

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

| | | |
|-----------------------------|---|----------------------------|
| In the matter of: |) | Docket Nos, 50-250 |
| | | 50-251 |
| FLORIDA POWER & LIGHT CO.) | | (Proposed Amendments to |
| (Turkey Point Nuclear) | | Facility Operating License |
| Generating Units Nos.) | | to Permit Steam Generator |
| 3 and 4) | | Repairs) |
| _____) | | |

PETITION FOR LEAVE TO INTERVENE

Revision

BY MARK P. ONCAVAGE

I, Mark P. Oncavage, petition for leave to intervene in the matter of proposed amendments to the facility operating license to permit steam generator repairs at the Turkey Point facility licensed to Florida Power and Light Company.

STANDING TO INTERVENE

The petitioner has grave concerns on the contemplated repairs to the steam generators at Turkey Point Units Nos. 3 and 4. There are three areas of concern and the petitioner's standing to intervene will be demonstrated to each area.

The first concern is about the release of radioactive airborne particulates occurring during the steam generator repair operation. The petitioner considers any radiation exposure above the natural background radiation to be an increased hazard in the formation of degenerative diseases.

The petitioner's wife, two year old son, and the petitioner

7904270136

live in Dade County, Florida. Approximately 15 miles from the home in which the petitioner and his family resides and owns, are the Turkey Point reactors. Turkey Point lies in a south-southeast direction from the petitioners residence. The climatological tables as found in the U.S. Coast Pilot, No. 4, 1972, were compiled from U.S. Weather Bureau data. The tables for Miami, Florida, state that during the months February, March, April, May, June, July, August, and September the mean prevailing wind direction is either east-southeast or southeast. The release of radioactive airborne particulates coupled with the mean prevailing wind presents a hazardous situation for the petitioner and his family.

The waters of South Biscayne Bay are among the finest of recreational areas in the United States. In close proximity of Turkey Point, the Dade County Metro Government has established two recreational areas, Homestead Bayfront Park and Elliot Key Park. The Federal Government has established the Biscayne National Monument encompassing much of the bay bottom and benthic biota of South Biscayne Bay. From South Biscayne Bay, through the passages of Angelfish Creek, Broad Creek, and Caesar's Creek lies the only living coral reef in the waters of the continental United States. It is the John Pennekamp Underwater Reef State Park.

These sensitive natural communities must be protected

from all forms of pollution if they are to survive. The petitioner owns a sailboat, FL 1684 Bu, and often cruises these waters with his family. The recreational aspects of cruising include fishing, crabbing, swimming, skin diving, and underwater photography. To be denied the privilege of utilizing the recreational environment of South Biscayne Bay, would diminish the quality of the petitioner's life.

The land surrounding Turkey Point is a low lying mangrove coastal zone. The U.S. Department of interior in the publication Resource and Land Information, for South Dade County, describes the mangrove zone as having an elevation of "0 to 5 feet above mean sea level." There is little land to trap radioactive liquids if a spill occurs. Also, the flow of groundwater in the Biscayne Aquifer starts in the Everglades, west of Turkey Point and flows eastward to South Biscayne Bay. Large portions of a liquid radioactive release would migrate to South Biscayne Bay.

As a user of South Biscayne Bay, as a recreational area, and as a student of environmental affairs, the petitioner has standing and a substantial interest on the matter of radioactive liquid releases.

The third area of concern is the economic feasibility of alternatives to repairing the steam generators. The petitioner is a resident of South Florida, a consumer of the electricity that is produced by Florida Power and Light Co.,

and a member of the South Florida economic community.

Reasonable energy costs can have a beneficial effect on the economic health of the petitioner's community and unreasonable or inflated energy costs can place an undue burden on individuals and the entire economic structure.

The petitioner questions the wisdom of proceeding towards expensive repairs without examining the alternatives thoroughly. The petitioner seeks a reanalysis of the total costs of Turkey Point's nuclear electricity, within the framework of cost benefits as outlined by the National Environmental Protection Act, of 1969.

10 CFR Part 2.714, i, GOOD CAUSE

The "Notice of proposed issuance of amendments to Facility Operating Licenses" as published in the Federal Register on December 13, 1977, Docket Nos. 50-250 and 50-251, contained incorrect information. The statement is:

"For further details pertinent to these matters, see the licensee's letter dated September 20, 1977, along with other material that may be submitted by the licensee in support of this action, all of which are or will be available for public inspection at the NRC's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199."

The Nuclear Regulatory Commission, staff response of March 1, 1979, states:

"We are informed by the librarian, Ms. Rene Daily, that the documents have, in fact, been in the local PDR since October 4, 1977, though probably misfiled for part of the time."

This statement directly conflicts with the enclosed, sworn affidavit of March 16, 1979 by Ms. Renee' Daily. Ms. Daily states:

"The September 20, 1977 letter from Florida Power and Light Company to the Nuclear Regulatory Commission was not found in the applicant correspondence file for 1977 letters."

The petitioner's contention is not to assign blame for this flaw of procedure. The petitioner's contention is to state that the public's right to domestic information that

concerns the health and welfare of the public, must not be denied.

If the importance of having crucial documents missing from the local Public Document Room can be dismissed, then it follows that the importance of having crucial documents missing from any Public Document Room can be dismissed. If the burden of full and accurate information can be lifted from the Public Document Rooms, then it must fall on the Federal Register. As the petitioner has shown, the Federal Register contained incorrect information.

The circular reasoning used by the Nuclear Regulatory Commission's staff response of March 1, 1979, fails to do the Commission service. Each organ of public information; the local Public Document Room, the Nuclear Regulatory Commission Public Document Room, and the Federal Register must stand on the merits of full and accurate information, otherwise, these organs of information will become functionless.

The contention of the Nuclear Regulatory Commission staff response of March 1, 1979, that the letter of September 20, 1977 was available from the Nuclear Regulatory Commission's Public Document Room, assumes that knowledge of the existence of the letter should have existed even though the letter was missing. The petitioner submits that the discovery, by Ms. Daily, that a crucial document was missing, took thirteen months to be realized.

Having crucial documents missing from a Public Document Room for thirteen months justifies good cause for extending the time limit, for filing a petition for leave to intervene, by thirteen months.

Other factors that can meet the qualifications of good cause for a time extension are present, also.

1. The cost projections of the steam generator repairs published in revision 1, arrived at the Florida International University Public Document Room on January 3, 1978, only ten days before the filing deadline.

2. Since January 13, 1978, new evidence has appeared directly related to the concerns expressed in the petition of February 9, 1979. It is Nuclear Power Costs by the Committee on Government Operations, House Report No. 95-1090, April 26, 1978.

3. Other sources of information that have been released, since the filing deadline, are the responses to the sixty two questions asked of Florida Power and Light by the Nuclear Regulatory Commission. The answers were published in Revisions nos. 2, 3, 4, 5, and 6, which arrived at the Florida International University, Public Document Room from March 20, 1978 to February 12, 1979. Many of these questions and responses deal with public safety in relation to radiation release.

4. Also released after the filing deadline of January 13,

1973, is Revision C. This information is held proprietary and has been excluded from the Public Document Room, but the content and projected costs of this document figure prominently into the areas of public safety economic feasibility.

The process of question and answer between the Nuclear Regulatory Commission and Florida Power and Light company which forces the licensee to examine their situation more closely, is valuable. The appropriate time for initiating hearings on public safety and economic feasibility is after all revisions have been made and after the Nuclear Regulatory Commission has completed the staff review of the proposed charter amendments. Rather than the petition being considered delaying or untimely, the time for convening hearings is ripe and the petition should be considered appropriate.

Full justification exists for the granting of the petition due to the stated problems in the information organs and the belated nature by which full information has been made public. Members of the public should be allowed to take part in the decision making process whenever possible.

The petitioner's concerns can be best addressed in the hearings that grant or deny the charter amendments to the licensee. All appeals are remedies that would be appropriate only if the Atomic Safety and Licensing Board were to deny the petition

Another regulatory body which may represent means to protect the petitioner's interest is the Florida Public Service Commission. The licensee has not brought the Public Service Commission into the decision making process, thereby not allowing the petitioner an alternate administrative remedy. In a letter to the petitioner, of February 27, 1979, concerning the proposed steam generator repairs, Commission Chairman Robert T. Mann states:

"It was the first time that this matter had been brought to my attention."

The granting of the petition for leave to intervene remains to date the only apparent procedure whereby the petitioner's interests may be adequately protected.

10 CFR Part 2.714, iii, DEVELOP A SOUND RECORD

As a resident of South Florida and a consumer of electricity produced by the licensee, the petitioner's participation in the hearing will be directed towards the safety and economic well being of the petitioner, his family, and the South Florida community.

These issues are extremely important to the residents of South Florida. This importance is reflected in the correspondence that the petitioner has received from the elected officials representing Florida, concerning the proposed steam generator repairs. In the letter of February 22, 1979, addressed to the petitioner, the Honorable Dante Fascell states:

"I can appreciate your concern about the proposed repairs at Turkey Point. I too, have written to the chairman of the Nuclear Regulatory Commission requesting action in this case."

In the letter of March 1, 1979, addressed to the petitioner, Senator Richard Stone states:

"I can certainly understand your concerns in this matter and your efforts to obtain public hearings on this issue. I am therefore taking the liberty of contacting the appropriate authorities within the Nuclear Regulatory Commission for their thorough review of this matter."

Senator Lawton Chiles, in the letter of March 5, 1979, states:

"In an effort to be of some help to you, I will contact the commission on your behalf. I will ask them to look into this matter and to fully review your request in the light of the comments you have made concerning the safety aspect involved with these repairs."

It is evident that the Honorable Dante Fascell from the 15 th Congressional District, which includes Turkey Point, Senator Richard Stone, and Senator Lawton Chiles have indicated that the petitioner's concerns warrant action, hearings and review

The petitioner will make every effort to assist in developing a sound record. Legal counsel will be available to the petitioner for the hearing. Expert witnesses are anticipated to testify in behalf of the petitioner.

The petitioner brings to the hearing a position not represented by the licensee in philosophy or intensity. The licensee as a profit making company may not have the health and welfare of the residents of South Florida foremost in their philosophy, if the health and welfare issues conflict with company interests.

The Nuclear Regulatory Commission as a judicial body may find it more difficult to render a just decision if the health and welfare concerns of the public are not represented at the hearing, but only licensee's interests are represented.

10 CFR Part 2.714, iv, EXISTING PARTIES

The petitioner has examined Docket Nos. SC-250 and SC-251 searching for existing parties and other petitions for leave to intervene. None were found. It is apparent that if this petition is denied, the licensee's application for charter amendments will be uncontested.

The position of the Nuclear Regulatory commission staff recommendation is unknown to the petitioner as of this date.

10 CFR Part 2.714, BROADEN ISSUES OR DELAY PROCEEDINGS

The petitioner contends that the concerns of public safety from radiation exposure, protection of the environment from radioactive liquid contaminants, and economic feasibility of the steam generator repairs, represent the crux of the proposed hearings. All other matters such as man-rem usage, construction accidents, storage of radioactive steam generator units, radwaste disposal, and security measures find a nexus in the three concerns.

Broadening the issues can only serve to dilute the main concerns. The petitioner's intervention will be directed towards the satisfactory resolution of the three main issues.

The purpose of the petition is not to delay proceedings but to assist in reaching a just decision. The petitioner finds no merit in prolonging the operation of the acknowledged defective steam generators. In an effort to reduce any delay that may occur, the petitioner is prefiling a motion with the Nuclear Regulatory Commission, to grant Discovery Rights immediately.

If a delay becomes unavoidable, the loss of flexibility by the licensee is more than offset by the value of having public hearings where a just decision can be rendered.

ISSUES

The petitioner seeks proof or demonstration that all releases of radioactive airborne particulates and radioactive liquid contaminants released from the Turkey Point site, during the steam generator repairs, will be fully and accurately determined by planned monitoring procedures.

The petitioner seeks a determination of the total amount of radioactivity that may be released from the Turkey Point site, during the steam generator repairs, that would not be hazardous to the petitioner's health nor the public's health nor present any hazard to the environment surrounding the Turkey Point site, including South Biscayne Bay.

The petitioner seeks proof or determination that adequate containment and decontamination procedures are immediately available to protect the petitioner's health, the public's health, and protect the environment in the event of any postulated or possible release of hazardous radioactivity, from the Turkey Point site, during the steam generator repairs.

The petitioner seeks to examine the total costs pertaining to the fission generated electricity from Turkey Point and compare the costs to the licensee's projected cost(s) of coal generated electricity. This

data would be instrumental in determining the cost benefits of the steam generator repairs within the framework of the National Environmental Policy Act of 1969. Cost benefit analysis must include the projected operating life of Turkey Point reactors nos. 3 and 4, and the projected operating life of a coal burning facility.

CONCLUSION

If the licensee cannot demonstrate, to the satisfaction of the Nuclear Regulatory Commission, that the petitioner's concerns are unreasonable or unfounded, then the Nuclear Regulatory Commission is fully justified to deny the charter amendments required by the licensee to repair the steam generators at the Turkey Point nuclear facility.



Mark P. Oncavage

STATE OF FLORIDA
COUNTY OF DADE

Before me personally appeared Mark P. Oncavage, to me well known and known to me to be the person described in and who executed the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 18 th day of March A.D. 1979.



Notary Public, State of Florida at Large
My Commission Expires Oct. 31, 1980
Bonded By American Fire & Casualty Company

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

In the matter of:)

Docket Nos. 50-250

PETITION FOR LEAVE TO)

50-251

INTERVENE)

AFFIDAVIT OF RENEE DAILY

STATE OF FLORIDA)

COUNTY OF DADE)

BEFORE ME personally appeared RENEE DAILY, who being first duly sworn, deposes and says:

I am employed by Florida International University and am a library technical assistant at the Environmental and Urban Affairs Library, Miami, Florida.

The September 20, 1977 letter from Florida Power and Light Company to the Nuclear Regulatory Commission was not found in the applicant correspondence file for the 1977 letters. We requested a xeroxed copy of it and received the duplicate letter January 22, 1979.

RENEE DAILY

SWORN TO and SUBSCRIBED before me this ____ day of March, 1979.

Notary Public, State of Florida

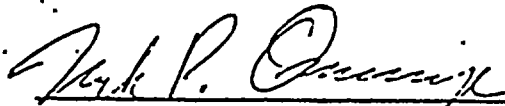
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

| | | |
|-----------------------|---|--------------------|
| In the matter of: |) | Docket Nos. 50-250 |
| Petition for leave to |) | 50-251 |
| <u>Intervene</u> |) | |

MOTION for the production of documents and things and entry
upon land for inspection and other purposes.

Pursuant to regulation of 10 CFR Part 2.741 (a), the
petitioner motions he be permitted to inspect all
documents and things pertaining to proposed charter
amendments specifically described as steam generator
repairs.



Mark P. Oncavage
12200 S.W. 110 th Avenue
Miami, Florida 33176
March 19, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

| | | |
|-----------------------|---|--------------------|
| In the matter of |) | Docket Nos. 50-250 |
| | | 50-251 |
| Petition for leave to |) | |
| intervene |) | |
| Turkey Point Nuclear |) | |
| Generating Units |) | |
| <u>Nos. 3 and 4</u> |) | |

CERTIFICATE OF SERVICE

I, Mark P. Oncavage, hereby certify that copies of the
Revision to, Petition For Leave To Intervene, have been
served on the following by deposit in the United States
mail, first class, properly stamped and addressed, this
___ day of March, 1979:

Elizabeth S. Bowers, Esquire; Chairman
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. David B. Hall
400 Circle Drive
Santa Fe, New Mexico 87501

Dr. Oscar H. Paris
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555


Harold F. Reis, Esquire
Lowenstein, Newman, Reis, Axelrad & Toll
1025 Connecticut Avenue, N. W.
Washington, D. C. 20036

Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Guy H. Cunningham, Esquire
Steven C. Goldberg, Esquire
U. S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington, D. C. 20555

By 
Mark P. Oncavage

RICHARD (DICK) STONE
FLORIDA

DOCKET NUMBER

PROD. & UTIL. EAC. 50-250,251 SP

7/14/79
COMMITTEES:
AGRICULTURE, NUTRITION, AND
FORESTRY
FOREIGN RELATIONS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, D.C. 20510

July 5, 1979

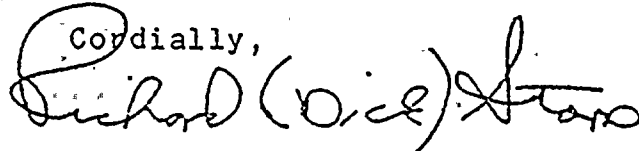
Our File: 9058170010

Congressional Liaison
Nuclear Regulatory Commission
1717 H Street, NW
Washington, D.C. 20555

Dear Director:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested. Your findings and views, in duplicate form, along with return of the enclosure, would be greatly appreciated. It would also be helpful to me if your response is mailed to my office at the address below and INCLUDES THE FILE NUMBER SHOWN ON THE COMMUNICATION I HAVE SENT TO YOU.

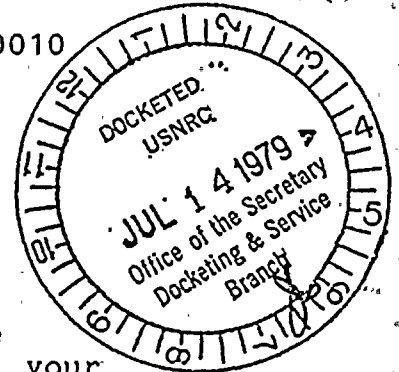
Cordially,



Richard (Dick) Stone

RDS/vms
Enclosure

PLEASE REPLY TO: POST OFFICE BOX 4081
TALLAHASSEE, FLORIDA 32303



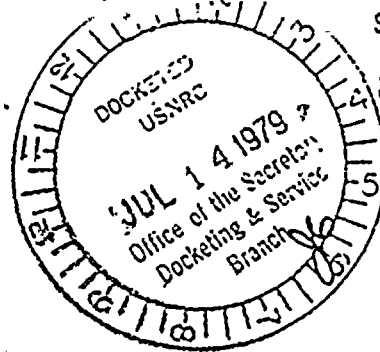
Mark P. Oncavage
12200 S.W. 110th Avenue
Miami, Florida 33176

June 22, 1979

On all correspondence with
Senator Stone regarding this

matter, please refer to
File # 9158-17616

Senator Richard Stone
2639 North Monroe St.
Suite 2003
Tallahassee, Florida 32303



Dear Senator Stone:

I am enclosing the most recent filing on behalf of my petition for public hearings. Both FP&L and the NRC are expected to file negative responses to this brief.

I am becoming concerned that an Environmental Impact Statement will not be written for the proposed repair project. I fear that both FP&L and the NRC are treating the health danger and the environmental damage possibilities, lightly.

FP&L is attempting to establish a new nuclear waste dump facility at Turkey Point. All the effects of this new facility and the other aspects of the repair effort cannot be ascertained without the thorough study as mandated by the National Environmental Policy Act of 1969.

Thank you for your continuing interest in my petition for public hearings.

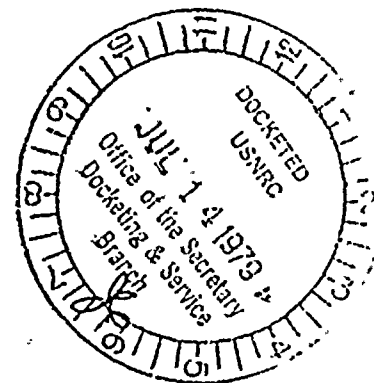
Very truly yours,

A handwritten signature in cursive script, which appears to read 'Mark P. Oncavage'.

Senator Stone:

I have just learned that Senator McGovern will propose an amendment to the NRC authorization bill dealing with state's rights on radioactive wastes. If this legislation will start to decentralize the power of the NRC, then I believe it is an important new direction.

Mark Oncavage

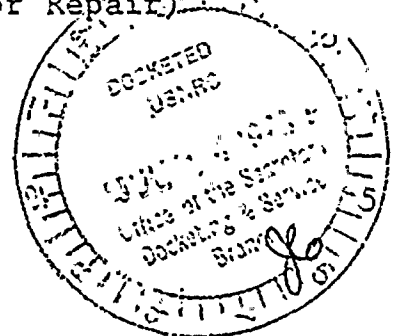


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

| | | |
|----------------------------------|---|-------------------------|
| In the Matter of |) | Docket Nos. 50-250-SP |
| FLORIDA POWER & LIGHT COMPANY |) | 50-251-SP |
| (Turkey Point Nuclear Generating |) | (Proposed Amendments to |
| Units Nos. 3 and 4) |) | Facility Operating |
| - |) | License to Permit Steam |
| |) | Generator Repair) |
| |) | |

SUPPLEMENTAL SUBMISSION
OF PETITIONER
MARK P. ONCAVAGE



Mark P. Oncavage, by undersigned counsel, requests he be granted intervenor status in this matter based on his previously submitted contentions and this "Supplemental Submission" authorized by the Board during the conference call held on May 31, 1979.

A. THE IDENTITY AND QUALIFICATIONS OF PROSPECTIVE WITNESSES AND THEIR RELEVANCE

The May 23, 1979 NRC Staff Response and the Licensee's Response voiced concern over the Petitioner's failure to explicitly inform the Board of "... the identity and qualifications of prospective witnesses, what commitments he has received from such persons to testify in this proceeding and the precise issues which they could address." NRC Staff Response p. 2 (footnote omitted). We now provide that information.

Three major areas of concern for public health and safety are raised by the Petitioner's contentions: (1) the long term on site storage of steam generator lower assemblies in an earthen floor facility; (2) the occupational radiation exposure; and (3) the release of liquid effluents containing radioactivity into a closed cycle cooling canal. The witnesses set forth below will testify with regard to those issues.^{1/}

KARL Z. MORGAN

Professor Karl Z. Morgan is Neeley Professor in the School of Nuclear Engineering at the Georgia Institute of Technology, Atlanta, Georgia. He received his Ph.D. at Duke University. Professor Morgan was the first president of the Health Physics Society and the International Radiation Protection Association. He is an emeritus member of the National Council on Radiation Protection and Measurement and a member of the International Commission on Radiological Protection. He was awarded a gold medal by the Royal Academy of Sweden for his work in Radiation Protection.

^{1/} We do not abandon the issues raised by contentions addressing the safety of the present operation at Turkey Point or the potential for recurring steam generator repairs. However, this submission focuses on the three enumerated areas in order to satisfy the Board that the Petitioner has the ability to contribute to a hearing.

One of the more recent of the '300 articles published by Professor Morgan is an April 5, 1979 New Scientist article entitled "How Dangerous Is Low Level Radiation?"

Professor Morgan will address the occupational radiation exposure problem created by the proposed repairs. The recently prepared Safety Evaluation Report (SER) on Turkey Point Plants 3 and 4 apparently believes the licensee's "estimated 1300 man-rem" exposure is within tolerable bounds. See SER pp. 2-9 through 2-11. Professor Morgan's recent New Scientist article recommends a 500 man-rem limit. His testimony will explain his conclusions and also analyze the validity of the licensee's methods for determining the exposure level.

Moreover, Professor Morgan's testimony will deal with the potential radiation dangers stemming from the method of on-site storage and release of radioactive effluent. That testimony will be elicited after laying a predicate built on meteorological data reflecting unique South Florida dangers caused by the possibility of surging tides and winds accompanying a major hurricane.^{2/}

WALTER GOLDBERG

Walter Goldberg is an associate professor at Florida International University. He received his Ph.D. in Oceanography from the University of Miami in 1973 and currently specializes in radioecological studies, evaluating the impact of radionucleoids on marine organisms and marine environments.

^{2/} The meteorological data is presently available from various published sources and reflects analyses of South Florida storms. The licensee's use of the 10.1 foot storm tide during Hurricane Betsy in 1965 fails to consider the potential dangers posed by more serious hurricanes. Since the Petitioner has not pursued the meteorological side of his case until counsel recommended it, the names of any witnesses are not presently available.

Professor Goldberg is a member of the Health Physics Society and served as a consultant to the Florida Department of Environmental Regulation to assist in the review of the Florida Power and Light site certification application for the St. Lucia No. 2 plant. He has some expertise in South Florida weather conditions.

Building on that expertise and the meteorological data to be submitted, Professor Goldberg will examine the possible consequences of escape of radioactive material from the on-site waste facility and the cooling canals. Obviously the integrity of the stored steam generator seals will be considered, since leakage upon the earthen floor, washed and drained by underground flooding resulting from strong storm activity, could seriously damage Biscayne Bay and inland areas. Similarly, strong winds and tides surging over the cooling canal system could create a similar effect.^{3/}

Professor Goldberg will focus on the marine dangers; Professor Morgan will focus on the risk to human health and safety caused by such eventualities.

^{3/} The NRC Staff Response of May 23, 1979, p. 3, intimates that Petitioner's "environmental" claims are resolved by the decision in U.S.A. v. F.P.&L., No. 70-328-CA (S.D. Fla. 1971). The admonition against Turkey Point discharges into Biscayne Bay contained in that decision would be small consolation to human and marine life accidentally destroyed as a result of a serious storm. The thrust of the Petitioner's case is the danger to life proposed by the suggested repairs; an issue the NRC is supposed to consider. NRC staff misses the point when it seeks to dismiss Petitioner's environmental claims as beyond the jurisdiction of this Board.

B. THE 10 CFR §2.714(a)1 STANDARDS

Resolution of this Petition to Intervene is governed by the several factors enumerated in 10 CFR §2.714(a)(1)(ii)-(v). We address those factors in light of the material submitted above.

THE AVAILABILITY OF OTHER MEANS WHEREBY
THE PETITIONER'S INTEREST WILL BE PRO-
TECTED AND THE EXTENT TO WHICH PETITION-
ER'S INTEREST WILL BE REPRESENTED BY
EXISTING PARTIES.

Unless the Petitioner is permitted to participate, the public safety and health issues presented by the Turkey Point repairs will be determined primarily by NRC staff. We do not denigrate the ability and commitment of that staff, but in matters which vitally affect the health and safety of thousands of South Florida residents, it is not unfair to ask that those residents have a chance to be heard on a subject which is critical to their future.

The NRC staff's understanding of the unique environmental problems here is remote and the Commission is even more removed from South Florida safety considerations. Commissioner Calinsky, testifying before the special panel appointed by President Carter to investigate the Three Mile Island accident said:

"Safety is still the number 1 area for the Commission, there's no question of that. But it has not delved as deeply, I think, into the details of that area of decision-making as it has in other areas."

-Miami Herald, June 2, 1979, p. 2A.

Leaving the resolution of the licensee's application only to the NRC staff and the licensee will prevent the "deeper delving" which can only occur when critical or opposing viewpoints are aired. Hearings after an accident come too late. Hearings before the repairs are made cannot insure the safety and health of South Florida residents, but they can guarantee that a decision made by this Board or the NRC is based on all relevant information.

For example, we are concerned about various inconsistencies in the licensee's position which have occurred throughout their submissions. Without belaboring the point, we note that Section 3.4.5.1(d) of the Steam Generator Repair Report says "90 days of radioactive decay assumed prior to cutting operations." Section 5.2.2.1(e) of the Report states "15 days of radioisotopic decay were assumed prior to cutting the reactor pipes." Which statement is accurate? Permitting the Petitioner to participate would allow these queries to be raised and resolved.

The essence of Petitioner's position is that he is entitled to an opportunity to be heard. NRC staff does not speak for him. The licensee does not speak for him. Therefore his interests cannot be protected by those parties. His attempt to intervene has a constitutional foundation. The Fifth Amendment provides protection against deprivation of life, liberty or property without due process of law. The regulatory authorization for intervention is an effort to provide due process for interested and affected citizens. Armstrong v. Manzo, 380 U.S. 545, 552 (1965) defined due process this way:

A fundamental requirement of due process is 'the opportunity to be heard' Grannis v. Ordean, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

Granting Mark Oncavage a hearing prior to permitting the steam generator repairs is the only meaningful time for protecting the life and property of all South Florida residents.

THE EXTENT TO WHICH PETITIONER'S PARTICIPATION MAY REASONABLY BE EXPECTED TO ASSIST IN DEVELOPING A SOUND RECORD AND THE EXTENT TO WHICH THE PETITION WILL BROADEN OR DELAY THE PROCESSING

By telephone conversations on June 4, 1979, undersigned counsel has obtained commitments from Professors Morgan and Goldberg to testify in the manner proffered above.^{4/} Hopefully this representation alleviates the licensee's concern over the Petitioner's failure to present evidence on the nature, scope and relevancy of the testimony. Florida Power and Light Response, May 21, 1979, p. 6.

Similarly, we have addressed the NRC staff's request for the identity and qualifications of Petitioner's witnesses. In addition, by presenting testimony from Dr. Morgan concerning occupational radiation exposure, we have raised a "significant matter not considered by the staff." NRC Staff Response of May 23, 1979, p. 4. Compare also the NRC Staff Response of April 6, 1979, which may fairly be read as supporting Petitioner's intervention if he became more specific regarding witnesses and testimony. He has now provided that information and demonstrated the contribution he can make to a sound record.

^{4/} The only caveat to those commitments regards the date of the hearing, should one be set. Dr. Morgan has international travel plans this summer.

Allowing the Petitioner to intervene will not cause serious delay or broadening of the proceedings. While it is true that another party creates additional issues, the benefit derived from hearing opposing contentions far outweighs any small time savings gained by exclusion of Mr. Oncavage. A pre-hearing conference will serve to narrow and define the scope of the hearing, thereby eliminating redundant and irrelevant testimony. Stipulations can save time. Submission of written materials without live testimony may expedite the proceedings. Numerous devices are available to the Board for insuring the integrity of the hearing process.

Finally, to the extent that the presence of counsel enhances a fact finding proceeding, the commitment of counsel to this case also helps insure the ability of the Petitioner to present a sound record.^{5/}

^{5/} Undersigned counsel has submitted a Notice of Appearance pursuant to 10 CFR §2.713(a) and will serve as lead counsel in this matter. He has commitments from several other South Florida lawyers to assist in the preparation of this case if Mr. Oncavage does become an intervenor. No useful purpose would be served by submitting additional Notices of Appearance until Mr. Oncavage's intervention status is determined.

CONCLUSION

For the foregoing reasons, MARK P. ONCAVAGE's
Petition to Intervene should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bruce S. RCGOW", written over a horizontal line.

BRUCE S. RCGOW
Nova University Center for
the Study of Law
3301 College Avenue
Fort Lauderdale, Florida 33314
(305) 587-6660

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

FLORIDA POWER AND LIGHT COMPANY)

(Turkey Point, Units 3 and 4))
)
)
)
)
)
)

Docket No.(s) 50-250SP
50-251SP

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

16th day of July 1979.

Regina T. Downing
Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

FLORIDA POWER AND LIGHT COMPANY)

(Turkey Point, Units 3 and 4))
)
)

Docket No.(s) 50-250SP
50-251SP

SERVICE LIST

Elizabeth S. Bowers, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. David B. Hall
400 Circle Drive
Santa Fe, New Mexico 87501

Dr. Oscar E. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Counsel for NRC Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Florida Power and Light Company
ATTY: Dr. Robert E. Uhrig
Vice President
P.O. Box 529100
Miami, Florida 33152

Michael A. Bauser, Esq.
Lowenstein, Newman, Reis,
Axelrad and Toll
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mr. Mark P. Oncavage
12200 S.W. 110th Avenue
Miami, Florida 33176

Norman A. Coll, Esq.
Steel Hector & Davis
1400 S.E. First National Bank Building
Miami, Florida 33131

Martin H. Hodder, Esq.
1131 N.E. 86th Street
Miami, Florida 33138

Joel V. Lumer, Esq.
245 Catalonia Avenue
Coral Gables, Florida 33134