible Challenge to the Commission's Regulations.

In their Response to the Applicant's Surreply, the Petitioners argue that FPL cannot object to a proposed contention in a subsequent license renewal proceeding on the grounds that the contention raises a Category 1 issue.<sup>81</sup> This argument is based on their interpretation of 10 C.F.R. § 51.53(c)(3).<sup>82</sup> However, even if the Petitioners were correct in asserting that § 51.53(c)(3) applies only to initial license renewal applicants, the Petitioners' argument should be rejected in that it constitutes an impermissible challenge to the NRC's regulations in 10 C.F.R. §§ 51.71(d) and 51.95(c).

Here, each of the Petitioners' seven contentions is, by its own terms, an environmental contention, which the Commission has described as an argument "on a material issue of fact or law which relates to NEPA."<sup>83</sup> In accordance with 10 C.F.R. § 2.309, petitioners are required to file contentions on NEPA-related issues "based on the applicant's environmental report";<sup>84</sup> this requirement was adopted in order to "improve the effectiveness and efficiency of NRC

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<sup>81</sup> Petitioners' Corrected Response to Applicant's Surreply, at 1.

<sup>82</sup> *Id.* at 2-3.

<sup>83</sup> 1989 Final Rule, 54 Fed. Reg. at 33,172.

<sup>84</sup> 10 C.F.R. § 2.309(f)(2).

proceedings.”<sup>85</sup> If an environmental contention is admitted, however, , the contention would “migrate” to challenge the EIS,<sup>86</sup> if the Staff’s EIS relies upon the Applicant’s assessment.<sup>87</sup>

Accordingly, upon issuance of the Staff’s draft SEIS (which will rely, in part, on the generic determinations in 10 C.F.R. Part 51, Appendix B, and the GEIS, as required under 10 C.F.R. §§ 51.71(d) and 51.95(c)), the Petitioners’ contentions challenging reliance on those generic determinations would migrate to challenge the Staff’s EIS. In contesting the Staff’s reliance on those determinations in its draft SEIS, the contentions would present an impermissible challenge to the Commission’s regulations in 10 C.F.R. §§ 51.71(d) and 51.95(c).<sup>88</sup> Accordingly, their contentions challenging the generic determinations in 10 C.F.R. Part 51 and the GEIS are inadmissible, and their arguments should therefore be rejected.

### CONCLUSION

For the reasons set forth above, the Petitioners’ arguments challenging the Applicant’s reliance on the generic determinations in 10 C.F.R. Part 51, Appendix B, Table B-1 and the Commission’s GEIS for license renewal, based on their incorrect interpretation of 10 C.F.R. § 51.53(c)(3), should be rejected. Accordingly, to the extent that their contentions challenge the

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<sup>85</sup> 1989 Final Rule, 54 Fed. Reg. at 33,179.

<sup>86</sup> 10 C.F.R. § 2.309(f)(2); see 1989 Final Rule, 54 Fed. Reg. at 33,172. If the EIS takes a different position than the environmental report, the petitioner may amend or supplement its contentions based on the new information or analysis in the EIS.

<sup>87</sup> Alternatively, the contention may be dismissed as moot. See *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54, 64 (2008), citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002) (explaining that a contention of inadequacy is migrated if the EIS analysis is essentially *in para materia* with the environmental report analysis at issue and that a contention of omission is mooted if the omitted information is later supplied in the EIS; otherwise, new or amended contentions must be filed in order to raise specific challenges regarding the new information in the EIS).

<sup>88</sup> 10 C.F.R. § 2.335.

Applicant's reliance on those generic determinations, their assertions should be dismissed as an impermissible challenge to the Commission's regulations governing license renewal.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 2nd day of November 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 THE APPLICANT’S SURREPLY AND THE PETITIONERS’ RESPONSE, REGARDING THE APPLICABILITY OF 10 C.F.R. § 51.53(c)(3) TO SUBSEQUENT LICENSE RENEWAL APLICATIONS,” dated November 2, 2018, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 2nd day of November, 2018.

Copies of the foregoing have also been sent by E-mail to Mr. Albert Gomez at [albert@icassemblies.com](mailto:albert@icassemblies.com), and to Richard E. Ayres, Esq. (for Friends of the Earth) at [ayresr@ayreslawgroup.com](mailto:ayresr@ayreslawgroup.com), this 2nd day of November, 2018.

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