

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

|                                 |   |                            |
|---------------------------------|---|----------------------------|
|                                 | ) |                            |
| In the Matter of                | ) |                            |
| Florida Power and Light Company | ) | Docket Nos. 50-250/251-SLR |
| Turkey Point Units 3 and 4      | ) |                            |
|                                 | ) |                            |

**PETITIONERS’ RESPONSE TO NRC STAFF CLARIFICATION**

Petitioners, Southern Alliance for Clean Energy, Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper, hereby respond to NRC Staff’s Clarification of its Views Regarding the Admissibility of Joint Petitioners’ Contention 1-E and SACE Contention 2 (Alternative Cooling Systems) (Dec. 18, 2018) (“Staff Clarification”). The Staff has clarified its position that Friends of the Earth/Natural Resources Defense Council/Miami Waterkeeper’s Contention 1E and SACE’s Contention 2 are admissible to the extent they seek consideration by Florida Power and Light Co. (“FPL”) of mechanical draft cooling towers as an alternative means of cooling the Turkey Point Units 3 and 4 reactors.

The Staff’s clarified position is consistent with the position taken by the Staff in NRC Staff’s Corrected Response to Petitions to Intervene and Requests for Hearing Filed by (1) Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper and (2) Southern Alliance for Clean Energy at 29-31 and 67-69 (Dec. 18, 2018) (“Staff Response”). While subsequent oral statements by the NRC Staff counsel seemed to retract or otherwise alter the Staff’s position (*see, e.g.*, transcript of December 4, 2018, oral argument at 158 (statement by Staff Counsel Sherwin S. Turk that there is “nothing” in NRC regulations that would require consideration of a cooling tower alternative)), it is now clear that the Staff did not intend those statements to make any change to their original position. Accordingly, the Staff agrees with

Petitioners regarding the admissibility of their contentions’ “central assertion” that FPL’s Environmental Report is deficient for failing to consider mechanical draft cooling towers. *See* Staff Clarification at 7.<sup>1</sup>

Under the circumstances, Petitioners respectfully submit that in ruling on the admissibility of their contentions, the Atomic Safety and Licensing Board should rely on the Staff Response and Staff Clarification and disregard any inconsistent statements made during the oral argument.

Respectfully submitted,

          /signed electronically by/          

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<sup>1</sup> The Staff also suggests that if the impacts of the cooling canal system are insignificant, consideration of a cooling tower alternative may not be necessary under a “principle of proportionality.” Staff Clarification at 8. Without conceding the merits of the Staff’s proposed proportionality principle, Petitioners respectfully submit that the Staff raises a merits question that is not appropriately addressed at this admissibility stage. Petitioners’ contentions of omission should be admitted for hearing that may include Staff’s merits claim that consideration of the mechanical draft cooling tower alternative is not justified under NEPA’s rule of reason.

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January 7, 2019

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**CERTIFICATE OF SERVICE**

I certify that on January 7, 2019, I posted copies of the foregoing PETITIONERS' RESPONSE TO NRC STAFF CLARIFICATION on the NRC's Electronic Information Exchange System.

      /signed electronically by/        
Diane Curran