

**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

June 24, 2024

**FLORIDA POWER & LIGHT COMPANY’S MOTION TO STRIKE
PORTIONS OF THE REPLY FILED BY MIAMI WATERKEEPER**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(a),¹ and the Atomic Safety and Licensing Board’s (“Board”) Initial Prehearing Order,² Florida Power and Light Company (“FPL”) moves to strike portions of Miami Waterkeeper’s Reply in Support of Motion to Admit Amended and New Contentions (“Reply”) filed on June 12, 2024, by Miami Waterkeeper (“Petitioner”).³ Miami Waterkeeper’s Reply was filed in support of its May 8, 2023, Motion to Admit Amended and New Contentions in Response to the NRC Staff’s Final Site-Specific Environmental Impact Statement (“Motion”),⁴ and the Answers filed by FPL and the U.S. Nuclear Regulatory Commission (“NRC”) Staff opposing the Motion.⁵

¹ Pursuant to 10 C.F.R. § 2.323(b), counsel for FPL certifies that a sincere effort was made to contact the other participants in the proceeding and resolve the issues raised in this motion and those efforts to resolve the issues have been unsuccessful. The NRC staff does not oppose this motion. Petitioner opposes the motion.

² Licensing Board Memorandum and Order (Initial Prehearing Order) (Dec. 6, 2023) (ML23340A098).

³ Miami Waterkeeper’s Reply in Support of Motion to Admit Amended and New Contentions (June 12, 2024) (ML24164A318) (“Reply”).

⁴ Miami Waterkeeper's Motion To Admit Amended And New Contentions In Response To NRC Staff's Final Site-Specific Environmental Impact Statement (May 8, 2024) (ML24129A220) (“Motion”).

⁵ Applicant's Answer to Petitioner's Motion to Admit New and Amended Contentions on the Final Site-Specific Environmental Impact Statement (June 3, 2024) (ML24155A267) (“FPL Answer”); NRC Staff Answer to

Petitioner’s Reply presents an entirely new theory of Contention 1-A. In the Motion, Petitioner alleged that the 2024 Final Site-Specific Environmental Impact Statement (“2024 FSEIS”)⁶ “fail[ed] to adequately analyze groundwater conditions for the ‘no-action’ alternative” when “the [canal cooling system (“CCS”)] is no longer used as a heat sink.”⁷ Petitioner’s new theory of Contention 1-A is that the 2024 FSEIS’s comparison of alternatives is deficient because it relies on an allegedly “outdated” discussion of the no-action alternative in the 2019 Final Site-Specific Environmental Impact Statement (“2019 FSEIS”).⁸ Rather than merely amplifying prior arguments or responding to arguments in the Answers, the Reply presents an entirely new theory of the contention. As explained below, this is not permissible in a reply. Accordingly, those portions of the Reply should be stricken.

II. LEGAL STANDARDS GOVERNING THE SCOPE OF A REPLY

Focused replies are an important component of the Commission’s pleading rules, which “demand a level of discipline and preparedness on the part of petitioners.”⁹ At the outset of a proceeding, the Commission requires petitioners to fully set forth their claims and support for their claims in their petition.¹⁰ That is because answering parties are “entitled to be told at the

Amended and New Contentions and Petition for Waiver (June 3, 2024) (ML24155A110) (“NRC Staff Answer”) (collectively, “Answers”).

⁶ 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, Final Report (Mar. 29, 2024) (ML24087A061).

⁷ Motion at 7, 13.

⁸ NUREG-1437, Supplement 5, 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, Final Report (Oct. 28, 2019) (ML19290H346).

⁹ *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004), *reconsideration denied* CLI-04-35, 60 NRC 619 (2004) (citation omitted).

¹⁰ *Id.*

outset, *with clarity and precision*, what arguments are being advanced.”¹¹ Because the petition should contain all of petitioner’s claims and support, reply briefs “must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it.”¹²

A “a reply cannot expand the scope of the arguments set forth in the original hearing request.”¹³ Simply put, “[t]he Commission will not permit, in a reply, the filing of new arguments or new legal theories that opposing parties have not had an opportunity to address.”¹⁴ Although a reply may “legitimately amplif[y]” arguments from the original petition,¹⁵ or “focus narrowly” on responding to the answer pleadings,¹⁶ it may *not* be used as a vehicle to “cure” deficient contentions merely because those deficiencies were identified in the answers.¹⁷ As the Commission has explained, there would be “no end” to NRC licensing proceedings if petitioners were permitted to add “new bases or new issues” at will.¹⁸

III. PORTIONS OF PETITIONER’S REPLY EXCEED THE PERMISSIBLE SCOPE OF A REPLY PLEADING AND SHOULD BE STRICKEN

Petitioner’s Reply presents a new theory for Contention 1-A that exceeds the permissible scope of a reply pleading and should therefore be stricken from the record. This new theory is that the alternatives comparison in 2024 FSEIS is deficient because it relies on allegedly

¹¹ *Kan. Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 576 (1975) (emphasis added).

¹² *Palisades*, CLI-06-17, 63 NRC at 732; *see also La. Energy Servs.*, CLI-04-25, 60 NRC at 225 (citing Final Rule: Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,203 (Jan. 14, 2004)).

¹³ *Nuclear Mgmt. Co. LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) (citing *LES*, CLI-04-25, 60 NRC 223; *USEC Inc.* (Am. Centrifuge Plant), CLI-06-09, 63 NRC 433, 439 (2006)).

¹⁴ *USEC*, CLI-06-09, 63 NRC at 439.

¹⁵ *See LES*, CLI-04-25, 60 NRC at 224.

¹⁶ *Palisades*, CLI-06-17, 63 NRC at 732.

¹⁷ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 n.32 (2008) (citing *LES*, CLI-04-25, 60 NRC at 224–225) (emphasis added).

¹⁸ *Id.* at 225 (citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428–29 (2003)).

“outdated” information from the 2019 FSEIS. As argued by Petitioner, Contention 1-A now “challenges the use of an *outdated* and incomplete assessment ... under the no-action alternative” and that “failing to *update* that old analysis ... rendered the [2024 FSEIS] analyses inadequate.”¹⁹ Petitioner’s “outdated information” theory is an entirely new theory of Contention 1-A that was not presented in the Motion.

As originally pled, Contention 1-A alleged that the 2024 FSEIS did not “compare groundwater impacts to a no action alternative where the CCS is no longer used as a heat sink.”²⁰ While Petitioner referenced the 2019 FSEIS in the Motion, Petitioner alleged only that the “2019 FSEIS and 2024 FSEIS” both failed “to objectively analyze, using best available science, how environmental conditions would benefit from the no action alternative.”²¹ In other words, Petitioner’s original theory was not that the analysis in the 2019 FSEIS was “outdated.” Instead, Petitioner’s theory was that the 2019 FSEIS and the 2024 FSEIS did not adequately analyze the no-action alternative. And nothing in the Answers invited this new theory of the contention. Commission case law makes clear that new bases for a contention cannot be introduced in a reply brief.²²

Because this new theory goes beyond the permissible scope of a reply pleading, the following portions of the Reply should be stricken:

- Reply at 7, starting at the second sentence of the first full paragraph (beginning “Petitioner challenges the use of ...”) through the end of the paragraph, and footnote 28;

¹⁹ Reply at 9, 10 (emphasis added).

²⁰ Motion at 13.

²¹ *Id.* at 14.

²² *Palisades*, CLI-06-17, 63 NRC at 732.

- Reply at 9, starting at the second sentence of first full paragraph (beginning “The basis of the contention ...”) through the seventh sentence of that paragraph (ending “... analysis of alternatives.”); and
- Reply at 10, starting at the second sentence of the first full paragraph (beginning “At bottom, Petitioner asserts ...”) through the end of that paragraph.

IV. CONCLUSION

The portions of Petitioner’s Reply discussed above exceed the permissible scope of a reply pleading. Accordingly, the Board should strike those portions of the Reply.

Respectfully submitted,

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Dated in Washington, D.C.
 This 24th day of June 2024

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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 Motion to Strike Portions of the Reply Filed by Miami Waterkeeper” was served on the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

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