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)	January 22, 2019

APPLICANT'S ANSWER TO PETITIONERS' JOINT MOTION FOR LEAVE TO RESPOND TO APPLICANT'S RESPONSE TO THE NRC STAFF'S CLARIFICATION

In accordance with 10 C.F.R. § 2.323(c), Florida Power & Light Company ("FPL") hereby timely files its Answer to the "Motion for Leave to Respond" ("Motion") to FPL's Response to the NRC Staff's Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions ("FPL Response"),[1] filed by Friends of the Earth, Natural Resources Defense Council, Miami Waterkeeper, and Southern Alliance for Clean Energy (collectively, "Petitioners").[2] Therein, Petitioners argue that "necessity and fairness" demand that the Atomic Safety and Licensing Board ("Board") grant them yet another opportunity to respond to allegedly new arguments raised by FPL.[3] However, the arguments Petitioners seek to address are not new, and have been advanced by FPL throughout this proceeding. The Motion is nothing more than an attempt to get the "last word"—indeed, a *fourth* bite at the proverbial apple—and should be rejected by the Board because it fails to satisfy the requirements for "extra filings," and serves only to further delay the proceeding.

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1 Applicant's Response to the NRC Staff's Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions (Jan. 7, 2019) (ML19007A311) ("FPL Response").

2 Petitioners' Motion for Leave to Respond to Applicant's Response to the NRC Staff's Clarification Regarding the Admissibility of Proposed Cooling Tower Contentions (Jan. 15, 2019) (ML19015A316) ("Motion"); *see also* Petitioners' Response to Applicant's New Arguments on the Admissibility of Petitioners' Proposed Cooling Tower Contentions (Jan. 15, 2019) (ML19015A317) ("Proposed Response").

3 Motion at 1.

More specifically, Petitioners assert that "FPL claims for the first time that [the National Environmental Policy Act of 1969, as amended] requires consideration of a cooling towers alternative 'only if: (1) there is a 'reasonably likely,' otherwise-unmitigated impact not bounded by the existing mitigation discussion, and (2) cooling towers would be a proportional response to that otherwise-unmitigated impact.'"[4] However, this is not the "first time" FPL has discussed these threshold materiality considerations for contention admissibility.

For example, FPL's earlier pleadings explain that:

> the mitigation controls and programs cited in the ER—which are formulated, finalized, and adopted—and which Petitioners disregard rather than dispute—exceed the applicable requirements in NEPA and Part 51. Because Petitioners have neither identified a genuine material dispute with the ER on this topic, nor attempted to explain why cooling towers would be a proportional response to any purported defect, they have not demonstrated the existence of a duty to evaluate cooling towers as a mitigation measure, or otherwise demonstrate an admissible contention. [5]

Likewise, at oral argument, FPL further clarified this point in response to the Board's request (in its Order providing topics and questions for oral argument[6]):

> [Mr. Lighty]: . . . based on case law and applicable NRC guidance, there appear to be two primary threshold considerations, which if both are satisfied give rise to such a duty. First, there must be an unmitigated impact identified. And, second, the given measure must be a proportional response thereto. And Petitioners have not satisfied either of these threshold criteria in their pleadings. [Continuing on to further explain the two criteria].[7]

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4 *Id*. at 2 (quoting FPL Response at 5). Petitioners assert that this is "among other" purportedly new arguments. *Id*. However, they cite no "other" arguments in the Motion. To the extent this refers to what Petitioners call "mischaracterizations of the record" in their Proposed Response (at 1), such arguments are not advanced in the Motion and should not be considered by the Board. Moreover, the mere fact that Petitioners may disagree with FPL's characterizations is not a cognizable basis for allowing "extra pleadings."

5 Applicant's Answer Opposing Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper at 26 (Aug. 27, 2018) (ML18239A445)). *See also* Applicant's Answer Opposing Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene at 47-48 (Aug. 27, 2018) (ML18239A450).

6 Order (Providing Oral Argument Topics) at 2 (unpublished) (Nov. 14, 2018) (ML18318A332) (second bullet, item 2).

7 Transcript at 203 (Dec. 4, 2018) (ML18340A077).

Indeed, the FPL Response even directed Petitioners to the *precise pages of the pleadings and transcript* where these earlier arguments are found.[8] Thus, contrary to Petitioners' assertion in their Motion, this is not a "new . . . proposed test."[9] FPL has consistently advanced and legitimately amplified this line of argument throughout the proceeding. Petitioners have had ample opportunities to address these arguments, both in the pleadings and at oral argument—they simply have chosen not to do so. Accordingly, their untimely attempt to do so now, on the eve of the Board's decision on standing and contention admissibility, should be rejected.

Respectfully submitted,

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Dated in Washington, D.C.
this 22nd day of January 2019

[8] *See, e.g.*, FPL Response at 2 n.7; *id*. at 5 n.23.
[9] Motion at 2.

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(Turkey Point Nuclear Generating Units 3 and 4)	)	January 22, 2019

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Applicant's Answer to Petitioners' Joint Motion for Leave to Respond to Applicant's Response to the NRC Staff's Clarification" was served upon the following persons by Electronic Information Exchange (the NRC's E-Filing System) and by electronic mail as indicated by an asterisk (*), in the above-captioned docket.

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
E. Roy Hawkens, Chairman
Sue Abreu, Administrative Judge
Michael F. Kennedy, Administrative Judge

U.S. Nuclear Regulatory Commission
Office of the General Counsel
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