LBP-24-03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

Emily I. Krause, Chair
Dr. Sue H. Abreu
Dr. Michael F. Kennedy

In the Matter of: FLORIDA POWER & LIGHT COMPANY (Turkey Point Nuclear Generating Units 3 and 4)	Docket Nos. 50-250-SLR-2 50-251-SLR-2 ASLBP No. 24-981-01-SLR-BD01 March 7, 2024

MEMORANDUM AND ORDER
(Granting Request for Hearing)

This proceeding concerns the twenty-year subsequent renewal of the operating licenses for Turkey Point Nuclear Generating Units 3 and 4. The licenses currently authorize Florida Power & Light Company (FPL) to operate Units 3 and 4 until July 19, 2032, and April 10, 2033, respectively. Miami Waterkeeper filed a hearing request with five proposed contentions challenging the Nuclear Regulatory Commission Staff's August 2023 Draft Supplemental Environmental Impact Statement (Draft SEIS). For the reasons set forth below, the Board grants Miami Waterkeeper's hearing request and admits Contention 1 as narrowed and reformulated by the Board.

I. BACKGROUND

In 2018, FPL submitted a subsequent license renewal application to operate Turkey Point Nuclear Generating Units 3 and 4 for an additional twenty years beyond the expiration dates of its initial renewed licenses.[1] A twenty-year extension would allow FPL to operate Units 3 and 4 until July 19, 2052, and April 10, 2053, respectively. The NRC Staff docketed the application and provided an opportunity for members of the public to request a hearing.[2]

In response, the agency received three hearing requests—one filed by Southern Alliance for Clean Energy (SACE), another by Friends of the Earth, Natural Resources Defense Council, and Miami Waterkeeper (Joint Petitioners), and a third by Albert Gomez—with several proposed contentions challenging FPL's application.[3] In LBP-19-3, a licensing board granted SACE's and Joint Petitioners' hearing requests, reformulating and admitting two of each petitioner's contentions.[4] The board denied Mr. Gomez's hearing request.[5]

The proceeding continued apace, with the board ultimately dismissing the admitted contentions as moot,[6] dismissing the petitioners' proposed new and amended contentions, and

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[1] See Florida Power & Light Company, Turkey Point Nuclear Plant Units 3 and 4, Subsequent License Renewal Application, Rev. 1 (Apr. 2018) (ADAMS Accession No. ML18113A146); see generally Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC 245 (2019). Our decision today recounts only a brief portion of the history of the agency's review of FPL's subsequent license renewal application for Turkey Point. For a complete recitation of the procedural background, see the Commission's decisions in CLI-22-6, CLI-22-3, CLI-22-2, and CLI-20-3, and the prior licensing board's decisions in LBP-19-8, LBP-19-6, and LBP-19-3, citations to which are provided as these cases are discussed.

[2] See Florida Power & Light Company; Turkey Point Nuclear Generating, Unit Nos. 3 and 4, 83 Fed. Reg. 19,304 (May 2, 2018).

[3] See Turkey Point, LBP-19-3, 89 NRC at 255.

[4] Id. at 301–02. Judges E. Roy Hawkens, Sue H. Abreu, and Michael F. Kennedy comprised that licensing board.

[5] Id. at 302.

[6] SACE withdrew from the proceeding on April 9, 2019, making Joint Petitioners the sole intervening party. See Southern Alliance for Clean Energy's Notice of Withdrawal (Apr. 9,

terminating the proceeding.[7] The petitioners appealed the board's rulings to the Commission.[8] In December 2019, the Staff completed its review of FPL's application and issued the subsequent renewed licenses.[9]

In CLI-22-2, however, as it considered the pending appeals, the Commission reversed its earlier decision allowing the Staff to rely on a Generic Environmental Impact Statement (GEIS) for subsequent license renewal environmental reviews.[10] The Commission held that the GEIS applied only to initial license renewal proceedings, and thus found that the Staff's environmental review of FPL's application, which relied on the GEIS, was incomplete.[11] The Commission left the subsequent renewed licenses for Turkey Point Units 3 and 4 in place, but with amended end dates to match the initial license renewal term to allow the agency to fulfill its obligations under the National Environmental Policy Act (NEPA).[12] The Commission also directed the parties to provide their views on the practical effects of this remedy as well as the practical effects of reinstating the initial renewed licenses.[13]

2019).

[7] See Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-8, 90 NRC 139, 178 (2019); Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-6, 90 NRC 17, 26 (2019).

[8] 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); 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 Ruling in LBP-19-08 (Nov. 18, 2019).

[9] See Notification of License Issuance (Dec. 5, 2019) at 1–2 (ML19339H994).

[10] Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), CLI-22-2, 95 NRC 26, 27 (2022), rev'g CLI-20-3, 91 NRC 133 (2020).

[11] Id. at 27, 36.

[12] Id. at 36–37.

[13] Id. at 37.

On the same day, the Commission issued CLI-22-3, in which the Commission outlined the path forward to remedy the incomplete environmental review in Turkey Point and four other subsequent license renewal proceedings.[14] The Commission directed the Staff to review and update the GEIS "and take appropriate action with respect to the pending subsequent license renewal applications to ensure that the environmental impacts for the period of subsequent license renewal are considered."[15]

In addition, the Commission observed that applicants might not wish to wait for the completion of the GEIS updates and the associated rulemaking proceeding.[16] Thus, the Commission provided an alternate track, allowing applicants to supplement their environmental reports with site-specific information that otherwise would have been addressed generically in an updated GEIS.[17] The Commission expected that the Staff would then consider the information in the supplemental environmental reports to generate revised site-specific environmental impact statements.[18] The Commission further directed the Staff to issue "a new

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[14] See Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC 40, 41–43 (2022) (addressing the Oconee, Peach Bottom, Turkey Point, Point Beach, and North Anna subsequent license renewal proceedings).

[15] Id. at 41; see also Staff Requirements—SECY-21-0066—Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296) (Feb. 24, 2022) (ML22053A308). On March 3, 2023, the NRC published a proposed rule that would amend the regulations governing the agency's environmental review of license renewal applications in 10 C.F.R. Part 51. See Renewing Nuclear Power Plant Operating Licenses—Environmental Review, 88 Fed. Reg. 13,329, 13,329 (Mar. 3, 2023). The proposed rule is based on an updated draft revised GEIS that addresses the impacts of an initial license renewal and one subsequent license renewal. See id. On February 21, 2024, the Staff submitted a draft final rule and updated draft revised GEIS for the Commission's review and approval. See "Final Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296)," Commission Paper SECY-24-0017 (Feb. 21, 2024) (ML23202A179 (package)).

[16] Oconee, CLI-22-3, 95 NRC at 41.

[17] Id.

[18] See id. at 41–42.

notice of opportunity for hearing . . . limited to contentions based on new information in the site-specific environmental impact statement" after the completion of each site-specific review.[19] As the Commission explained, this approach would allow petitioners to submit newly filed or refiled contentions without meeting the heightened, "good cause" standard for new and amended contentions.[20] The Commission dismissed the motions, petitions, and appeals pending before it in Turkey Point without prejudice.[21]

In CLI-22-6, the Commission revisited the remedy it provided in CLI-22-2 regarding the status of the operating licenses for Turkey Point Units 3 and 4.[22] After considering the parties' views, the Commission confirmed its decision to leave in place the subsequent renewed licenses for Turkey Point Units 3 and 4 with shortened end dates to match the initial license renewal term.[23] The Commission reasoned that "this remedy is the best way to fulfill our statutory duty [under NEPA] while maintaining the enhanced aging management programs and safety enhancements of the subsequently renewed licenses favored by all parties to the proceeding."[24] The Commission thus affirmed its direction in CLI-22-2 and terminated the proceeding.[25]

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[19] Id. at 42.

[20] Id. (citing 10 C.F.R. § 2.309(c)).

[21] Id. at 43.

[22] Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), CLI-22-6, 95 NRC 111, 112 (2022).

[23] Id. at 112–15.

[24] Id. at 114.

[25] Id. at 115.

FPL elected to supplement its environmental report, which it submitted in June 2022.[26] The Staff issued its Draft SEIS in August 2023.[27] In preparing the Draft SEIS, the Staff undertook a site-specific evaluation of "Category 1" issues that previously had been dispositioned as generic in the Staff's 2019 Supplemental Environmental Impact Statement (2019 SEIS) in reliance on the GEIS.[28] In addition, the Staff considered whether, with the passage of time, any new and significant information would change the Staff's previous analyses of site-specific, "Category 2," issues.[29]

On September 8, 2023, the Staff published a Federal Register notice announcing an opportunity to request a hearing on the Draft SEIS.[30] In accordance with a twenty-day extension granted by the Secretary of the Commission, Miami Waterkeeper filed its hearing request on November 27, 2023.[31] On November 30, 2023, this Board was established to rule on Miami Waterkeeper's standing to intervene and the admissibility of its proposed contentions

[26] Subsequent License Renewal Application—Appendix E Environmental Report Supplement 2 (June 9, 2022) (ML22160A301).

[27] NUREG-1437, "Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants," Supplement 5a, Second Renewal, Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, Draft Report for Comment (Aug. 2023) (ML23242A216) (Draft SEIS); see also Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4, 88 Fed. Reg. 62,110 (Sept. 8, 2023) (Draft SEIS Notice). The Draft SEIS was issued as a supplement to the Staff's October 2019 Final Supplemental Environmental Impact Statement. NUREG-1437, "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 SEIS).

[28] See Draft SEIS at iii.

[29] See id.

[30] Draft SEIS Notice, 88 Fed. Reg. at 62,110.

[31] Request for Hearing and Petition to Intervene Submitted by Miami Waterkeeper (Nov. 27, 2023) (Hearing Request); Order of the Secretary (Nov. 6, 2023) at 4 (unpublished).

and to preside at any hearing.[32] We issued an initial prehearing order to establish a briefing schedule for answers and replies and to address other administrative matters governing the proceeding.[33]

FPL and the Staff filed answers in opposition to Miami Waterkeeper's hearing request on December 22, 2023, to which Miami Waterkeeper replied on January 8, 2024.[34] FPL followed with a motion to strike portions of Miami Waterkeeper's reply on January 18, 2024, to which Miami Waterkeeper responded on January 23, 2024.[35] We held oral argument on the issues raised in Miami Waterkeeper's hearing request on January 24, 2024.[36]

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[32] Florida Power & Light Company; Establishment of Atomic Safety and Licensing Board, 88 Fed. Reg. 84,835 (Dec. 6, 2023).

[33] See Licensing Board Order (Initial Prehearing Order) (Dec. 6, 2023) (unpublished).

[34] Florida Power & Light Company's Answer Opposing Miami Waterkeeper's Hearing Request and Petition for Leave to Intervene (Dec. 22, 2023) (FPL Answer); NRC Staff Answer Opposing Miami Waterkeeper Hearing Request (Dec. 22, 2023) (Staff Answer). We granted Miami Waterkeeper's motion to extend the reply deadline; thus, Miami Waterkeeper's reply was timely filed on January 8, 2024. See Licensing Board Order (Granting Motion for Extension of Time) (Dec. 19, 2023) (unpublished); Reply in Support of Request for Hearing and Petition to Intervene Submitted by Miami Waterkeeper (Jan. 8, 2024) (Reply).

[35] Florida Power & Light Company's Motion to Strike Portions of the Reply Filed by Miami Waterkeeper (Jan. 18, 2024) (Motion to Strike); Miami Waterkeeper's Response in Opposition to Florida Power & Light Company's Motion to Strike Portions of Miami Waterkeeper's Reply (Jan. 23, 2024). On February 1, 2024, Miami Waterkeeper filed an unopposed motion to amend its response to FPL's motion to strike to bring it within the page limit established in our initial prehearing order. Unopposed Motion for Leave to File Amended Response in Opposition to FPL's Motion to Strike Portions of Miami Waterkeeper's Reply (Feb. 1, 2024). Miami Waterkeeper included its amended response with the motion. Miami Waterkeeper's Amended Response in Opposition to FPL's Motion to Strike Portions of Miami Waterkeeper's Reply (Feb. 1, 2024) (Amended Response). We granted Miami Waterkeeper's motion on February 13, 2024. Licensing Board Order (Granting Unopposed Motion for Leave to File Amended Response) (Feb. 13, 2024) (unpublished).

[36] See Tr. at 1, 7; see also Licensing Board Order (Providing Administrative Information and Topic for Initial Prehearing Conference) (Jan. 9, 2024) at 2 (unpublished). Following the prehearing conference, we certified to the Commission a question whether the Staff's notice of opportunity for hearing was premature, and if so, the impact that would have on this proceeding. See LBP-24-1, 99 NRC __ (Jan. 31, 2024) (slip op.). The Commission accepted the certified question and held that the timing of the notice reflected a reasonable interpretation of the Commission's direction in CLI-22-3 that the notice follow the completion of the Staff's review.

II. ANALYSIS

The posture of this proceeding is unusual. As discussed above, this is the second proceeding involving FPL's subsequent license renewal application, and we are the second licensing board to rule on hearing requests filed in response to a notice of opportunity for hearing related to that application.

As an initial matter, we note that this proceeding is not a continuation of the previous Turkey Point subsequent license renewal adjudication. Miami Waterkeeper, the Staff, and FPL appear to agree on this point.[37] In CLI-22-6, the Commission terminated the prior proceeding.[38] And in accordance with 10 C.F.R. § 2.318(a), the current proceeding commenced with the Staff's issuance of a Federal Register notice announcing the opportunity to request a hearing on the Draft SEIS.[39] Because the Commission dismissed the appeals of the prior board's contention admissibility decisions without reviewing them,[40] we view the prior board's rulings as persuasive but not binding on this proceeding.[41]

A. Miami Waterkeeper's Standing to Intervene

FPL and the Staff do not challenge Miami Waterkeeper's standing.[42] Nevertheless, a

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See CLI-24-1, 99 NRC __, __ (Mar. 7, 2024) (slip op. at 6); Oconee, CLI-22-3, 95 NRC at 42.

[37] See Reply at 10, 29–30, 45; Staff Answer at 2; FPL Answer at 1–2; Tr. at 19, 27–28, 42.

[38] Turkey Point, CLI-22-6, 95 NRC at 115; see 10 C.F.R. § 2.318(a).

[39] See 10 C.F.R. § 2.318(a) ("Unless the Commission orders otherwise, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. . . . A proceeding commences when a . . . notice of proposed action under § 2.105 is issued."); Draft SEIS Notice, 88 Fed. Reg. at 62,110.

[40] Oconee, CLI-22-3, 95 NRC at 43.

[41] See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 558 (2013) ("Unreviewed Board decisions do not create binding legal precedent.").

[42] See Staff Answer at 13–14; FPL Answer at 2 n.7.

licensing board independently must determine whether a petitioner has fulfilled the agency's standing requirements.[43] We conclude that Miami Waterkeeper has met these requirements.

Section 189a of the Atomic Energy Act of 1954, as amended, requires the NRC to "grant a hearing upon the request of any person whose interest may be affected by the proceeding."[44] The Commission has established general standing criteria that require a petitioner to provide certain identifying information (name, address, and telephone number) and require a petitioner to state (1) the nature of its right under the statute governing the proceeding to be made a party; (2) the nature and extent of its property, financial, or other interest; and (3) the possible effect of any decision made in the proceeding on that interest.[45]

When determining whether a petitioner has met the agency's standing requirements, the Commission and licensing boards generally look to contemporaneous judicial concepts of standing—a three-part inquiry that assesses whether the petitioner has "(1) allege[d] an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision."[46] But the Commission is "not strictly bound by judicial standing doctrines,"

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[43] 10 C.F.R. § 2.309(d)(2). The board in the first Turkey Point subsequent license renewal proceeding found that Miami Waterkeeper, along with the other two Joint Petitioners, had demonstrated standing to intervene. See Turkey Point, LBP-19-3, 89 NRC at 285–86 & n.60. A finding of standing in one proceeding, however, does not automatically confer standing in another proceeding. See Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 342–43 (2009) (holding that affidavits used in one proceeding were insufficient to authorize representation in another proceeding involving the same license because they did not make specific reference to the proceeding in which standing was sought).

[44] 42 U.S.C. § 2239(a)(1)(A).

[45] 10 C.F.R. § 2.309(d)(1)(i)–(iv); see also Calvert Cliffs 3 Nuclear Project LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

[46] Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015). The NRC's standing analysis also includes a "zone-of-interests" test whereby the injury must arguably be within the zone of interests protected by the governing statute. Calvert Cliffs, CLI-09-20, 70 NRC at 915 (citing Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

and in certain power reactor licensing proceedings, the Commission has recognized a presumption of standing for petitioners who reside within fifty miles of the facility to be licensed.[47] In view of the fact that licensing boards have routinely, with the Commission's implicit endorsement,[48] applied this "proximity presumption" in reactor license renewal proceedings, the board in the prior proceeding concluded that subsequent license renewal proceedings should be treated no differently.[49] For the same reasons, we agree that the fifty-mile proximity presumption applies here.

An organization that, like Miami Waterkeeper, seeks to intervene on behalf of its members also must meet the agency's representational standing requirements. The organization must demonstrate that at least one of its members has standing and has authorized the organization to request a hearing on that member's behalf.[50] In addition, the interests that the organization seeks to protect must be germane to its purpose, and neither the asserted claim nor the requested relief must require the member's participation.[51]

Miami Waterkeeper has supplied declarations from two members who state that they reside within fifty miles of Turkey Point Units 3 and 4—and whose standing is thus presumed based on their proximity to the plant.[52] These members state that they support the petition and

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[47] Calvert Cliffs, CLI-09-20, 70 NRC at 915.

[48] See FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 394 & n.4 (2012) (affirming in part, and reversing in part, licensing board decision granting a request for hearing that found standing based on geographic proximity); accord Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 431 n.16 (2011).

[49] Turkey Point, LBP-19-3, 89 NRC at 258–59.

[50] Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

[51] Id.; see also Southern Nuclear Operating Co., Inc. (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237–38 & n.83 (2020) (citing Turkey Point, CLI-15-25, 82 NRC at 394).

[52] Declaration of Rachel Silverstein, Ph.D. (Nov. 20, 2023) (Silverstein Declaration); Declaration

have authorized Miami Waterkeeper to request a hearing on their behalf.[53] And Miami Waterkeeper asserts that its mission is to "protect and preserve the Biscayne Bay watershed"[54]—a purpose that falls squarely within the interests it seeks to protect in this proceeding, which involves the environmental impacts from the subsequent license renewal of Turkey Point Units 3 and 4, a plant geographically located near the Biscayne Bay.[55] Moreover, the direct participation of Miami Waterkeeper's members is not required to resolve the issue whether the Staff has adequately considered the environmental impacts of subsequent license renewal and met its obligations under NEPA. Finally, Miami Waterkeeper's requested relief, which would have the Staff correct a purportedly deficient NEPA analysis, likewise does not require the direct participation of Miami Waterkeeper's members. Accordingly, we find that Miami Waterkeeper has demonstrated its representational standing to challenge the Staff's Draft SEIS.

B. Miami Waterkeeper's Proposed Contentions

A hearing request "must set forth with particularity the contentions sought to be raised."[56] A petitioner must provide a specific statement of the issue of law or fact it seeks to raise and a brief explanation of the basis for each contention.[57] The petitioner must support its claims with "a concise statement of . . . alleged facts or expert opinions"—with reference to specific sources and documents—sufficient to show "that a genuine dispute exists with the applicant . . . on a

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of Philip K. Stoddard, Ph.D. (Nov. 3, 2023) (Stoddard Declaration). Both declarations contain contact information for each member. See Silverstein Declaration at 4; Stoddard Declaration at 1.

[53] Silverstein Declaration at 3; Stoddard Declaration at 4.

[54] Hearing Request at 4.

[55] See Draft SEIS at 2-23.

[56] 10 C.F.R. § 2.309(f)(1).

[57] Id. § 2.309(f)(1)(i)–(ii).

material issue of law or fact."[58] The petitioner must reference specific portions of the application in dispute or identify information that should have been included as a matter of law.[59] And the petitioner must demonstrate that its issues are within the scope of the proceeding and material to the findings the NRC must make to support the underlying licensing action.[60]

The contention admissibility rule is "strict by design,"[61] but it is not insurmountable.[62] The rule serves to assess the scope, materiality, and support provided for a proposed contention, to ensure that the hearing process is "properly reserve[d] . . . for genuine, material controversies between knowledgeable litigants."[63] Contentions must have "some reasonably specific factual or legal basis."[64] Specificity is key: mere speculation is insufficient,[65] and a petitioner may not simply reference documents without clearly identifying or summarizing the

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[58] Id. § 2.309(f)(1)(v)–(vi).

[59] Id. § 2.309(f)(1)(vi). In this case, the Staff's Federal Register notice provided an opportunity for hearing on the Draft SEIS; accordingly, Miami Waterkeeper's contentions challenge the Draft SEIS and not FPL's application directly. See Draft SEIS Notice, 88 Fed. Reg. at 62,110.

[60] 10 C.F.R. § 2.309(f)(1)(iii)–(iv).

[61] Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016).

[62] Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999) (explaining that the rule should not be used as a "fortress to deny intervention") (internal quotation marks and citation omitted); see Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 104–05 (2022) (admitting for hearing portions of a contention that raised a genuine material dispute with the application).

[63] Davis-Besse, CLI-12-8, 75 NRC at 396 (internal quotation marks omitted).

[64] Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015) (internal quotation marks omitted); see also Palisades, CLI-22-8, 96 NRC at 45 (rejecting argument that did not "establish a supported genuine dispute with the application").

[65] See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003) (rejecting an argument that, at best, was based on speculation); GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000) (finding "bare assertions and speculation" insufficient to trigger a contested hearing).

portions of the documents on which it relies.[66] For contentions that challenge the agency's compliance with NEPA, simply suggesting that additional information could be considered is not enough.[67] A petitioner must explain how that information would make a material difference in the agency's NEPA review, either by showing that the analysis lacks information the agency was obligated to include or by demonstrating that the existing analysis is otherwise unreasonable.[68]

Before we address each of Miami Waterkeeper's five contentions, we begin with a discussion concerning this proceeding's scope. In CLI-22-3, the Commission stated that the new hearing opportunity would be "limited to contentions based on new information in the site-specific environmental impact statement."[69] Miami Waterkeeper argues that the Commission's decisions in CLI-22-2, CLI-22-3, and CLI-22-6 provide it with a clean slate to challenge the Staff's compliance with NEPA, going so far as to assert that in CLI-22-3 the Commission vacated the prior board's rulings.[70]

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[66] See Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240–41 (1989). Licensing boards should not be expected to parse through lengthy references to ascertain the basis for a contention. See Seabrook, CLI-89-3, 29 NRC at 241.

[67] See, e.g., NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323–24 (2012).

[68] See id. at 323 ("[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA. We have long held that contentions admitted for litigation must point to a deficiency in the application, and not merely 'suggestions' of other ways an analysis could have been done, or other details that could have been included."); System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005) ("Our boards do not sit to 'flyspeck' environmental documents or to add details or nuances. If the [environmental report] (or EIS) on its face 'comes to grips with all important considerations' nothing more need be done.") (internal citations omitted)).

[69] Oconee, CLI-22-3, 95 NRC at 42.

[70] See Reply at 10, 29, 45; see also Tr. at 13, 19.

The Staff asserts that in CLI-22-3 the Commission intended "not to allow the re-litigation of pre-existing information for which a hearing opportunity had already been offered, but to allow for the litigation of new information that could not have been challenged previously."[71] The Staff argues that Contentions 2, 3, and 5 impermissibly challenge pre-existing information in the 2019 SEIS.[72] FPL shares the Staff's view that, absent new information, arguments rejected in the earlier adjudication or arguments that challenge information in earlier environmental documents are outside this proceeding's scope.[73] FPL also claims that Contentions 2, 3, and 5 raise issues that are not new and would have us dismiss a portion of Contention 1 for the same reason.[74]

Although we disagree with Miami Waterkeeper that the Commission vacated the prior board's decisions—if it had wished to do so, it would have done so expressly[75]—we conclude that Miami Waterkeeper's proposed contentions are within the scope of this proceeding. In both form and substance, Miami Waterkeeper bases its contentions on the Draft SEIS.[76] Although Miami Waterkeeper references documents and repeats arguments that pre-date the Draft SEIS,

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[71] Staff Answer at 37; see also id. at 1–2 (asserting that arguments that dispute information in documents that pre-date the Draft SEIS and that are not tied to the Draft SEIS are outside the scope of the proceeding); accord Tr. at 25–31.

[72] Tr. at 25; Staff Answer at 35–38, 43, 50. Miami Waterkeeper used Roman numerals to number the contentions but used Arabic numerals in its reply. We use Arabic numerals for ease of reference.

[73] See FPL Answer at 2, 30–31, 53.

[74] See id. at 27–28, 30–31, 38, 53. The Staff and FPL also argue that Contention 5 is outside the scope of the proceeding to the extent it challenges safety issues. Staff Answer at 50; FPL Answer at 53.

[75] See San Onofre, CLI-13-9, 78 NRC at 558 (addressing the question whether vacatur was appropriate in a proceeding that had become moot due to intervening events). As FPL points out, the Commission's decisions in CLI-22-2, CLI-22-3, and CLI-22-6 do not contain the word "vacate." Tr. at 43. In any event, Commission vacatur would only impact the persuasive weight we would accord the prior board's decisions. See San Onofre, CLI-13-9, 78 NRC at 559 & n.34 (explaining that the Commission and licensing boards will determine the persuasive weight of arguments made in reliance on vacated decisions).

[76] See infra sections II.B.1 to 5.

Miami Waterkeeper makes clear that it remains unsatisfied with the Staff's treatment of these issues in the Draft SEIS.[77]

Further, we find significant the Commission's express permission in CLI-22-3 for petitioners to refile contentions.[78] Although the Commission advised petitioners of its expectation that refiled contentions would be accompanied with updated references, petitioners were told that they would be responsible solely for meeting the agency's standing and general contention admissibility requirements.[79] The agency's rules of practice include heightened pleading standards for new and amended contentions, which require a showing of good cause that hinges on the newness of the information supporting those contentions, along with an inquiry into whether the information could not have been raised previously.[80] But here the Commission excused petitioners from satisfying these heightened pleading standards in their new hearing requests.[81] Were we to credit the Staff's and FPL's cabined reading of CLI-22-3 to preclude Miami Waterkeeper's refiled contentions and references to documents that pre-date the Draft SEIS, we would, in effect, have shoehorned the heightened pleading standards for new and amended contentions into the scope inquiry.

Rather, we find that the best way to give full effect to the Commission's instructions in CLI-22-3 is to treat the newness of the information underlying Miami Waterkeeper's refiled

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[77] See, e.g., Hearing Request at 13–14, 34–35, 50, 75–76.

[78] Oconee, CLI-22-3, 95 NRC at 42 & n.8.

[79] Id. (citing 10 C.F.R. § 2.309(a)).

[80] See 10 C.F.R. § 2.309(c)(1) (requiring a showing that "(i) [t]he information upon which the filing is based was not previously available; (ii) [t]he information upon which the filing is based is materially different from information previously available; and (iii) [t]he filing has been submitted in a timely fashion based on the availability of the subsequent information").

[81] Oconee, CLI-22-3, 95 NRC at 42.

contentions as a materiality issue rather than a scope issue.[82] Thus, as a general matter, the failure to provide new information or discuss its significance might risk failing to persuade us (or the Commission, on appeal) that a refiled contention previously dismissed by the prior board should now be admitted. But that failure does not require us to find a refiled contention beyond the scope of this proceeding.[83]

We therefore do not find fault with Miami Waterkeeper's proposed contentions under 10 C.F.R. § 2.309(f)(1)(iii). Whether Miami Waterkeeper otherwise has met the requirements for a hearing on its proposed contentions is another matter, however, and one we turn to now.

1. Contention 1: "The 2023 Draft [SEIS] Fails to Take a Hard Look at Impacts to Groundwater Quality"

In Contention 1, Miami Waterkeeper asserts that the Draft SEIS lacks the requisite "hard look" at impacts to groundwater quality during the subsequent license renewal period resulting from operation of the cooling canal system (CCS) for Turkey Point Units 3 and 4 and the

[82] At oral argument, counsel for FPL asserted that the Commission's instructions can be reconciled if we assume the Commission intended for any refiled contentions that fail to establish a connection with the Draft SEIS to be refiled only on appeal. See Tr. at 39–40. We disagree. When discussing the new opportunity for hearing that would follow the Staff's environmental review, the Commission spoke generally about the five captioned proceedings, including Turkey Point. See Oconee, CLI-22-3, 95 NRC at 41–43. Significantly, the Commission did not expressly reserve issues (e.g., certain refiled contentions) for the Commission's sole review. Moreover, it is not clear what the mechanism would be for the Commission to consider refiled contentions if they are deemed beyond the scope of the proceeding. A proceeding commences with a notice of opportunity for hearing, and that "proceeding" may include licensing board and Commission review. See 10 C.F.R. § 2.318(a). The Commission terminated the prior proceeding. The Staff's notice of opportunity for hearing on the Draft SEIS initiated this proceeding. Thus, if refiled issues are not part of the new proceeding in its broadest sense (i.e., an adjudication that includes licensing board and Commission review), when would they be raised?

[83] For example, the lack of updated information might go to the issue whether a petitioner has provided sufficient support or raised a genuine dispute. But where, as here, the Commission expressly has allowed petitioners to refile contentions that would not be subject to a heightened "new information" standard, the lack of updated information would not be the determining factor for the scope inquiry.

measures undertaken to "offset its legacy of significant environmental impacts."[84] In addition to groundwater quality, and interwoven throughout its discussion of Contention 1, Miami Waterkeeper raises concerns regarding groundwater use conflicts and the impacts of non-radiological contaminants on aquatic organisms.[85] At oral argument, counsel for Miami Waterkeeper clarified that its main points are captured in a four-sentence summary near the end of its discussion of Contention 1, in which Miami Waterkeeper states that it contests: (1) the Staff's conclusion in section 2.8.3 of the Draft SEIS that the impacts on groundwater quality will be small or moderate; (2) the Staff's conclusion in section 2.8.2.1 of the Draft SEIS that groundwater use conflicts in the Biscayne aquifer will be small; (3) the Staff's conclusion in section 2.8.2.2 of the Draft SEIS that impacts to groundwater use conflicts in the Upper Floridan aquifer will be moderate; and (4) the Staff's conclusion that the effect of non-radiological contaminants on aquatic organisms will be small.[86]

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[84] Hearing Request at 12.

[85] See, e.g., id. at 15–16 (raising concerns regarding use conflicts and groundwater quality impacts within the discussion of the interceptor ditch); id. at 21–22 (raising concerns regarding use conflicts and groundwater-quality impacts within the discussion of the hypersaline plume); id. at 29–30 (raising concerns regarding impacts to aquatic organisms along with impacts to groundwater quality). Miami Waterkeeper references several lengthy reports, including declarations from William K. Nuttle and James Fourqurean, along with declarations they provided in prior litigation concerning the Turkey Point plant and before the prior board. See id. at 14–16, 19–20, 22–23, 26–30, 33; Declaration of Dr. William K. Nuttle (undated) (attaching expert reports from May 2018 and June 2019) (Nuttle Declaration); Declaration of James Fourqurean, Ph.D. (Nov. 22, 2023) (attaching expert reports from January 2021 and June 2019) (Fourqurean Declaration). Each of these declarations combine multiple documents in one portable document format (PDF) file. When citing these declarations, we refer to the page numbers in the PDF files.

[86] Hearing Request at 33; Tr. at 15. Counsel for Miami Waterkeeper also stated at oral argument that Contention 1 includes the "key point . . . that the 2023 DEIS has failed to compare the positive and remedial impact of . . . discontinuing CCS use against the perpetuating impact of the proposed action of continuing to use the CCS." Id. (citing Hearing Request at 12). We question whether this argument was raised in the hearing request, but it does appear in Miami Waterkeeper's reply. See Reply at 13, 15–17. FPL argues that the argument is new and that we should strike it for exceeding the proper scope of a reply. Motion to Strike at 4–5. Miami Waterkeeper asserts that discussing the benefits of discontinuing the use of the CCS is another way of challenging the impacts of its use and that FPL opened the

Although we determine that the bulk of Contention 1 lacks the specificity required for an admissible contention, we admit a narrow portion of Miami Waterkeeper's challenge regarding the Draft SEIS discussion of groundwater-quality impacts. Miami Waterkeeper takes issue with the Staff's conclusion that due to uncertainty regarding the success of FPL's efforts to remediate the hypersaline plume resulting from operation of the CCS, the impacts on groundwater quality could increase from small to moderate.[87] We conclude that with this challenge, Miami Waterkeeper has identified an omission in the Staff's analysis—specifically that the Draft SEIS lacks an explanation as to how the uncertainty in the success of FPL's remediation efforts leads to a finding of moderate impacts.

In its brief statement of this issue and its basis,[88] Miami Waterkeeper asserts that the Staff's determination that groundwater-quality impacts could be moderate "is not a reasonable conclusion" and lacks the requisite hard look under NEPA.[89] This issue is within the scope of the proceeding and is material to the findings the Staff must make to support the twenty-year subsequent license renewal of Turkey Point Units 3 and 4 because it calls into question the Staff's compliance with NEPA in the Draft SEIS.[90] The Commission tasked the Staff in CLI-22-3 with remedying an incomplete NEPA analysis, and Miami Waterkeeper's dispute goes to the

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door to these arguments in its answer. Amended Response at 4–5. As we discuss below, we admit only a narrow portion of Contention 1 and conclude that all other claims, including this one, are inadmissible. Therefore, even were we to consider Miami Waterkeeper's argument regarding the benefits of discontinuing use of the CCS, it would not change our admissibility determination for Contention 1.

[87] See Hearing Request at 21–22.

[88] See 10 C.F.R. § 2.309(f)(1)(i)–(ii).

[89] Hearing Request at 21–22 (citing Draft SEIS at 2-31); see also id. at 12, 33; Nuttle Declaration at 2 (stating that a "more thorough, more critical analysis" is needed).

[90] See 10 C.F.R. § 2.309(f)(1)(iii)–(iv); Hearing Request at 30–31.

heart of the Staff's compliance with the Commission's direction and the agency's statutory obligation under NEPA.[91]

Further, Miami Waterkeeper specifically references the portion of the Draft SEIS in dispute—section 2.8.3.[92] Miami Waterkeeper argues that, contrary to its obligations under NEPA, the Staff "resorted to guesswork and speculation" in its discussion of the possible impacts to groundwater quality in the event FPL is unable to retract the hypersaline groundwater plume to within the Turkey Point Units 3 and 4 site boundary before the subsequent license renewal term.[93] In section 2.8.3.2 of the Draft SEIS, the Staff states that impacts to groundwater quality would be small "if FPL can retract and maintain the hypersaline plume to within the FPL site boundary prior to the [subsequent license renewal] term."[94] The Staff further states that "because some uncertainty exists" about FPL's success in retracting the plume beforehand, the impacts could be moderate.[95] But, as Miami Waterkeeper maintains, the Draft SEIS lacks an explanation why the Staff chose "moderate" for the impacts that might result if FPL is not successful in retracting the hypersaline plume.[96]

For its part, Miami Waterkeeper argues that the impacts to groundwater quality would be large.[97] And in support of this claim, Miami Waterkeeper relies on the declarations of its

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[91] See Oconee, CLI-22-3, 95 NRC at 41–42.

[92] See Hearing Request at 21–22, 33; Reply at 23; 10 C.F.R. § 2.309(f)(1)(vi).

[93] Reply at 23 (citing Draft SEIS at 2-31); see also Hearing Request at 21–22; Nuttle Declaration at 2.

[94] Draft SEIS at 2-31.

[95] Id. Consequently, the Staff concludes that its overall groundwater quality impact finding based on this uncertainty is small to moderate. Id.

[96] See Hearing Request at 21–22; see also Reply at 23 ("[F]ortune telling and crystal balls are not the NEPA standard; rather, NEPA demands that agencies draw scientifically supported conclusions from reliable data.").

[97] Hearing Request at 12.

experts, as well as studies that it provided to the Staff during the scoping process for the Draft SEIS.[98] Miami Waterkeeper also cites a recent analysis that it claims calls into question FPL's ability to retract the hypersaline plume.[99] But Miami Waterkeeper's arguments go to the uncertainty in the plume retraction itself, not to whether a failure to retract the plume will produce large effects.[100] And the Staff already has acknowledged in the Draft SEIS that uncertainty exists in FPL's ability to retract the plume.[101] At bottom, Miami Waterkeeper fails to make the connection between the uncertainties regarding the plume's retraction and the "significant, clearly noticeable, and destabilizing environmental impacts" it claims will result.[102] We therefore conclude that, at this time, Miami Waterkeeper has not provided a sufficient showing to support its assertion that groundwater-quality impacts would be large.[103]

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[98] See id. at 14–30.

[99] See id. at 24–25.

[100] See, e.g., id. at 23 ("With conflict occurring between state and local regulators, NRC [S]taff should reassess their confidence that cooperation between [Florida Department of Environmental Protection and Department of Environmental Resources Management] will shepherd FPL's remediation measures to a successful result."); id. at 25 ("Therefore, it is unknown the degree to which FPL's remediation plan has been effective."). In its reply, Miami Waterkeeper appears to assert that the NRC has the authority to order FPL to discontinue use of the CCS. See Reply at 22 (contrasting NRC's authority with that of state and local regulators and asserting that "[t]he NRC is the regulatory agency with authority to holistically address the hypersaline plume by ordering FPL to cease operating the CCS, and the Board should reject the attempt by NRC Staff and FPL to defer to the necessarily limited efforts of [s]tate and local authorities on that issue"). FPL moved to strike this argument as beyond the proper scope of a reply. Motion to Strike at 5–6. Miami Waterkeeper asserts that its argument directly responds to FPL's assertion that the NRC lacks authority to require FPL to address groundwater pollution from the CCS. Amended Response at 7. But at oral argument, counsel clarified that Miami Waterkeeper was not asserting that NEPA required the Staff to order FPL to discontinue using the CCS and explained that its argument should be viewed in reference to the Staff's "hard look" obligation. Tr. at 17–18, 23. We view Miami Waterkeeper's argument through that lens—in relation to NEPA's "hard look" requirement—which was raised in the hearing request.

[101] Draft SEIS at 2-31.

[102] Hearing Request at 25.

[103] See 10 C.F.R. § 2.309(f)(1)(vi).

But for the purposes of a contention of omission, Miami Waterkeeper has sufficiently called into question the reasonableness of a Staff analysis that contains no explanation for the Staff's conclusion that the impacts to groundwater quality "could be moderate."[104] For a contention of omission, it is enough for a petitioner to show what information is missing and explain why that information is required to be included.[105] Here, Miami Waterkeeper has done just that. Miami Waterkeeper asserts that the Staff resorted to guesswork and speculation, contrary to NEPA.[106] As the Commission has recognized, NEPA "is intended to 'foster both informed decision-making and informed public participation.'"[107] The Staff must provide some basis on which to judge the reasonableness of its conclusion that the impacts from not successfully remediating the hypersaline plume prior to the subsequent license renewal term could be moderate, as opposed to small.[108] We therefore reformulate and admit a portion of Contention 1, as follows:

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[104] See 10 C.F.R. § 2.309(f)(1)(v)–(vi); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 7 (2002) (finding that "[w]hile the contention might have been more detailed or otherwise better supported," the petitioners had done enough to raise a question whether an applicant's severe accident mitigation alternatives analyses should have incorporated information from a then-recent study).

[105] See 10 C.F.R. § 2.309(f)(1)(vi) (allowing a petitioner to demonstrate a genuine dispute on a failure "to contain information on a relevant matter as required by law" by identifying "each failure and the supporting reasons for the petitioner's belief"); see also Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382–83 (2002) ("There is, in short, a difference between contentions that merely allege an 'omission' of information and those that challenge substantively and specifically how particular information has been discussed in a license application.").

[106] See, e.g., Hearing Request at 13 (citing Sierra Club v. FERC, 867 F.3d 1357, 1367 (D.C. Cir. 2017)).

[107] McGuire/Catawba, CLI-02-17, 56 NRC at 10 (quoting Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998)).

[108] See 42 U.S.C. § 4332 ("[T]o the fullest extent possible . . . (2) all agencies of the Federal Government shall . . . (D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document; [and] (E) make use of reliable data and resources in carrying out this Chapter."); 10 C.F.R. § 51.71(d) ("To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or

> The 2023 Draft SEIS fails to take a hard look at impacts to groundwater quality because it does not include an explanation for the Staff's conclusion that the uncertainty in retracting the hypersaline groundwater plume could result in moderate impacts.

We find inadmissible Miami Waterkeeper's remaining arguments in Contention 1, including Miami Waterkeeper's challenges concerning groundwater use conflicts and non-radiological impacts to aquatic organisms. For these claims, Miami Waterkeeper has not provided sufficient information to raise a genuine, material dispute with the existing information in the Draft SEIS.[109] With regard to groundwater use conflicts, for example, Miami Waterkeeper asserts that "[o]peration of the interceptor ditch [near the CCS] represents a large, undocumented demand on the regional freshwater resource provided by the Biscayne aquifer," which should cause the Staff to reassess its conclusion that the impacts on the Biscayne aquifer would be small.[110] Additionally, Miami Waterkeeper argues that "the recovery well system and the Upper Floridan Aquifer pumping exert additional pressure on existing groundwater use conflicts," which should cause the Staff to reassess its conclusion that the impacts on the Floridan aquifer would be moderate.[111] But Miami Waterkeeper does not explain how this information would change the analyses in the Draft SEIS, nor does Miami Waterkeeper otherwise show that the Staff's analyses are unreasonable. For a contention to be admitted, a petitioner must connect the dots to explain how its claims call into question the adequacy of

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factors will be discussed in qualitative terms."); cf. New York v. NRC, 681 F.3d 471, 478–79 (D.C. Cir. 2012) (reasoning that "[u]nder NEPA, an agency must look at both the probabilities of potentially harmful events and the consequences if those events come to pass," and finding that the agency had failed to satisfy NEPA because it had not considered the consequences of failing to establish a permanent repository for nuclear waste when such a repository would be needed).

[109] See 10 C.F.R. § 2.309(f)(1)(v)–(vi).

[110] Hearing Request at 15–16.

[111] Id. at 21.

existing analyses.[112] Miami Waterkeeper's claims amount to a bare assertion that more analysis is needed, which is insufficient to support an admissible contention.[113]

Likewise, Miami Waterkeeper's arguments regarding non-radiological impacts to aquatic organisms lack the specificity required for an admissible contention.[114] Miami Waterkeeper asserts that operation of the CCS will lead to seagrass decline, in which "seagrasses are killed and replaced by fast-growing, noxious seaweed or planktonic algae," leading to the replacement of animal species dependent on seagrass for food and shelter with "less desirable species."[115] Section 2.10.4 of the Draft SEIS discusses non-radiological impacts on aquatic organisms.[116] But Miami Waterkeeper does not address with any specificity the analysis in section 2.10.4 or any other portion of the Draft SEIS.[117] Although Miami Waterkeeper provides its own view of impacts to aquatic organisms in relation to seagrass decline, it does not engage with the analyses in the Draft SEIS and thus fails to raise a genuine dispute with respect to this issue.[118] Accordingly, with the exception of the portion of Contention 1 as reformulated above, we dismiss the remaining claims in Contention 1 for failing to establish a genuine, material dispute with the Draft SEIS.

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[112] See Seabrook, CLI-12-5, 75 NRC at 323–24; see also Oglala Sioux Tribe v. NRC, 45 F.4th 291, 305 (D.C. Cir. 2022) (dismissing challenge to agency's NEPA analysis for "continu[ing] to ignore" and "fail[ing] to engage with the agency's actual . . . analysis").

[113] See Seabrook, CLI-12-5, 75 NRC at 324 (finding that a proposal for an alternative NEPA analysis "that may be no more accurate or meaningful" was insufficient to establish a genuine, material dispute).

[114] See 10 C.F.R. § 2.309(f)(1)(v)–(vi).

[115] Hearing Request at 26.

[116] See Draft SEIS at 2-46 to -47.

[117] See Hearing Request at 12–34.

[118] See 10 C.F.R. § 2.309(f)(1)(v)–(vi); Seabrook, CLI-12-5, 75 NRC at 323–24.

2. Contention 2: "The Draft [SEIS] Fails to Adequately Analyze Cooling Towers as a Reasonable Alternative that Could Mitigate Adverse Impacts of the [CCS] in Connection with the Subsequent License Renewal of Turkey Point Units 3 and 4"

In Contention 2, Miami Waterkeeper asserts that the Draft SEIS lacks an adequate analysis of reasonable alternatives because it relies on a discussion in the 2019 SEIS that "at best, only analyzes the adverse impacts of constructing and operating an alternative cooling system without looking specifically and in any detail at the environmental and other benefits that would accrue from replacing the . . . CCS with a cooling tower."[119] According to Miami Waterkeeper, the 2019 SEIS lacks a discussion of "the benefits to groundwater and aquatic organisms" from the cooling water system alternative.[120] In addition, Miami Waterkeeper argues that the Staff did not adequately discuss "how replacing [FPL's use of] the existing CCS with cooling towers would reduce adverse environmental impacts."[121] In support of its contention, Miami Waterkeeper incorporates several of its claims from Contention 1 regarding groundwater use conflicts, impacts to groundwater quality, and non-radiological impacts on aquatic organisms resulting from use of the CCS.[122] Miami Waterkeeper also references a declaration from its expert, Bill Powers, to support the claim that replacing the CCS with cooling towers is a "reasonable and cost-effective alternative."[123]

We conclude that Contention 2 is inadmissible for failure to raise a genuine, material dispute with the Draft SEIS.[124] First, as a contention of omission, Miami Waterkeeper fails to raise a genuine dispute because the information Miami Waterkeeper claims to be missing—a

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[119] Hearing Request at 34–35 (citing 10 C.F.R. § 51.71(d)).

[120] Id. at 35.

[121] Id.

[122] See id. at 37–38.

[123] Id. at 39.

[124] See 10 C.F.R. § 2.309(f)(1)(v)–(vi).

discussion of the benefits of the cooling system alternative—is present.[125] The Draft SEIS references the cooling system alternative analysis from the 2019 SEIS.[126] And in the 2019 SEIS, the Staff states that (1) "[t]he benefits of the alternative cooling water system are . . . the impacts of . . . [using the CCS that] would be avoided";[127] (2) the impacts of using the CCS "are discussed extensively in th[e] SEIS"; and (3) the no-action alternative analysis in section 4.5.2 discusses "the avoidance of those impacts . . . (e.g., on groundwater resources)."[128] Similarly, Miami Waterkeeper's arguments that replacing the CCS with cooling towers is "reasonable and cost-effective" go to whether the Staff should evaluate the cooling tower alternative in the first place.[129] Thus, because the Draft SEIS references the 2019 SEIS discussion that evaluates the cooling tower alternative, Miami Waterkeeper fails to raise a genuine dispute on this issue.[130]

To the extent Miami Waterkeeper frames Contention 2 as a contention of adequacy, Miami Waterkeeper has not provided sufficient support to demonstrate a genuine, material dispute with the Draft SEIS.[131] Miami Waterkeeper generally asserts that the Staff's analysis did not look "specifically" or "in any detail" at the benefits of replacing the CCS with a cooling tower.[132] Miami Waterkeeper characterizes the Staff's discussion as "cursory" and lacking "any

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[125] See id. § 2.309(f)(1)(vi).

[126] Draft SEIS at 3-2 (explaining that the Staff "evaluated an alternative cooling water system to mitigate potential impacts associated with the continued use of the existing cooling canal system" in the 2019 SEIS).

[127] 2019 SEIS at 2-13.

[128] Id.

[129] Hearing Request at 39. In that respect, Miami Waterkeeper appears to repeat arguments that were made in support of a contention admitted by the prior board and later cured when the Staff supplied the omitted analysis. See Turkey Point, LBP-19-6, 90 NRC at 19, 23, 26; Turkey Point, LBP-19-3, 89 NRC at 286–87.

[130] See Draft SEIS at 3-2; 2019 SEIS at 2-13; 10 C.F.R. § 2.309(f)(1)(vi).

[131] 10 C.F.R. § 2.309(f)(1)(v)–(vi).

[132] Hearing Request at 34–35.

meaningful analysis."[133] But in the Draft SEIS and the 2019 SEIS, the Staff specifically references the sections it deemed relevant to its conclusion regarding the benefits of the cooling tower alternative.[134] Miami Waterkeeper does not explain why NEPA or the agency's implementing regulations would require the Staff to do more.

Moreover, Miami Waterkeeper does not contest with any specificity the Staff's conclusions regarding the benefits of the alternative cooling water system that were analyzed in the 2019 SEIS and referenced in the Draft SEIS.[135] Miami Waterkeeper provides information that it would have wished to see in the Staff's analysis, but it fails to make the necessary connection between its preferred analysis and its claim that the Staff's analysis fails to satisfy NEPA.[136] We therefore do not admit Contention 2.

3. Contention 3: "The Draft [SEIS] Fails to Adequately Consider the Cumulative Impacts of Continued Operation of Units 3 and 4"

In Contention 3, Miami Waterkeeper argues that the Draft SEIS does not adequately consider the cumulative impacts on the environment, particularly on water resources, from continued operation of Turkey Point Units 3 and 4 through the subsequent license renewal period, contrary to 10 C.F.R. § 51.71(d).[137] Miami Waterkeeper takes issue with the Staff's discussion of climate-change impacts on environmental resources in the Draft SEIS, which

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[133] Reply at 33.

[134] Draft SEIS at 3-2; 2019 SEIS at 2-13.

[135] See Hearing Request at 34–43. The prior board dismissed similar claims regarding the sufficiency of the Staff's draft 2019 alternatives analysis for the same reason—i.e., failing to engage with the Staff's analysis of the cooling tower alternative and the benefits of discontinuing use of the CCS. See Turkey Point, LBP-19-8, 90 NRC at 151–54.

[136] See Seabrook, CLI-12-5, 75 NRC at 323–24.

[137] See Hearing Request at 45, 63; 10 C.F.R. § 51.71(d) (stating that the "draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects, including any cumulative effects, of the proposed action").

references the Staff's discussion of cumulative impacts in the 2019 SEIS.[138] Miami Waterkeeper asserts that the Staff's analyses are inadequate because they do not address new information showing that "the effects of climate change, including reasonably foreseeable increases in sea level and air temperature, will have significant adverse impacts on the continued operation of Units 3 and 4."[139] Along with information regarding sea-level rise and increases in air temperature, Miami Waterkeeper provides information on the effects of climate change on coastal storms, rainfall, storm surge, and flooding.[140]

We conclude that Contention 3 is inadmissible because it does not provide sufficient information to demonstrate a genuine, material dispute with the Draft SEIS.[141] Although Miami Waterkeeper offers several sources of purportedly new information in support of its contention, it does not explain the significance of that information to the Staff's review.[142] As the Commission has observed, petitioners often might find new information to consider, potentially making the environmental review process never-ending if not for the required showing that the new information is material to the Staff's analysis.[143] Here, Miami Waterkeeper does not explain how its proffered information would amount to more than fine-tuning the information in the Draft SEIS.

For example, Miami Waterkeeper argues that the Draft SEIS should have used values on sea-level rise from a February 2022 National Oceanic and Atmospheric Administration

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[138] Hearing Request at 45 (citing Draft SEIS at E-8 to -9; 2019 SEIS § 4.16).

[139] Id.

[140] Id. at 52–59.

[141] See 10 C.F.R. § 2.309(f)(1)(v)–(vi).

[142] See Luminant Generation Co., LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 390–91 (2012) (finding inadequate a contention that asserted a new report must be considered without including a sufficient explanation of the report's significance).

[143] See, e.g., Seabrook, CLI-12-5, 75 NRC at 324; Grand Gulf, CLI-05-4, 61 NRC at 13.

(NOAA) technical climate change report.[144] Miami Waterkeeper argues that the 2022 NOAA report is new and must be considered in the Draft SEIS, but it does not dispute the values for sea-level rise the NRC Staff used in the 2019 SEIS or provide a reason why those values are insufficient.[145]

Miami Waterkeeper also repeats arguments that the prior board considered and found inadmissible for lack of support and failing to raise a genuine, material dispute.[146] For example, Miami Waterkeeper argues that the Draft SEIS "has not adequately considered the reasonably foreseeable impacts of Bay waters increasingly over-topping the banks of the [CCS]," of which repeated inundation and constant flooding "would mean that the surface waters of the cooling canal will flow into Biscayne Bay National Park, carrying with it thermal pollution, and high levels of tritium, phosphorus, and salt-concentrated waters."[147] In the face of a substantively similar argument, the prior board found it lacked "such necessary information as the relationship between th[e] projected sea levels and the relevant elevations of the Turkey Point site, its sea level barriers, or the CCS, to support th[e] claim that the site will be flooded and the CCS . . . overtopped or breached."[148] We agree, for the same reason.

In addition, Miami Waterkeeper argues that an "increase in air temperature during the subsequent license renewal period will increase the rate of evaporation from the cooling water canals, thereby increasing salinity in the canals and cumulative impacts on groundwater."[149] But the prior board rejected a substantively similar argument, finding that it was not accompanied by

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[144] See Hearing Request at 50–54.

[145] See 2019 SEIS at 4-120, 4-122 to -124.

[146] See Turkey Point, LBP-19-3, 89 NRC at 288–90.

[147] Hearing Request at 57.

[148] Turkey Point, LBP-19-3, 89 NRC at 288; see 10 C.F.R. § 2.309(f)(1)(v).

[149] Hearing Request at 59.

sufficient support "to demonstrate that the [postulated] higher temperatures . . . would increase evaporation in the CCS to any particular extent, much less to an extent that would be sufficient to increase the CCS salinity such that it would, in turn, affect the environment."[150] That reasoning applies equally here. Miami Waterkeeper has not remedied the deficiencies identified by the prior board or provided the necessary link that would call into question the sufficiency of the Staff's existing analyses.[151] We therefore do not admit Contention 3.

4. Contention 4: "The Draft [SEIS] Fails to Take a Hard Look at Impacts to Endangered Species"

In Contention 4, Miami Waterkeeper argues that the Draft SEIS "unlawfully fails to address whether the continued operation of Turkey Point Units 3 and 4 and its cooling canals will affect . . . South Florida's endemic Miami cave crayfish (Procambarus milleri)," which the U.S. Fish and Wildlife Service proposed for listing as a threatened species on September 20, 2023.[152] According to Miami Waterkeeper, the Draft SEIS does not mention or consider impacts to the Miami cave crayfish, and therefore the Staff has not complied with its statutory obligations under section 7(a)(2) of the Endangered Species Act and the NRC's NEPA-implementing regulations, namely 10 C.F.R. § 51.71(c).[153] Miami Waterkeeper asserts that operation of

[150] Turkey Point, LBP-19-3, 89 NRC at 288–89.

[151] See Seabrook, CLI-12-5, 75 NRC at 323–24; 10 C.F.R. § 2.309(f)(1)(v)–(vi).

[152] Hearing Request at 64; see Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for the Miami Cave Crayfish, 88 Fed. Reg. 64,856 (Sept. 20, 2023) (corrected at 88 Fed. Reg. 65,356 (Sept. 22, 2023)) (Proposed Listing).

[153] See Hearing Request at 63–65; 10 C.F.R. § 51.71(c) (stating that the "draft environmental impact statement will list all Federal permits, licenses, approvals, and other entitlements which must be obtained in implementing the proposed action and will describe the status of compliance with those requirements," and "[i]f it is uncertain whether a Federal permit, license, approval, or other entitlement is necessary, the draft environmental impact statement will so indicate").

Turkey Point Units 3 and 4 contributes to two sources that could impact the species: tritium and saltwater intrusion.[154]

We conclude that Contention 4 is premature based on controlling Commission precedent. The Commission has held that contentions claiming deficiencies from an alleged "failure to consult" are not ripe if the Staff has not yet completed the relevant consultation requirements.[155] And the Commission disfavors contentions that serve as "placeholders" for future events.[156] Here, the Staff provided notice of its issuance of the Draft SEIS on September 8, 2023.[157] The Fish and Wildlife Service issued the proposed listing for the Miami cave crayfish on September 20, 2023, almost two weeks after the Draft SEIS had issued.[158] Because the Draft SEIS predates the proposed listing, it understandably does not reflect Staff engagement with the Fish and Wildlife Service on the Miami cave crayfish.

In its answer, the Staff states that it "will comply with [Fish and Wildlife Service] regulations concerning conferences on proposed species."[159] And the Staff acknowledges that the proposed listing "can be considered new information . . . in developing the [Final Supplemental Environmental Impact Statement (Final SEIS)]."[160] The Staff further states that "[a]s long as it remains at least a proposed species before the issuance of the [Final SEIS], the

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[154] Hearing Request at 67; see also id. at 68–74.

[155] See Crow Butte Resources, Inc. (In Situ Leach Uranium Recovery Facility), CLI-20-8, 92 NRC 255, 261 (2020) (citing Crow Butte, CLI-09-9, 69 NRC at 348–51).

[156] See, e.g., Union Electric Co. (Callaway Plant, Unit 1), CLI-15-11, 81 NRC 546, 548–50 (2015); see also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120 (2009) (affirming licensing board's rejection of "placeholder" motion).

[157] See Draft SEIS Notice, 88 Fed. Reg. at 62,110. The Staff's notice is dated August 31, 2023, but it was published in the Federal Register on September 8. Id. at 62,112.

[158] Proposed Listing, 88 Fed. Reg. at 64,856.

[159] Staff Answer at 48.

[160] Id.

Miami cave crayfish is material to the NRC's findings in this proceeding and will be addressed in the [Final SEIS], as appropriate."[161] Thus, Miami Waterkeeper will have an opportunity to advance any arguments regarding the agency's Endangered Species Act compliance relative to the Miami cave crayfish in a new or amended contention when the Staff issues the Final SEIS.[162] Accordingly, we do not admit Contention 4.[163]

5. Contention 5: "The Draft [SEIS] Fails to Consider the Effects of Climate Change on Accident Risk"

In Contention 5, Miami Waterkeeper argues that the Draft SEIS fails to consider the "potentially significant" effects of climate change on accident risk and thus fails to satisfy NEPA's "hard look" requirement.[164] In addition, Miami Waterkeeper asserts that the failure to consider climate change impacts on the operation of Turkey Point's safety systems contravenes recent Council on Environmental Quality guidance that encourages agencies to "consider climate change impacts on proposed actions and mitigative actions to 'reduce climate risks and promote resilience and adaptation.'"[165] As a result, Miami Waterkeeper maintains, the NRC "generally underestimates the environmental impacts of continuing to operate Turkey Point for

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[161] Id.

[162] At that time, Miami Waterkeeper must address the general admissibility criteria in 10 C.F.R. § 2.309(f)(1) and the heightened pleading standards for new and amended contentions in 10 C.F.R. § 2.309(c). See Crow Butte, CLI-20-8, 92 NRC at 266–69.

[163] We are not persuaded by Miami Waterkeeper's argument that Contention 4 is appropriate for consideration now because it raises a broader question concerning the Staff's compliance with NEPA's "hard look" standard. Reply at 65. Although Miami Waterkeeper mentions NEPA in Contention 4, it does so in the context of a question regarding the agency's compliance with the Endangered Species Act, and therefore it must await an opportunity for the Staff to confer with the Fish and Wildlife Service. See Hearing Request at 63–74.

[164] Hearing Request at 75.

[165] Id. (quoting National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1209 (Jan. 9, 2023)).

another twenty years" and "omit[s] or understate[s] the benefits of the no-action alternative and mitigation alternatives."[166]

In support of its contention, Miami Waterkeeper provides a declaration from Jeffrey T. Mitman and asserts that "the failure to address climate change impacts on accident risks constitutes a significant omission, because climate change impacts on safe operation of nuclear reactors may be significant."[167] Miami Waterkeeper argues that climate change affects accident risk in three ways: (1) climate change "increases the likelihood or initiating event frequency of events" (e.g., "increased storm frequency can lead to higher initiating event frequency for losses of offsite power"); (2) climate change "can increase the probability of failure of design features or mitigation equipment"; and (3) climate change can affect the "cliff edge" effect unique to flooding risks, whereby "a small increase in the hazard can cause a dramatic and often overwhelming impact on a structure."[168]

Taking Miami Waterkeeper at its word that it seeks to challenge the Draft SEIS and does not seek to challenge the Staff's safety analysis, we analyze Contention 5 as an environmental contention, and not a safety contention.[169] We conclude that Contention 5 is inadmissible because it does not provide sufficient information to show that a genuine, material dispute exists with the Draft SEIS.[170] Although Miami Waterkeeper insists that its contention identifies an

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[166] Id.

[167] Id. at 76 (citing Declaration of Jeffrey T. Mitman (Nov. 27, 2023) ¶ 6 (Mitman Declaration)).

[168] Id. at 76–77.

[169] As the Staff and FPL correctly point out, challenges to the Staff's safety analysis are beyond the scope of the proceeding. Staff Answer at 50; FPL Answer at 53; see Oconee, CLI-22-3, 95 NRC at 42; see also Turkey Point, CLI-22-6, 95 NRC at 115 ("Our ruling in CLI-22-2 did not disturb the safety review."); Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6–10 (2001) (explaining that the Staff's safety review of license renewal applications is limited as described in 10 C.F.R. Part 54). Miami Waterkeeper maintains that its claims are directed at the Draft SEIS. See Reply at 74 & n.302.

[170] See 10 C.F.R. § 2.309(f)(1)(v)–(vi).

omission in the Draft SEIS,[171] the Draft SEIS includes an analysis of the environmental impacts of design-basis accidents and severe accidents.[172] Therefore, at bottom, Miami Waterkeeper's arguments go to the adequacy of that analysis—i.e., whether it is deficient for failing to address climate-change impacts.[173] But Miami Waterkeeper provides only a passing reference to a portion of the Staff's analysis, and it has not provided sufficient support to raise a genuine, material dispute.[174]

Throughout the contention, Miami Waterkeeper's arguments, as well as the Mitman Declaration on which Miami Waterkeeper relies, speculate that climate change impacts "may be significant" or "could be significant."[175] Miami Waterkeeper asserts that a project sponsored by NOAA and undertaken by the National Academies will consider updates to the methodology for determining probable maximum precipitation and suggests that the results of this project could inform the Staff's review.[176] But Miami Waterkeeper would have the Staff wait for a future

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[171] See Hearing Request at 76, 78; Reply at 71.

[172] See Draft SEIS at 2-65 to -68, app. D.

[173] The Staff reads Contention 5 as a claim that the agency must consider the "environmental effects on a plant," rather than "the effects of the plant on the environment," and thus argues that it is outside the scope of the proceeding and amounts to an impermissible challenge to the agency's NEPA-implementing regulations. Staff Answer at 50–51. But the Staff's reading ignores Miami Waterkeeper's arguments (although lacking support) that climate change could impact accident risk. The agency analyzes the environmental impacts of accidents as part of its review of license renewal applications, either in the GEIS, or as here, in a site-specific supplemental environmental impact statement, which may include an evaluation of how external events might impact that analysis. See Diablo Canyon, CLI-11-11, 74 NRC at 442–43 (affirming licensing board decision admitting contention that challenged the lack of probabilistic risk assessment of a newly discovered fault relative to the Staff's severe accident mitigation alternatives analysis, a "Category 2" site-specific issue in that proceeding).

[174] See Hearing Request at 76 (citing Draft SEIS, app. D); 10 C.F.R. § 2.309(f)(1)(v)–(vi).

[175] Hearing Request at 75–78; see also Reply at 71–72; Mitman Declaration at 1–3.

[176] Hearing Request at 77–78.

project that might not result in any changes to the Staff's accident analyses in the Draft SEIS,[177] and Miami Waterkeeper relies on bare assertions regarding the significance of climate change impacts without tying them directly to the existing environmental impact analysis for the subsequent license renewal of Turkey Point Units 3 and 4.[178] Therefore we do not admit Contention 5.

C. FPL's Motion to Strike

After Miami Waterkeeper filed its reply to the Staff's and FPL's answers, FPL moved to strike portions of Miami Waterkeeper's reply.[179] As FPL correctly points out, a reply must be narrowly focused on the legal or factual arguments originally raised in the hearing request or the answers.[180] We nonetheless decline to administer a line-by-line strike-through of Miami Waterkeeper's arguments, as FPL would have us do. Given that we find all but a narrow portion of Contention 1 inadmissible, even were we to find some of Miami Waterkeeper's arguments beyond the permissible scope of a reply, our consideration of them would not change our ruling on any of the five contentions. We therefore deny FPL's motion to strike as moot.

III. CONCLUSION

For the foregoing reasons, we (1) grant Miami Waterkeeper's hearing request, admitting Contention 1 as narrowed and reformulated by the Board; (2) dismiss Contentions 2 through 5 and the remaining portions of Contention 1; and (3) deny FPL's motion to strike portions of Miami Waterkeeper's reply as moot.

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[177] See supra note 156 and accompanying text (regarding the Commission's disfavor of placeholder contentions).

[178] See Seabrook, CLI-12-5, 75 NRC at 323–24; Fansteel, CLI-03-13, 58 NRC at 204; Oyster Creek, CLI-00-6, 51 NRC at 208.

[179] See supra note 35 and accompanying text.

[180] See Motion to Strike at 3 (citing Nuclear Management Co., LLC (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)).

This proceeding will be conducted in accordance with the Simplified Hearing Procedures for NRC Adjudications in 10 C.F.R. Part 2, Subpart L.[181] The Staff, FPL, and Miami Waterkeeper should confer and jointly propose a scheduling order to govern the future conduct of this proceeding, in accordance with 10 C.F.R. § 2.332, by March 22, 2024.[182]

Any appeal to the Commission from this Memorandum and Order must be filed in accordance with 10 C.F.R. § 2.311.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Emily I. Krause, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 7, 2024

[181] See 10 C.F.R. § 2.310(a).

[182] The proposed scheduling order should include (1) proposed due dates for initial and continuing disclosures under 10 C.F.R. § 2.336(d); and (2) the Staff's estimated date for issuing the Final SEIS.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250-SLR-2
	)	50-251-SLR-2
(Turkey Point Nuclear Generating Units 3 & 4)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Granting Request for Hearing) (LBP-24-03)** have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland,
this 7th day of March 2024.