UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S BRIEF IN RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S APPEAL OF LBP-19-3

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.311(b), the U.S. Nuclear Regulatory Commission staff hereby responds to Florida Power & Light Company's (FPL or Applicant) appeal of the Atomic Safety and Licensing Board's admission of four contentions in LBP-19-3.[1] As more fully set forth below, the Staff submits that the Applicant has not shown any error of law or abuse of discretion on the part of the Board with respect to its admission of two contentions, filed by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (collectively, Joint Petitioners), and the Board's decision as to those two contentions should be affirmed. Further, because Southern Alliance for Clean Energy (SACE) has withdrawn from this adjudication, FPL's appeal from the Board's admission of SACE's two contentions is moot and should be dismissed.

[1] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC __ (Mar. 7, 2019) (slip op.). *See* Florida Power & Light Company's Notice of Appeal of LBP-19-3 (Apr. 1, 2019); Brief in Support of Florida Power & Light Company's Appeal of LBP-19-3 (Apr. 1, 2019) (Applicant's Appeal).

BACKGROUND

This proceeding concerns FPL's subsequent license renewal application (SLRA) for an additional 20 years of operation for Turkey Point Nuclear Generating Units 3 and 4.[2] The current renewed operating licenses for Units 3 and 4 expire on July 19, 2032 and April 10, 2033, respectively.[3] FPL's SLRA seeks to extend the Turkey Point Units 3 and 4 operating licenses until July 19, 2052 and April 10, 2053, respectively.[4]

The NRC published a notice of receipt of the Turkey Point SLRA[5] and issued a determination of acceptability and sufficiency for docketing of the SLRA, along with a notice of opportunity for hearing on the application.[6] Timely petitions for leave to intervene were filed by SACE and the Joint Petitioners.[7] In addition, a petition to intervene was submitted by Mr. Albert

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[2] *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) SLRA, Rev. 1 (Apr. 10, 2018) (ADAMS Package Accession No. ML18113A132).

[3] The construction permits for Turkey Point Units 3 and 4 were issued on April 27, 1967; the initial operating licenses for Units 3 and 4 were issued on July 19, 1972 and April 10, 1973, respectively; and the licenses for both Units were renewed for an additional 20 years on June 6, 2002. SLRA Appendix E, Environmental Report, Subsequent Operating License Renewal Stage, at 1-1, 2-1 (ML18113A145) (ER).

[4] *Id.* Turkey Point Units 3 and 4 are the only nuclear plants at the site. The site is also occupied by two retired natural gas/oil steam-generating units (Units 1 and 2), which have been repurposed to support transmission reliability but which do not generate power or process water, and one 1,150 MW combined-cycle natural gas-fired steam-generating unit (Unit 5). *Id.* at 2-1. Recently, the NRC issued combined licenses (COLs) for two Westinghouse AP1000 (1,117 MWe) nuclear plants (Units 6 and 7) to be built at the site. Florida Power & Light Co.; Turkey Point Units 6 and 7; Combined licenses and record of decision; issuance, 83 Fed. Reg. 18,091 (Apr. 25, 2018).

[5] 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).

[6] Florida Power & Light Co.; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; License renewal application; opportunity to request a hearing and to petition to intervene, 83 Fed. Reg. 19,304 (May 2, 2018).

[7] *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) (Joint Petition); and (2) Southern Alliance for Clean Energy's Request for Hearing and Petition to Intervene (Aug. 1, 2018) (SACE Petition).

Gomez, as an attachment to comments he filed regarding the scope of environmental issues to be considered for the SLRA.[8] On August 8, 2018, the Board was established to preside over any adjudicatory proceeding that may be held regarding the Turkey Point SLRA.[9]

The Applicant and the Staff filed responses to the Joint Petitioners' and SACE's Petitions,[10] to which the Joint Petitioners and SACE then replied.[11] Additional arguments were submitted by the litigants concerning the Joint Petitioners' and SACE's replies, which the Board resolved in an Order issued on October 23, 2018.[12] The Board held oral argument on contention admissibility on December 4, 2018,[13] after which the litigants filed additional briefs concerning the Staff's views regarding the admissibility of two contentions.[14]

On March 7, 2019, the Board issued LBP-19-3, in which it, *inter alia*, ruled that SACE and the Joint Petitioners have standing to intervene in this proceeding; revised and admitted two

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[8] *See* (1) E-mail message from Lois James (NRC) to Albert Gomez (July 6, 2018); (2) E-mail message from Albert Gomez to Lois James (NRC) (Aug. 2, 2018); and (3) E-mail message from Lois James (NRC) to Hearing Docket (Aug. 2, 2018) (ML18219A900).

[9] Establishment of Atomic Safety and Licensing Board; Florida Power & Light Co., 83 Fed. Reg. 40,360 (Aug. 14, 2018).

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

[11] *See* (1) [SACE's] Reply to Oppositions by Florida Power & Light and NRC Staff to SACE's Hearing Request (Sept. 10, 2018); and (2) Reply in Support of Request for Hearing and Petition to Intervene Submitted by [Joint Petitioners] (Sept. 10, 2018).

[12] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), 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) (unpublished).

[13] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), Official Transcript of Proceedings, at 11-259 (Dec. 4, 2018).

[14] *See* LBP-19-3, slip op. at 5.

contentions filed by SACE; revised and admitted two contentions filed by the Joint Petitioners;[15] denied Mr. Gomez' hearing request for failure to file an admissible contention; and referred a portion of its ruling to the Commission pursuant to 10 C.F.R. § 2.323(f)(1).[16]

On April 1, 2019, the Applicant filed its appeal of LBP-19-3 pursuant to 10 C.F.R. § 2.311, in which it asserted that the Board erred in admitting the Joint Petitioners' and SACE's contentions. Shortly thereafter, SACE filed a notice of its withdrawal from the proceeding;[17] in a subsequent filing before the Commission, the Applicant asserted that SACE's withdrawal extinguishes its two pending contentions and renders moot the Applicant's appeal of the Board's admission of those two contentions.[18]

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[15] The contentions filed by SACE and the Joint Petitioners raised environmental issues, challenging statements or omissions in the Applicant's Environmental Report (ER), submitted as SLRA Appendix E, Applicant's Environmental Report, Subsequent Operating License Renewal Stage (Jan. 31, 2018) (ML18113A145). *See also* Letter from William D. Maher (FPL) to NRC Document Control Desk (Apr. 10, 2018) (ML18102A521) (transmitting supplemental information related to the ER).

[16] *Id.* at 63. As a foundation for its contention admissibility rulings, the Board concluded that FPL was not required to consider Category 1 issues on a site-specific basis but could rely on the Category 1 findings in the Generic Environmental Impact Statement for license renewal and in Table B-1. *Id.* at 25; *see* 10 C.F.R. § 51.53(c)(3). Administrative Judge Abreu dissented, in part, from the Board's decision, insofar as the Board ruled that 10 C.F.R. § 51.53(c)(3) applies to subsequent license renewal. *See* LBP-19-3, slip op. (Abreu, J., concurring in part and dissenting in part, at 1). The referred ruling is pending before the Commission.

[17] Southern Alliance for Clean Energy's Notice of Withdrawal (Apr. 9, 2019) (Notice). In its Notice, SACE stated that it is a party to certain Clean Water Act litigation concerning operation of the Turkey Point cooling canal system (CCS); that SACE and FPL have entered into a tentative global settlement of their disputes concerning the CCS; and that a settlement is expected to be finalized within 120 days that will include "proposed revisions to the National Pollutant Discharge Elimination System Permit for the CCS to address salinity of groundwater and other measures to improve water quality in Biscayne Bay." *Id.* at 1. SACE further stated that it was submitting its notice of withdrawal "without prejudice to other intervenors [Joint Petitioners], the issues they have raised, or the arguments they have made." *Id.*

[18] Applicant's Notice Regarding SACE Withdrawal (Apr. 11, 2019).

DISCUSSION

In LBP-19-3, the Board revised and admitted portions of two contentions filed by SACE and two contentions filed by the Joint Petitioners. As revised by the Board, the admitted contentions are as follows:

> SACE Contention 1A (as admitted):
> The ER fails adequately to analyze the impacts (including cumulative) of continued [cooling canal system (CCS)] operation on the American Crocodile and its critical seagrass habitat.[19]
>
> SACE Contention 2 (as admitted):
> In light of the adverse impact of continued CCS operations on the threatened American crocodile and its critical seagrass habitat, the ER is deficient for failing to consider mechanical draft cooling towers as a reasonable alternative to the CCS in connection with the license renewal of Turkey Point Units 3 and 4.[20]
>
> Joint Petitioners' Contention 1-E (as admitted):
> In light of the adverse impact of continued CCS operations on the threatened American crocodile and its critical seagrass habitat, the ER is deficient for failing to consider mechanical draft cooling towers as a reasonable alternative to the CCS in connection with the license renewal of Turkey Point Units 3 and 4.
>
> Joint Petitioners' Contention 5-E (as admitted):
> The ER is deficient in its failure to recognize Turkey Point as a source of ammonia in freshwater wetlands surrounding the site, and in its failure to analyze the potential impacts of ammonia releases during the renewal period on threatened and endangered species and their critical habitat.[21]

On appeal, the Applicant asserts that the Board erred and abused its discretion in admitting each of these contentions. The Staff's views with respect to these assertions are set forth below.

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[19] LBP-19-3, slip op. at 33.

[20] *Id.* at 41. As the Board noted, SACE Contention 2 (as admitted) is identical to Joint Petitioners' Contention 1-E (as admitted). *See id.* at 63 nn. 81-82.

[21] *Id.* at 52-53.

A. Legal Standards

The Commission's regulations at 10 C.F.R. § 2.311(d)(1) provide for an appeal as of right on the question of whether a request for hearing should have been wholly denied. The Commission generally defers to Board rulings "on contention admissibility absent error of law or abuse of discretion."[22] An appellant's recitation of its prior positions in a proceeding or a statement of general disagreement with a Board's decision is not sufficient; unless the appellant points out an error of law or abuse of discretion by the Board, the decision will be affirmed.[23]

It is undisputed that "a licensing board has the authority to 'reformulate contentions to eliminate extraneous issues or to consolidate issues for a more efficient proceeding.'"[24] A Board abuses its discretion, however, if it supplies information that is lacking in a contention that otherwise would be inadmissible.[25] Similarly, a Board abuses its discretion if it reformulates a contention such that the reformulated contention presents a different challenge than the original contention.[26]

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[22] *Tennessee Valley Authority* (Clinch River Nuclear Site Early Site Permit Application), CLI-18-5, 87 NRC 119, 121 (2018) (citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-9, 83 NRC 472, 482 (2016); *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 13-14 (2014)).

[23] *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017).

[24] *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1) CLI-18-4, 87 NRC 89, 96 (2018) (quoting *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 401 (2015)).

[25] *Id.* at 96-97. *See also DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 141-42 (2015) (citing *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552-53, 565-66 (2009)).

[26] *Fermi*, CLI-15-18, 82 NRC at 145-46.

B. The Board Correctly Admitted Joint Petitioners' Contention 1-E, As Revised

In Contention 1-E, as revised and admitted by the Board, the Joint Petitioners asserted that operation of the CCS during the period of subsequent license renewal will adversely impact the threatened American crocodile and its critical seagrass habitat, and that the Applicant's Environmental Report was deficient for failing to consider mechanical draft cooling towers as "a reasonable and feasible alternative" to CCS operation.[27] The Applicant opposed the admission of this contention, asserting, in part, that it had already taken other mitigation measures, in compliance with requirements imposed by the State of Florida and the Miami-Dade County Department of Environmental Resources Management (DERM) to address the adverse effects of CCS operation, and the construction and operation of cooling towers would therefore not be a "reasonable alternative" to continued operation of the CCS.[28]

The Staff did not oppose the admission of this contention. In the Staff's view, the contention's assertion that the ER omitted consideration of a reasonable alternative, raised a "litigable issue" as to whether mechanical draft cooling towers constitute "a reasonable alternative to use of the plants' cooling canal system."[29] The Staff observed that while the National Environmental Policy Act (NEPA)[30] does not mandate the consideration of cooling towers, NEPA does require the NRC to consider "reasonable" alternatives to the proposed

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[27] Joint Petition at 19-24.

[28] Applicant's Answer at 8-26.

[29] Staff Response at 29-30. *See also* NRC Staff's Clarification of Its Views Regarding the Admissibility of Joint Petitioners' Contention 1-E and SACE Contention 2 (Alternative Cooling Systems), at 1 (Dec. 18, 2018) (Staff Clarification). As the Staff further noted, the consideration of alternatives "is governed by the rule of reason and the principle of proportionality," and portions of the contention (later admitted by the Board) "appeared to raise a litigable issue as to whether FPL's omission of a mechanical draft cooling tower alternative was reasonable …." *Id.*

[30] National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321-4347.

action;[31] further, pursuant to 10 C.F.R. Part 51, the Staff's supplemental environmental impact statement (SEIS) is required "to consider 'the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects.'"[32]

The Board revised and admitted this contention as a contention of omission, consistent with its admission (and limitation) of a similar contention proffered by SACE, i.e., SACE Contention 2.[33] As the Board explained, "[a]lthough neither the NRC Staff nor FPL is required to select the most environmentally superior alternative, NRC regulations require the ER and the EIS to consider 'alternatives available for reducing or avoiding adverse environmental impacts.'"[34]

On appeal, the Applicant asserts that under applicable case law, it was not required to consider "every imaginable mitigation measure"; rather, its discussion of alternatives "need only be 'reasonably complete.'"[35] Further, the Applicant asserts that the Joint Petitioners were

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[31] Staff Response at 30 (citing *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012)) ("NEPA requires consideration of 'reasonable' alternatives, not all conceivable ones."); *cf. Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998).

[32] *Id.* (quoting 10 C.F.R. § 51.71(d)). The Staff noted that it will consider a cooling tower alternative in its SEIS for subsequent license renewal of Turkey Point Units 3 and 4, stating that it "expresses no position regarding the environmental impacts of CCS operation or the need for further mitigation of those impacts beyond the measures currently in place or mandated by State and local regulatory authorities." *Id.* at 30 n.112.

[33] LBP-19-3, slip op. at 44; *see id.* at 40.

[34] *Id.* at 40-41 (emphasis in original) (citing 10 C.F.R. § 51.45(c); 10 C.F.R. § 51.71(d); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 259-61, 280 (2007) (admitting a contention regarding dry cooling as a NEPA alternative in light of the sensitive biological resources affected)).

[35] Applicant's Appeal at 9 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333, 352 (1989); Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,031 (Mar. 23, 1981)).

obliged to explain why the mitigation measures that are "currently in place" do not constitute a "reasonable range" of alternatives.[36] The Applicant's arguments, however, fail to recognize that under 10 C.F.R. § 2.309(f)(1), a contention, in pertinent part, need only describe (with supporting basis) a potentially reasonable and feasible alternative, and demonstrate a genuine dispute with the Applicant on a material issue of fact or law sufficient to raise an admissible issue for litigation.[37] Later, after the contention has been admitted for litigation, the Applicant and other parties will have an opportunity to produce evidence on the merits of the contention as to whether the ER's consideration of alternatives was "reasonably complete" or whether it should have considered the proposed alternative as a reasonable and feasible alternative to CCS operation.[38]

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[36] *Id.* at 11.

[37] Pursuant to 10 C.F.R. § 2.309(f)(1)(i)-(vi), contentions must (i) provide a specific statement of the issue of law or fact to be raised or controverted; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised in the contention is within the scope of the proceeding; (iv) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions which support the requestor's/ petitioner's position on the issue and on which the petitioner intends to rely at hearing . . .; and (vi) provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, "if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief."

[38] The Staff recently published its draft SEIS for subsequent license renewal of Turkey Point Units 3 and 4, in which it included a detailed evaluation of the environmental impacts of constructing and operating mechanical draft cooling towers as an alternative to operation of the CCS. *See* NUREG–1437, Supp. 5, Second Renewal, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 5, Second Renewal, Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, Draft Report for Comment," at 2-12 – 2-13, 2-22 – 2-23, 4-11, 4-18 – 4-19, 4-21, 4-41 – 4-42, 4-48, 4-59 - 4-60, 4-76, 4-82 – 4-83, 4-88, 4-94 – 4-95, 4-97 (Mar. 2019) (ML19078A330). In accordance with established case law, in the event that a proper motion is filed, this contention may be dismissed on the grounds that the Staff's inclusion of this alternative in its draft SEIS effectively moots the Intervenors' contention challenging the ER's omission of such an evaluation. *See, e.g., USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002).

For the reasons explained above, the Staff submits that the Joint Petitioners raised a litigable issue as to whether the Applicant should have considered mechanical draft cooling towers as a reasonable and feasible alternative to continued operation of the CCS. The Board's decision to admit this contention (as revised), was therefore correct, and the Applicant has not shown that the Board committed any error of law or abuse of discretion in finding that the Joint Petitioners' contention satisfies the pleading requirements of 10 C.F.R. § 2.309(f)(1).[39] The Board's decision to admit this contention, as revised, should therefore be affirmed.

C. The Board Correctly Admitted Joint Petitioners' Contention 5-E, As Revised

In Contention 5-E, as revised and admitted by the Board, the Joint Petitioners asserted that the Applicant's ER is deficient in (a) failing to recognize that Turkey Point is a source of ammonia in freshwater wetlands surrounding the site, and (b) failing to analyze the potential impacts of ammonia releases during the subsequent renewal period on threatened and endangered species and their critical habitat.[40] The Joint Petitioners observed that the Applicant's ER stated that ammonia detected in surface waters is not the result of point or non-point source contamination attributable to the Turkey Point site.[41] In contrast, the Joint Petitioners cited a letter from Wilbur Mayorga of DERM to FPL (Mayorga Letter) to support its assertion that Turkey Point is a source of the ammonia that caused violations of water quality standards.[42]

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[39] *See* LBP-19-3, slip op. at 40; *id.* at 44.

[40] *See* Joint Petition at 58-59, 62-63.

[41] *Id.* at 62 (citing ER at 9-13, 3-93, 3-94).

[42] *Id.*

In LBP-19-3, the Board found that the Joint Petitioners provided adequate support for these assertions in Contention 5-E.[43] In particular, the Board found that the Mayorga Letter supported the Joint Petitioners' assertions that (1) violations of surface water ammonia standards have been observed in canals near Turkey Point; and (2) Turkey Point is a key source of that ammonia.[44] Accordingly, the Board admitted these portions of Contention 5-E.

The Applicant argues on appeal that the Joint Petitioners drew a clear distinction between surface waters and wetlands and that the Staff and the Board disregarded this distinction.[45] This assertion is without merit. The Mayorga Letter states that elevated levels of ammonia were detected in several sampling locations in <u>both</u> groundwater <u>and</u> surface water, and that the DERM concluded that the CCS is a contributing source of these elevated ammonia concentrations. These findings in the Mayorga Letter are sufficiently broad to support the Joint Petitioners' assertion that elevated levels of ammonia were present in wetlands near the Turkey

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[43] LBP-19-3, slip op. at 51-52.

[44] *Id*. (citing Joint Petition, Att. P (Letter from Wilbur Mayorga (Chief of Environmental Monitoring and Restoration Division, DERM), to Matthew J. Raffenberg (Senior Director of Environmental Licensing and Permitting, FPL) (July 10, 2018) (Mayorga Letter)). Specifically, the Mayorga Letter found that

> An evaluation of the total ammonia … groundwater data provided in the referenced report along with historical data (since 2010) from groundwater monitoring wells within … and immediately adjacent, to the Cooling Canal System (CCS) … indicates a statistically significant increasing trend … and a concentration gradient emanating from the CCS at the deep and intermediate levels. DERM finds that the total ammonia concentrations documented in several sampling locations … exceeded the applicable Miami-Dade County surface water standard. DERM acknowledges that the documented elevated surface water ammonia concentrations may be attributable to several contributing sources, including factors not directly related to the operation of the CCS. However, based on an evaluation of other associated water quality data, such as tritium concentrations and temperature, DERM finds that the data supports that the CCS is a contributing source to the ammonia concentrations observed in areas which exceed the applicable standard.

Mayorga Letter at 1-2.

[45] Applicant's Appeal at 17 n.64.

Point site. Therefore, the Board did not commit an error of law or abuse of discretion in determining that the Joint Petitioners supplied adequate support for this assertion.

In addition, the Applicant contends that the Board failed to afford its ammonia mitigation efforts “the same presumption of compliance and effectiveness” that the Board afforded its efforts to mitigate high levels of salinity.[46] This assertion is also without merit. The Applicant itself, in its ER, treated ammonia impacts differently than it treated salinity. The ER acknowledged that hypersalinity resulted from operation of the CCS, but asserted that the CCS is not the source of elevated ammonia and, accordingly, stated that ammonia mitigation efforts are not necessary and did not analyze the potential impacts of CCS-derived ammonia on the environment.[47] In view of this apparent omission in the ER, the Board properly admitted the Joint Petitioners’ claims in Contention 5-E with respect to the impact of ammonia on threatened and endangered species. Nor is there any basis for an assertion that the Board committed an error of law or abuse of discretion by declining to extend a presumption of compliance and effectiveness to a non-existent ammonia mitigation plan.

Finally, the Applicant argues that the Board erred in admitting Contention 5-E because it impermissibly raises a “Category 1” issue, the impacts of which have already been determined generically by the Commission in 10 C.F.R. Part 51, Appendix B, Table B-1. This claim should also be rejected. Contrary to the Applicant’s assertion, the issue admitted by the Board is not a Category 1 issue. While the Staff agrees with the Applicant that the impact of ammonia on wetlands falls within the Category 1 issue of “cooling system impacts on terrestrial resources

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[46] *Id.* at 17-18.

[47] ER at 3-95 (“The data collected during [FPL’s Site Assessment Report] investigation indicate the presence of elevated ammonia values in excess of … DERM surface water standards is not the result of point or non-point source contamination attributable to the Turkey Point Site. …Therefore, FPL concludes that … [t]here is no evidence of any sources of ammonia being caused by FPL that warrant a corrective action plan by FPL.”).

(plants with once-through cooling systems or cooling ponds),"[48] here the Board limited the contention's scope to the Joint Petitioners' assertion that the ER failed to analyze the potential impact of ammonia arising from the CCS on threatened and endangered species.[49] As stated in 10 C.F.R. Part 51, Appendix B, Table B-1, the impacts of license renewal on threatened and endangered species is a site-specific Category 2 issue. The Board did not commit an error of law or abuse of discretion in admitting this issue. Rather, the Board properly reformulated Contention 5-E so that it is limited to only the admissible portion, which is a Category 2 issue. The Board's decision to admit this contention, as revised, should therefore be affirmed.

D. The Applicant's Appeal Regarding SACE Contentions 1 and 2 Should Be Dismissed as Moot

In its notice to the Commission regarding SACE's withdrawal from the proceeding, the Applicant states that SACE's withdrawal effectively "extinguishes its pending contentions," and that the Applicant's appeal of the Board's decision admitting portions of SACE's contentions "is now moot."[50] The Staff agrees with the Applicant that SACE's withdrawal effectively terminates any further proceedings on its admitted contentions, and renders moot the Applicant's appeal of the Board's admission of those contentions.[51] Accordingly, the Staff need not, and does not, address the Applicant's appeal of the Board's admission of SACE's contentions.[52]

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[48] Applicant's Appeal at 21.

[49] LBP-19-3, slip op. at 52-53.

[50] Applicant's Notice Regarding SACE Withdrawal (citing *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), ALAB-799, 21 NRC 360, 382 (1985)).

[51] *South Texas,* ALAB-799, 21 NRC at 382-84.

[52] To be sure, because Joint Petitioners' Contention 1-E and SACE Contention 2 are identical, the Staff's arguments herein as to Contention 1-E would apply with equal force to Contention 2.

CONCLUSION

For the reasons set forth above, the Board was correct in admitting Joint Petitioners' Contentions 1-E and 5-E, as revised, and the Board's decision should therefore be affirmed as to these two contentions. Further, SACE's withdrawal from the proceeding effectively terminated the litigation of its admitted contentions, and the Applicant's appeal of the Board's admission of SACE Contentions 1 and 2 (as revised) should therefore be dismissed as moot.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 26th day of April 2019

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 Units 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 BRIEF IN RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S APPEAL OF LBP-19-3," dated April 26th, 2019, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 26th day of April 2019.

Copies of the foregoing have also been sent by e-mail to Richard E. Ayres, Esq. (for Friends of the Earth, Inc.) at ayresr@ayreslawgroup.com, this 26th day of April 2019.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 26th day of April 2019