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

In the Matter of:	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-250
	)	Docket No. 50-251
(Turkey Point Nuclear Generating Station, Unit Nos. 3 and 4)	)	July 26, 2019
	)	

REPLY IN SUPPORT OF MOTION TO MIGRATE CONTENTIONS & ADMIT NEW CONTENTIONS IN RESPONSE TO NRC STAFF'S SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT

INTRODUCTION

On June 24, 2019, pursuant to 10 C.F.R. § 2.309 and the Atomic Safety and Licensing Board's ("Board") Revised Scheduling Order,[1] Intervenors Natural Resources Defense Council, Friends of the Earth, and Miami Waterkeeper (together "Intervenors") filed a motion[2] to migrate or amend admitted Contentions and to admit new Contentions based on the Draft Supplemental Environmental Impact Statement[3] ("DSEIS") for Florida Power and Light Co.'s ("Applicant") subsequent license renewal for Turkey Point Nuclear Generating Station, Units 3 and 4, issued by Nuclear Regulatory Commission ("NRC" or "Commission") Staff in March 2019. NRC Staff and Applicant both filed Answers opposing our motion *en bloc*.[4] Intervenors' Motion sets forth

[1] Order (Granting in Part Intervenor's Joint Motion for Partial Reconsideration of Initial Scheduling Order) (Apr. 2, 2019) (ML19092A386) (providing that the deadline for answer opposing a dispositive motion is 30 days after May 10, 2019) (hereinafter "Scheduling Order").

[2] Natural Resources Defense Council's, Friends of the Earth's, and Miami Waterkeeper's Amended Motion to Migrate Contentions & Admit New Contentions in Response to NRC Staff's Supplemental Draft Environmental Impact Statement (June 24, 2019) (ML19179A316) (hereinafter "Motion").

[3] 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" (Mar. 2019) (ML19078A330) (hereinafter "DSEIS").

[4] NRC Staff's Answer to Joint Intervenors' (1) Amended Motion to Migrate or Amend Contentions 1-E and 5-E and to Admit Four New Contentions, and (2) Petition for Waiver (July 19, 2019) (ML19200A300) (hereinafter "Staff Answer"); [Applicant's] Answer Opposing Intervenors' Motion to Migrate or Amend Contentions 1-E and 5-E and

the bases for the migration, amendment, and admission of Contentions, in light of the Board's prior admission of Contentions in this proceeding (directed at the Environmental Report[5] ("ER")), the applicable statutory and regulatory framework, and supporting declarations setting forth relevant facts. In sum, Intervenors' amended and new Contentions meet the criteria for admission and the Board should grant Intervenors' Motion.

ARGUMENT

I. THE PREVIOUSLY ADMITTED CONTENTIONS SHOULD BE ADMITTED AS AMENDED.

In their Motion, Intervenors argued that the ER's omissions alleged in Contentions 1-E and 5-E (1) continue to be omitted in the DSEIS and therefore the Contentions should be migrated or, in the alternative, (2), to the extent those prior omissions are addressed in the DSEIS, they are treated inadequately and therefore Intervenors' amendments alleging that the analysis remains inadequate should be admitted.[6] On July 8, 2019, the Board dismissed Contentions 1-E and 5-E and thus the law of the case is that these Contentions are moot.[7] Intervenors have provided, however, sufficient information as required by NRC regulations to have Contentions 1-Eb and 5-Eb admitted as amended.

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to Admit New Contentions 6-E, 7-E, 8-E, and 9-E (July 19, 2019) (ML19200A297) (hereinafter "Applicant Answer").

[5] Turkey Point Nuclear Plant, Units 3 and 4, Appendix E, Applicant's Environmental Report Subsequent Operating License Renewal Stage (Jan. 2018) (ML1813A145) (hereinafter "Environmental Report").

[6] *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117 (July 26, 2013) ("if there is any question about whether an admitted contention merits a new/amended contention motion relative to the Staff's environmental document, the best approach seemingly would be to make a filing that treats the contention as if it were new/amended or, perhaps most prudently, argues in the alternative.").

[7] Memorandum and Order (Granting FPL's Motions to Dismiss Joint Intervenors' Contentions 1-E and 5-E as Moot), LBP-19-06 (July 8, 2019). Intervenors plan to file with the Commission a Petition for Review on this decision.

A. Amended Contention 1-Eb Should Be Admitted

Applicant and NRC Staff misconstrue the legal requirements for an amended contention. Contention 1-Eb (a) is timely, (b) is consistent with National Environmental Policy Act ("NEPA") requirements, and (c) meets the requirements in 10 C.F.R. § 2.309.

1. Contention 1-Eb is timely.

Applicant concedes that Contention 1-Eb is timely regarding the potential of the cooling towers to mitigate impacts to endangered species. But Applicant argues Contention 1-Eb is untimely as to the purported "repackaging" of arguments made regarding the impact of continued use of the cooling canal system on groundwater resources.[8] Applicant insists that because Contention 1-E and 1-Eb both *mention* groundwater, Contention 1-Eb cannot be based on new and materially different information, as required by 10 C.F.R. 2.309, and it is therefore untimely.[9] These claims are erroneous.

First, Applicant seems to want it both ways. Having already argued that Contention 1-E cannot migrate because the DSEIS cured the alleged omission by analyzing the cooling canal system alternative,[10] Applicant cannot now argue that Contention 1-Eb is not based on new and material information because it happens to address the same topic as Contention 1-E. The basis of Contention 1-Eb is the new alternatives analysis in the DSEIS that is materially different from what was included in the ER, and thus the Contention is timely.

Second, Contention 1-Eb is not a "repackaging" of Contention 1-E. Contention 1-E argued that the ER omitted the reasonable and feasible alternative of replacing the cooling canal

[8] Applicant Answer at 9.

[9] Applicant Answer at 9.

[10] Applicant Answer at 5; *see also* FPL's Motion to Dismiss Joint Petitioners' Contention 1-E as Moot (May 20, 2019) (ML19140A355).

system with cooling towers. Contention 1-Eb, on the other hand, argues that the discussion in the DSEIS is inadequate because it does not consider how the cooling towers could reduce or avoid adverse impacts, such as to groundwater.[11] Contention 1-E was a contention of omission while the amended Contention 1-Eb is a contention of adequacy based on the new information included in the DSEIS. The DSEIS includes new and material information on groundwater impacts of the cooling canal system, but it fails to include a meaningful discussion of how these adverse impacts could (and likely would) be mitigated through the use of the cooling towers.[12] Given that Contention 1-E was dismissed as moot based on the inclusion in the DSEIS of new information curing the omission challenged in Contention 1-E, it would be ridiculous to also reject Contention 1-Eb as untimely.

2. NRC regulations require an alternatives analysis.

Applicant argues that NEPA does not require a DSEIS to include mitigation measures.[13] But NRC regulations implementing NEPA require an alternatives analysis for "reducing or avoiding adverse environmental effects," including an analysis of "benefits and costs of the proposed action and alternatives."[14] Intervenors acknowledge that the DSEIS includes a nominal discussion of a cooling tower alternative, but note that the DSEIS analysis is inadequate under NRC regulations because it failed to look at the benefits of alternatives for reducing or avoiding adverse effects. The *Methow Valley* opinion requires mitigation be "discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated,"[15] and that is exactly what

[11] Motion at 10-11.

[12] DSEIS at 4-41 – 4-42.

[13] Applicant Answer at 11–14.

[14] Motion at 10-11 (citing 10 C.F.R. § 51.71(d); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); and *Hydro Res., Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53, 93 (Aug. 21, 2006)).

[15] Applicant Answer at 12–13 (citing *Methow Valley*, 490 U.S. at 352).

Intervenors are asking for. Without understanding the benefits an alternative can provide together with any adverse impacts, the public and decisionmakers cannot make the informed decisions on the project and its alternatives that NEPA requires.

3. Amended Contention 1-Eb meets the requirements in 10 C.F.R. § 2.309(f)(1).

NRC Staff and Applicant argue that Contention 1-Eb lacks adequate support and fails to raise a genuine dispute as required by 10 C.F.R § 2.309.[16] Both are incorrect. The failure of the DSEIS to address the benefits of substituting cooling towers for the cooling canal system creates a genuine and consequential dispute. While the DSEIS acknowledges the adverse impacts of the cooling canal system and provides a description of the adverse impacts of constructing cooling towers, the document fails to provide any analysis of the reduction in adverse environmental effects that cooling towers would achieve. Intervenors' position is simply that NRC NEPA regulations require the DSEIS evaluate the potential benefits of using cooling towers, and the Staff's failure to provide such an analysis creates a genuine dispute.

First, NRC Staff and Applicant claim support for their specificity and genuine dispute arguments from the wrong part of the DSEIS.[17] Rather than cite the cooling tower analysis, they instead cite the discussion of the no-action alternative.[18] On the face of it, these two discussions are unrelated, addressing different facts and circumstances. Failing a convincing explanation, which is not provided, this argument offers no support for their position. Additionally, Applicant cites the June 2017 Biological Opinion to argue that Intervenors are incorrect that there have been "decreased nesting and fewer American crocodiles."[19] Yet for this conclusion, Intervenors

[16] Staff Answer at 20; Applicant Answer at 14–17.

[17] Staff Answer at 20–22; Applicant Answer at 14–15.

[18] *Id.*

[19] Applicant Answer at 17.

relied on the more recent and relevant 2018 Biological Assessment which the DSEIS incorporates.[20] These arguments based on inapposite sources are without merit.

Second, Applicant incorrectly exaggerates the burden Intervenors bear under NRC regulations to establish the admissibility of a contention. Intervenors provided sufficient support under NRC regulations for the proposition that replacing the cooling canal system with cooling towers could yield environmental benefits. Contrary to Applicant's assertion,[21] at the contention admissibility phase, Intervenors are not required to prove the merits of this contention, but only to show sufficient support "indicating that further inquiry is appropriate."[22] And the NRC has explained that a "Board may appropriately view Petitioners' support for its contention in a light that is favorable to the Petitioner."[23] Under NEPA, the NRC, not Intervenors, is required to evaluate in its EIS whether "cooling towers would be more effective in addressing [cooling canal system]-related impacts."[24] Intervenors showed in their Motion that cooling towers are a reasonable and feasible alternative that the DSEIS therefore was obliged to consider as NRC regulations require the analysis of reasonable alternatives to look at the benefits. Having shown that those benefits were not meaningfully considered, Intervenors met their burden for Contention 1-Eb and it should be admitted as amended.

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[20] Motion at 12 citing Biological Assessment for the Turkey Point Nuclear Generating Unit Nos. 3 and 4 Proposed Subsequent License Renewal, at 32 (Dec. 2018) (hereinafter "Biological Assessment") ("The number of nests and hatchlings at Turkey Point peaked in 2008 and 2009… but have since declined. Most recently, the number of nests within the [cooling canal system] rapidly decreased from 25 nests in 2014 to 8 or 9 nests from 2015 through 2017. The FWS (2017a) determined that the most recent reduction in crocodile nesting and hatchling abundance was the result of the increase in water temperature and salinity, and the decrease in water quality in the [cooling canal system] from 2013 through 2017.").

[21] Applicant Answer at 16.

[22] *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 & 4), LBP-09-17, 70 NRC 311, 329 (2009).

[23] *Id.*

[24] Applicant Answer at 16.

B. Amended Contention 5-Eb Should Be Admitted

In contrast to the assertions of Staff and Applicant,[25] Intervenors provided sufficient facts to support admission of Contention 5-Eb.[26] In making their assertions NRC Staff and Applicant ask more of Intervenors than NRC regulations do. While the burden is on petitioners to meet the six admissibility factors,[27] petitioners are not required to prove the merits of their case – specifically, that the DSEIS is deficient in its analysis of the potential impacts of ammonia releases during the renewal period on threatened and endangered species and their critical habitat – at the contention admissibility stage. NRC regulations only require Intervenors provide sufficient factual and legal basis, "demonstrating that an 'inquiry in depth' is appropriate."[28] The objectives of the "basis" requirement are simply (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against.[29] Intervenors met this requirement.[30]

Intervenors showed that the DSEIS admits to heightened levels of ammonia at the site.[31] Applicant denies this fact, but supplies contradictory arguments in attempting to make this case.

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[25] Staff Answer at 23; Applicant Answer at 21 & 24.

[26] Motion at 21–25.

[27] 10 C.F.R. § 2.325; *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331 (1983); *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), LBP-87-2, 25 NRC 32, 34 (1987).

[28] *Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994) (quoting Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989) (quoting Connecticut Bankers Association v. Board of Governors, 627 F.2d 245 (D.C. Cir. 1980)). *See also, Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004); *USEC, Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 596-97 (2005).

[29] *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20–21 (1974).

[30] Motion at 21–25

[31] DSEIS at 3-52 (citing Letter from W. Mayorga, DERM, to M. Raffenberg, FPL (July 10, 2018)).

In its Answer, Applicant claims that the "DSEIS does *not* acknowledge[] that Miami-Dade County has offered evidence that Turkey Point is a key source of the ammonia and is responsible for the violations of water quality standards."[32] But when Applicant argued that Contention 5-E should be dismissed as moot, Applicant stated that "[a]s to the first part of Contention 5-E, alleging the failure to recognize Turkey Point as a possible source of ammonia in groundwater and surface waters surrounding the site, the DSEIS now provides such information."[33] We agree, the DSEIS does provide that information and that information comes from Miami-Dade County.[34]

The DSEIS conducts a general ammonia analysis and randomly conducts ammonia analysis on specific individual species,[35] but the DSEIS illogically fails to include an analysis of ammonia impacts to nearly all of the relevant threatened and endangered species. The DSEIS fails to explain its cherry-picking, even though, as the Biological Assessment for the subsequent relicensing of Turkey Point Units 3 & 4 notes, a specific evaluation of ammonia's impacts must consider "[s]everal water quality parameters, including pH, temperature, and salinity; the rate and duration of exposure; and *a species' specific physiobiology*. . . .".[36]

NRC Staff and Applicant spend significant time reviewing the ammonia discussion in the DSEIS but fail to logically account for the inconsistent depth of analysis for different species. Staff specifically argues that Intervenors "do not provide any alleged facts or expert opinions to support a claim that differing treatment is not justified by the differing circumstances of the

[32] Applicant Answer at 21 (emphasis in original).
[33] FPL's Motion to Dismiss Joint Petitioners' Contention 5-E as Moot, at 4 (May 20, 2019) (ML19140A356).
[34] *See* Motion at 23, n. 98 (citing DSEIS at 3-52 (citing the Mayorga – Raffenberg Letter)).
[35] See Motion at 23–24.
[36] Biological Assessment at 60 (emphasis added).

different species and habitats."[37] In fact, Intervenors specifically are arguing that differing circumstances do require differing treatment, but that the DSEIS picks seemingly at random which species to analyze for the ammonia impacts. NRC Staff and Applicant both argue that the specific circumstances of the West Indian manatee are what make the DSEIS's focused evaluation of ammonia impacts on the manatee logical.[38] Yet the source of ammonia is the cooling canal system, and, unlike the manatees, the American crocodile's critical habitat is the cooling canal system itself. It would seem logical, then, for the DSEIS to have done a thorough analysis of ammonia impacts to the crocodile, especially given the fact that the DSEIS concluded the subsequent license renewal will likely adversely affect the crocodile even without considering the impact of ammonia[39] and the Biological Assessment concluded that "the most recent reduction in crocodile nesting and hatchling abundance was the result of the increase in water temperature and salinity, and the decrease in water quality in the [cooling canal system]."[40]

II. THE NEW CONTENTIONS SHOULD BE ADMITTED.

In their responses to each of the new contentions, the NRC Staff and Applicant failed to present evidence or explicitly describe if or how they disagreed with Intervenors' evidence or expert opinions. Rather, Staff and Applicant attack the admission of the new contentions by asserting that Intervenors have run afoul of this Board's ruling in this case, that is, according "substantial weight" to the determination that Applicant will comply with its legal obligations.[41] Further, Staff suggests that Intervenors fail to identify documents or specific statements that

[37] Staff Answer at 30.

[38] Staff Answer at 29-30; Applicant Answer at 25.

[39] DSEIS at 4-6.

[40] Biological Assessment at 32.

[41] Staff Answer at 33 (citing LBP-19-3, 89 NRC at __ (slip. op at 38)); Applicant Answer at 35 (citing LBP-19-3, 89 NRC at __ (slip. op at 38)).

support the contentions assertions.[42] Staff and Applicant are incorrect. As demonstrated in its original Motion and in the following pages, Intervenors (A) demonstrated "good cause" for their new contentions and (B) met the contention admissibility requirements for their new contention. The new contentions should therefore be admitted.

As an initial matter, Intervenors presented their new Contentions, Contentions 6-E through 9-E, in a logical, straightforward manner that is easy to understand and follow. This includes three expert reports totaling approximately 30 pages of written text, a petition filed by Miami-Dade County against the Florida Department of Environmental Protection, and documents that were not available to Intervenors before they filed their initial contentions in this proceeding.[43]

Each of the new contentions address the DSEIS conclusions on environmental impacts from the continued operation of the cooling canal system: Contention 6-E (impacts on nearby surface waters via the groundwater pathway); Contention 7-E (groundwater quality degradation); Contention 8-E (cumulative environmental impacts on water resources); and Contention 9-E (groundwater use conflicts). Each new contention relies on newly presented evidence and expert opinions to "demonstrate that Applicant's remedial and freshening efforts are not sufficient to address environmental impacts from the cooling canal system now or in the future."[44]

The DSEIS states that Applicant's efforts to meet the 34 PSU annual average salinity requirements in the cooling canal system are not working as predicted by modeling and that "more favorable climatic conditions" are necessary to achieve these results.[45] But the DSEIS

[42] Staff Answer at 33, 34.

[43] *See* Motion at Section IV.B., New Information.

[44] *See*, *e.g.*, Motion at 41–42 (Contention 6-E) (referencing Section IV.B of the Motion); Motion at 47 (Contention 7-E); Motion at 49 (Contention 8-E); Motion at 52 (Contention 9-E).

[45] *See*, *e.g.*, Motion at 41 (citing DSEIS at 3-49). Critically, the NRC Staff does not challenge this statement.

lacks any determination about "what climatic conditions would be necessary to achieve the salinity target, or whether these necessary climatic conditions will or are likely to exist during the subsequent license renewal period."[46] Since the modeling has proven unreliable and Applicant has been unable to meet the salinity target, there should be ***some*** reasoned basis for concluding that the freshening effort might actually work; yet there is ***none***. The "DSEIS is simply assuming that continued oversight . . . will produce a solution."[47] But this is not a proper NEPA analysis. The D.C. Circuit has held that "the existence of permit requirements overseen by another federal agency or state permitting authority cannot substitute for a proper NEPA analysis."[48] Thus, we think (and will address in detail below) even if this Board accords substantial weight to the notion that Applicant will comply with its legal obligations, this does not relieve the Staff of its burden under NEPA to take a "hard look" at the underlying questions: whether freshening efforts might work, what climatic conditions are necessary, and if freshening is even possible in a warming world.

Indeed, in the ordinary NEPA case, the absence of a reasoned basis for a major conclusion in the DSEIS alone would send an agency back to the drawing board. But here, Intervenors further provided evidence and expert opinions to *demonstrate* that there is no reasoned basis for the DSEIS's conclusions regarding the impacts from the cooling canal system and, indeed, that the evidence supports contrary conclusions. We now turn to the specifics of Intervenors' obligations under the regulations.

[46] Motion at 41.

[47] Motion at 41.

[48] *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1375 (D.C. Cir. 2017).

A. Intervenors Demonstrated "Good Cause" for Admitting Their New Contentions

Intervenors' Motion explains why each of the new contentions satisfies the "good cause" standard in 10 C.F.R. § 2.309(c)(1) for submitting new and amended contentions.[49] As the regulation requires, Intervenors supported each new contention with expert reports analyzing and providing information that was previously unavailable and materially different from information that was previously available. Each contention is also timely filed based on the availability of that new information and the Board's Scheduling Order. Therefore, and for the reasons set forth in Intervenors' Motion and in response to the NRC Staff's and Applicant's various arguments below, the Board should find the Intervenors satisfied the "good cause" standard to be admitted.

1. Dr. Fourqurean's Report.

The NRC Staff and Applicant challenge Intervenors' reliance on the reports of Dr. Fourqurean.[50] The Staff posit that Intervenors "fail to explain why they could not have submitted the *previous version* of his report" on August 1, 2018 and "do not show that Dr. Fourqurean's conclusions in April 2019 differed to any extent from his earlier conclusions."[51] Applicant's argument is substantially the same.[52]

Starting with the latter contention, Intervenors explained that Dr. Fourqurean's updated report relies on his analysis of seagrass samples that show excess phosphorous loadings in the surface waters adjacent to the cooling canal system.[53] This information was not available in August 2018 and therefore could not be submitted at that time. Intervenors were not required to submit the prior version of Dr. Fourqurean's report because the Board would have rejected it for

[49] Motion at Section IV.C.

[50] Staff Answer at 37–38.

[51] Staff Answer at 38.

[52] Applicant Answer at 31–32.

[53] Motion at 39; *see also* Motion at 29–30 (citing Dr. Fourqurean's report at 5).

lacking actual data on phosphorus loadings in Biscayne Bay. Applicant's claim that Dr. Fourqurean's report is not "adequately supported" proves this point. It argues (erroneously) that Dr. Fourqurean's opinions are not adequately supported because he is "working toward publishing a paper once a full 3 years of data are collected."[54] Thus, according to Applicant, it is both too late and too soon for Intervenors to rely on this information.

The NRC Staff's argument is even more spurious. It claims that Intervenors fail to demonstrate good cause based on Dr. Fourqurean's report because the report and his Curriculum Vitae "cite numerous documents, which appear to have been published [as far back as] 1958 . . . ."[55] Using this logic, Intervenors would have to file contentions every time an expert publishes a scientific paper no matter how remote to the question at hand. Intervenors did not submit Dr. Fourqurean's report until after Dr. Fourqurean organized and presented the hard data upon which his report relies. While other information existed beforehand, the new data provided hard evidence of adverse impacts.

Both the NRC Staff and Applicant also fail to explain why Dr. Fourqurean's report is untimely given the fact Intervenors submitted it in accordance with the Board's April 2, 2019 Scheduling Order, which set a June 24, 2019 for filing new and amended contentions. As explained in the Motion, the Board may "define timeliness by specifying a deadline for timely filing a new or amended contention."[56] That is exactly what happened here. Intervenors contentions are timely because they were filed in accordance with the Scheduling Order.

[54] Applicant Answer at 32 n.144 (internal modifications and quotations omitted).

[55] Staff Answer at 37.

[56] Motion at 35 (quoting *Crow Butte Res., Inc.* (Marsland Expansion Order) LBP-18-3 at 8 (July 20, 2018).

2. Mr. Wexler's report.

As stated in Intervenors' Motion, in contrast to Applicant's ER, the DSEIS recognizes that Applicant's efforts to reduce salinity in the cooling canal system is not working and that "more favorable climatic conditions" are necessary to achieve the salinity target.[57] This was the first time "[this] information [was] actually used by the NRC Staff to form its conclusions on impacts in the DSEIS."[58] The NRC Staff complain, however, that Intervenors do not demonstrate good cause for filing Contention 9-E, supported by Mr. Wexler's declaration, "sooner."[59] Notably, "sooner" is not the regulatory standard. The question is whether Intervenors filed the contention in a timely manner. And based on the availability of the new information in the DSEIS, the contention is timely. Intervenors "need not" have responded until after publication of the DSEIS and in accordance with the Board's Scheduling Order.[60]

Applicant claims, however, that Mr. Wexler's report contains no new and materially different information.[61] Applicant apparently reviewed the report,[62] but merely cherry-picked it for statements consistent with its legal argument.[63] Mr. Wexler's report does not merely "dicuss[] groundwater modeling studies performed by [Applicant's contractor] . . . from 2014 through 2017."[64] Mr. Wexler's report took the new real-world information presented for the first time in the DSEIS and modeled the impact on Applicant's ability to remediate the hypersaline plume.[65] In performing that analysis, Mr. Wexler noted that Applicant's modelers simulated the

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[57] *See, e.g.*, Motion at 41.
[58] *Powertech USA, Inc*. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-13-09, 78 NRC 37, 93 (2013).
[59] Staff Answer at 51.
[60] *Id*.
[61] Applicant Answer at 30–31.
[62] *See, e.g.*, Applicant Answer at 30 n.138 (citing page 1 of the Wexler Report).
[63] Applicant Answer at 30–31.
[64] *Id*. at 30.
[65] Wexler Decl. at 4.

effectiveness of the recovery well system *assuming* salinity in the cooling canal system would be brought down to 35 PSU at the outset of recovery well operations.[66] Mr. Wexler therefore conducted his analysis using the most updated Tetra Tech model but without the 35 PSU salinity assumption and found "that freshening of the cooling canal system is the key driver to retraction of the hypersaline plume; not pumping."[67] Mr. Wexler's analysis further "demonstrates that retraction of the hypersaline plume is not likely to occur without the addition of more wells and increased pumped volumes."[68] Simply put, Mr. Wexler's report shows that under existing conditions, without the "more favorable climatic conditions" assumed for the first time in the DSEIS, there is no reasoned basis for concluding Applicant will be able to remediate the hypersaline plume.

3. Dr. Nuttle's Report and the Miami-Dade County Petition for Hearing Contain New and Materially Different Information.

Applicant argues that the Miami-Dade County Petition is not "new" information because it was "available" ten months ago.[69] But this statement conveniently neglects the fact that the County did not file its Petition until after Intervenors filed both their initial contentions and reply brief on the ER.[70] 10 C.F.R. § 2.309(c)(1) does not require Intervenors to show that information is "new," only that the information "was not previously available." Here, it is indisputable that the Petition did not exist before the deadline to file contentions on the ER.

Applicant also argues that the Miami-Dade County Petition is not materially different because Miami-Dade County "identified its concerns" before Intervenors filed their initial

[66] Wexler Decl. at 4.
[67] Motion at 28 (citing Wexler Decl. at 4).
[68] Motion at 28 (citing Wexler Decl. at 5).
[69] Applicant Answer at 33.
[70] Motion at 31.

contentions.[71] But this misses the point. The referenced letter requested a 60-day "extension of time to September 17, 2017 for [Miami-Dade County] to further review and fully evaluate [Florida Department of Environmental Protection's] action . . . to contemplate action regarding a petition for administrative hearing . . . ."[72] On its face, the document did not at that time represent the County's final determination. That determination only became final when the County filed its petition at the end of the 60-day extension. Moreover, Intervenors offer the Petition in support of their new contentions because "the very fact that two agencies with oversight over water resources disagree is material to this proceeding. Logically, the NRC cannot conclude that compliance with and oversight by FDEP *and* Miami-Dade's requirements will result in "small" environmental impacts when Miami-Dade is on record stating FDEP's requirements are incompatible with its own."[73] As noted above, Applicant attempts to downplay the significance of the Petition by claiming in a footnote that "[t]he relevance of the Miami-Dade County Petition to [subsequent license renewal], if any, is far from clear."[74]

With respect to timeliness, it is relevant to note that Applicant's response fails to explain why Intervenors' reliance on the Miami-Dade County Petition is untimely when, to Intervenors' knowledge, there was no record of the Petition in this proceeding until April 3, 2019 when Applicant submitted "*more recent* additional information to support the Staff's review . . . ."[75] This is of course *after* the NRC Staff released the DSEIS. Applicant also does not address the fact that Intervenors filed their new contentions in compliance with the Board's Scheduling Order.

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[71] Applicant Answer at 33.

[72] Letter from Lee N. Heft, Director, MDC-DERM, to Lee Crandall and Timothy Rach, FDEP (July 18, 2018).

[73] Motion at 34 (addressing the materiality requirement in 10 C.F.R. § 2.309(c)(1)(ii).

[74] Applicant Answer at 35 n.156.

[75] Motion at 35–36 (emphasis added).

Dr. Nuttle's report is similarly timely because it is offered to confirm those concerns raised in Miami-Dade County's Petition. Notably, neither Applicant nor the NRC Staff argue that Intervenors' failed to satisfy the "good cause" standard with respect Dr. Nuttle's opinion that the "more favorable climatic conditions" that the DSEIS relies on to support its conclusions are unlikely to occur.[76] Thus, Intervenors met their burden.

B. <u>The New Contentions Meet Admissibility Standards</u>

Both the NRC Staff and Applicant incorrectly argue that the new contentions do not meet admissibility standards. As shown below, each contention meets the standards and thus should be admitted.

1. Reply to NRC Staff Regarding Contentions Meeting Admissibility Standards.

NRC Staff make the same faulty arguments against each of Intervenors' new Contentions: that the Contentions are lack specificity and fail to establish a genuine dispute of material fact, as required by 10 C.F.R. § 2.309(f). These objections have no merit. NRC Staff make them with almost no regard for the specific statements and evidence Intervenors provided supporting the new contentions. As shown in Intervenors' Motion and below, Intervenors' presentation of evidence for Contentions 6-E through 9-E complies with NRC regulations for admissibility.

a. <u>Intervenors provide specific statements to support the new contentions and that dispute material facts in the DSEIS.</u>

First, Intervenors offered the expert opinion of Dr. Nuttle. With respect to the issue of "more favorable climatic conditions"[77] relied on in the DSEIS, Dr. Nuttle opines that they "are unlikely to occur."[78] There is nothing in the DSEIS that shows otherwise.

[76] Motion at 28 (citing the Nuttle Decl. at 8).
[77] DSEIS at 3-49.
[78] Motion at 28 (citing Nuttle Decl. at 8).

Intervenors also presented evidence and expert opinions showing the DSEIS cannot rely on a presumption of compliance and oversight by two government agencies.[79] One of these government agencies (Miami-Dade County Department of Environmental Resources Management ("DERM")) began litigation against the other agency (Florida Department of Environmental Protection ("FDEP")) because, *inter alia*, the latter's actions change the hydrological conditions in the area "exacerbate the existing water quality violations that [Applicant] is otherwise working to abate and remediate."[80] Intervenors again offered the expert opinion of Dr. Nuttle to confirm the bases for Miami-Dade County's statements regarding how Applicant's compliance with the mitigation permit substantially changes the region's hydrological profile[81] and that, in light of hydrological conditions and based on his review, "compliance with requirements for remediation established by DERM and FDEP does not reliably predict future compliance with state and local water quality requirements."[82]

Intervenors offered the expert report of E.J. Wexler as well. His report eliminates any possible claim that the models and modeling efforts relied on in the DSEIS *might* somehow show that Applicant's existing efforts to freshen the cooling canal system or retract the hypersaline plume will be successful.[83] The modeling in the DSEIS has "serious flaws" that are "especially critical" given current efforts are not achieving the anticipated results.[84] Ultimately, Mr. Wexler concludes that Applicant *cannot* meet the salinity target using existing measures. Meeting the

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[79] *See, e.g.*, Motion at. 41 (quoting DSEIS at 4-23, which states the Staff is relying on "the FDEP's and DERM's existing requirements and their continuing oversight of FPL's site remediation efforts.").

[80] Motion at 27.

[81] *Id*. at 26 (quoting Miami-Dade County. Miami-Dade County Petition for Administrative Hearing. (Sept. 17, 2018)).

[82] *Id*. at 28 (citing Nuttle Decl.).

[83] *See, e.g.*, Motion at 44 ("Intervenors offer evidence and expert opinions that Applicant's ongoing efforts to manage salinity issues are not, and will not, reach required target salinity levels or effectively remediate the hypersaline plume."); Motion at 28–29 (summarizing Mr. Wexler's opinions).

[84] Motion at 28 (citing Wexler Decl. at 4).

target is, in his view, also the "key driver to retraction of the hypersaline plume."[85] Finally, Mr. Wexler opines that more analysis would be required to determine whether changing the existing measures would have harmful environmental effects.[86]

Finally, while NRC Staff acknowledges that Intervenors offered Dr. Fourqurean's report in support of Contention 6-E, they fail to address the substance of the report.[87] NRC Staff incorrectly claims that the Motion "fails to refer to any particular section or statement in Dr. Fourqurean's 22-page report."[88] The NRC Staff apparently disregarded, again, the Motion's reference to Section IV.B, which lists eight bulleted paragraphs of Dr. Fourqurean's "specific statements."[89] Each of these, in turn, cite the relevant page number in his report.[90] Ultimately, the NRC Staff cannot comply with NEPA's "hard look" requirement by refusing to take *any* look at evidence and opinions supplied in Intervenors' Motion.

b. NRC Staff almost entirely ignore Intervenors' evidence.

The NRC Staff's position amounts to willful blindness. The Staff claims that it can only "speculate" as to what evidence supports a "particular contention" and which statements "demonstrate a genuine dispute of material [sic] fact with the DSEIS."[91] But there is no need to speculate—the NRC Staff can simply follow the instructions found in each contention, turn to Section IV.B of the Motion, and read the "concise statement[s] of the alleged facts or expert opinions" and "references to the specific sources and documents" that Intervenors rely on to

[85] Motion at 28–29 (citing Wexler Decl. at 5).

[86] Motion at 29 (citing Wexler Decl. at 5).

[87] Motion at 34.

[88] Staff Answer at 34.

[89] Staff Answer at 31 (complaining that the "Motion fails to cite any specific statements in the referenced documents.").

[90] Motion at 26-30.

[91] Staff Answer at 30–31.

establish the required "genuine dispute" over various conclusions in the DSEIS.[92] Respectfully, it seems that NRC Staff take the odd position that Intervenors went through the time, expense, and effort to supply evidence and expert opinions that they do *not* rely on in support of their new contentions. But, as Dr. Suess might say, Intervenors meant what they said and said what they meant. NEPA's "hard look" standard requires that legitimate concerns, facts, and legal arguments presented be confronted and responded to.[93] The NRC Staff's apparent disregard of Intervenors' logically sequenced reliance on the expert declarations violates the "hard look" requirement.

The NRC Staff's only substantive arguments come in response to Contention 9-E (groundwater use conflicts). There, the NRC Staff reviewed and responded to Mr. Wexler's declaration but claim that it fails to "demonstrate any genuine dispute of material fact with the DSEIS."[94] We can only say that the NRC Staff's position is incomprehensible: while claiming no genuine dispute exists, the NRC Staff admit that Mr. Wexler offers a countervailing "prediction" that "Applicant's present freshening program will ultimately be [un]successful."[95]

The NRC Staff goes on to highlight certain "facts stated in the DSEIS" that Mr. Wexler does not dispute.[96] For example, Mr. Wexler does not to dispute the *existence* of the 2016 FDEP Consent Order that requires Applicant to reduce salinity in the cooling canal system to an average 34 PSU within 10 years to establish a genuine dispute of material fact or law.[97]

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[92] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[93] *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 431 (2003); *Hydro Res., Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), 62 NRC 442, 442 (2005) *Union Elec. Co.* (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 366 (1983).

[94] Staff Answer at 47.

[95] Staff Answer at 47.

[96] Staff Answer at 47-48.

[97] Staff Answer at 47.

Likewise, he does not dispute the fact that evaporation increases salinity in the cooling canal system, that hypersaline water has seeped from the canal system into Biscayne aquifer, or that Applicant has installed a recovery well system for the purpose of retracting the hypersaline plume.[98] But Mr. Wexler *does* dispute the ultimate conclusions proffered in the DSEIS and the technical basis supporting them. The NRC Staff freely admits this and fails to offer any substantive challenge to his work.[99]

Instead, the NRC Staff point to the "fact" relied on by the DSEIS, "that the State of Florida and Miami-Dade County are actively engaged in regulating [Applicant's] water quality impacts and have imposed extensive requirements on [Applicant] to freshen the [cooling canal system] waters and retract the hypersaline plume, and thereby redress the [cooling canal system's] adverse water quality impacts."[100] But this is precisely the point Intervenors challenge and Mr. Wexler disputes—he states that these "extensive requirements" ***are not working*** as anticipated and ***will not*** "redress" the adverse water quality impacts. Indeed, Miami-Dade County is *challenging* the State over changes to Applicant's state-issued permit that are incompatible with the County's "extensive requirements." Thus, the NRC Staff's reliance on the notion that the State of Florida and Miami-Dade County are "engaged in regulating" is entirely misplaced. With the regulators at loggerheads, there is no basis whatsoever for the Staff or this Board to assume that the water quality issue will be resolved.

Intervenors anticipated that the NRC Staff might argue that the State or County might try to address the water quality issue by "modifying current requirements affecting the volumes of

[98] Staff Answer at 47.
[99] Staff Answer at 49.
[100] Staff Answer at 49.

water currently being used and the locations selected for adding water."[101] Mr. Wexler addressed this issue when he opined that "[m]ore analysis would be required to determine whether additional withdrawals would have harmful environmental effects."[102] The NRC Staff fail to suggest otherwise and therefore accept this premise.

To summarize, the current freshening efforts are not working (NRC Staff does not dispute), Mr. Wexler's report and opinions demonstrate those efforts will not work now or in the future without a significant change (NRC Staff does not dispute), the State or County could modify the solution by adding more water to the canals (NRC Staff does not dispute), but consistent with its past practice, the DSEIS would have to analyze the impacts on groundwater use conflicts (NRC Staff does not dispute). The DSEIS is left to rely on only the deadlocked regulatory process as its only support for concluding that the impacts on water use conflicts will be "small." One can hardly imagine a further departure from NEPA's required "hard look," which mandates that the federal government inform itself fully of the impact on the environment of proposed actions. As Intervenors' Motion cites, in *Sierra Club v. Fed. Energy Regulatory Comm'n* the D.C. Circuit held that the mere "existence of permit requirements overseen by another . . . state permitting authority cannot substitute for a proper NEPA analysis."[103] The NRC Staff does not even attempt to reconcile the DSEIS with the *Sierra Club* case (and as shown below, neither does Applicant).

[101] Staff Answer at 50 (internal quotations and citations omitted).

[102] Motion at 29 (citing Wexler Decl. at 5).

[103] *See, e.g.*, Motion at 41 (citing *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1375 (D.C. Cir. 2017).

2. Reply to Applicant Regarding the New Contentions Meeting Admissibility Standards.

Applicant erroneously argues that Intervenors' new contentions are not within the scope of the proceeding, are not adequately supported, and fail to show that genuine disputes exist.

a. Contention 6-E is within the scope of the proceeding.

Applicant's arguments on the scope of the proceeding are internally inconsistent, unsupported by prior decisions by this Board, contrary to binding NRC and circuit court NEPA law, and miss the point of Intervenors contentions.

At the same time Applicant argues that Contention 6-E is outside the scope of the proceeding, it cites Board precedent in direct conflict with that premise. Applicant highlights the Board's pronouncement in LBP-19-3 that it gives "substantial weight" to state and county determinations that Applicant "will comply with its legal obligations."[104] Of course, that the Board weighs these issues at all and is willing to consider "evidence to the contrary" means that these issue is *within* the scope of this proceeding; if it were outside the scope of the proceeding, then the Board would not weigh the evidence and would instead simply find it outside the scope or immaterial.[105]

The cases cited in Applicant's response brief similarly do not support its scope and materiality arguments. Applicant relies on *Turkey Point* CLI-16-18 as "binding case law" supporting its argument that challenging the DSEIS's reliance on actions and oversight of state and county regulators is outside the scope of the proceeding.[106] But there, the Commission did not even address the scope of the petitioner's contention. Rather, the Commission "*decline[d] to*

[104] Applicant Answer at 35 (quoting *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Station Units 3 & 4), LBP-19-3, 89 NRC __ (slip op. at 38) (Mar. 7, 2019)).

[105] *See* Applicant Answer at 35.

[106] Applicant Answer at 35.

assume that [Applicant would not] comply with applicable requirements," and found that the petitioner "has not shown a reason, for purposes of the NEPA review at issue here, to doubt [Applicant] will comply with the environmental conditions required by State and local authorities."[107] The Commission simply *did not* hold that the petitioner's claim was outside the scope of the proceeding or immaterial. This decision, like LBP-19-3, indicates that Intervenors raise an issue that *is* within the scope of the proceeding and material to its outcome.

Applicant also relies heavily on CLI-07-25 to suggest that Contention 6-E is outside the scope or immaterial to these proceedings. But there is an obvious reason why Applicant's reliance on that case is fundamentally flawed—the petitioners in CLI-07-25 were not raising NEPA contentions; the Board "considered each of the proposed contentions to be 'technical,' as opposed to 'environmental' contentions."[108] In essence, the petitioner argued that a regional water authority might not authorize the applicant to use enough water to operate the plant safely if the NRC authorized the applicant's proposed uprate. Thus, it was an entirely different kind of issue that the Commission found was outside the scope of proceeding. As the Board found initially, "the [extended power uprate] request will have implications in terms of increased water consumption, entrainment and impingement, and thermal and liquid effluent discharges, all of which are evaluated in the ER accompanying the PPL application that has not been the subject of [the petitioner's] contentions."[109]

Applicant also quotes from CLI-07-25 to argue that "the NRC's adjudicatory process was not the proper forum for investigating alleged violations that are primarily the responsibility of

[107] *Florida Power & Light Co*. (Turkey Point Nuclear Generating Station, Units 3 and 4), CLI-16-18, 84 NRC 167, 174–75 n.38 (2016).

[108] *PPL Susquehanna LLC* (Susquehanna Steam Elec. Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 103 (2007).

[109] *Susquehanna Steam Elec. Station*, LBP-07-10, 66 NRC at 27.

other Federal, state, or local agencies."[110] But this quote tells only part of the story. As the Board "correctly explained" in its decision,[111] "the agency's adjudicatory process is not a forum for litigating [such] matters" unless there is "some need for resolution to meet the agency's statutory responsibilities."[112] Here, NEPA provides the "statutory responsibility" for inquiring into the environmental impacts.

Finally, Applicant's entire argument on scope and materiality is merely a strawman. Intervenors never argued that Applicant would not "comply with its legal obligations"[113] or that state and county official will not "enforce, and Applicant will [not] comply with, the legally mandated measures in the Consent Order."[114] Rather, Intervenors offer evidence and argument that the NRC cannot simply rely on a presumption of compliance when the regulating entities are litigating whether compliance with both of their requirements is even possible. Applicant tries to brush this point aside by stating that the "relevance of the Miami-Dade County Petition to [subsequent license renewal], if any, is far from clear."[115] Regardless, what is clear is that Applicant does not provide any evidence that indicates the agencies' requirements are in fact compatible.

Applicant is correct that the "NRC is not an arbiter, mediator, or participant in any dispute between Miami-Dade County and the [Florida Department of Environmental Protection]."[116] But Intervenors are not asking the NRC or its Staff to play any of these roles.

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[110] Applicant Answer at 36 (quoting *PPL Susquehanna LLC* (Susquehanna Steam Elec. Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104 (2007)).

[111] *PPL Susquehanna LLC* (Susquehanna Steam Elec. Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 105 (2007).

[112] *Susquehanna Steam Elec. Station*, LBP-07-10, 66 NRC at 27 (citing *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121–22 (1998)).

[113] Applicant Answer at 35 (*Fla. Power & Light Co.* (Turkey Point Nuclear Generating Station Units 3 & 4), LBP-19-3, 89 NRC __ (slip op. at 38) (Mar. 7, 2019)).

[114] Applicant Answer at 35 (quoting *Turkey Point*, LBP-19-3, 89 NRC __ (slip op. at 54)).

[115] Applicant Answer at 35 n.156.

[116] Applicant Answer at 35 n.156.

Intervenors argue that the NRC cannot presume compliance with both State and County requirements will lead to "small" environmental when those agencies are fighting and the evidence shows current efforts to address salinity problems are not working and will not work in the future. Failure to do so would put the NRC in conflict with binding NEPA case law holding that the "mere existence of permit requirements overseen by another . . . state permitting authority cannot substitute for a proper NEPA analysis."[117]

b. Contention 6-E is adequately supported and raises a genuine material dispute with the DSEIS.

Applicant errantly claims that Contention 6-E is based on two incorrect factual premises: (i) that the DSEIS recognizes Applicant's freshening efforts have been unsuccessful and (ii) that the DSEIS's conclusions regarding salinity impacts are based on modeling that has proven unreliable and unsupported claims by Applicant's modelers that more favorable climatic conditions will resolve the problem.[118] In this regard, Applicant stands alone as the NRC Staff make no such claim even though it would be in a better position to do so as the authors of the DSEIS.

Applicant argues that these factual premises are "factually incorrect and misrepresent the DSEIS's contents"[119] because "the relevant DSEIS discussion simply describes certain modeling efforts undertaken by [Applicant] and its contractors to date, and the observed effects of drier conditions on the model predictions and results."[120] Applicant's spin is absurd. It is as if the Yankees denied they lost to the Red Sox because they merely described the observed effects of the Red Sox scoring more runs. The "certain modeling efforts" predicted that Applicant's

[117] *See, e.g.*, Motion at 41 (citing *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1375 (D.C. Cir. 2017) (emphasis added).

[118] Applicant Answer at 36–37 (quoting Motion).

[119] Applicant Answer at 37.

[120] Applicant Answer at 38.

freshening efforts would reduce the cooling canal system salinity to 35 PSU in "less than a year."[121] As stated in the DSEIS, that did not happen; average salinity concentrations only reached 64.9 PSU.[122] Thus, the freshening efforts have been unsuccessful because they did not adequately reduced salinity under real world conditions, favorable or not. Applicant can spin this any way it wants, but it does not change the fact that the model predictions were unreliable and that Applicant failed to meet the salinity target. The proffered reason for the failure to meet the model's predictions is that the climatic conditions were not favorable. Logic dictates that if Applicant continues with its current freshening effort it will fail to meet the 34 PSU requirement unless "more favorable climatic conditions" exist in the future.

Applicant also addresses Dr. Fourqurean's report and simply concludes that it is lacks factual support and is speculative. But Applicant fails to explain the basis for its contention, i.e., what facts are missing. Instead, it merely references a 2016 monitoring report from Applicant that the Florida Department of Environmental Protection reviewed and determined that exceedances of surface water quality standards were not detected in Biscayne bay.[123] But as Dr. Fourqurean opines, it is virtually impossible to measure phosphorus in Biscayne Bay surface water because of rapid uptake.[124] Instead, one must look for evidence of elevated phosphorus loadings. Relevant to Biscayne Bay, that means evaluating seagrass. Dr. Fourqurean opines, based on his own research, that there are definitive signs of increased phosphorus loadings, that these are attributable to Applicant's operation of the cooling canal system, and that it indicates a violation of Florida's narrative water quality standards.[125]

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[121] Applicant Answer at 37 (block quoting the DSEIS at 3-49).
[122] *Id*.
[123] Applicant Answer at 38–39.
[124] Dr. Fourqurean's report at 11.
[125] Dr. Fourqurean's report at 1–2, 10, 19–21.

Thus, Contention 6-E meets the contention admissibility standards and should be admitted.

c. Contention 7-E is within the scope of the proceeding.

It is by no means a "fact"—as Applicant portrays it—that Intervenors' request for a waiver in connection with Contention 7-E means that it addresses an issue that has been generically resolved. As stated in the Motion, "Intervenors do not believe a waiver is necessary here, but submit a waiver for the new contentions out of an abundance of caution."[126]

As further stated in the Motion, "Contention 7-E is limited to those conclusions regarding the 'new information' that the NRC Staff identified and evaluated in the DSEIS."[127] The DSEIS plainly includes information, analysis, and conclusions on groundwater quality impacts that were never treated generically. The Motion explains, "the DSEIS provides in section 4.5.1.2 that 'the NRC Staff has concluded that the ***site-specific*** impacts for [groundwater quality impacts] at the Turkey point site are MODERATE for current operations, but will be SMALL during the subsequent license renewal term as a result of ongoing remediation measures and State and county oversight, now ***in place at Turkey Point***.'"[128] Applicant fails to identify any precedent or regulation that prohibits intervenors from challenging these discussions on site-specific impacts to groundwater without a waiver.

d. Contention 7-E is adequately supported and raises a genuine material dispute with the DSEIS.

Without explanation, Applicant asserts that Intervenors "fail to provide any credible factual or expert opinion support for the claim that [Applicant's cooling canal system]

[126] Motion at 2 n.3.

[127] Motion at 44 (citing DSEIS at 4-2).

[128] Motion at 45 (citing DSEIS at -27) (emphasis added).

remediation and freshening efforts are ineffective or inadequate."[129] Applicant ignores all of the information in Section IV.B of Intervenors' Motion, including the 17 bulleted paragraphs containing expert opinions and accompanying citations to expert reports in making this claim. Applicant, moreover, fails to provide any explanation why any of the factual or expert opinions therein are not "credible." Its opposition on these grounds are without merit. Also for the reasons discussed in Section II. B. 2. C (addressing 6-E) above, Contention 7-E raises an issue that is material to the NRC's findings and establishes a genuine material dispute with the DSEIS and the Contention should be admitted.

e. Contention 8-E is within the scope of the proceeding and raises a genuine material dispute with the DSEIS.

Applicant inaccurately claims that Contention 8-E seeks to litigate a Category 1 issue and is therefore outside the scope of the proceeding. Yet as explained in Intervenors' Motion, Contention 8-E specifically addresses a Category 2 issue, cumulative impacts on groundwater resources. That "cumulative impacts" is a Category 2 issue is made clear in Section 4.16.2.1 of the DSEIS, which addresses cumulative impacts on groundwater resources. There, the "NRC Staff concludes that Applicant's recovery well system will be 'successful' in retracting the hypersaline plume before the end of the current license period and 'result in beneficial impacts on groundwater quality within the Biscayne aquifer."[130] Further, the DSEIS states the NRC Staff:

> expects the continued operation of the freshening system, combined with proper operation and maintenance of the [cooling canal system], will result in no substantial contribution to ***cumulative impacts on groundwater quality*** or associated impacts on surface water quality in Biscayne Bay during the subsequent license renewal period.[131]

[129] Applicant Answer at 41.

[130] Motion at 48 (quoting DSEIS at 4-116 – 117).

[131] Motion at 48 (quoting DSEIS at 4-117) (emphasis added).

Applicant's claim and the DSEIS itself are completely at odds, and therefore Applicant's claim is without merit.

Additionally, for the reasons discussed in Section II. B. 2. C (addressing 6-E) above, Contention 8-E raises an issue that is material to the NRC's findings and establishes a genuine material dispute with the DSEIS. Contention 8-E meets the contention admissibility standards and should be admitted.

f. Contention 9-E is within the scope of this proceeding.

Applicant claims that the NRC has no duty under NEPA to "concern itself with water use matters within the jurisdiction of other state and Federal agencies."[132] Applicant again relies erroneously on CLI-07-25 for this proposition. As explained above, the "water use matters" at issue in that case were not framed as environmental contentions. As further explained above, the Board initially found that "the [extended power uprate] request will have implications in terms of increased water consumption, entrainment and impingement, and thermal and liquid effluent discharges, all of which are evaluated in the ER accompanying the PPL application that has not been the subject of [the petitioner's] contentions."[133] Thus, Applicant's reliance on this out-of-context quote, based on entirely different claims and circumstances, is wholly misplaced and contrary to NEPA.

g. Contention 9-E is adequately supported and raises a genuine material dispute.

Applicant falsely claims that intervenors "provide no information" to reach a conclusion contrary to that in the DSEIS.[134] Once again, Applicant simply ignores the Motion and accompanying evidence and expert opinions.[135] Indeed, the Motion provides the very

[132] Applicant Answer at 45 (quoting *Susquehanna*, CLI-07-25, 66 NRC at 107).
[133] *Susquehanna Steam Elec. Station*, LBP-07-10, 66 NRC at 27.
[134] Applicant Answer at 46.
[135] *See* Motion at 51–52 (referencing Section IV.B and the Wexler Declaration at 2).

information necessary to reach a conclusion contrary to that in the DSEIS. That information undermines the conclusion in the DSEIS that there is no anticipated "need to withdraw groundwater at a rate exceeding [Applicant's] current permits and/or authorizations during the subsequent license renewal period."[136] Thus, Contention 9-E meets admissibility standards and should be admitted.

CONCLUSION

For the foregoing reasons, the Petitioners have demonstrated that their updated contentions and new contention are admissible, and they are entitled to a hearing on these contentions.

Respectfully submitted,

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July 26, 2019

[136] DSEIS at 4-33.

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

In the Matter of:	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-250
	)	Docket No. 50-251
(Turkey Point Nuclear Generating Station, Unit Nos. 3	)	
and 4)	)	July 26, 2019
	)	

CERTIFICATE OF SERVICE

I certify that on July 26, 2019, I posted copies of the foregoing REPLY IN SUPPORT OF MOTION TO MIGRATE CONTENTIONS & ADMIT NEW CONTENTIONS IN RESPONSE TO NRC STAFF'S SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT and copies of REPLY OF NATURAL RESOURCES DEFENSE COUNCIL, FRIENDS OF THE EARTH, AND MIAMI WATERKEEPER IN SUPPORT OF PETITION FOR WAIVER OF 10 C.F.R. §§ 51.53(C)(3) AND 51.71(D) AND 10 C.F.R. PART 51, SUBPART A, APPENDIX B AS APPLIED TO APPLICATION FOR RENEWAL OF LICENSES FOR TURKEY POINT UNITS 3 AND 4 on NRC's Electronic Information Exchange System.

/signed electronically by/

Caroline Reiser