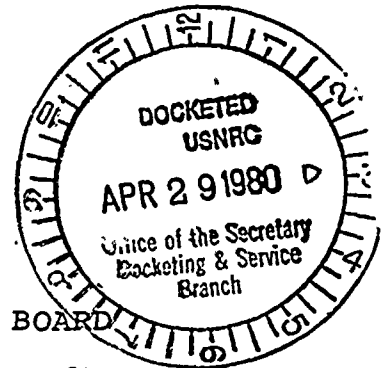


RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



April 28, 1980

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

AMENDMENT TO LICENSEE'S RESPONSE TO REQUEST
FOR PRODUCTION OF DOCUMENTS

On April 22, 1980, Licensee served "Licensee's Response to Request for Production of Documents." Paragraph 6 of that pleading should be amended as follows:

6. As previously indicated in responses served by FPL 1-31-80 to Request 1-14, the Board has ordered FPL to provide information either in a revision to the SGRR or in testimony concerning the tests that are planned to assure containment building and reactor coolant system integrity following the repair. On April 1, 1980, Licensee served the Board and the parties with copies of Revision 7 to the Steam Generator Repair Report and a copy of a letter of transmittal dated March 28, 1980 from FPL to the NRC Staff. As indicated on page two of that letter of transmittal, "Chapter 4 of the SGRR has been revised to include additional details on the return to service testing

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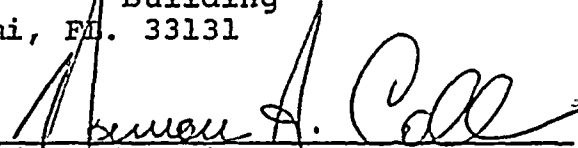


which will be done to verify the integrity of the reactor coolant system and the containment building. This information is in response to the Atomic Safety and Licensing Board Order dated October 11, 1979."

Respectfully submitted,

STEEL, HECTOR & DAVIS
Co-Counsel for Licensee
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By


NORMAN A. COLL

DATED: April 28, 1980

cc: See attached Certificate of Service.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the attached
"Amendment to Licensee's Response to Request for Production
of Documents," captioned in the above matter, were served on
the following by deposit in the United States mail, first class,
properly stamped and addressed, on the date shown below:

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Chairman
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U. S. Nuclear Regulatory Commission
Washington, DC 20555

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DATED: April 28, 1980

3/26/80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S RESPONSE TO MOTION TO AMEND CONTENTIONS

On March 11, 1980, Mark Oncavage (Intervenor) moved to amend Contention 1 to include a Contention 1B. Contention 1 asserts that an Environmental Impact Statement (EIS) must be prepared prior to the issuance of operating license amendments authorizing the repair of the steam generators of Turkey Point Units 3 and 4. The Intervenor's proposed Contention 1B states:

The application of Florida Power and Light for an amendment to its facility operating license involves a material alteration of a licensed facility which requires a construction permit to issue prior to the issuance of the amendment, which in turn requires the preparation of an environmental impact statement.

The Licensee respectfully submits that this motion should be denied.

Although the proposed motion refers to the requirement for a construction permit, the language of the motion seems to indicate that the only relief requested is the preparation of an EIS. The Intervenor proposes to amend Contention 1, which is solely related to the preparation of an EIS, rather

than to add an independent contention, and states that the instant motion simply presents "grounds different" from those earlier asserted concerning the need for an EIS. (Motion, p. 3)

At the time the Intervenor filed his motion, he may not have been aware of several events which have rendered moot the contention that the preparation of an EIS is required. On March 4, 1980, the Commission issued an order which required the NRC Staff to prepare an EIS for the steam generator repairs for Surry Unit 1.^{1/} In a letter dated March 6, 1980, to which the motion does not refer, the NRC Staff informed this Board that it intends to prepare an EIS for the Turkey Point repairs. Since the Staff's action provides the relief requested by Contention 1 and proposed Contention 1B, they are both moot. Consequently, the instant motion should be denied.^{2/}

The foregoing should dispose of the motion. However, the proposed contention states that there is here involved "a material alteration of a licensed facility which requires a construction permit to issue" As we demonstrate below, if the motion is read as suggesting that a construction permit is required to make the steam generator repairs, it is

^{1/} Virginia Electric and Power Company (Surry Nuclear Power Station, Units 1 and 2), CLI-80-4, 11 NRC (March 4, 1980).

^{2/} It would also be appropriate for the Board to dismiss Contention 1.

a late filing which lacks good cause. Therefore the merits need not be addressed. However, the statement seems to be based on so significant a misreading of the regulations as to justify some comment.

The motion states:

If an application for an amendment to a license involves a material alteration to a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the licensee. 10 C.F.R. §50.91. Alteration, as used in that regulation, means a change in a technical specification or a change which involves an unreviewed safety question.

(Motion, p. 5)

This is incorrect. Without referring to 10 CFR § 50.59, the statement confuses that section with the material alteration section, 10 CFR § 50.91.^{1/} Section 50.59 permits the holder of an operating license, among other things, to make

^{1/} The motion also confuses "unreviewed safety question" with another term, "unresolved safety issue." See Motion, p. 6. "Unresolved safety issues" are defined as those generic safety issues whose safety significance in individual plants is such that the issue does not prohibit continued operation or licensing actions while the Commission's generic review is progressing. "NRC Program for the Resolution of Generic Issues Related to Nuclear Power Plants," January 1978, NUREG-040, p. viii; "Identification of Unresolved Safety Issues Relating to Nuclear Power Plants," January 1979, NUREG-0510, p. 4. The Commission is required to develop a plan to implement corrective measures for unresolved safety issues and to submit this plan to Congress pursuant to Section 210 of the Energy Reorganization Act of 1974 as amended, 42 U.S.C. § 5851. If the Intervenor is suggesting that an unresolved safety issue is equivalent to a material alteration, we are aware of no basis for support of such a novel proposition, and the Intervenor has offered no evidence of his own.

changes in the facility without authorization from the NRC, but requires that an application for an operating license amendment be made if what is proposed involves either "an unreviewed safety question," as defined in the regulation, or a change in technical specifications. Most operating license amendments are issued only because a change in technical specifications or an unreviewed safety question is involved. Nothing in section 50.59, 59.91, in Commission practice or in precedent supports the implication that every change involving an unreviewed safety question or a change in technical specifications is also a material alteration which requires the issuance of a construction permit.^{1/} In fact, the Commission has consistently issued license amendments for changes in facilities which involved unreviewed safety questions without requiring a construction permit under § 50.91. Even though amendments may involve extensive repairs, changes or additions, only on the rarest occasions has the Commission considered a "material alteration" to be involved. See

^{1/} The motion (pp. 3, 6) refers to 38 Fed. Reg. 22796 (1973) and 39 Fed. Reg. 10554 (1974) in this context. Neither of these notices defines or interprets "material alteration"; they merely state that under § 50.59 a change in a facility which involves an unreviewed safety question requires the issuance of an amendment, pursuant to § 50.90. The Intervenor's reliance upon these Federal Register notices is wholly misplaced.

Portland General Electric Co. (Trojan Nuclear Plant),
LBP-77-69, 6 NRC 1179, 1183 (1977).^{1/}

In fact, we have been able to discover only two cases in which an applicant for an amendment was required to seek a construction permit because a material alteration within the meaning of § 50.91 was found to be involved. The first case, referred to in the Trojan decision, involved an application by the University of Maryland for authorization to replace its Allis-Chalmers control rods, their drive mechanism, the control room panels, and instrumentation with those of a Triga design. This "change essentially rendered major portions of the original safety analysis for the facility inapplicable to the modified facility." 6 NRC at 1183. The second involved a request by Nuclear Fuel Services (NFS) to expand the capacity of its fuel reprocessing plant at West Valley from 300 MTU/year to 750 MTU/year, i.e., by 2 1/2

^{1/} In Trojan, the Licensing Board held that modification of a spent fuel pool did not constitute a material alteration of a facility. Other operating license amendments not deemed to constitute material alterations include change in the fuel assembly lattice, Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Notice of proposed amendment 39 Fed. Reg. 24046 (June 28, 1974); Boston Edison Company (Pilgrim Nuclear Power Station, Unit 1), Notice of proposed amendment 39 Fed. Reg. 4798 (Feb. 7, 1974); Niagara Mohawk Power Corporation (Nine Mile Point, Unit No. 1), Notice of proposed amendment 39 Fed. Reg. 5528 (Feb. 13, 1974); an increase in authorized power, Carolina Power and Light Company (H.B. Robinson, Unit No. 2), Notice of proposed amendment 39 Fed. Reg. 15061 (April 30, 1974); and, as we point out below, repair of steam generator lower assemblies.

times. Both of these modifications entailed extensive construction and significant changes in the design of the facility. The Commission found that the NFS amendment would "result in a substantially different facility,"^{1/} and "the Final Safety Analysis Report (FSAR) which served as the basis for the initial license and the technical specifications . . . would, for all practical purposes, no longer be suitable."^{2/}

If the steam generator repairs are compared to these two modifications, little similarity can be found. The repairs will not result in a "substantially different facility," nor will they significantly alter the design of the plant or render "major portions of the original safety analysis for the facility inapplicable to the modified facility." The steam generator repairs are essentially major maintenance operations which do not constitute the type of substantial alteration which was present in both the NFS and University of Maryland cases. Basically, the repairs entail replacement of defective parts with new parts of a similar design. To the extent that the repaired steam generators will utilize a slightly different design, this design change will have

1/ 38 Fed. Reg. 31985 (Nov. 30, 1973). NFS later withdrew its application for an amendment for reasons not relevant here.

2/ Letter from S. H. Smiley (AEC) to Robert N. Miller (NFS), dated May 25, 1972.

no affect upon the safety analysis performed in the Turkey Point FSAR.^{1/}

Directly in point is the holding in Virginia Electric and Power Co. (Surry Power Station, Units 1 and 2), DD-79-19, 10 NRC 625, 654-661 (1979). The petitioners in that case argued inter alia that the amendment authorizing the Surry steam generator repairs was issued in violation of NRC regulations, because the repairs constituted a material alteration of a facility under § 50.91 for which no construction permit was obtained. The Director of Nuclear Reactor Regulation rejected this contention and explicitly held that the steam generator repairs were not a material alteration. The Commission has declined to review this aspect of the Director's decision. CLI-80-4, 11 NRC ___, slip op. p. 2 (March 4, 1980).

There is, moreover, doubt as to the Board's jurisdiction to consider a contention which requests that a construction permit be obtained pursuant to § 50.91. It is the function of the NRC Staff to review an application and determine whether it is acceptable for docketing. 10 CFR § 2.101. If the application is acceptable, a notice of hearing or of proposed action will be issued by the Commission. 10 CFR §§ 2.104 and 2.105. It is this notice which designates

^{1/} See SGRR § 5.1; SER §§ 3.3 and 3.4.1.

the proceeding as a construction permit proceeding under § 50.91 or as an operating license amendment proceeding,^{1/} and it is this notice which defines the jurisdiction of the licensing board. See Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n. 5 (1979). The notice for the Turkey Point steam generator repairs specified that this proceeding would be an amendment proceeding. 42 Fed. Reg. 62569 (1977).

Although we believe it might be helpful to attempt to clarify the misconceptions evidenced by the motion, we do not believe it necessary for the Board to address the issue. Even if the motion is interpreted as requesting that the need for a construction permit be made a contention -- and we submit it should not be so interpreted -- the Intervenor has not established good cause for the late filing of such a supplemental contention, as required by 10 CFR § 2.714.^{2/} Essentially, the Intervenor has attempted to justify his

^{1/} See notice in Nuclear Fuel Services Inc. (West Valley Reprocessing Plant), 39 Fed. Reg. 10471 (1974); University of Maryland, 35 Fed. Reg. 4082 (1970).

^{2/} At several places during the Intervenor's discussion of the "Subject Matter of the Proposed Amendments to the Contentions," the Intervenor refers to testimony or evidence which he intends to introduce in a hearing on the repairs. This evidence is irrelevant to good cause for the late filing and to the material alteration question.

tardiness on the grounds that the Licensee's responses to the Intervenor's interrogatories has provided him with new information upon which to base his proposed contention. (Motion, p. 2) However, the Intervenor only cites the responses to five interrogatories, none of which are at all relevant to a showing of good cause.

The Intervenor first references the answers to Interrogatories 1-7 and 1-8, which state that SGRR § 2.2 contains FPL's basis for concluding that the repaired steam generators will not undergo degradation. Since the Intervenor had access to the SGRR when he first filed his contentions, these responses can hardly be termed "new information" sufficient for a showing of good cause. Moreover, the responses provided no new information regarding the design of the repaired steam generators. At a minimum, a "material alteration" requires a change in facility design. Since the responses did not alter the design specifications in the SGRR, they cannot be utilized to establish good cause for an untimely contention regarding a material alteration of a facility.

The Intervenor also references the answers to Interrogatories 6-11, 6-21, and 6-35. However, all of these interrogatories pertain to the steam generator storage building. Since the Intervenor has been aware of the plans to build a storage building since the beginning of this proceeding, he cannot claim that its construction is "new information" sufficient to constitute good cause for this untimely motion.

In short, the Intervenor has relied upon the responses to his interrogatories as his "good cause" for the late filing, but has not shown why he was incapable of raising this same contention with his previous filings. In the absence of a demonstration of inability to have proffered this contention in a timely fashion, the Intervenor has not established good cause.

Accordingly, the Licensee requests that the Board deny the Intervenor's motion as moot. In the alternative, it should be denied because the proposed contention is late filed without good cause.

Respectfully submitted,



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Dated: March 26, 1980

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NUCLEAR REGULATORY COMMISSION

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)	50-251-SP
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)	Repairs)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the attached "Licensee's Response to Motion to Amend Contentions," dated March 26, 1980, captioned in the above matter, were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below:

Elizabeth S. Bowers, Esq.
Chairman
Atomic Safety and Licensing
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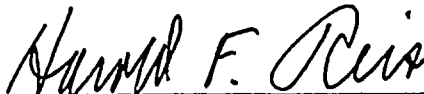
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