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 COLL. N.A. Steel, Hector & Davis
 RECIP. NAME RECIPIENT AFFILIATION
 Atomic Safety and Licensing Board Panel

SUBJECT: Response in opposition to Oncavage 801209 motion to permit
 intervenor & experts to enter site for insp, measuring &
 testing property or objects & for production of documents.
 Motion is irrelevant. Certificate of Svc encl.

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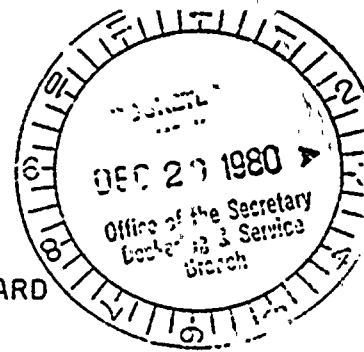
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	(Proposed Amendments to
Generating Unit Nos. 3)	Facility Operating License
and 4))	to Permit Steam Generator
)	Repairs)

LICENSEE'S RESPONSE IN OPPOSITION TO INTERVENOR'S
"MOTION TO PERMIT ENTRY UPON
TURKEY POINT SITE"

I. INTRODUCTION

On December 9, 1980, Mark Oncavage (Intervenor) served a document entitled "Motion to Permit Entry Upon Turkey Point Site" (Motion). The Motion requests the Licensing Board to issue an order authorizing "the Intervenor and any experts designated by the Intervenor to enter upon the Turkey Point Site for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon pursuant to 10 CFR 2.741."^{1/} The Motion also requests the production of documents insofar as it also indicates "That the Intervenor wishes to examine the Plant Survey Reports

^{1/}Motion, p.1.

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starting January 1, 1978, the environmental radiological monitoring data starting January 1, 1978, and the workers (sic) dosimetry records starting January 1, 1978 . . .".

2/ The Motion further states ". . . and in addition [Intervenor] wishes to do a physical radiological survey of Turkey Point and Environs, to obtain samples of the air, water, soil, sediment, and various biota forms."3/

Florida Power and Light Company (Licensee) hereby submits its response in opposition to the Motion.

II. THE MOTION IS DEFECTIVE

The Intervenor's Motion is defective for several reasons.

First, the Motion is not authorized by, and in fact is inconsistent with the Commission's regulations. Although the Motion states that it is made "pursuant to 10 CFR 2.741"4/, Section 2.741 provides that a "party may serve on any other party a request" for production of documents or entry upon land; it does not authorize the filing of a motion for such purposes. On this ground alone, the motion should be denied in its entirety.

2/Motion ¶8, p.2.

3/Motion ¶8, pp.2-3.

4/Motion, p.1.

Nor, in Licensee's view, can the Motion appropriately be construed as a Request under Section 2.741. But, in the event the Board disagrees, Licensee submits that the Motion does not satisfy the provisions of that section, and Licensee objects to it for the reasons set forth below.

A. Request For Entry Upon Land

With respect to the request for entry upon the Turkey Point site, 10 CFR § 2.741(a)(2) provides that a request may be made to

"(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 2.740.

(emphasis added).

Under Section 2.740(b) the scope of discovery ". . . shall relate only to those matters in controversy which have been identified . . ." as issues to be litigated in the proceeding.

However, the request by Intervenor for access to the Turkey Point Site is unrelated to the contentions concerning the Turkey Point Steam Generator Repair Program which is the subject matter of this proceeding. The "grounds" asserted by Intervenor for the grant of the Motion

are contained in the first six (6) numbered paragraphs. All relate to alleged "recent and continuing problems with the steam generators"^{5/} arising from (i) the discovery of a leak in a plugged tube in a steam generator in Unit 3 on or about November 19, 1980 which resulted in a "voluntary shut-down" of that Unit by FPL November 22, 1980,^{6/} (ii) unspecified "previous problems that have occurred in November of this year",^{7/} and (iii) an alleged recent ". . . rumbling probably caused by surging water [which] shook Unit Number Three and broke a two inch pipe that spewed out thousands of gallons of cooling water"...^{8/}

Based upon these allegations, Intervenor then concludes:

7. That Mark Oncavage as the Intervenor has the right to make an independent inspection to determine what damage if any these latest problems have caused to the steam generators and whether or not there has been radioactive leakage into the various cooling canals and surrounding areas of the Turkey Point Site.

The "latest problems" referred to in the Motion all relate to current operation of the plant. But the purpose

^{5/}Motion, p.1, ¶1.

^{6/}Motion pp. 1-2 ¶¶2,3,5.

^{7/}Motion p.2, ¶4.

^{8/}Motion p.2, ¶6.

of this proceeding is to consider impacts relating to the proposed Steam Generator Repair Project, and not current plant operation. Indeed, this Board has previously rejected an attempt by Intervenor to raise contentions concerning operation of the plant.^{9/} Licensee, therefore, objects to this Request, and Intervenor's Motion should be denied for this reason alone.

The Motion does assert, without explanation, "that the above inspections are relevant and could lead to admissible evidence concerning contentions number 2, 3, 7, 9, and 13."^{10/} To the extent that this assertion is related to Intervenor's request for access to the Site, reference to these contentions demonstrates that it simply is not correct.

Contention 2 questions whether occupational exposures during the repairs will be maintained as low as is reasonably achievable (ALARA) if transient workers with unknown radiation histories are used, or whether a sufficient work force can be obtained. Contention 3 questions whether activities involving handling of primary coolant or laundry waste water "during the course of the repairs" is likely to result in releases of radioactive material which will not be ALARA. Contention 7 relates to

^{9/}See "Order Relative to Contentions and Discovery" September 25, 1979, p.4.

^{10/}Motion, p.3, ¶8.

the cost of, anticipated effluents to be released from, and extent of any environmental degradation caused by a full flow condensate polishing demineralizing system.^{11/}

Contention 9 is addressed to "Cumulative offsite radiation releases . . . during the proposed repairs". Contention 13 questions whether the proposed method of radiation monitoring "during the proposed repairs" will provide accurate information.

It is not apparent how entry upon the site is relevant to these contentions or would lead to the discovery of admissible evidence relevant to these contentions. Nor does Intervenor make any effort to demonstrate such relevance. Intervenor's request to "immediately allow the Intervenor" entry upon the Turkey Point site is objectionable for this additional reason and his Motion should be denied.

^{11/}FPL has previously responded fully to extensive interrogatories propounded by Intervenor which state the cost of, anticipated effluents to be released from, and extent of any environmental degradation caused by a full flow condensate polishing demineralizer system. See FPL responses of 1-31-80 to requests 1-30, 7-2, 7-3, 7-4, 7-11, 7-12, 7-16, 7-18, 7-23, 7-24 thru 7-27; responses of 12-17-79 to requests 7-1, 7-7, 7-14, 7-19, 7-20, 7-21, 7-22, 7-24, 7-25, 7-26, 7-28; letter of March 18, 1980 from Dr. Robert E. Uhrig, FPL to NRC, in reply to NRC staff letter of November 19, 1979, a copy of which was sent to the Board and the parties.

Moreover, recent court decisions which have construed Fed.R.Civ.P. 34, which is substantially identical to 10 CFR § 2.741, hold that a more stringent standard than mere relevancy is necessary to authorize a discovery excursion upon land, and that a showing of "good cause" is required. In Belcher v. Bassett Furniture Industries, Inc., 588 F2d. 904 (4th Cir. 1978), the Court reversed the trial court's grant of a request by the plaintiff, in an employment discrimination class action, to inspect five of the defendant's plants whose operations were in issue. The Court held:

Rule 34, concerning the production of documents and tangible things as well as inspection of premises, is governed by the standards of rule 26(b). There is not, however a clear indication of which standard defined by 26(b) is to control the proposed inspections. The conflicts in the courts which led to the 1970 amendments centered almost entirely around the production of documents. Consequently, the realignment of rules 34 and 26, along with the advisory committee's notes, largely concerned documents. Since entry upon a party's premises may entail greater burdens and risks than mere production of documents, a greater inquiry into the necessity for inspection would seem warranted. We therefore reject the plaintiffs' contention that the inspection in this case must necessarily be governed by the general relevancy standard of rule 26(b). Rule 26(c) expressly provides that "for good cause shown," the court may "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" by either denying inspection or by appropriate restrictions on the inspection.

Under this subsection, the degree to which the proposed inspection will aid in the search for truth must be balanced against the burdens and dangers created by the inspection.^{12/}

^{12/} See 8 Wright & Miller, Federal Practice & Procedure § 2040, at 286-287 (1970). As recognized by the commentators:

* * * (i)t is clear that the right to discovery is a qualified right that does not extend to making unnecessary and unwarranted excursions onto the property of another under the guise of supportable litigative need. Public policy supports reasonable and necessary demands for information in the hands of the adversary, in order that the case may be well and truly tried. But any such invasion of a person's property rights must, in the language of our Supreme Court, 'be judged with care Properly to balance these competing interests is a delicate and difficult task.'

Hughes & Anderson, [Discovery: A Competition Between the Right of Privacy and The Right to Know, 23 U. Fla. L. Rev. 289, 291 (1971)] (quoting Hickman v. Taylor, 329 U.S. 495, 497, 67 S.Ct. 385, 91 L.Ed. 451 (1947)).

Id., 588 F.2d at 908. (Footnotes 10, 11 are omitted; emphasis added).

The Motion, construed to be a request pursuant to § 2.741, is patently defective for another reason. Section 2.741(c) states:

Contents. The request shall set forth the items to be inspected either by individual item or by category, and describe each item

and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The Motion fails to identify what portion of the site "the Intervenor and any experts designated by the Intervenor" desire to visit, the nature or extent of the contemplated "inspection, measuring, surveying, photographing, testing or sampling", or the proposed "physical radiological survey of Turkey Point and Environs, to obtain samples of the air, water, soil, sediment, and various biota forms". Such a request fails to comply with the requirements of particularity imposed by Section 2.741(c). Rather, it is in the nature of a "'fishing expedition'" which should in "no event . . . be permitted." 10 C.F.R. Part II, App. A, § IV(a).

In addition, no experts are designated or identified and no disciplines or areas of expertise are described. In Belcher, the Fourth Circuit specifically noted "The motion broadly states that the inspection is to be conducted over a five-day period by a designated expert. While the expert is identified, his special expertise is not described," Belcher v. Bassett Furniture Industries, Inc., supra, 588 F.2d at 906, in concluding that the district court's order granting the motion was an abuse of discretion:

It [the order] fails to identify the items to be inspected with any degree of particularity, fails to insure the reliability of

the information to be gained, and provides inadequate protection for the defendant . . . On the present showing, plaintiffs were not entitled to the order as granted and we find its issuance improvident.

Id., 588 F.2d at 911.

Consequently, Licensee objects to the Intervenor's Request for entry upon the Turkey Point site, and Intervenor's Motion should be denied.

B. Request for Documents

Paragraph 8 of the Motion states:

"8. That the Intervenor wishes to examine the Plant Survey Reports starting January 1, 1978, the environmental radiological monitoring data starting January 1, 1978, and the workers dosimetry records starting January 1, 1978 . . ."

To the extent that the stated "grounds" for the production of these records are those identified in paragraphs 1 through 7 of the Motion, FPL objects to the production of these records for the reasons set forth above.

To the extent that Intervenor seeks production of these documents, as indicated in paragraph 8 of the Motion, as allegedly relevant to contentions 2, 3, 7, 9, and 13 FPL objects and responds as follows:

1. Plant Survey Reports - January 1, 1978 to date.

Objection: This Request is irrelevant and immaterial to the contentions and the subject matter of this
-10-



proceeding; is not designed to lead to the discovery of admissible evidence; and is unduly burdensome, oppressive, and expensive.

Plant Survey Reports are prepared by radiation protection personnel at the plant as part of the overall Health Physics effort to maintain exposures ALARA. Levels of radiation and contamination are measured and recorded in defined areas of the plant routinely on a daily, weekly, and monthly/quarterly basis during normal operation, and additional Plant Survey Reports are prepared on a daily basis during normal shutdown. Additional Plant Survey Reports may be made on an unscheduled basis in the event that specific tasks are planned to be performed in an area, either during normal operation, or during normal shutdown. During a five day work week an average of 12 to 15 Plant Survey Reports are prepared per day.

An active file of Plant Survey Reports is maintained for a period of three to twelve months; all other Plant Survey Reports are reduced to microfilm, usually annually, on a batch basis with other plant records. Consequently, Plant Survey forms are not contained on separate microfilm cassettes, and review of all microfilm cassettes would be necessary to locate any Plant Survey Reports for a given year.

The contentions referred to in the Motion relate to occupational exposures during the repairs (Contention



2), anticipated releases involving handling of primary coolant or laundry waste water during the repairs (Contention 3), the cost of, effluents from, and degradation caused by, a full flow condensate polishing demineralizer system (Contention 7), cumulative offsite radiation releases during the proposed repairs (Contention 9) and proposed methods of radiation monitoring during the proposed repairs (Contention 13). Information contained in Plant Survey Reports from January 1, 1978 to date would not be relevant or material to the resolution of these Contentions and would not lead to the discovery of admissible evidence. It would also require a considerable expenditure of man-power, and would be unduly expensive, burdensome, and oppressive for the Licensee to produce these documents. Licensee objects to the production of these documents.

2. Environmental Radiological Monitoring Data - January 1, 1978 to date.

In paragraph 14 of "Intervenor Mark P. Oncavage's Request for the Production of Documents from Licensee, Florida Power & Light Company" served March 18, 1980, Intervenor requested:

14. The reports containing the test results of all environmental radiological sampling and analyses done since Turkey Point Units 3 and 4 began operations. This information is relevant to contentions 9 and 11.

In its response, dated April 22, 1980 FPL stated:

14. Response. FPL will produce copies of the annual reports it files with the Nuclear Regulatory Commission, and copies of the State of Florida, DHRS, reports to FPL, for the past 3 years.

FPL had previously provided a similar response January 31, 1980 to Interrogatory 9-1F, in which it was indicated:

- F. The reports containing the test results of all environmental radiological sampling and analyses since Turkey Point Units 3 & 4 began operations will be made available for inspection and copying, upon reasonable notice, during normal business hours.

and in response to Interrogatory 9-2, in which it was indicated:

- 9-2. . . .The results of the sample analyses of the Radiological Environmental Monitoring Program are reported to the NRC semi-annually within 60 days following January 1st and 60 days following July 1st covering the previous six months of operation. These reports are available in the local public document room, or will be made available for inspection and copying, upon reasonable notice, during normal business hours.

To date Intervenor has not sought to inspect such records in the possession of FPL. Licensee provides the same response to this discovery request, as those above.

3. Worker Dosimetry Records - January 1, 1978
to Date.

Objection: Individual worker dosimetry records are customarily held in confidence by the Licensee and not disclosed to third persons. There is a rational basis for having customarily held these records in confidence, because they are in the nature of medical records to which the individual has a right of privacy.^{12/} Licensee further objects to this request on the grounds that it is broad, general, non-specific as to personnel or their relationship to the steam generator repair program, irrelevant to the contentions, and not designed to lead to the discovery of admissible evidence.

Response. Summaries of individual dosimetry records, which list the number and type of workers exposed, the cumulative exposure of each type of worker, and the number of workers exposed to specified ranges of doses, on an annual basis, are on file and available for review at the local public document room. See, e.g. 10 C.F.R. § 20.407.

^{12/}See 10 C.F.R. § 9.5(1)(6)(i) which specifically exempts such records in the possession of the NRC from disclosure pursuant to Freedom of Information Act requests.

IV. CONCLUSION

Intervenor's stated reason for requesting entry upon the site demonstrates that it is not relevant to the contentions in the proceeding, but is instead directed only to a desire to investigate matters relating to current operation of the plant. Moreover, in addition to being irrelevant and not designed to lead to the discovery of admissible evidence in this proceeding, the request does not contain any showing of good cause. Licensee vigorously opposes this broad, non-specific, request by Intervenor to enter upon the site, "immediately", for an unspecified duration, with unidentified experts to conduct an undisclosed number and kind of tests, or a "physical radiological survey", or to obtain, in an unspecified manner "samples of the air, water, soil, sediment, and various biota forms".

The Motion should be denied.

DATED this 24th day of December, 1980.

Respectfully submitted,

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cc.: See attached service list.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket Nos. 50-250-SP
50-251-SP

IN THE MATTER OF)	
FLORIDA POWER & LIGHT COMPANY)	(Reposed Amendments to
(Turkey Point Nuclear Generating)	Facility Operating
Units Nos. 3 and 4)	License to Permit Steam
		Generator Repairs)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Licensee's Response in Opposition to Intervenor's "Motion to Permit Upon Turkey Point Site" 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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December 24, 1980