

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
FLORIDA POWER & LIGHT COMPANY)	Docket No. 50-250-SLR-2
)	Docket No. 50-251-SLR-2
(Turkey Point Nuclear Generating Units 3 and 4))	
)	July 3, 2024
(Subsequent License Renewal Application))	

**MIAMI WATERKEEPER’S ANSWER TO FLORIDA POWER & LIGHT COMPANY’S
MOTION TO STRIKE PORTIONS OF ITS REPLY**

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(2), Petitioner Miami Waterkeeper files this Answer in opposition to Florida Power and Light Company’s (“FPL”) Motion to Strike a portion of its Reply.¹ Throughout this proceeding, FPL has filed motions to strike at every turn²—none of which has been granted.³

¹ Applicant’s Answer to Petitioner’s Motion to Admit New and Amended Contentions on the Final Site-Specific Environmental Impact Statement, ADAMS Accession No. ML24155A267 (June 3, 2024) (hereinafter “FPL Answer”).

² Applicant’s Motion to Strike a Portion of the September 10, 2018 Reply Filed by Southern Alliance for Clean Energy, ADAMS Accession No. ML18263A285 (Sept. 20, 2018); Florida Power & Light Company’s Motion to Strike Portions of the Reply Filed by Miami Waterkeeper, ADAMS Accession No. ML24018A224 (Jan. 18, 2024); Florida Power & Light Company’s Motion to Strike Portions of the Reply Filed by Miami Waterkeeper, ADAMS Accession No. ML24176A271 (June 24, 2024) (hereinafter “FPL Motion to Strike”).

³ See, e.g., Order Denying FPL’s Motions to Strike Portions of Replies, ADAMS Accession No. ML18296A673 (Oct. 23, 2018), at 4 (“[W]e conclude that the argument challenged by FPL is a permissibly focused response to “legal . . . arguments . . . raised in the [NRC Staff’s] answer[.]” to the petition.).

DISCUSSION

I. LEGAL STANDARDS GOVERNING THE SCOPE OF A REPLY

As FPL correctly states, NRC rules are designed to ensure that applicants understand petitioners' arguments "with clarity and precision."⁴ Petitioners only get the same understanding—of an applicant's counterarguments—after they receive the answers to their initial petition. In the spirit of fundamental fairness, petitioners have the right to counter in reply the arguments raised against their contentions in an answer. Thus, reply briefs "must focus narrowly on the legal or factual arguments first presented in the original petition or **raised in the answers to it.**"⁵ Even FPL acknowledges that "a reply may 'legitimately amplif[y]'" arguments from the original petition.⁶

Generally, Boards grant motions to strike where a reply brief introduces entirely new issues in an impermissible attempt to "cure" severely deficient contentions, thereby depriving the respondent of a meaningful opportunity to respond.⁷ FPL cites a series of cases where the disputed arguments made in replies were "not even suggested by Petitioners' proposed Contention . . . as initially pled,"⁸ where the reply "attempt[ed] to backstop elemental deficiencies in its original' petition to intervene,"⁹ or where the original petition "did not cite adequate documentary support."¹⁰ As discussed below, none of these situations are present here.

⁴ FPL Motion to Strike at 2-3.

⁵ FPL Motion to Strike at 3 (emphasis added) (citing *Palisades*, CLI-06-17, 63 NRC at 732). See also *In the Matter of Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004).

⁶ *Id.* at 3 (citing *La. Energy Servs.*, CLI-04-25, 60 NRC at 224).

⁷ See *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 n.32 (2008) (citing *In the Matter of Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224–225 (2004)).

⁸ *Nuclear Mgmt. Co. LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 731 (2006).

⁹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 n.35 (2008).

¹⁰ *Palisades*, CLI-06-17, 63 NRC at 732.

Boards have also granted motions to strike where replies present entirely new legal theories that opposing counsel has not had the opportunity to address.¹¹ Yet the Commission acknowledges that petitioners are entitled to make “arguments [that] genuinely ‘reply’ to arguments raised in the other participants’ briefs.”¹² This is precisely what Petitioner did here, as explained below.

II. THE REPLY IS PROPER AND THE MOTION SHOULD BE DENIED

The portions of Miami Waterkeeper’s Reply that FPL seeks to strike respond directly to legal arguments FPL made in its Answer, and legitimately amplify arguments made in Miami Waterkeeper’s Motion to Admit Amended and New Contentions (“Petition”).¹³

The ordinary meaning of “amplify” is “to expand (something, such as a statement) by the use of detail or illustration or by closer analysis.”¹⁴ Miami Waterkeeper’s Petition alleges 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.”¹⁵ The Petition states that the alternatives analysis in the 2024 FSEIS is inadequate because it used the 2019 FSEIS evaluation of the no action alternative and NRC Staff did not identify any significant new information that could change that evaluation.¹⁶

¹¹ See, e.g., *In the Matter of USEC, Inc.* (American Centrifuge Plant), CLI-06-09, 63 NRC 433, 439 (2006); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 n.32 (2008).

¹² See *American Centrifuge Plant*, CLI-06-09, 63 NRC at 439.

¹³ Miami Waterkeeper’s Motion to Admit Amended and New Contentions in Response to NRC Staff’s Final Site-Specific Environmental Impact Statement, ADAMS Accession No. ML24129A220 (May 8, 2024) (hereinafter “Miami Waterkeeper Motion”).

¹⁴ *Amplify*, MERRIAM-WEBSTER, available at <https://www.merriam-webster.com/dictionary/amplify> (last visited July 1, 2024).

¹⁵ FPL Motion to Strike at 4 (citing Miami Waterkeeper Motion at 14).

¹⁶ Miami Waterkeeper Motion at 13.

FPL’s Answer disputed a statement in the Petition that the analysis of the no action condition was inadequate. In its Answer, FPL stated that Petitioner’s “primary claim is that the 2024 FSEIS fails to adequately analyze groundwater conditions for the *no-action alternative*.”¹⁷ FPL then misconstrued the initial Petition by stating Petitioner is not alleging that there is any new and significant information.¹⁸

In its Reply, Miami Waterkeeper clarified that it was indeed alleging there is new and significant information that made the 2019 evaluation of the no action alternative outdated, and made both the 2019 evaluation and the 2024 FSEIS evaluation of alternatives inadequate.¹⁹

These contested arguments are a direct response and “genuine[] reply” to a legal argument (and mischaracterization of the Petition) that FPL raised in its answer.²⁰ Boards consistently acknowledge that “it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, so long as new issues are not raised.”²¹

No new issues were raised in Miami Waterkeeper’s Reply. Instead, the Reply amplifies the Petition by providing a detailed and closer analysis of why the 2019 FSEIS and 2024 FSEIS are inadequate. This is precisely the sort of “legitimate amplification” that NRC procedure permits.²² For example, a Board found “arguments made in reply related to the use of freshwater to be a legitimate amplification of [the] original petition,” where the original petition raised “concerns about the impact that FPL's actions will have on freshwater, including the withdrawal

¹⁷ FPL Answer. at 12; Miami Waterkeeper Motion at 7.

¹⁸ *Id.* at 16.

¹⁹ Miami Waterkeeper’s Reply in Support of Motion to Admit Amended and New Contentions, ADAMS Accession No. ML24164A196 (June 12, 2024) at 7, 9.

²⁰ *See American Centrifuge Plant*, CLI-06-09, 63 NRC at 439.

²¹ *In the Matter of Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ASLBP No. 08-871-01-LR, 68 NRC 905, 919 (2008).

²² *See* FPL Motion to Strike at 3.

of freshwater from Florida's aquifers.”²³ The Board in that case denied FPL’s motion to strike.²⁴ In another case, a Board found that where a contention was “based on the risk that the construction of Fermi Unit 3 will kill snakes, destroy their habitat, and exterminate the species from the area . . . arguments concerning the adequacy of the NEPA analysis of the impact of construction of Unit 3 upon the snake and of measures to mitigate those impacts fall within the scope of the Contention” because they constitute legitimate amplification of previous arguments.²⁵ The Board in this case also concluded that where Petitioners on reply raised the fact that a DEIS had “relied on assumptions about the future actions of” an agency, this argument “[did] not impermissibly expand the scope of Contention 8 into an attack upon the state agency's process,” but instead permissibly elaborated on “the sufficiency of the DEIS under NEPA.”²⁶

Thus, the contested portions of Miami Waterkeeper’s Reply constitute a legitimate amplification of the arguments presented in its Petition and a response to arguments in FPL’s answer—not an entirely new legal theory²⁷ nor an impermissible attempt to “cure” a severely deficient contention.²⁸ The Board should therefore deny FPL’s Motion.

²³ *In the Matter of Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-15-13, 81 NRC 456, 462 (2015). *See also In the Matter of DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 81 NRC 249 (2015) (*reversed on other grounds* CLI-15-18, 82 NRC 135 (2015)).

²⁴ *Turkey Point*, LBP-15-13, 81 NRC at 456.

²⁵ *In the Matter of Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC 445, 464 (2012) (discussing the term “legitimately amplify” in the context of a response to a summary disposition motion).

²⁶ *In the Matter of Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-23, 76 NRC. 445, 465 (2012).

²⁷ *See, e.g., In the Matter of USEC, Inc.* (American Centrifuge Plant), CLI-06-09, 63 NRC 433, 439 (2006); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC. 251, 262 n.32 (2008).

²⁸ *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 262 n.32 (2008) (citing *Louisiana Energy Services*, CLI-04-25, 60 NRC at 224–225).

II. CONCLUSION

FPL is seeking to constrain Petitioner in a way that would render the reply brief a mere repetition of the initial brief. But Petitioner has the right to amplify its arguments in reply and respond to those raised in FPL's answer. The present reply brief did just that. As a result, FPL's Motion to Strike should be denied.

Respectfully submitted,

/Signed (electronically) by/ Cameron Bills

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, the foregoing “*Miami Waterkeeper’s Answer to Florida Power & Light Company’s Motion to Strike Portions of Its Reply*” was served upon the Electronic Information Exchange (“EIE,” the NRC’s E-Filing System), in the above-captioned docket, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/Signed (electronically) by/ Cameron Bills

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