

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

Before Administrative Judges:

E. Roy Hawkens, 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

November 14, 2018

ORDER

(Providing Oral Argument Topics)

On October 9, 2018, this Licensing Board issued an order scheduling oral argument regarding the admissibility of the contentions proffered by (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Inc. (collectively, Joint Petitioners).² See Licensing Board Order (Scheduling Oral Argument) (Oct. 9, 2018) (unpublished). Argument will be held on Tuesday, December 4, 2018, in Homestead, Florida. See id. at 1–2.

During a prehearing teleconference, this Board stated that it would issue an order identifying topical areas that counsel should be prepared to address at oral argument. See Official Transcript of Proceedings, Florida Power and Light Co. Turkey Point Units 3 and 4

¹ Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018).

² Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 1, 2018).

Teleconference at 8–9 (Oct. 4, 2018) [hereinafter Tr.].³ Those topical areas are included in the following list, which is not intended to be exclusive:

- The applicability of 10 C.F.R. § 51.53(c)(3) and Appendix B to Subpart A (Table B-1) to Subsequent License Renewal (SLR) applications, including:
 1. Why the term “initial renewed license” remained unchanged throughout subsequent agency rulemakings that directly revised that section;
 2. The relevance of SECY-14-0016 (Jan. 31, 2014) (ADAMS Accession No. ML14050A306), including the NRC Staff’s apparent endorsement of the language in section 51.53(c)(3) on page 5 therein;
 3. The relevance of 56 Fed. Reg. 47,016, 47,017 (Sept. 17, 1991), which states: “The part 54 rule could be applied to multiple renewals of an operating license for various increments. However, the part 51 amendments apply to one renewal of the initial license for up to 20 years beyond the expiration of the initial license”;
 4. How the Board should proceed if it determines that 10 C.F.R. § 51.53(c)(3) does not apply to SLR applications.
- As related to 10 C.F.R. § 51.45(c) and the alleged cooling tower alternative:
 1. Under what threshold criteria an action becomes “relevant to mitigation” and, therefore, must be included in the environmental report (ER);
 2. Under what threshold criteria an “alternative[] available for reducing or avoiding adverse environmental effects” becomes sufficiently significant that it must be included in the ER;
 3. The applicability of the following portion of 10 C.F.R. § 51.45(c) to SLR proceedings: “The environmental report must also contain an analysis of the cumulative impacts of the activities to be authorized by the limited work authorization, construction permit, or combined license in light of the preconstruction impacts described in the environmental report.” See SACE Petition at 6 (quoting that section).
- Whether the analyses and conclusions from the NRC Staff’s Environmental Impact Statement (EIS) for Turkey Point Units 6 and 7 are sufficiently relevant and applicable to Units 3 and 4, given that Units 6 and 7 will use cooling towers rather than the cooling canal system (CCS), and specifically:
 1. Whether and how Appendix I of the EIS is relevant and applicable to the Units 3 and 4 SLR application;

³ A third petitioner in this case, Mr. Albert Gomez, cannot attend oral argument. During the teleconference, we stated that if we had any questions for Mr. Gomez, we would provide them to him in writing and request a written response. See Tr. at 8. We have no questions for Mr. Gomez.

2. How the analysis and conclusions regarding the environmental impacts on water resources are applicable to Units 3 and 4, given the use of cooling towers and reclaimed water at Units 6 and 7;
 3. How the analysis and conclusions regarding cumulative impacts caused by potential climate change upon the affected resources are applicable to Units 3 and 4;
 4. Assuming *arguendo* that § 51.53(c)(3)(O) is applicable, the criteria/standards that should be used for determining what is “reasonably foreseeable” and the relevance of the NRC Staff’s statement in the Units 6 and 7 EIS that “it is reasonably foreseeable that climate change may substantially alter the affected environment . . . climate change will provide a new environment that the operation of [Units 6 & 7] will affect,” Office of New Reactors, Environmental Impact Statement for Combined Licenses (COLs) for Turkey Point Nuclear Plant Units 6 and 7, NUREG-2176, at I-1 (Oct. 2016).
- Any climate change-related issues that must be included in the ER, and the controlling statute or regulation.
 - Assuming *arguendo* that § 51.53(c)(3) is applicable:
 1. Whether the reference to “new and significant information” in 10 C.F.R. § 51.53(c)(3)(iv) allows a petitioner to challenge the adequacy or omission of “new and significant” information relevant to a Category 1 issue absent the filing of a waiver request;
 2. The meaning and scope of the Commission’s following statement in Exelon Generation Co. (Limerick Generating Station, Units 1 & 2), CLI-12-19, 76 NRC 377, 386 (2012) (emphasis added): “In our view, NRDC may challenge the adequacy of the new information provided in the Limerick Environmental Report.”
 - Assuming *arguendo* that § 51.53(c)(3) is applicable, address the explanation in the Generic Environmental Impact Statement (GEIS) that “[g]eneric impacts will be reconsidered in SEISs only if there is new and significant information that would change the conclusions in the GEIS,” Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437, at 1-4 (Vol. 1, Rev. 1 June 2013) (ADAMS Accession No. ML13106A241) (emphasis added), as it relates to:
 1. The lack of discussion of the “new and significant” information and impact regarding, *inter alia*, the dying of sawgrass; the American crocodile population loss; and the decreasing water quality issues that have given rise to violation notices and consent agreements;
 2. The relevance of section 4.6.1.1 of the GEIS, which states that the generic determination of SMALL cooling system impacts on terrestrial resources was based on the history of no adverse effects to terrestrial plants or animals;
 3. The relevance of section 4.6.1.2 of the GEIS, which states, “Impacts of contaminant discharges are considered to be of SMALL significance if water quality criteria (e.g., NPDES permits) are not violated.” (Emphasis added.)

4. Whether the Florida Department of Environmental Protection Consent Order and the Miami-Dade County Consent Agreement, which establish mitigation measures for the CCS, relate to Category 1 issues, such that the effectiveness and impacts of those mitigation measures may not be challenged without a waiver.
- Assuming arguendo that § 51.53(c)(3) is applicable, regarding ER § 4.0.1 Category 1 License Renewal Issues, identify the analysis or reference that supports the following assertion: “The new and significant review [Chapter 5] did evaluate new information such as the findings of state and local agencies regarding the westward movement of hypersaline groundwater. Finding compliance with CAs and orders would result in insignificant impacts for the SLR term. Therefore, FPL adopts by reference the NRC findings for these Category 1 issues.” ER at 4-2 (emphasis added).
 - When an ER incorporates a GEIS or EIS by reference, what, if any, citation information regarding the incorporated document needs to be provided (such as a page citation or brief description) so that the incorporation by reference satisfies the National Environmental Policy Act (NEPA)? See, e.g., FPL Answer to Joint Petitioners at 30 (arguing that the ER incorporates by reference discussions of cumulative impacts in the Units 6 and 7 EIS and providing an ER page number, although the ER itself does not cite to a page number in the EIS); NRC Staff Answer to Joint Petitioners at 41 (arguing that the ER incorporates by reference the information in the GEIS about sea level rise as a climate change impact, but not providing an ER page number to show where it mentions the GEIS).
 - Regarding the ER’s discussion of American crocodiles, whether there is legal significance under NEPA that although crocodile populations at the Turkey Point site have recently declined, the current crocodile population is still stronger than what it was prior to the CCS’s construction. In other words, what baseline should the Board use in determining impact to the American crocodile?

On or before November 20, 2018, counsel shall provide by email to the Board’s law clerk, Taylor Mayhall, taylor.mayhall@nrc.gov, the name of counsel who will present oral argument.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 14, 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 (Providing Oral Argument Topics)** 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 (Providing Oral Argument Topics)

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

Dated at Rockville, Maryland,
this 14th day of November, 2018