UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of: FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Station, Units 3 and 4)	Docket Nos. 50-250-SLR-2 and 50-251-SLR-2 December 22, 2023

FLORIDA POWER & LIGHT COMPANY'S ANSWER OPPOSING MIAMI WATERKEEPER'S HEARING REQUEST AND PETITION FOR LEAVE TO INTERVENE

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), and the Initial Prehearing Order issued by the Atomic Safety and Licensing Board ("Board"),[1] Florida Power and Light Company ("FPL") submits this Answer opposing the Request for Hearing and Petition to Intervene filed by Biscayne Bay Waterkeeper, Inc. d/b/a Miami Waterkeeper ("Miami Waterkeeper" or "Petitioner") on November 27, 2023.[2] Miami Waterkeeper seeks to intervene in the above-captioned proceeding and requests a hearing to challenge the draft Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, NUREG-1437, Supplement 5a, issued on August 31, 2023 ("2023 DSEIS").[3] As explained below, the Petition should be denied because Miami Waterkeeper has not submitted an admissible contention as required by 10 C.F.R. § 2.309(a).

In its Petition, Miami Waterkeeper proposed five contentions on: (1) the operation of the cooling canal system ("CCS"), (2) the benefits of replacing the CCS with cooling towers, (3) cumulative impacts from continued operation, (4) impacts to endangered species, and (5) impacts from climate change. But as detailed in Section III below, none of the five contentions are admissible.

By way of background, the instant matter (Docket Nos. 50-250-SLR-2 and 50-251-SLR-2) is a limited-scope proceeding that follows and supplements extensive earlier proceedings (Docket Nos. 50-250-SLR and 50-251-SLR) ("Initial Proceedings") related to FPL's

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1 Memorandum and Order (Initial Prehearing Order) (Dec. 6, 2023) (unpublished) (ML23340A098).

2 Request for Hearing and Petition to Intervene Submitted by Miami Waterkeeper (Nov. 27, 2023) (ML23331A971) ("Petition"). The Petition was filed with 18 "exhibits." (Package No. ML23332A301).

3 NUREG-1437, Supplement 5a, Second Renewal, Site Specific Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, Draft Report for Comment (Aug. 31, 2023) (ML23242A216) ("2023 DSEIS").

Subsequent License Renewal ("SLR") Application ("SLRA") for Turkey Point Nuclear Generating Units 3 and 4 ("Turkey Point").[4] In 2022, the Commission directed the NRC Staff to supplement its environmental review for the SLRA and to publish an additional hearing opportunity.[5] However, recognizing that re-litigation of the full scope of environmental and safety issues subject to challenge in the Initial Proceedings was unnecessary, the Commission limited the scope of the additional hearing opportunity to challenges to "new information" published in the supplemental environmental document (here, the 2023 DSEIS). Accordingly, the scope of the instant hearing opportunity, as announced in the *Federal Register* notice,[6] is limited to challenges to new information in the 2023 DSEIS.

Notwithstanding this limitation, many claims in the Petition simply repeat arguments that Miami Waterkeeper presented—and that were rejected—in the Initial Proceedings. Similarly, other portions of the contentions proposed by Miami Waterkeeper attempt to challenge information that has long been available in earlier environmental documents, instead of challenging new information in the 2023 DSEIS. Accordingly, these contentions are outside the scope of this limited proceeding. And beyond that fundamental and overarching defect, Section III below details the many additional reasons why none of Miami Waterkeeper's proposed contentions satisfy the Contention admissibility criteria in 10 C.F.R. § 2.309(f).[7]

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4 *See infra* Section II.C.

5 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-22-3, 95 NRC 40 (2020).

6 Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4, Draft environmental impact statement; request for comment; public comment meetings; opportunity to request a hearing and to petition for leave to intervene 88 Fed. Reg. 62,110, 62,111 (Sept. 8, 2023) ("Hearing Opportunity Notice").

7 Miami Waterkeeper was previously found to satisfy the requirements for the NRC's proximity-based standing shortcut in the Initial Proceedings, and FPL does not contest Miami Waterkeeper's claim to proximity-based standing here. However, FPL does not concede that Miami Waterkeeper has satisfied traditional judicial standing requirements and reserves its right to challenge such standing in the future or in other proceedings.

II. BACKGROUND

A. License Renewal Safety Review

The objective of the NRC's license renewal safety review "is to ensure that the licensee can successfully manage the detrimental effects of aging."[8] Accordingly, "the license renewal regulations in 10 C.F.R. Part 54 focus on whether the licensee can manage the effects of aging on certain long-lived, passive components that are important to safety."[9] Those Aging Management Programs ("AMPs") are at the core of the NRC's license renewal safety framework.[10]

Importantly, "[t]he license renewal [safety] review is not intended to duplicate the NRC's ongoing oversight of operating reactors."[11] In particular, a plant's current licensing basis ("CLB")[12] is beyond the limited scope of license renewal and cannot be challenged in a license renewal adjudicatory proceeding.[13] The Commission determined that re-assessments of CLB safety issues at the license renewal stage would be "unnecessary and wasteful"[14] because those issues are "effectively addressed and maintained by ongoing agency oversight, review, and enforcement."[15]

B. License Renewal Environmental Review

The NRC's license renewal environmental regulations in Part 51 are based, in large part, on the Generic Environmental Impact Statement for License Renewal of Nuclear Plants

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8 *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), CLI-15-6, 81 NRC 340, 347 (2015).

9 *Id*.; *see also* 10 C.F.R. §§ 54.21, 54.29(a).

10 *See* NUREG-1801, "Generic Aging Lessons Learned (GALL) Report" (Rev. 2, Dec. 2010) (ML103490041).

11 *Indian Point*, CLI-15-6, 81 NRC at 347.

12 *See* 10 C.F.R. § 54.3 (defining the CLB).

13 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 7–9 (2001).

14 *Id*. at 7.

15 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-36, 60 NRC 631, 638 (2004) (citation omitted).

("GEIS"), which summarizes the findings of a systematic inquiry (accomplished through notice and comment rulemaking) into the potential environmental consequences of license renewal.[16] Based on these analyses, the GEIS delineates two types of environmental issues:

> Generic "Category 1" issues, for which the NRC made "generic conclusions applicable to all existing nuclear power plants"; and
>
> Plant-Specific "Category 2" issues, for which site-specific analyses are required for each individual license renewal proceeding.

C. Procedural History Through February 2022

The Subsequent License Renewal Application: FPL filed its SLRA with the NRC on January 30, 2018, to renew Turkey Point's operating licenses for an additional 20-year period.[17] As part of the SLRA, FPL submitted an environmental report ("ER") that considered the potential environmental impacts of the requested extension.[18] Under the prevailing interpretation of the NRC's regulations prior to February 2022, SLR applicants could rely on the GEIS's analyses of Category 1 issues in an environmental report.[19] FPL did so in its ER and also provided site-specific analyses for all Category 2 issues.[20]

Adjudication of Initial Hearing Requests: In May 2018, NRC published a notice in the *Federal Register* docketing the Turkey Point SLRA and providing an opportunity for interested

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16 *See* NUREG-1437, Rev. 0 "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996) (Vol. 1, ML040690705); NUREG-1437, Rev. 1 "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (June 2013) (Vol. 1, ML13106A241). As used in this brief, "GEIS" refers to Rev. 1 unless otherwise noted. The NRC is now working on Rev. 2 of the GEIS and corresponding changes to 10 C.F.R. Part 51. But that effort is only at the proposed rule stage and imposes no requirements here.

17 *See* Letter from M. Nazar, FPL, to NRC, "Turkey Point Units 3 and 4 Subsequent License Renewal" Application (Jan. 30, 2018) (ML18037A824) ("SLRA").

18 *See* SLRA, App. E.

19 *See* 10 C.F.R. § 51.53(c)(3)(i) ("The environmental report for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in appendix B [to Part 51]."). *See id.* § 51.53(a) (expressly authorizing environmental reports to incorporate GEIS analyses and conclusions by reference).

20 *See* 10 C.F.R. §§ 51.41, 51.45, 51.53(c)(3)(ii).

persons to request a hearing.[21] Miami Waterkeeper, along with co-petitioners Friends of the Earth and the Natural Resources Defense Council (together with Miami Waterkeeper, the "Joint Petitioners"), filed a petition seeking to intervene and proposed five contentions, designated 1-E through 5-E.[22] The Board admitted portions of two contentions, 1-E and 5-E, both of which were contentions of omission.[23] As admitted, Contention 1-E alleged the ER failed to consider mechanical draft cooling towers as a reasonable alternative to the CCS;[24] and Contention 5-E alleged the ER failed "to recognize Turkey Point as a source of ammonia in freshwater wetlands surrounding the site" and failed to analyze the "impacts of ammonia releases on threatened and endangered species and their critical habitat."[25]

In March 2019, the NRC released the Draft Supplemental Environmental Impact Statement for the SLRA ("2019 DSEIS").[26] The 2019 DSEIS supplied the information that the Joint Petitioners claimed, in contentions 1-E and 5-E, was missing from FPL's ER.[27] Thus, FPL

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21 *See* Florida Power & Light Company; Turkey Point Nuclear Generating, Unit Nos. 3 and 4; License Renewal Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene, 83 Fed. Reg. 19,304 (May 2, 2018).

22 Request for Hearing and Petition to Intervene Submitted by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Aug. 1, 2018) (ML18213A418) ("2018 Petition") (the 2018 Petition also included attachments A–Q (Package ML18213A417)).

23 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-3, 89 NRC 245, 287, 293–94 (2019).

24 *Id.* at 285.

25 *Id.* at 293–94.

26 *See generally* 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) ("2019 DSEIS").

27 In particular, the 2019 DSEIS addressed the use of mechanical draft cooling towers, which mooted Contention 1-E. *See* 2019 DSEIS § 2.2.3. The 2019 DSEIS also addressed the release of ammonia from Turkey Point and the impacts of such releases on threatened and endangered species and their critical habitat, which mooted Contention 5-E. *See* 2019 DSEIS at 3-41 to 3-44, 3-50 to 3-52, 4-22 to 4-23, 4-60 to 4-61.

moved to dismiss the two contentions as moot.[28] Joint Petitioners moved to migrate their contentions challenging FPL's ER to instead challenge the 2019 DSEIS and also sought leave to file new or amended contentions of sufficiency challenging the 2019 DSEIS.[29] The Board granted FPL's motions to dismiss,[30] denied Joint Petitioners' motion to admit the new contentions, and terminated the proceeding.[31] Joint Petitioners appealed these decisions to the Commission.[32]

Issuance of Subsequent Renewed Operating Licenses: The NRC staff issued the Final Supplemental Environmental Impact Statement on SLR for Turkey Point in October 2019 ("2019 FSEIS").[33] The NRC then issued the subsequently renewed operating licenses to Turkey Point on December 4, 2019.[34]

Orders Regarding Applicability of GEIS to SLR: In April 2020, the Commission issued an order re-confirming that the NRC staff and SLR applicants could rely on the GEIS and its corresponding generic impact conclusions for Category 1 issues as codified in 10 C.F.R. Part 51.[35] However, in February 2022, the Commission issued two decisions that reversed the

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28 *See* FPL's Motion to Dismiss Joint Petitioners' Contention 1-E as Moot (May 20, 2019) (ML19140A355); FPL's Motion to Dismiss Joint Petitioners' Contention 5-E as Moot (May 20, 2019) (ML19140A356).

29 *See* Natural Resources Defense Council's, Friends of the Earth's, and Miami Waterkeeper's Motion to Migrate Contentions & Admit New Contentions in Response to NRC Staff's Supplemental Draft Environmental Impact Statement (June 24, 2019) (ML19175A307).

30 *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-6, 90 NRC 17 (2019).

31 *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-8, 90 NRC 139 (2019).

32 *See* Friends of the Earth's, Natural Resources Defense Council's, and Miami Waterkeeper's Petition for Review of the Atomic Safety and Licensing Board's Rulings in LBP-19-3 and LBP-19-06 (Aug. 9, 2019) (ML19221B677).

33 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, Final Report" (Oct. 2019) (ML19290H346) ("2019 FSEIS").

34 *See* Florida Power & Light Co – Turkey Point Nuclear Generating Unit 3 Subsequent Renewed Facility Operating License (Dec. 4, 2019) (ML19310D777); Florida Power & Light Co – Turkey Point Nuclear Generating Unit 4 Subsequent Renewed Facility Operating License (Dec. 4, 2019) (ML19310D778).

35 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-20-3, 91 NRC 133 (2020).

agency's course on this issue. In the first order, CLI-22-2, the Commission, overturned its prior decision and held that 10 C.F.R. § 51.53(c)(3) only applies to *initial* license renewal and that the GEIS did not address environmental impacts for SLR.[36] As a result, the Commission found that the NRC staff "did not conduct an adequate NEPA analysis before issuing FPL licenses for the subsequent license renewal period."[37] The Commission allowed FPL to maintain the subsequently renewed licenses for Turkey Point, but it modified the expiration of the licenses to match the end of the initial renewed licenses (July 19, 2032 for Unit 3 and April 10, 2033 for Unit 4), pending completion of a supplemental environmental review.[38]

In the second order, CLI-22-3, the Commission directed the NRC staff to "review and update" the GEIS "so that it covers operation during the subsequent license renewal period."[39] However, the Commission also recognized that applicants may not want to postpone their supplemental environmental reviews until completion of the multi-year GEIS update proceeding. It thus gave applicants an option to "submit a revised environmental report providing information on environmental impacts during the subsequent license renewal period,"[40]—*i.e.*, an ER supplement with *site-specific* analyses of issues that previously had been analyzed generically as Category 1 issues in the GEIS. In those cases, the Commission stated that interested parties would "be given an opportunity to submit new or amended contentions based on *new information in the revised site-specific environmental impact statement*."[41]

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36 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-22-2, 95 NRC 26 (2022).

37 *Id.* at 36.

38 *Id.*

39 *Turkey Point*, CLI-22-3, 95 NRC at 41.

40 *Id.* at 41.

41 *Id.* at 41–42 (emphasis added).

D. Procedural History After February 2022

In response to the Commissions decisions in CLI-22-2 and CLI-22-3, FPL elected to supplement its ER.[42] FPL's ER supplement contained a site-specific analysis for each Category 1 issue that was previously analyzed generically in the GEIS.[43] FPL's analysis identified no information that would "materially chang[e] the impact assessments provided in the NRC's [2019 FSEIS]."[44] FPL's analysis also confirmed that the findings in the GEIS "continue to bound operation of Turkey Point during the subsequent period of extended operations".[45]

On August 31, 2023, the NRC released the 2023 DSEIS for comment.[46] The 2023 DSEIS presents a site-specific analysis of all environmental issues. The document focuses on site-specific analyses of former Category 1 issues, but also considered "whether there is significant new information that would change the NRC staff's conclusions concerning Category 2 issues . . . in the [2019] FSEIS."[47] The NRC staff "determined that there would be no impacts" to Category 1 issues beyond those already discussed in the GEIS.[48] The NRC staff also found "no significant new information that would change the conclusions" for Category 2 issues "reached in the [2019] FSEIS."[49] Thus, the analysis in the FSEIS on Category 2 issues "remains valid."[50]

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42 *See* Letter from W. Maher, FPL, to NRC, "Subsequent License Renewal Application – Appendix E Environmental Report Supplement 2" (June 9, 2022) (ML22160A301).

43 *See id.*

44 *Id.* at 2.

45 *See id.*

46 *See generally* 2023 DSEIS.

47 *Id*. at iii, at 2-1.

48 *Id.* at xv.

49 *Id.*

50 *Id.* at xv–xvi.

On September 8, 2023, the NRC published a notice in the *Federal Register* that announced an opportunity for interested parties to file a hearing request and petition to intervene, "limited to contentions based on new information in the [2023 DSEIS]," within 60 days.[51] On October 27, 2023, Miami Waterkeeper filed a request for a 60-day extension of the deadline to file a petition and request a hearing.[52] The Commission Secretary granted Miami Waterkeeper a 20-day extension.[53] Miami Waterkeeper filed the Petition on November 27, 2023.[54] And FPL timely files this answer in opposition thereto.

E. Background on the Cooling Canal System at Turkey Point[55]

Units 3 and 4 discharge their cooling water to the CCS. The CCS was built shortly after Units 3 and 4 were licensed to create a closed-cycle system and avoid thermal discharges to Biscayne Bay.[56] The CCS is approximately five miles long and two miles wide. It acts like a radiator by dissipating heat via evaporation as the water travels through its various channels and returns to the plants.[57] The CCS was initially filled with seawater. But, as the sea water evaporated and was replaced by rainwater and groundwater, the CCS water became more

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51 Hearing Opportunity Notice, 88 Fed. Reg. at 62,111.

52 Request for 60-Day Extension of Request for Hearing and Petition to Intervene for Turkey Point Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Docket ID 50-250 and 50-251; NRC-2022-0172 (Oct. 27, 2023) (Extension Request)

53 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4) Order (Granting Extension of Time) (Nov. 6, 2023) (unpublished) (ML23310A269).

54 *See* Petition.

55 A full description of the CCS and FPL's remedial measures is provided in the 2019 FSEIS (*see* 2019 FSEIS at 3-4 to 3-12 and 3-49 to 3-107) and is updated in the 2023 DSEIS (2023 DSEIS at 2-15 to 2-31). This brief background relates to the issues raised in the Petition.

56 *See generally* 2019 FSEIS at 3-7 to 3-8.

57 *Id*.

saline.[58] The denser, more saline water tended to sink to the bottom of the canals and into the underlying Biscayne aquifer.[59]

Starting in 2014, state and local regulators worked with FPL to address the spread of hypersaline water in the Biscayne aquifer.[60] To that end, FPL began adding water from the deeper Floridan aquifer which, while brackish, is significantly less salty than the CCS water.[61] The addition of this water has reduced the salinity in the CCS to that of sea water (*i.e.*, not hypersaline). In simple terms, the CCS effectively no longer contributes to the hypersaline groundwater plume.[62]

Separately, to address the *legacy* hypersaline plume in the Biscayne aquifer, FPL implemented a recovery well system ("RWS") to retract the plume back toward the CCS. The RWS also prevents new CCS-origin water from moving inland. FPL publishes annual reports regarding the status of its compliance with these agreements.[63]

In 2022, following a contested hearing, the Florida Department of Environmental Protection ("FDEP") issued FPL a renewed National Pollutant Discharge Elimination System ("NPDES") permit for Turkey Point, which acknowledges FPL's activities to halt and retract the hypersaline plume.[64]

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58 *Id*. at 3-55.

59 *Id.*

60 *Id*. at 3-56 to 3-57.

61 *Id*. at 3-57 to 3-59.

62 *Id*. *See also* 2023 DSEIS at 2-24.

63 *See, e.g.*, 2023 DSEIS at 4-6 (reference "FPL 2022b").

64 *See* Letter from C. Cashwell, NRC, to NRC Document Control Desk, "NPDES Permit No. FL0001562; Notification of Permit Issuance" at 19 (ML22145A543). The actual permit ("FDEP NPDES Permit") is Attachment 1 to that letter.

F. Legal Standards for Hearing Requests & Contention Admissibility

Pursuant to 10 C.F.R. § 2.309(a)(1), a hearing request and petition to intervene may be granted only if the presiding officer determines that the petitioner has established standing and has proposed at least one admissible Contention that meets all six of the threshold admissibility criteria in 10 C.F.R. § 2.309(f)(1).[65] Failure to satisfy any one of these six admissibility criteria requires that a proposed Contention be rejected.[66] These criteria are "strict by design."[67] The rules were "toughened…in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'"[68] The petitioner alone bears the affirmative burden to satisfy these criteria.[69] Thus, where a petition fails to do so on its face, the Board may not cure a deficiency or fill a gap by supplying the information that is lacking or making factual assumptions that favor the petitioner.[70] Key aspects of the six admissibility criteria are summarized below.

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65 A proposed Contention 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 is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions, referring to the specific sources and documents that support the petitioner's position and on which the petitioner intends to rely; and (vi) provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1).

66 *See* Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004); *see also Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

67 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

68 *Id.* (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

69 *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 325, 329 (2015) ("[t]he proponent of a Contention is responsible for formulating the Contention and providing the necessary support to satisfy the Contention admissibility requirements" and "it is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission") (citation omitted); *see also DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 149 (2015) ("the Board may not substitute its own support for a Contention or make arguments for the litigants that were never made by the litigants themselves.").

70 *See Fermi*, CLI-15-18, 82 NRC at 149.

Basis and Specificity: In simple terms, a Contention must articulate the specific legal or regulatory requirement that it claims to be unsatisfied, and then it also must explain the basis for that claim. That is because the parties are "entitled to be told at the outset, *with clarity and precision*, what arguments are being advanced and what relief is being" sought.[71]

Scope: The subject matter of all contentions is limited to the scope of the proceeding delineated by the Commission in its hearing notice and referral order delegating to the Licensing Board the authority to conduct the proceeding.[72] Challenges to NRC rules are prohibited as outside the scope of a proceeding because, absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding."[73] This includes challenges to the generic environmental analyses and conclusions codified in 10 C.F.R. Part 51, Subpart A, Appendix B.[74]

Materiality: A "material issue" is one that would "make a difference in the outcome of the licensing proceeding."[75] The petitioner must show that the application deficiency asserted in the Contention "would impact the grant or denial" of the pending application.[76]

Adequate Support: Presiding officers must scrutinize documents and expert opinions to confirm that they support a proposed contention.[77] A petitioner's imprecise reading of a

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71 *Kansas Gas & Elec. Co.* (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 576 (1975) (emphasis added).

72 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790 (1985).

73 10 C.F.R. § 2.335(a).

74 *Vt. Yankee*, CLI-07-3, 65 NRC at 17–18.

75 *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 333–34 (1999) (citation omitted).

76 *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 62 (2008) (citation omitted).

77 *See Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

document cannot support a litigable contention.[78] Likewise, a document or expert opinion that merely states a conclusion, "without providing a reasoned basis or explanation for that conclusion," is not enough to satisfy this criterion.[79] Furthermore, "bare assertions and speculation," even by experts, are incapable of providing the requisite support for a proposed contention.[80]

Genuine Dispute: The Commission has stated that petitioners must "read the pertinent portions of the license application . . . state the applicant's position and the petitioner's opposing view," and explain why the petitioner disagrees with the applicant.[81] In other words, a Contention of sufficiency that does not directly controvert specific text within the application is subject to dismissal.[82] And for contentions of omission, the petitioner must show two things: (a) that the applicant had a legal obligation to provide the allegedly omitted information, and (b) that such information is, in fact, absent from the application.[83]

The Commission has long held that *reply briefs* cannot be used to cure admissibility defects identified by other parties or otherwise "reinvigorate thinly supported contentions."[84] NRC contention admissibility and timeliness requirements "demand a level of discipline and preparedness on the part of petitioners," who must set forth precise claims from the start of the

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78 *See Ga. Inst. of Tech.* (Ga. Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995).

79 *See USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006).

80 *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

81 Rules of Practice for Domestic Licensing Proceedings; Procedural Changes in the Hearing Process; Final Rule, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989); *see also Millstone*, CLI-01-24, 54 NRC at 358.

82 *See S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 21–22 (2010); *Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992), *vacated as moot*, CLI-93-10, 37 NRC 192 (1993).

83 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 95 (2004) (if the allegedly missing information is indeed in the license application, then the contention does not raise a genuine dispute).

84 *La. Energy Servs., LP* (Nat'l Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004).

proceeding.[85] Thus, if a proposed contention—as presented in the *initial petition*—fails to satisfy these contention admissibility requirements, that is the end of the inquiry. Moreover, in a recent order, the Board reminded Miami Waterkeeper of the importance of complying with this strict limitation on the scope of reply pleadings.[86]

III. THE PETITION SHOULD BE DENIED BECAUSE MIAMI WATERKEEPER FAILED TO PROPOSE AN ADMISSIBLE CONTENTION

In its Petition, Miami Waterkeeper proposes five contentions. But as explained below, none of the proposed contentions satisfy all six admissibility criteria in 10 C.F.R. § 2.309(f)(1). Accordingly, the Petition must be denied.

A. Proposed Contention 1 (Groundwater) Is Inadmissible

In Proposed Contention 1, Miami Waterkeeper alleges that the 2023 DSEIS "fails to take a hard look at impacts to groundwater quality."[87] More specifically, Miami Waterkeeper claims that the NRC Staff's impact conclusions for certain issues (namely, groundwater use conflicts, groundwater quality, and effects of nonradiological contaminants on aquatic organisms) are wrong.[88] According to Petitioner, the NRC Staff should have concluded that the impacts from the proposed action are LARGE for each of these issues.[89] As explained below, this proposed contention fails to satisfy the admissibility criteria for multiple reasons.

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85 *Id.* at 225 (citation omitted).

86 Licensing Board Memorandum and Order (Granting Motion for Extension of Time) at 2 (Dec. 19, 2023) (unpublished) (ML23353A147).

87 Petition at 12.

88 *Id*. at 12–13, 33 (expressly challenging the conclusions in 2023 DSEIS Sections 2.8.3, 2.8.2.1, and 2.8.2.2, as well as effects of non-radiological contaminants on aquatic organisms, which is discussed in 2023 DSEIS Section 2.10.4).

89 *Id*. at 12.

1. Petitioner's Discussion of the "Interceptor Ditch" Fails to Identify Any Material Deficiency in the 2023 DSEIS

As a purported basis for Proposed Contention 1, Petitioner delves into the "interceptor ditch" near the Turkey Point site. The Interceptor Ditch, which is located immediately west of the CCS and immediately east of the L-31E Canal, was constructed to create a hydraulic barrier between the CCS and the L-31E Canal and lands west of the L-31E Canal.[90] The water level in the Interceptor Ditch historically has been maintained at a lower water elevation than in the L-31E Canal (by pumping) to create a continual west to east gradient from the L-31E Canal toward the CCS.[91] Petitioner asserts that the 2023 DSEIS analysis of groundwater use conflicts "fails to discuss" the allegedly "undocumented demand on the regional freshwater resource" created by operation of the Interceptor Ditch, and "does not discuss" the failure of this feature to "prevent westward migration of hypersaline water," and therefore the NRC Staff should "reassess" its groundwater use conflicts conclusion.[92] Petitioner's claims are unsupported, however, and fail to demonstrate a genuine dispute with the 2023 DSEIS.

First, the 2019 FSEIS discusses the Interceptor Ditch at some length. In fact, the term "Interceptor Ditch" appears in the document 32 times, including in the description of the CCS layout (which includes a diagram depicting the CCS, L-31E canal, and the Interceptor Ditch).[93] Contrary to Miami Waterkeeper's claim, he 2019 FSEIS fully acknowledges the fact that the operation of the Interceptor Ditch has not completely prevented hypersaline water migration

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90 FDEP, *Fla. Keys Aqueduct Auth. et al. v. FPL and FDEP*, OGC Case Nos. 20-0820 & 20-0846, DOAH Case Nos. 20-2967 & 20-2968, Consolidated Final Order at 10, ¶ 18 (Feb. 21, 2022) ("FDEP Final Order"), *available at* https://floridadep.gov/sites/default/files/20-0820.pdf.

91 *Id.* at 38–39, ¶ 130.

92 Petition at 15–16.

93 2019 FSEIS at 3-8 to 3-10.

because it only functions to the depth to which it was constructed.[94] To the extent that Petitioner claims the NRC's environmental review omitted this information, Petitioner is plainly wrong and fails to identify a material dispute. And because Petitioner does not acknowledge this discussion, it certainly does not offer any reason why it somehow falls short of any requirement in Part 51.[95] Moreover, Petitioner identifies no reason the 2023 DSEIS was required to republish this analysis or otherwise present a separate discussion of the Interceptor Ditch—and no express requirement to do so is found in 10 C.F.R. Part 51.

Petitioner's second claim—that operation of the Interceptor Ditch creates an "undocumented"[96] water use—is unsupported and fails to demonstrate any defect in the 2023 DSEIS. Although unexplained, Petitioner appears to be referring to the fact that, as part of the operation of this feature, "[w]ater is pumped out of the interceptor ditch."[97] But this fact certainly is not "undocumented" or otherwise disregarded in the environmental review.

The NRC's analysis fully acknowledges that, historically, "water is pumped from the interceptor ditch and discharged into the CCS."[98] Moreover, the operating criteria and procedures for the Interceptor Ditch are prescribed by the Fifth Supplemental Agreement[99] between FPL and the South Florida Water Management District ("SFWMD")—the entity

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94 *Id.* at 3-73.

95 Moreover, this discussion is not "new" and therefore is not subject to challenge in this limited scope proceeding. *See infra* Section III.A.3.

96 Petition at 15, 16.

97 *Id.* at 15.

98 2019 FSEIS at 3-10.

99 *See* Fifth Supplemental Agreement between the South Florida Water Management District and Florida Power & Light Co. (Oct. 16, 2009) ("Fifth Supplemental Agreement"), *available at* https://www.sfwmd.gov/sites/default/files/documents/5th_supplemental_agreement.pdf.

responsible for water supply planning in South Florida.[100] The Fifth Supplemental Agreement also prescribes certain monitoring and reporting requirements, including disclosure of pump operation logs and submittal of annual reports describing—*i.e.*, "documenting"—those pumping activities. Indeed, the 2022 annual report was considered in preparing the 2023 DSEIS.[101] Ultimately, Petitioner's vague claim that operation of the Interceptor Ditch is somehow "undocumented" or otherwise ignored by either the cognizant state and local regulators, or in the NRC's environmental review, is unsupported and fails to demonstrate any defect in the 2023 DSEIS.[102]

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[100] 2019 FSEIS at 4-24 ("The NRC staff recognizes that the State of Florida, and its regulatory agencies, including the FDEP and the South Florida Water Management District (SFWMD), is statutorily responsible to determine the acceptability of the groundwater analyses.").

[101] 2023 DSEIS at 4-6 (reference "FPL 2022b"). Moreover, Petitioner's own document shows that its concern is already out of date, as FPL and the agencies have concluded that pumping the interceptor ditch is not necessary to achieve salinity goals and should not be reasonably expected in the future:

> In February 2023, FPL proposed to field test an alternative Interceptor Ditch Operating Procedure (IDOP) that could reduce the amounts of pump operations to below historic levels. This field test was driven by the effectiveness of the RWS operations in preventing westward migration of groundwater from beneath the CCS and a desire by the Agencies to limit ID operations when possible. The SFWMD approved the test protocol on February 27, 2023, which relies on using salinity as a trigger in most of the ID instead of water levels for ID pumping (FPL 2023a). With the implementation of the test protocol at the end of February 2023 through May 2023, no pump operations were triggered when using salinity as a trigger; but they would have been triggered on multiple days during that same period if stage criteria were used. Based on an initial assessment of the ID test procedure (FPL 2023a), reliance on salinity as the trigger resulted in less ID pumping while continuing to constrain westward migration of saline groundwater from the CCS in the shallow portion of the Biscayne aquifer.

Petition, Exh. 9 at 2-11 (Year 5 RAASR).

[102] Petitioner further claims that "NRC staff should reassess their confidence that cooperation with local agencies will shepherd FPL's remediation measures to a successful result." Petition at 16. FPL addresses that argument in this Answer. *See infra* Section III.A.2.d.

2. Petitioner's Discussion of the "Hypersalinity Plume" Fails to Identify Any Material Deficiency in the 2023 DSEIS

a. Petitioner's Comments Regarding the Impacts of the Legacy Hypersaline Plume Do Not Identify Any Material Deficiency in the 2023 DSEIS

Petitioner argues that the 2023 DSEIS is inadequate because the NRC Staff's impact conclusions on groundwater quality and use issues are wrong. Petitioner asserts that Staff should have reached a LARGE impact finding in each area. Petitioner bases that assertion on its view that impacts from the already-existing plume are "clearly significant, noticeable, and destabilizing important resources."[103] Petitioner's assertion, however, is based on a fundamental misunderstanding of the scope of those analyses, which focus on impacts from the proposed action. In contrast, neither NEPA nor Part 51 require the NRC to assign impact levels to *baseline* environmental conditions. Accordingly, this line of argument fails to raise a genuine dispute with the 2023 DSEIS.

In support of its claim of LARGE impacts, Petitioner points to the hypersaline groundwater plume that arose over multiple past decades and the remediation activities that have been ordered by state and local regulators as a result of it.[104] These *legacy* environmental conditions, however, did not result from the "proposed action" in this proceeding, which is the *future* operation of Turkey Point during the SLR term (beginning in 2032).[105] The legacy condition of the environment, including conditions created by past operation of the plant, is part of the environmental baseline described in Chapter 3 of the 2019 FSEIS (which Petitioner does

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103 Petition at 17.

104 *Id.* at 17–19.

105 *See* 2023 DSEIS at 1-2. And, as the 2023 DSEIS makes clear, "[b]ased on the available data, the NRC staff concludes that CCS operation during the SLR term is unlikely to result in substantial contributions to the hypersaline groundwater plume, if freshening activities and CCS salinity are maintained at their current levels." *Id*. at 2-24. Petitioner does not acknowledge or challenge that conclusion.

not appear to acknowledge or challenge). Environmental baseline descriptions typically do not assign "impact" levels to legacy conditions—and that certainly is not required by NEPA or Part 51. In contrast, Sections 2.8.2.1, 2.8.2.2, and 2.8.3 of the 2023 DSEIS—which Petitioner purports to challenge here—present the NRC's analysis of potential incremental impacts to that environmental baseline that could result from the "proposed action."[106]

Petitioner criticizes those analyses because they do not account for impacts "already"[107] caused by the legacy hypersaline plume. That criticism misses the mark, however, because the environmental baseline is not an impact caused by the proposed action. Any legacy conditions would be present *regardless* of whether the NRC approves or denies the SLRA. Petitioner's misunderstanding of the relevant analyses, and conflation of legacy baseline conditions versus impacts of the "proposed action," provides no basis for an admissible contention. Accordingly, these arguments are unsupported and fail to raise a genuine material dispute with the 2023 DSEIS.

b. *Petitioner's Criticisms of the Remediation Plan Imposed by State and Local Regulators Do Not Identify Any Material Deficiency in the 2023 DSEIS*

Next, Petitioner proffers a list of grievances with the remediation activities imposed by state and local regulators. To the extent that Petitioner seeks to relitigate the outcome of past state and local determinations here, its challenge is improper. Moreover, Petitioner makes no attempt to connect these criticisms to any particular aspect of the NRC Staff's analysis. Ultimately, as explained below, these challenges are beyond the scope of this proceeding and fail to demonstrate a dispute with the 2023 DSEIS.

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106 *See, e.g.*, 2023 DSEIS at 1-5 to 1-6 ("[t]his site-specific EIS presents the NRC staff's supplemental analysis of the environmental effects of the continued operation of Turkey Point during the SLR term").

107 Petition at 25.

Petitioner seemingly demands that the Board grant a hearing, here, for the purpose of second-guessing previous decisions by state and local regulators. For example, Petitioner criticizes the remediation plan imposed by state and local regulators because it "does not abate the continued leaching of industrial wastewater from the unlined canals in the CCS into groundwater."[108] As another example, Petitioner derides the recovery well system ("RWS") because it allegedly is "barely" adequate to offset potential future contributions from the CCS to the groundwater plume.[109] But this NRC license renewal proceeding is not the appropriate forum to challenge the decisions of state and local agencies with direct regulatory responsibility for such matters.[110] In that respect, Petitioner's arguments are beyond the scope of this proceeding. Moreover, those decisions are entitled to "substantial weight" in NRC environmental reviews.[111] Petitioner identifies no reason such deference is not appropriate here.

Petitioner also never explains how these criticisms somehow undermine any particular aspect of the Staff's environmental review. For example, FPL's recently renewed NPDES permit specifically authorizes discharges from the CCS into the underlying aquifer.[112] Petitioner criticizes the remediation plan imposed by state and local regulators because it "does not abate the continued leaching of industrial wastewater from the unlined canals in the CCS into groundwater."[113] To the extent Petitioner disagrees with that permitting decision, its remedy is

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108 *Id.* at 19.

109 *Id.* at 20.

110 *See NextEra Energy Point Beach, LLC* (Point Beach Nuclear Plant, Units 1 and 2), CLI-22-5, 95 NRC 97, 104–05 (2022) ("[T]he NRC has no statutory authority to review limitations or requirements established by [state agencies] under the Clean Water Act and must accept at face value that the cooling system . . . is sufficiently protective of the environment.")((citing Federal Water Pollution Control Act § 511(c)(2)(B), 33 U.S.C. § 1371(c)(2)(B)).

111 *Pub. Serv. Co. of N.H.* (Seabrook Station Units 1 and 2), CLI-77-8, 5 NRC 503, 527 (1977) (citations omitted).

112 FDEP NPDES Permit at 2.

113 Petition at 19.

not found in this NRC license renewal proceeding. Further, Petitioner identifies no portion of the 2023 DSEIS that *assumes* full abatement. That is unsurprising, because Staff's analysis fully comes to grips with the fact that the CCS is unlined and therefore hydraulic interaction with underlying groundwater systems may occur during the SLR term.[114] And, in full view of that information, the Staff "concludes that CCS operation during the SLR term is unlikely to result in substantial contributions to the hypersaline groundwater plume, if freshening activities and CCS salinity are maintained at their current levels."[115] Nothing in Petitioner's criticism of the remediation plan—and indeed nothing in the Petition at all—attempts or purports to challenge *that* conclusion.[116]

Likewise, Petitioner's criticism of the CCS "freshening activities" mandated by state and local regulators expose no material defect in the Staff's review. Petitioner derides these efforts as merely "flushing" saline water from the CCS into groundwater, thereby reducing freshwater availability and "exacerbating groundwater use conflicts."[117] However, the Staff has fully evaluated this aspect of the remediation plan mandated by state and local regulators.[118] And Petitioner identifies no way in which that evaluation is insufficient.[119]

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114 *See, e.g.*, 2023 DSEIS at 2-22.

115 *Id.* at 2-24 (emphasis added).

116 In fact, Petitioner's acknowledgment that the RWS is "barely adequate" to offset CCS contributions (Petition at 20) nevertheless concedes the adequacy of these efforts (despite Petitioner's views on the *margin* of that adequacy) and is fully harmonious with Staff's conclusion that continued operation of the CCS is unlikely to result in "substantial" contributions to the plume.

117 *Id*. at 19.

118 *See, e.g.*, 2023 DSEIS at 2-17, tbl. 2-4.

119 Furthermore, Petitioner's suggestion that 30 MGD of CCS water simply migrates into freshwater aquifers is facially illogical and counterfactual. As Petitioner knows, the RWS captures the CCS outflow and prevents its migration into the aquifer—and Petitioner has acknowledged this process is (barely) "adequate to offset the rate at which the continued operation of the CCS adds water to the plume." Petition at 20.

Accordingly, even if these grievances with state and local regulatory decisions were properly before the Board (they are not), Petitioner still has not identified a genuine dispute with the 2023 DSEIS. This portion of Proposed Contention 1 should be rejected for one or all of these many reasons.

c. Petitioner's Discussion of the Year 5 RAASR Does Not Identify Any Material Deficiency in the 2023 DSEIS

In its discussion of Proposed Contention 1, Petitioner invokes FPL's Year 5 Remedial Action Annual Status Report ("RAASR").[120] The RAASR is an annual report prepared by FPL since 2019 to document the results of remediation efforts imposed by state and local regulators. As explained below, Petitioner's comments in this regard fail to identify a genuine dispute with the 2023 DSEIS.

First, to the extent Petitioner implies that the 2023 DSEIS is somehow inadequate because it does not discuss the Year 5 RAASR,[121] Petitioner has not identified a genuine dispute because the NRC had no obligation to do so. The 2023 DSEIS was issued in August 2023, while the Year 5 RAASR was not available until November 2023, approximately three months *after* the 2023 DSEIS was published. The Staff's analysis cannot be faulted for its lack of clairvoyance.

Second, Petitioner offers no explanation as to why or how the 2023 DSEIS is materially lacking because the Year 5 RAASR was not considered. For example, Petitioner notes that the Year 5 RAASR shows that the remediation plan is unlikely to result in complete retraction of the legacy plume within 10 years.[122] However, Petitioner acknowledges that the "three latest

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120 *See* Petition, Exh. 9.

121 *See, e.g.*, *id*. at 21 (complaining that the "NRC has not evaluated" certain information).

122 *Id*. at 20.

consecutive annual reports" show the same thing.[123] And the NRC Staff expressly considered that information as part of its review.[124] As another example, Petitioner notes that the Year 5 RAASR contemplates the possibility of iterative adjustments to the remediation plan (e.g., increased RWS withdrawals or longer term operation of the RWS) to improve the likelihood of success of the plume retraction efforts.[125] But again, the Staff's analysis in the 2023 DSEIS fully contemplates the "uncertainty" associated with the retraction of the legacy plume. Moreover, Petitioner does not claim (and certainly offers no support for any such claim) that these speculative adjustments would *materially* alter any aspect of the NRC's analysis.[126]

Ultimately, nothing in Petitioner's discussion of the Year 5 RAASR (which post-dates the 2023 DSEIS by 3 months) identifies any shortcoming in the 2023 DSEIS.

d. Petitioner's Criticisms of State and Local Regulatory Processes Do Not Identify Any Material Deficiency in the 2023 DSEIS

Petitioner next asserts that the 2023 DSEIS is somehow inadequate because it does not consider "how the State's regulatory processes could conflict with and exacerbate contamination of the groundwater."[127] As alleged support, Petitioner cites a one-off circumstance in which the state and local regulators reached divergent conclusions regarding the appropriate elevation of certain weirs (small barriers intended to control water levels) along the L-31E canal.[128] For this reason, Petitioner claims "NRC staff should reassess their confidence that cooperation between

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123 *Id.*

124 *See, e.g.*, 2023 DSEIS at 4-6 (listing the Year 4 RAASR as a reference); *id*. at 2-25 (acknowledging that the retraction "has not been as successful as originally forecasted.").

125 Petition at 21.

126 And as a matter of common sense, any such claim would be dubious given that any adjustment to the remediation plan would require administrative approval by the pertinent state and local regulatory agencies—an approval that would be entitled to "substantial weight" in the NRC's environmental review. *Seabrook*, CLI-77-8, 5 NRC at 527 (citation omitted).

127 Petition at 22.

128 *Id.* at 22–23.

[those regulators] will shepherd FPL's remediation measures to a successful result."[129] However, these vague criticisms of routine state and local regulatory processes are immaterial, out-of-scope, and fail to raise a genuine dispute.

First, in the 2023 DSEIS, the NRC Staff plainly accounted for *uncertainty* in retracting the legacy plume. More specifically, the 2023 DSEIS expresses its impact conclusion for Section 2.8.3 as a range (SMALL to MODERATE), rather than a single conclusion, precisely because it does not have clairvoyance on this issue. Thus, Petitioner's claims are unsupported and fail to demonstrate a genuine dispute.

Second, the Commission has long held that decisions made by competent state and local authorities are "properly entitled to substantial weight in the conduct of [the NRC's] own NEPA analysis."[130] Petitioner offers no reason why this one-off example undercuts, or provides any basis to revisit, the Commission's longstanding policy.[131] Ultimately, Petitioner's vague collateral attack on state and local regulatory processes is immaterial to and beyond the scope of this proceeding, and certainly does not identify any material dispute with the 2023 DSEIS.

e. *Petitioner's Claims Regarding Its "Scoping Comments" Do Not Identify Any Material Deficiency in the 2023 DSEIS*

Petitioner complains that the 2023 DSEIS is somehow inadequate because it "fails to include information that was sent to the NRC in Petitioner Miami Waterkeeper's scoping comments." But Petitioner identifies no express requirement in Part 51 requiring its scoping

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129 *Id.* at 23.

130 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503, 527 (1977).

131 This is especially so because, in the example cited by Petitioner, the divergent views among the regulatory agencies were ultimately resolved through normal regulatory processes. *See Miami-Dade County v. Fla. Power & Light and Dep't of Envt'l Prot.* (OGC Case No. 18-1126), Order Closing File (Apr. 2, 2020). The years-old document submitted by Petitioner as alleged support for this contention predates this order, which moots the underlying concern.

comments to be "included" in the 2023 DSEIS—nor does any such requirement exist. As with all NRC license renewal proceedings, stakeholder scoping comments were addressed in the scoping summary report for this proceeding.[132] Petitioner's comments were considered in that report,[133] and were thoroughly discussed throughout, including in Sections C.1.3, C.1.5, C.1.6, C.1.7, C.1.9, C.2.3, C.2.4, C.2.5. In turn, the results of that scoping process "were addressed by the NRC staff in [the 2023 DSEIS]."[134] Thus, to the extent that Petitioner criticizes the 2023 DSEIS for not expressly acknowledging its scoping comments, it is challenging the *wrong document*.

Furthermore, Petitioner offers no explanation as to why some unspecified portion of the 2023 DSEIS is somehow materially lacking because Miami Waterkeeper's scoping comments were not expressly acknowledged. The purpose of the scoping process was to determine "the scope of the staff's environmental review."[135] Accordingly, the NRC "provided an opportunity for members of the public to propose environmental issues to be addressed in the site-specific EIS."[136] As relevant here, Miami Waterkeeper's scoping comments proposed that groundwater resources be included in the scope of the site-specific EIS. And groundwater resources were, in fact, included in the scope of the 2023 DSEIS. Petitioner identifies no requirement in Part 51 that is unsatisfied by the NRC's routine conduct of the scoping process.

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132 *See* Site-Specific [EIS] Scoping Process; Summary Report; [Turkey Point] at 3 (Aug. 2023) (ML23198A271) ("Scoping Report").

133 *See id*. at 6 (designating Miami Waterkeeper's comments as Correspondence ID # 10).

134 2023 DSEIS, App. A at A-1.

135 Scoping Report at 3.

136 *Id*. at 4.

3. Petitioner's Discussion of "Seagrass Decline" Fails to Identify Any Material Deficiency in the 2023 DSEIS

Next, Petitioner claims that the "2023 DSEIS fails to adequately consider the effects of non-radiological contaminants on aquatic organisms."[137] However, Petitioner offers no further explanation as to how the DSEIS is somehow inadequate in this regard. And Petitioner identifies no specific portion of the 2023 DSEIS that it purports to challenge. Importantly, neither the Petition—nor any of the exhibits thereto—mention, reference, summarize, analyze, or challenge the relevant section of the 2023 DSEIS that discusses this issue: Section 2.10.4. As mandated by the codified admissibility criteria, a petitioner is required to:

> provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information *must* include references to *specific portions* of the application . . . that the petitioner disputes and the supporting reasons for each dispute . . . .[138]

On its face, this portion of Proposed Contention 1 cannot support an admissible Contention because it fails to engage with the relevant analysis.

Rather than dispute the relevant analysis, Petitioner simply summarizes certain claims and opinions presented in two reports attached to the Petition. Specifically, Petitioner summarizes a 2021 report from Dr. James Fourqurean and a 2018 report from William K. Nuttle. However, Petitioner does not explain how any of this information allegedly undercuts any portion of the analysis in Section 2.10.4 (or any other section) of the 2023 DSEIS. And neither report indicates that the respective author even reviewed the relevant discussion. In sum, neither the Petitioner nor the authors of the reports identify any "specific portion" of the analysis they purport to challenge, and they certainly do not identify any "supporting reasons" for those

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137 Petition at 26.

138 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added).

unspecified disputes.[139] Far more is required to satisfy the material dispute criterion in 10 C.F.R. § 2.309(f)(1)(vi).

The Commission has long refused to "sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves."[140] And neither FPL, nor the NRC Staff, nor the Board can be "faulted for not having searched for a needle that may be in a haystack."[141] Nevertheless, for the sake of completeness, FPL offers the following additional observations regarding this portion of Proposed Contention 1.

First, the thrust of the "seagrass" discussion pertains to the presence of nutrients—specifically, phosphorous—in areas outside the CCS. In particular, this discussion recites Dr. Fourqurean's concern with "phosphorous loading." However, it does not acknowledge or expressly challenge any specific part of the analysis of nutrients (or phosphorous) presented in the 2023 DSEIS or the 2019 FSEIS. Perhaps more importantly, this discussion presents claims nearly identical to certain claims presented (and rejected) in the initial phase of this SLR proceeding. Specifically, in the Initial Proceedings, Miami Waterkeeper (and its co-petitioners) proposed a new contention, 6-E, purporting to challenge the NRC's analysis of CCS impacts on adjacent surface waters.[142] As alleged support for that contention, the co-petitioners offered a report from Dr. Fourqurean presenting his "concern with phosphorous loadings" and speculating

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139 This is to be expected because Petitioner's recycled "exhibits" are not based on a reading of the 2023 DSEIS and effectively seek to relitigate a years-old citizens suit and an unsuccessful challenge to issuance of the FDEP NPDES Permit. But, the NRC is not authorized to relitigate state NPDES hearings. *See supra* note 110 (citing CLI-22-5 and the Commission's ruling that the NRC lacks authority to review NPDES permits).

140 *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 337 (2002) (quoting *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 194 (1999)).

141 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 240–41 (1989).

142 *See Fla. Power & Light Co.* (Turkey Point Nuclear Generation Units 3 & 4), LBP-19-8, 90 NRC 139, 160–161 (2019).

that phosphorous in Biscayne Bay must originate from the CCS as opposed to other known sources.[143] The previous Board rejected those claims as unsupported speculation that failed to raise a genuine dispute.[144] And those are the same claims being made by Petitioner here.[145] Thus, the Board should reject them again for the same reasons.

Even more fundamentally, the fact that Petitioner raised these claims in the Initial Proceedings confirms that the challenge is not based on "new" information.[146] In contrast, this limited scope proceeding is restricted to challenges based on "new" information in the 2023 DSEIS. Because Petitioner does not identify any such "new" information, these claims are also beyond the scope of the proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

Furthermore, whether continued operation of the CCS would result in the input of nutrients into Biscayne Bay was definitively resolved in 2022 by the FDEP—the regulatory body with jurisdiction over that issue. Following an extensive administrative hearing before an independent administrative law judge (the "ALJ"), the ALJ rejected Dr. Fourqurean's speculation (in the same 2021 report submitted here) that the CCS was the source of phosphorous in adjacent wetlands and surface waters, calling it "unpersuasive."[147] In fact, the ALJ found the opposite: that "the competent, substantial, and persuasive evidence demonstrates that the continued operation of the CCS will not result in the input of nutrients into Biscayne

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143 *Id*. at 166.

144 *Id*.

145 Indeed, the 2019 report from Dr. Fourqurean is recycled here as attachment B to "Exhibit 4" to the Petition.

146 In fact, the 2019 FSEIS addressed nutrient impacts to Biscayne Bay in a new Category 2 issue created especially for Turkey Point, "Water Quality Impacts on Adjacent Water Bodies (Plants with Cooling Ponds in Salt Marshes)." This underscores that the issue was addressed previously and is not "new information." 2019 FSEIS at 4-22 to 4-24.

147 *Fla. Keys Aqueduct Auth. et al. v. FPL and FDEP*, DOAH Case Nos. 20-2967 & 20-2968, Amended Recommended Order at 61 ¶ 231 (Fla. Div. of Admin. Hearings, Feb. 21, 2022) ("ARO"), *available at* https://www.doah.state.fl.us/ROS/2020 /20002967Amended.pdf. The FDEP adopted the ALJ's findings and conclusions in their entirety. *See generally* FDEP Final Order.

Bay."[148] To the extent Miami Waterkeeper seeks to relitigate the ALJ's or FDEP's conclusions or findings of fact in this license renewal proceeding, its argument is out of scope and immaterial.[149]

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As shown above, Proposed Contention 1 is inadmissible because it fails to satisfy multiple criteria in 10 C.F.R. § 2.309(f)(1).

B. Proposed Contention 2 (Cooling Towers) Is Inadmissible

In Proposed Contention 2, Miami Waterkeeper claims that the "2023 DSEIS fails to comply with 10 C.F.R. § 51.71 because it fails to include an adequate analysis of 'alternatives available for reducing or avoiding adverse environmental effects.'"[150] Miami Waterkeeper also claims that the 2023 DSEIS violates Section 51.71 because it lacks an analysis of "the environmental and other benefits that would accrue from replacing the current CCS with a cooling tower" and "relies on the 2019 FSEIS which, at best, only analyzes the adverse impacts of constructing and operating" cooling towers, not the benefits.[151]

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148 ARO at 65 ¶ 244; FDEP Final Order at 65 ¶ 244. *See also id*. ¶ 247 ("the evidence does not show that there is significant, if any, seepage of CCS-origin water, via ground water seepage, into the L-31E Canal, S-20 Discharge Canal, Sea-Dade Canal, or other offsite canals or surface waters in the vicinity of the CCS, and the evidence does not show that the CCS is a source of nutrient input into these canals or other surface waters.").

149 *See, e.g.*, *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 & 2), CLI-07-25, 66 NRC 101, 107 (2007) (denying an appeal claiming "that [the] NRC ought to concern itself with . . . matters within the jurisdiction of other state and federal agencies"); *Entergy Nuclear Vermont Yankee, LLC* (Vt. Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 109 n.35 (2016) (noting that the NRC "lack[s] jurisdiction" to consider a licensee's compliance with FERC regulations); *Hydro Res., Inc.* (Albuquerque, NM), CLI-98-16, 48 NRC 119, 121–22 (1998) ("Congress granted us authority [in the AEA] merely to regulate radiological and related environmental concerns. It gave our agency no roving mandate to determine other agencies' permit authority. Our regulation . . . show[s] due respect to our sister agencies' responsibilities but do not add to our own regulatory jurisdiction."). Petitioner's complaint that freshening activities approved by state and local regulators create an "unintended consequence" of groundwater contamination (Petition at 30) are immaterial and out of scope for the same reasons.

150 Petition at 34 (quoting 10 C.F.R. § 51.71(d)).

151 *Id.* at 34–35.

Proposed Contention 2 is inadmissible for two reasons. First, the proposed Contention is outside the scope of this proceeding as announced in the Hearing Opportunity Notice published in the *Federal Register*. Second, Miami Waterkeeper has not shown a genuine dispute exists with the 2023 DSEIS on a material issue of law or fact. For these reasons, and as discussed below, the Board should reject Proposed Contention 2 as inadmissible.

1. Petitioner's Challenge to the Cooling Tower Alternative Analysis in the 2019 FSEIS Is Not Within the Scope of This Proceeding

The subject matter of contentions in any adjudicatory proceeding is limited to the scope delineated by the Commission in its hearing notice and referral order delegating to the Licensing Board the authority to conduct the proceeding.[152] Here, the hearing notice states that the scope of contentions in this proceeding is "limited" to those presenting challenges "based on new information in the [2023 DSEIS]."[153] As shown below, there is no new information on cooling towers in the 2023 DSEIS for Miami Waterkeeper to challenge. Instead, Petitioner seeks to challenge an analysis from the 2019 FSEIS (*i.e.*, not "new information"). For this reason, Proposed Contention 2 is outside the scope of this proceeding and should be denied.

The 2019 FSEIS evaluated replacing the CCS with mechanical draft cooling towers to provide cooling water for Units 3 and 4.[154] For this evaluation, the NRC staff drew upon FPL's application to construct and operate two new units (Turkey Point Units 6 and 7), which included mechanical draft cooling towers as part of the application.[155] The NRC assumed the cooling

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152 *Turkey Point*, CLI-00-23, 52 NRC at 329 (2000); *Catawba*, ALAB-825, 22 NRC at 790.

153 Hearing Opportunity Notice, 88 Fed. Reg. at 62,111. This is consistent with the Commission's instructions in CLI-22-3, which prescribed that the "new notice of opportunity for hearing" would be "limited to contentions based on *new information* in the site-specific environmental impact statement." *Turkey Point*, CLI-22-3, 95 NRC at 42 (emphasis added).

154 2019 FSEIS at 2-12 to 2-13.

155 *Id.* at 2-13.

towers for Units 3 and 4 would have the same general design and characteristics as those proposed for Units 6 and 7.[156] The 2019 FSEIS then analyzed the feasibility, cost, environmental benefits, and environmental impacts of constructing cooling towers and discontinuing using the CCS at Turkey Point.[157]

Despite the requirement for contentions in this proceeding to address "*new information* in the [2023 DSEIS],"[158] Proposed Contention 2 attacks the analysis in the 2019 FSEIS. Petitioner tries to characterize its claims as a challenge to the 2023 DSEIS merely because the 2023 DSEIS did not *alter* the analysis in the 2019 FSEIS. Even so, the information being challenged plainly originates from the long-available 2019 FSEIS and thus any alleged deficiencies are not "new." Accordingly, this challenge is beyond the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

2. Even If Petitioner's Challenge to the Cooling Tower Alternative Analysis in the 2019 FSEIS Is Within the Scope of This Proceeding, It Is Inadmissible for Multiple Reasons

Even if Petitioner's challenge to the (not new) analysis in the 2019 FSEIS were justiciable here (it is not), Petitioner's challenge remains inadmissible for multiple additional reasons, as explained below.

a. Proposed Contention 2 Should Be Rejected for Precisely the Same Reasons Articulated by the Previous Board

Proposed Contention 2 is inadmissible because it merely recycles arguments that the prior Board soundly rejected. In fact, Proposed Contention 2 is Miami Waterkeeper's third attempt to

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156 *Id.*

157 2019 FSEIS at 2-12 to 2-13. For environmental benefits, the 2019 FSEIS discussed the potential benefit of cooling towers, which could help avoid certain impacts on groundwater. *See id.* § 4.5.2. For environmental consequences, the 2019 FSEIS discusses the potential impacts of cooling towers on various resources. *See, e.g.*, *id.* §§ 4.2.7, 4.3.7, 4.4.7, 4.5.7, 4.6.7, 4.7.7, 4.9.4, 4.10.7, 4.11.7, 4.12.4 and 4.13.7.

158 Hearing Opportunity Notice, 88 Fed. Reg. at 62,111 (emphasis added).

have the cooling tower issue admitted as a contention. Miami Waterkeeper's first attempt met with limited success, as the prior Board admitted a part of that contention (1-E) as a contention of omission—because the ER did not present a cooling tower alternative analysis.[159] That contention of omission, however, became moot after the NRC issued the 2019 DSEIS—which did contain such an analysis.[160] To stave off the dismissal of its mooted contention, Miami Waterkeeper and its co-petitioners moved for leave to amend Contention 1-E.[161] Miami Waterkeeper's proposed amended contention (designated Amended Contention 1-Eb) sought to convert its contention of omission into a contention of sufficiency, claiming that the 2019 DSEIS "fail[ed] to analyze adequately mechanical draft cooling towers as a reasonable alternative that could mitigate adverse impacts of the cooling canal system in connection with the license renewal of Turkey Point Units 3 and 4."[162]

Proposed Contention 2 here is an almost word-for-word reproduction of Amended Contention 1-Eb from the Initial Proceedings. Indeed, the only difference between the two contentions is that Proposed Contention 2 changed "analyzed adequately" to "adequately analyzed," removed the word "mechanical" before "cooling towers," and inserted the word "subsequent" before "license renewal."[163] What is more, Miami Waterkeeper repeats the same fundamental arguments. In particular, Miami Waterkeeper claimed in the Initial Proceedings, and again claims here, that the cooling tower analysis:

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159 *See Turkey Point*, LBP-19-3, 89 NRC at 287.

160 *See, e.g.*, 2019 DSEIS at 2-12 to 2-13.

161 Natural Resources Defense Council's, Friends Of The Earth's, And Miami Waterkeeper's Motion To Migrate Contentions & Admit New Contentions In Response To NRC Staff's Supplemental Draft Environmental Impact Statement (June 24, 2019) (ML19175A307) ("Motion to Amend").

162 Motion to Amend at 8.

163 *Cf.* Motion to Amend at 8 (Proposed Amended Contention 1-Eb) *with* Petition at 34 (Proposed Contention 2).

- Only analyzed the adverse impacts of constructing cooling towers;[164]
- Provided no analysis of the benefits that would follow from constructing cooling towers;[165] and
- Did not assess how the cooling water alternatives could reduce groundwater conflicts.[166]

The prior Board duly considered these claims and ultimately rejected Amended Contention 1-Eb as inadmissible.[167] The Board held that Miami Waterkeeper "fail[ed] to establish a genuine issue of material law or fact" regarding the cooling tower alternative analysis in the 2019 DSEIS.[168] Because Petitioner merely repeats the same arguments (without updated or additional support), and because the prior Board already determined those arguments were inadmissible,[169] this Board should reach the same conclusion—that Proposed Contention 2 fails to establish a material dispute.[170]

b. *Petitioner Otherwise Fails to Demonstrate Any Material Deficiency in the Cooling Tower Analysis*

Miami Waterkeeper focuses much of its discussion in Proposed Contention 2 on the need to *evaluate* cooling towers as an alternative to the CCS. Indeed, Petitioner devotes several pages to its claim that cooling towers are a reasonable alternative and attaches a document to that effect.[171] However, these claims fail to identify a material dispute for multiple reasons. First, the

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164 Motion to Amend at 10; Petition at 34-35.

165 Motion to Amend at 11; Petition at 35-36.

166 Motion to Amend at 14; Petition at 37.

167 *Turkey Point*, LBP-19-8, 90 NRC at 151-54.

168 *Id.* at 152.

169 The analyses in the 2019 DSEIS and 2019 FSEIS are substantively the same. *Compare, e.g.*, 2019 DSEIS at 2-13 to 2-14 *with* 2019 FSEIS at 2-13 to 2-14.

170 *See also Ga. Power Co.* (Vogtle Elec. Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 38 n.27 (1993) ("Collateral estoppel principles may be applied by the Commission in administrative proceedings to bar re-litigation of previously resolved issues.") (citations omitted).

171 Petition at 39–41, 44.

feasibility of a cooling tower alternative is not a disputed issue in this proceeding. The NRC plainly did not reject this alternative on feasibility grounds because it fully evaluated cooling towers as an alternative in the 2019 FSEIS. Second, Petitioner claims that Proposed Contention 2 is supported by the exact same "Cooling Tower Feasibility Assessment" prepared by Bill Powers, P.E., that was submitted in the Initial Proceedings.[172] That assessment, dated May 14, 2018, was submitted as alleged support for a contention challenging the *omission* of a cooling tower analysis in the original ER. But that omission was cured in the 2019 FSEIS, which post-dates the assessment. Thus, that feasibility assessment provides no obvious support for contention purporting to challenge the *sufficiency* of the 2019 FSEIS.[173] At bottom, the feasibility of a cooling tower alternative is not a disputed issue here; and Petitioner's discussion of this issue fails to identify a material dispute.

Nevertheless, Miami Waterkeeper continues to argue that the cost of replacing the CCS with cooling towers is reasonable, and that changing the cooling source at an operating plant is feasible and has been done at other sites.[174] The subtext to the repetition of these undisputed assertions appears to be Miami Waterkeeper's desire for the NRC to require Turkey Point to construct cooling towers as a condition of its subsequently renewed license.[175] But the NRC has repeatedly stated that it lacks such authority.

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172 *See* Petition at 39 n.151 (citing Petition, Exh. 5, Attach. A, which is a report prepared by Bill Powers, P.E., dated May 14, 2018); *Turkey Point*, LBP-19-3, 89 NRC at 284 (noting the same report was submitted by a different petitioner, Southern Alliance for Clean Energy, in support of its contention challenging the omission of a cooling tower analysis in the ER).

173 In Exhibit 5 to the Petition, Mr. Powers briefly asserts that the 2023 DSEIS is inadequate because it "does not discuss the alternative of installing mechanical draft closed cycle cooling towers" (¶ 7). However, the relevant analysis is presented in the 2019 FSEIS, not the 2023 DSEIS. Mr. Powers does not claim to have reviewed the 2019 FSEIS and provides no commentary on the sufficiency of that unacknowledged analysis.

174 *Id.* at 40–41.

175 *See id.* at 42.

In the 2019 FSEIS, the NRC stated it had "neither the statutory nor the regulatory authority to determine which system or technology should be used, or to decide other permitting issues, for which the State of Florida has been delegated regulatory."[176] The NRC reiterated this in the draft GEIS update:

> The NRC will not make a decision or any recommendations on the basis of information presented in this LR GEIS regarding changes to nuclear power plant cooling systems, other than those involving safety-related issues, to mitigate adverse impacts under the jurisdiction of State or other Federal agencies. Implementation of the provisions of the Clean Water Act (CWA; 33 U.S.C. § 1251 et seq.), including those regarding cooling system operations and design specifications, is the responsibility of the U.S. Environmental Protection Agency (EPA). In many cases, the EPA delegates such authority to the individual States. To operate a nuclear power plant, licensees must comply with the CWA, including associated requirements imposed by the EPA or the State, as part of the National Pollutant Discharge Elimination System (NPDES) permitting system under CWA Section 402 and State water quality certification requirements under CWA Section 401. The EPA or the State, not the NRC, sets the limits for effluents and operational parameters in plant-specific NPDES permits.[177]

In other words, while the NRC analyzed cooling towers as an alternative to satisfy NEPA, it lacks the regulatory authority to mandate their use. Thus, the "selection" of cooling towers is outside the scope of this proceeding and raises no genuine dispute with the 2023 DSEIS.

Second, Miami Waterkeeper argues that the NRC "cannot rely on state and local regulators to . . . remediate the plume due to overlapping goals and responsibilities."[178] Miami Waterkeeper also points to a seven-year-old resolution by the Miami-Dade County Board of

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176 2019 FSEIS at 2-13.

177 NUREG-1437, Draft Report for Comment, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" at 1-9 (Rev. 2) (Feb. 2023) (ML23010A078). *See also Point Beach*, CLI-22-5, 95 NRC at 104-05. In *Point Beach*, the Commission rejected a contention focused on the failure to consider a cooling tower alternative to mitigate environmental impacts. The Commission explained that the NRC lacks authority to review limitations or requirements established by state agencies under NPDES permits and must accept at face value that the cooling system is sufficiently protective of the environment. *Id.*

178 Petition at 38.

Commissioners for FPL to discontinue its use of the CCS.[179] However, as with Proposed Contention 1, these vague arguments about the effectiveness of state and local regulators fail to dispute any specific assertion or conclusion in the NRC's environmental analysis.[180]

Lastly, Miami Waterkeeper argues that the 2019 FSEIS did not adequately address replacing the CCS with cooling towers because it fails to analyze "the environmental benefits" of installing cooling towers.[181] That claim is demonstrably untrue. The 2019 FSEIS addressed the feasibility, cost, environmental benefits, and environmental impacts of constructing cooling towers and discontinuing using the CCS.[182] Staff expressly considered the benefits to groundwater that would come from replacing the CCS with cooling towers,[183] which is the exact analysis Miami Waterkeeper claims is missing:[184]

> The benefits of the alternative cooling water system are that the impacts of utilizing the CCS for cooling of Turkey Point Units 3 and 4 would be avoided; those impacts are discussed extensively in this SEIS; the avoidance of those impacts of CCS operation (e.g., on groundwater resources), is discussed in Section 4.5.2 (Water Resources: "No-Action Alternative"), in that use of the CCS to cool Units 3 and 4 would cease at the end of the current license terms if the Turkey Point subsequent license renewal (SLR) application is denied.[185]

Because the allegedly omitted analysis is, in fact, present, this line of argument is unsupported and fails to identify a genuine dispute with the Staff's environmental review.

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179 *Id.* at 38–39.

180 *See supra* Section III.A.2.d.

181 Petition at 36.

182 2019 FSEIS at 2-13 to 2-14. For environmental benefits, the 2019 FSEIS discussed the potential benefit of cooling towers, which could help avoid certain impacts on groundwater. *See id.* § 4.5.2. For environmental consequences, the 2019 of impacts of cooling towers on various resources. *See id.* §§ 4.2.7, 4.3.7, 4.4.7, 4.5.7, 4.6.7, 4.7.7, 4.8.7, 4.9.7, 4.10.7, 4.11.7, 4.12.4 and 4.13.7.

183 *See* 2019 FSEIS §§ 2.2.3, 4.5.2.

184 Petition at 37–39.

185 2019 FSEIS at 2-13.

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As shown above, Proposed Contention 2 is inadmissible because it raised issues that are immaterial and outside the scope of the proceeding and because Miami Waterkeeper failed to adequately support its claims or demonstrate a genuine material dispute with the 2023 DSEIS, contrary to 10 C.F.R. § 2.309(f)(1)(iii)–(vi).

C. Proposed Contention 3 (Cumulative Impacts from Climate Change) Is Inadmissible

Proposed Contention 3 claims that the 2023 DSEIS fails to adequately consider the cumulative impacts of continued operation of Units 3 and 4.[186] In this contention, Miami Waterkeeper argues that the 2023 DSEIS does not comply with 10 C.F.R. § 51.71(d) because "it does not adequately address the cumulative effects on the environment of operating Units 3 and 4 through the subsequent license extension period" and the discussion of climate change impacts in Appendix E "is inadequate to satisfy NEPA."[187] As discussed below, Proposed Contention 3 is inadmissible for three primary reasons. First, the bulk of the Contention fails to dispute any "new information" in the 2023 DSEIS and is therefore outside the scope of this proceeding. Second, the claims raised in Proposed Contention 3 are simply recycled from the Initial Proceedings—and should be rejected for the same reasons identified by the previous Board. Third, Petitioner's challenge to the voluntary information provided in Appendix E to the 2023 DSEIS fail to identify any material defects. For these reasons, and as explained below, the Board should deny Proposed Contention 3.

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186 Petition at 45.

187 *Id.*

1. Petitioner's Challenge to the Cumulative Impacts Analysis in the 2019 FSEIS Is Beyond the Scope of This Proceeding

As discussed above in Section III.B, the NRC limited the scope of this proceeding to "new information" in the 2023 DSEIS.[188] In contrast, Proposed Contention 3—as with Proposed Contention 2—seeks to challenge information in the 2019 FSEIS. Specifically, Proposed Contention 3 claims the discussion of "cumulative impacts" in the 2019 FSEIS was inadequate.[189] Petitioner tries to characterize its claims as a challenge to the 2023 DSEIS merely because the 2023 DSEIS did not *alter* the analysis in the 2019 FSEIS. Even so, the information being challenged plainly comes from the 2019 FSEIS; and the alleged deficiencies are thus not "new." Accordingly, those challenges are beyond the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

2. Even If Petitioner's Challenge to the Cumulative Impacts Analysis in the 2019 FSEIS Is Within the Scope of This Proceeding, It Is Inadmissible for Precisely the Same Reasons Articulated by the Previous Board

Miami Waterkeeper identifies two elements of the 2019 FSEIS cumulative impacts analysis it finds lacking: (1) cumulative impacts of rising sea levels and (2) cumulative impacts of increasing air temperatures.[190] These are effectively the same challenges that Miami Waterkeeper raised—and the Board rejected—in the Initial Proceedings.[191] Remarkably, Miami Waterkeeper does not even attempt to cure the admissibility deficiencies identified by the prior Board. Thus, even if these recycled challenges to non-new information in the 2019 FSEIS are within the scope of this proceeding (they are not), they remain inadmissible for the very reasons identified by the prior Board.

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188 Hearing Opportunity Notice, 88 Fed. Reg. at 62,111; *see also Turkey Point*, CLI-22-3, 95 NRC at 42.

189 Petition at 45–63

190 *Id*. at 52–60.

191 *Turkey Point*, LBP-19-3, 89 NRC at 287–88.

First, Miami Waterkeeper claims in Proposed Contention 3 that sea level rise caused by climate change will impact surface water resources.[192] Specifically, Petitioner claims sea level rise will increase the risk of flooding and overtopping the canal system, which would discharge polluted water from the CCS to Biscayne Bay.[193] That is the same argument it presented in the Initial Proceedings.[194] There, the prior Board rejected an essentially identical contention because it "fail[s] to discuss such necessary information as the relationship between their projected sea levels and the relevant elevations of the Turkey Point site, its sea level barriers, or the CCS, to support their claim that the site will be flooded and the CCS will be overtopped or breached."[195] As before, Proposed Contention 3 *still* fails to connect these claims on sea level rise to the specific characteristics of Turkey Point. So even if all of Miami Waterkeeper's claims about sea level rise are true,[196] Proposed Contention 3 contains insufficient information or support to identify a material dispute with the (not new) cumulative impacts analyses in the 2019 FSEIS.

Second, Proposed Contention 3 claims that higher air temperatures will "increase the rate of evaporation in the [CCS]" and cause an increase in salinity in the canals that would impact groundwater.[197] Once again, Miami Waterkeeper also made this substantively identical claim in its prior petition.[198] Whereas, the prior Board rejected that claim as inadmissible because Petitioner "provide[d] no support to demonstrate that the higher temperatures they postulate

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192 Petition at 52–57.

193 *Id.*

194 2018 Petition at 30–35.

195 *Turkey Point*, LBP-19-3, 89 NRC at 288.

196 *See* Petition at 52–53.

197 Petition at 57–60. Petitioner's recycled argument aside, Staff recognizes that that a critical part of the CCS salinity reduction measures involves the use of water from the Upper Floridian aquifer and that the amount of freshening water added during the 2021–22 period was less than half the amount FPL is authorized to withdraw. *See* 2023 DSEIS at 2-23.

198 2018 Petition at 35–37.

would increase evaporation in the CCS to any particular extent, much less to an extent . . . that would . . . affect the environment."[199] Here, Proposed Contention 3 makes no attempt to address or cure that Board-identified defect. Because Petitioner simply repeats its previously inadmissible arguments on this issue, without addressing the admissibility defects identified by the previous Board, this Board should conclude that it remains inadmissible for the same reasons identified in the Initial Proceedings.

3. Petitioner's Challenges to Appendix E to the 2023 DSEIS Are Immaterial, Out-of-Scope, and Fail to Raise a Genuine Dispute

Notwithstanding the absence of any requirement to do so, the NRC staff provided (in Appendix E to the 2023 DSEIS) a voluntary supplemental analysis of climate change impacts on environmental resources.[200] The NRC Staff did so proactively, as a matter of efficiency, based on a proposed modification to Part 51 that *may* become effective before the conclusion of this proceeding. Miami Waterkeeper finds fault with this analysis for multiple reasons. First, Petitioner suggests this analysis fails to satisfy the requirements of the proposed Part 51 rule and recently published Council on Environmental Quality ("CEQ") guidance. However, compliance with a non-final rule and non-binding guidance from a different agency is not required. Thus, Petitioner's corresponding claims are immaterial to this proceeding. Petitioner also complains that the voluntary analysis in Appendix E to the 2023 DSEIS does not account for a February 2022 U.S. governmental report on projected sea level rise.[201] But the data from the February 2022 report differs little from prior reports, and Petitioner does not attempt to explain how or

199 *Turkey Point*, LBP-19-3, 89 NRC at 288-89.

200 2023 DSEIS at E-8 to E-9.

201 Petition at 50–51.

why consideration of that information would, in any way, change the NRC staff's conclusions.[202] Thus, these claims also fail to raise a genuine dispute on a material issue.

a. Neither the Proposed Rulemaking for Part 51 Nor CEQ Guidance Imposes Any Requirements Regarding the Content of the 2023 DSEIS

Miami Waterkeeper argues that the NRC's proposed draft rule for Part 51 requires the NRC staff to consider certain information in the 2023 DSEIS, and that Appendix E does not meet that obligation.[203] But the draft rule is just that—a draft. By definition, it is not effective and imposes no legal requirement until it is finalized. Thus, to the that extent Miami Waterkeeper alleges some deficiency on the basis of non-compliance with the proposed rule, its claim is immaterial, out of scope, and fails to raise a genuine dispute.

Additionally, Miami Waterkeeper argues that recent guidance from the Council on Environmental Quality requires the NRC to consider impacts caused by climate change.[204] To the contrary, the NRC's position is that, because it is an independent regulatory agency, it is not bound by CEQ regulations or guidance:

> [A]s a matter of law, the NRC as an independent regulatory agency can be bound by CEQ's NEPA regulations only insofar as those regulations are procedural or ministerial in nature. NRC is not bound by those portions of CEQ's NEPA regulations which have a substantive impact on the way in which the Commission performs its regulatory functions.[205]

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202 *Cf.* Petition at 53 (table of values) *with* 2019 FSEIS at 4-123 (The updated values for projected sea level rise in the Petition are from 0.7-1.4 feet by 2050. In comparison, the 2019 FSEIS, which relied on a prior version of the same report, found projected sea level rise would be between 0.5-1.2 feet by 2050, for a difference of approximately 2.5 inches (0.2 feet)).

203 Petition at 47–48.

204 Petition at 48–49

205 Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9352, 9352 (Mar. 12, 1984); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002) ("[T]he Commission is not bound by CEQ regulations that it has not expressly adopted.") (citing *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 743 (3d Cir. 1989)).

And, in general, guidance documents do not impose legal requirements. Thus, the non-compliance with CEQ guidance alleged by Miami Waterkeeper is not a material issue in this proceeding for multiple reasons.

Additionally, Miami Waterkeeper fails to explain any particular way in which the NRC's analysis allegedly does not comply with that guidance. So even if that guidance somehow imposed some obligation on the NRC (it does not), Miami Waterkeeper's vague and conclusory assertion of non-compliance fails to articulate any particular dispute or demonstrate the materiality of that unspecified dispute, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

b. Petitioner's Citation to an Updated Climate Change Report Identifies No Material Deficiency in the 2023 DSEIS

Miami Waterkeeper claims that the 2023 DSEIS is deficient because the NRC incorrectly stated that "[t]here have been no updates to the climate change reports from the [U.S. Global Change Research Program ("USGCRP")] and the NOAA since the publication of the [2019] FSEIS."[206] Miami Waterkeeper points out that the USGCRP and NOAA issued an updated report in February 2022.[207] It then claims that the NRC failed to "consider[] this report in its analysis."[208] But, standing alone, this claim of omission fails to raise a material dispute. To be admissible, Petitioner also must show that consideration of the omitted information would *materially alter* the NRC's findings. It has not done so here.

In fact, the difference in projected sea level rise between the 2017 USGCRP reports and the 2022 report is minuscule. In the earlier report, the USGCRP estimated that relative to year 2000 global mean sea levels, sea levels were projected to rise by 0.5 to 1.2 feet by 2050.[209] In

206 Petition at 50 (quoting 2023 DSEIS, App. E at E-9).

207 *Id.* at 50–51.

208 *Id*. at 51.

209 2019 FSEIS at 4-122.

comparison, the 2022 report projects that sea levels will rise by 0.7 to 1.4 feet by 2050.[210] The difference in projected sea level rise between the 2017 and 2022 reports is just 2.5 inches (0.2 feet).[211] Petitioner proffers no explanation on how or why that minor difference would materially impact any analysis or conclusion. As the Commission has often reminded litigants, "[o]ur boards do not sit to 'flyspeck' environmental documents or to add details or nuances."[212] If the analysis "'comes to grips with all important considerations,' nothing more need be done."[213] Petitioner fails to explain any reason why the Staff's analysis does not do so here.[214]

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As shown above, Proposed Contention 3 is inadmissible because it raises issues outside the scope of the proceeding and because Miami Waterkeeper fails to demonstrate a genuine material dispute with the 2023 DSEIS, contrary to 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi).

D. <u>Proposed Contention 4 (Endangered Species) Is Inadmissible</u>

Proposed Contention 4 claims that the 2023 DSEIS fails to take a hard look at impacts to endangered species.[215] Specifically, Miami Waterkeeper argues that the 2023 DSEIS unlawfully fails to address whether the continued operation of Turkey Point Units 3 and 4 and the CCS will affect the Miami cave crayfish (*Procambarus milleri*), a species *proposed* for listing under the

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210 *See* Petition at 53 (citing William V. Sweet, National Oceanic and Atmospheric Administration, Global and Regional Sea Level Rise Scenarios for the United States (Feb. 2022)).

211 The NRC Staff also acknowledged other estimates in the FSEIS, including a report published by the Southeast Florida Regional Climate Change Compact that projected sea level rise of 1.16 to 2.83 feet by 2060, which given the uncertainty, the Staff considered as conservative or bounding estimates. 2019 FSEIS at 4-123. So the NRC has already considered potential sea level rise projections larger than those sought by Petitioner here.

212 *Sys. Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005).

213 *Id* (citation omitted).

214 As found by the prior Board, a contention on sea level rise cannot raise a material issue when it "fail[s] to discuss such necessary information as the relationship between their projected sea levels and the relevant elevations of the Turkey Point site, its sea level barriers, or the CCS, to support [a] claim that the site will be flooded and the CCS will be overtopped or breached." *Turkey Point*, LBP-19-3, 89 NRC at 288.

215 Petition at 63.

Endangered Species Act ("ESA") *after* the 2023 DSEIS was issued.[216] According to Miami Waterkeeper, because the 2023 DSEIS is silent on whether NRC consulted the U.S. Fish and Wildlife Service ("FWS") about the proposed listing of the Miami cave crayfish, the NRC has not fulfilled its obligations under Section 7(a)(2) of the ESA[217] and thus failed to comply with NEPA and 10 C.F.R. § 51.71(c).[218] As discussed below, the proposed Contention is inadmissible because it does not demonstrate a genuine dispute on a material issue of law or fact.

The FWS maintains a list of "endangered species"[219] and "threatened species"[220] that are protected under the ESA.[221] When considering whether to list a species under the ESA, the FWS will make a determination "solely on the basis of the best scientific and commercial data available" at that time.[222] Similarly, when the FWS designates "critical habitat" for a listed species, that determination is made "on the basis of the best scientific data available" at that time and after accounting for economic impacts and the impacts on national security.[223] The FWS proposes a species for listing by publishing a notice in the *Federal Register* seeking public comment on the proposed listing.[224] When the decision to list or not list the proposed species as

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216 Petition at 63–74.

217 Endangered Species Act, Pub. L. 93-205, § 7(a)(2) (1973) (codified as amended at 16 U.S.C. § 1536(a)(2)).

218 Petition at 63–74.

219 16 U.S.C. § 1532(6) ("endangered species means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.").

220 16 U.S.C. § 1532(20) ("threatened species means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.").

221 *See* 50 C.F.R. §§ 17.11(h) and 17.12(h).

222 16 U.S.C. § 1533(b)(1); 50 C.F.R. § 424.11(b).

223 16 U.S.C. § 1533(b)(2); 50 C.F.R. § 50.424.12(a).

224 *See* 10 C.F.R. § 424.16.

threatened or endangered is made, the FWS publishes a final rule in the *Federal Register.*[225] Under the FWS's regulations, the final rule must be published within one year from the notice proposing the listing.[226]

Relevant to this proceeding, ESA section 7 requires federal agencies to ensure that proposed actions are not likely to jeopardize the continued existence of both listed species and proposed species.[227] This is done through an interagency process with the FWS, but this process is different for listed species and proposed species:

- For threatened and endangered species, the ESA requires every federal agency to *consult* the FWS.[228] The ESA regulations refer to this as a "formal consultation."[229]

- For proposed species, the ESA requires every federal agency to *confer* with the FWS.[230] The ESA regulations refer to this as a "conference" which involves "informal discussions between a Federal agency and the [FWS] under [16 U.S.C. § 1536(a)(4)] regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects."[231]

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225 *Id.* § 424.18

226 *Id.* § 424.17(a)(1).

227 *See* 16 U.S.C. § 1536(a)(2) (listed species); 16 U.S.C. § 1536(a)(4) (proposed species); *see also* 50 C.F.R. § 402.10.

228 A different licensing board noted that "[i]n practice, the Secretaries of Interior and Commerce have delegated these responsibilities to the [FWS] and the National Marine Fisheries Service, respectively." *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-12-10, 75 NRC 633, 639 n.36 (2012).

229 50 C.F.R. § 402.02 (definition of "Formal consultation" which "is a process between the [FWS] and the Federal agency that commences with the Federal agency's written request for consultation under [16 U.S.C. § 1536(a)(2)] and concludes with the [FWS]'s issuance of the biological opinion under [Section 1536(b)(3)].").

230 16 U.S.C. § 1536(a)(4); 50 C.F.R. § 402.10.

231 50 C.F.R. § 402.02 (definition of "Conference").

According to the FWS's regulations, it performs a "strictly advisory function" under the ESA, and the federal agency (here, the NRC) retains "the ultimate decision as to whether its proposed action" satisfies the ESA.[232]

In April 2010, the FWS received a petition from the Center for Biological Diversity and other groups and individuals, requesting the FWS to list 404 aquatic, riparian and wetland species in the southeastern United States as threatened or endangered.[233] One of the species listed in the petition was the Miami cave crayfish.[234] After reviewing the petition, the FWS determined that listing of 374 of the species, including the Miami cave crayfish, "may be warranted."[235] The FWS noted that the standard used for this determination is far less rigorous than the "best scientific and commercial data" standard that applies to an actual listing determination.[236]

The 2019 FSEIS presented a fulsome analysis of the potential impact of the proposed action on all federally listed species and documents related consultation activities.[237] The 2023 DSEIS discusses a supplemental consultation with FWS that post-dated the 2019 FSEIS, but concluded that there was no significant new information that would alter the conclusions presented in the 2019 FSEIS on that issue.[238] On September 20, 2023, almost three weeks after the NRC released the 2023 DSEIS on August 31, 2023, the FWS published a proposal in the

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232 Interagency Cooperation - Endangered Species Act of 1973, as Amended; Final Rule, 51 Fed. Reg. 19,926, 19,928 (June 3, 1986).

233 Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Endangered or Threatened with Critical Habitat, Notice of petition finding and initiation of status review, 76 Fed. Reg. 59,836, 59,837 (Sept. 27, 2011).

234 *Id*. at 59,837.

235 *Id.* at 59,862.

236 *Id.*

237 2019 FSEIS at 4-63 to 4-83.

238 2023 DSEIS at 2-1.

Federal Register to list the Miami cave crayfish as a threatened species under the ESA.[239] The comment period on the proposed listing closed on November 20, 2023.[240] As of the date of this Answer, the FWS has issued no final decision on whether to list the crayfish.

1. Petitioner's Criticism of the 2023 DSEIS for Its "Silence" Regarding the Miami Cave Crayfish Fails to Identify a Material Dispute

In Proposed Contention 4, Miami Waterkeeper claims "the NRC has not taken a hard look at endangered species" because the 2023 DSEIS is "silent as to whether the NRC consulted with FWS about the Miami cave crayfish."[241] However, the fact that the 2023 DSEIS is silent on this issue is unsurprising, given that the Miami cave crayfish did not become a proposed species until after the 2023 DSEIS was published. Petitioner cannot fault the 2023 DSEIS for not discussing a circumstance that had not yet occurred at the time of its publication.[242] Neither NEPA nor Part 51 imposes any obligation on the NRC Staff to predict the future. Thus, the omission of this discussion is not a material deficiency in the 2023 DSEIS.

Furthermore, if Miami Waterkeeper's claim is that the NRC was required to consult or confer with the FWS about the Miami cave crayfish *before* it became a proposed species, then Miami Waterkeeper's claim is unsupported, legally incorrect, and fails to raise a genuine dispute with the 2023 DSEIS. Petitioner identifies no obligation of federal agencies to consult or confer with the FWS regarding species other than those that have been proposed or listed.[243] And no

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239 Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for the Miami Cave Crayfish; Proposed Rule, 88 Fed. Reg. 64,856 (Sept. 20, 2023).

240 *Id*. at 64,856.

241 Petition at 64.

242 No NRC regulation requires Staff to address proposed species in an EIS. For license renewal, NRC regulations require only consideration of threatened or endangered species. 10 C.F.R. § 51.53(c)(3)(ii)(E). This environmental report scope is incorporated by reference for draft environmental impact statements in 10 C.F.R. § 51.71(a).

243 Because the NRC did not need to consult the FWS before the NRC published the 2023 DSEIS, FPL does not specifically address Miami Waterkeeper's various claims on pages 67–70 of the Petition. FPL notes, however,

such obligation exists. Thus, Petitioner identifies no unmet obligation, or any defect in the 2023 DSEIS whatsoever, as of the date the 2023 DSEIS was issued.

2. To the Extent Petitioner Seeks a Hearing Regarding NRC Staff Actions After the Miami Cave Crayfish Became a Proposed Species, Its Demand Is Premature

The Commission recognizes that its environmental reviews necessarily reflect a "snapshot in time."[244] And the Commission has held that contentions claiming deficiencies stemming from an alleged "failure to consult" are "premature" if the time for completing the required consultation has not expired.[245] That is the case here. As of the date of this pleading, the NRC Staff has not yet announced its determination on whether it needs to confer with FWS about the Miami cave crayfish.[246] However, the Staff should be given a chance to make that determination. Simply put, Miami Waterkeeper's claim—that the NRC Staff's consideration of this topic is somehow deficient—is not yet ripe because Staff's evaluation remains ongoing. At the appropriate time, Petitioner will have an opportunity to review and challenge any Staff action (or inaction) related to the proposed listing of the Miami cave crayfish.[247] But that time is not now. And Proposed Contention 4 should be rejected for this additional reason.

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that the species status assessment on which Miami Waterkeeper's claims are based contains "inaccurate and misleading information" that lack supporting data and are "wildly speculative." *See* Letter from K. Eaton, FPL, to U.S. Dep't of the Interior, "Comments submitted by Florida Power and Light on the Species Status Assessment accompanying the September 20, 2023 Proposed Threatened Species Status with Section 4(d) Rule for the Miami Cave Crayfish" (Dec. 1, 2023) (ML23340A033)

244 *Southern Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 & 4), CLI-12-7, 75 NRC 379, 391-92 (2012) (citations omitted).

245 *Crow Butte Res., Inc.* (In Situ Leach Uranium Recovery Facility), CLI-20-8, 92 NRC 255, 261 (2020) (citing *Crow Butte Res., Inc.* (In Situ Leach Uranium Recovery Facility), CLI-09-9, 69 NRC 331, 350–351 (2009)) (regarding alleged failure to conduct consultation under the National Historic Preservation Act).

246 A conference is only required if approving Turkey Point's SLRA is deemed "likely to jeopardize the continued existence" of the Miami cave crayfish. *See* 50 C.F.R. § 402.10(a). Petitioner does not acknowledge or address this high threshold, much less attempt to explain how or why it is met here.

247 *Crow Butte*, CLI-20-8, 92 NRC at 261–262 (noting, in the context of a premature consultation-related contention, that NRC's rules allow the filing of new contentions on a final EIS where it contains information that differs "significantly" from the information previously available).

* * *

Proposed Contention 4 is inadmissible because it is unsupported and raises no genuine dispute with the 2023 DSEIS on a material issue and thus fails the Contention admissibility criteria in 10 C.F.R. § 2.309(f)(1)(v) and (vi).

E. Proposed Contention 5 (Climate Change & Accident Risk) Is Inadmissible

In Proposed Contention 5, Petitioner alleges that the 2023 DSEIS "fails to consider the effects of climate change on accident risk."[248] But across the entirety of the discussion of Proposed Contention 5, Petitioner does not challenge a *single word* of the relevant analysis, which is considered in the "Postulated Accidents" portion of the environmental review. Instead, Petitioner merely offers vague platitudes regarding the potential for "climate change" to influence risk analyses. As discussed below, far more is required to demonstrate a genuine dispute. Accordingly, Proposed Contention 5 is inadmissible.

1. Petitioner's Vague Claims Fail to Demonstrate a Genuine Material Dispute with Any Specific Portion of the 2023 DSEIS

As a general matter, the potential environmental impacts of postulated accidents (including the risk of such accidents) are evaluated under the "Postulated Accidents" issue, which is divided into three distinct sub-issues: (1) Design Basis Accidents, (2) Severe Accidents, and (3) Severe Accident Mitigation Alternatives ("SAMAs"). Here, the full spectrum of analyses are spread across multiple environmental documents, including the 2000 EIS for Turkey Point's initial license renewal (which contains the original SAMA analysis), the 1996 and 2013 GEIS (presenting extensive generic analyses of Design Basis Accidents and Severe Accidents),

[248] Petition at 75.

the 2019 FSEIS (including an updated SAMA analysis and consideration of possible new and significant information on Design Basis Accidents and Severe Accidents), and the 2023 DSEIS (which presents a further site-specific analysis of all three sub-issues).

Despite the extensive and detailed evaluation provided across hundreds of pages of environmental documents as noted above, Petitioner does not engage with or attempt to dispute any specific risk evaluation that it claims is inadequate. Indeed, it is not apparent which one (or more) of the sub-issues (Design Basis Accidents, Severe Accidents, or SAMAs) Petitioner is attempting to dispute. The Contention should be rejected for that reason alone. The Commission has long held that parties are "entitled to be told at the outset, *with clarity and precision*, what arguments are being advanced."[249]

The codified admissibility criteria require a petitioner to:

> provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information *must* include references to *specific portions* of the application . . . that the petitioner disputes and the supporting reasons for each dispute . . . .[250]

But instead of engaging with any "specific portion" of the analysis (in one or more unspecified sub-issue), Petitioner merely offers the vague assertion that "the 2023 DSEIS does not even attempt to address the environmental impacts of climate change on radiological accident risks."[251] Petitioner does not take the next step to explain why anything further is required or why the Postulated Accidents analysis allegedly is *materially* deficient without the further information it demands.

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249 *Wolf Creek*, ALAB-279, 1 NRC at 576 (emphasis added).

250 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added).

251 Petition at 76.

Indeed, Petitioner's three generalized comments regarding climate change and accident risk illustrate why the absence of such further explanation "deprives the Board of the ability to make the necessary, reflective assessment" of Petitioner's demand.[252] Specifically, Petitioner claims that climate change "increases the likelihood or initiating event frequency of events,"[253] and "can increase the probability of failure of design features or mitigation equipment."[254] But Petitioner fails to (1) identify any specific "initiating event frequency" or "failure probability" used in any postulated accident analysis, and (2) explain why those unspecified frequencies or probabilities are somehow deficient in light of "climate change." Without this information, the Board lacks the information needed to determine whether the alleged defect is, in this specific proceeding, a *material* one. Likewise, Petitioner references the "cliff edge" effect,[255] but identifies no portion of any postulated accident analysis that allegedly is materially impacted by a failure to consider this phenomenon. Simply put, Petitioner's vague speculation that climate change "potentially" or "may" impact some unspecified risk analysis provides insufficient support for an admissible Contention and falls far short of satisfying the materiality demonstration required by 10 C.F.R. § 2.309(f)(1)(vi).

2. Petitioner Disregards and Fails to Dispute the NRC's Consideration of "New Meteorological Information" in the 2023 DSEIS

Petitioner also claims that Turkey Point could be affected by "sea level rise; and increased hurricane intensity in the form of wind speed, rainfall and storm surge."[256] And the document supplied by Petitioner as alleged support plainly admits that impacts on

252 *Palisades*, CLI-15-23, 82 NRC at 328 (citation omitted).

253 Petition, Exh. 19 ¶ 11.

254 *Id.* ¶ 12.

255 *Id.* ¶ 13.

256 *Id.* ¶ 10.

"environmental resources" from these phenomenon "are recognized" in the 2023 DSEIS.[257] Petitioner then suggests that some further consideration of these phenomenon is necessary in the context of accident risks. But it fails to explain, with specificity, what more is allegedly required. And the contention should be rejected for that reason alone.

Furthermore, the NRC *did* consider "new meteorological information" in the context of the Severe Accidents analysis.[258] Given that Petitioner failed to articulate its challenge with the requisite specificity, it is unclear whether this is the information that Petitioner alleges has not been analyzed. But, if so, its claim of omission is demonstrably untrue.

Notably, the NRC concluded that the new meteorological information did "not contribute sufficiently to impacts to warrant their inclusion in the severe accident analysis, especially given the factor of 18.3 reduction in risk over the prior analyses."[259] Simply put, *other* new information demonstrated a significantly lower accident risk compared to the previous analysis (which was already consistent with the NRC's conclusion that the probability weighted consequences of severe accidents were SMALL); and that reduction was so significant as to outweigh any *potential* increased risk that might result from further analysis of new meteorological information. Petitioner does not acknowledge or dispute Staff's conclusion that new meteorological information is immaterial to the severe accident risk analysis for Turkey Point. Thus, Petitioner again fails to raise a genuine dispute with the environmental review.

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257 *Id.*

258 2023 DEIS at D-6. The NRC addressed climate risks as part of its evaluation of FPL's SAMA analysis. *See* 2019 FSEIS § 4.11.1.3, Appendix E.

259 2023 DEIS at D-6.

3. Petitioner's Collateral Attack on Part 54 Is Beyond the Scope of This Proceeding

Lastly, Petitioner cites, and purports to challenge, a passage from the 2019 FSEIS explaining why the "effects of climate change on Turkey Point Unit 3 and 4 structures, systems, and components are outside the scope of the NRC staff's license renewal environmental review."[260] But, as an initial matter, the challenged discussion is not "new information" in the 2023 DSEIS. Accordingly, it is beyond the scope of this limited proceeding.

Moreover, the license renewal safety review has long been limited to certain aging management matters pursuant to codified scope limitations in 10 C.F.R. Part 54.[261] CLB safety issues are beyond that codified scope.[262] Accordingly, to the extent that Petitioner is demanding the ability to challenge CLB safety issues—such as the integrity of plant systems, structures, and components or their ability to withstand certain meteorological conditions—in this license renewal proceeding, its demand amounts to an impermissible collateral attack on NRC regulations.[263] Such attacks are beyond the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

Either way, this line of argument fails to supply the basis for an admissible contention.

IV. CONCLUSION

Pursuant to 10 C.F.R. § 2.309(a), the Petition should be DENIED because Miami Waterkeeper failed to propose an admissible contention.

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260 Petition at 78.

261 10 C.F.R. §§ 54.21, 54.29(a); *see also Turkey Point*, CLI-01-17, 54 NRC at 7–8.

262 The Commission determined that re-assessments of CLB safety issues at the license renewal stage would be "unnecessary and wasteful" (*id.* at 7) because they are "effectively addressed and maintained by ongoing agency oversight, review, and enforcement." *Millstone*, CLI-04-36, 60 NRC at 638 (citation omitted).

263 10 C.F.R. § 2.335(a).

Respectfully submitted,

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Dated in Washington, D.C.
This 22nd day of December 2023

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of: FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Station, Units 3 and 4)	Docket Nos. 50-250-SLR-2 and 50-251-SLR-2 December 22, 2023

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Florida Power & Light Company's Answer Opposing Miami Waterkeeper's Hearing Request and Petition for Leave to Intervene" was served on the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

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