4/30/81

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
	)	Facility Operating License
(Turkey Point Nuclear Generating Unit Nos. 3 and 4)	)	to Permit Steam Generator Repairs)

LICENSEE'S RESPONSE IN SUPPORT OF NRC MOTION FOR SUMMARY DISPOSITION OF AMENDED CONTENTION 1 AND OBJECTIONS TO THE AMENDED CONTENTION

During the prehearing conference of March 24, 1981, the Licensing Board granted the Intervenor "leave to file on or before April 20, 1981, appropriate amendments to Contention 1 in order to plead with specificity the respects in which the FES*/ (due to be filed by the Staff by April 1) does not legally or factually comply with NEPA."**/ "Memorandum and Order (Prehearing Conference, March 24-25, 1981)" (April 2, 1981), p. 4. On April 20, 1981, the Intervenor served "Intervenor's Amendment to Contention 1" which proposes seventeen amendments to Contention 1. On

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*/ Final Environmental Statement for the Turkey Point Steam Generator Repair, NUREG-0743 (March 1981).

**/ National Environmental Policy Act, 42 U.S.C. § 4321, et seq.

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April 27, 1981, the NRC Staff filed a document entitled "NRC Staff Objections to Proposed Amended Contention 1 and Third Motion for Summary Disposition" (Staff Pleading). In that document, the NRC Staff moved for summary disposition of Contentions 1 and 4B. In a separate response to be filed shortly Florida Power & Light Company (FPL or Licensee) will express its support of the motion for summary disposition of Contention 4B.

In this pleading, FPL records its objections to amended Contention 1 and its support of the motion for summary disposition of that contention. This pleading also undertakes to demonstrate why any further requests for amendment by Intervenor at this time would be inappropriate and inequitable and should be denied.

I. Introduction

The Intervenor is proposing to amend Contention 1, which states:

> Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. § 4332(2)(C)) or 10 CFR § 51.5 requires the preparation of an Environmental Impact Statement prior to the issuance by the Nuclear Regulatory Commission of amendments to the operating licenses for Turkey Point Units Nos. 3 and 4 (Facility Operating Licenses Nos. DPR-31 and DPR-41) authorizing the Licensee to repair the steam generators now in use in each facility.

The contention was made at a time when the Staff view was that an environmental impact statement was not required and that an environmental impact appraisal would be adequate. However, thereafter, the Staff determined to prepare an impact statement and in the Licensing Board's view, Contention 1 was rendered "moot."*/ Intervenor, nevertheless, interpreted Contention 1 as related to the Board's duty to make a finding as to the legal and factual compliance with NEPA of the FES yet to be prepared. Tr. 14. As the Board noted, Contention 1 as so interpreted is wholly "lacking in specificity as a Contention." Tr. 35; 42-43. Thus, Contention 1, as it presently exists, fails to satisfy 10 CFR § 2.714(b), which requires that "the bases for each contention [be] set forth with reasonable specificity."

Nevertheless, in response to Intervenor's wish, the Board granted Intervenor an opportunity "to raise a Contention as to the adequacy and sufficiency, both legally and factually, of a Final Environmental Impact Statement to be filed and in the hands of the parties by April 1, 1981. The purpose was to give "Intervenor the opportunity to file a Contention with more specificity . . . ." Tr. 43. This was to be accomplished by submitting "appropriate

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*/ Prehearing conference (March 24, 1981), Tr. 11.

amendments" to Contention 1. However, the majority of the Intervenor's proposed amendments are not "appropriate." Most fail to meet the requisite test of specificity. The Board and the other parties lack sufficient notice as to what the Intervenor desires to litigate and it is difficult, if not impossible, to prepare a case on these proposed amendments. Many of the Intervenor's proposed amendments assert propositions which are invalid or unsubstantiated from a legal standpoint. Other proposed amendments are based upon patently erroneous descriptions of the FES. In short, the Intervenor was afforded the opportunity to file "appropriate amendments," but has neglected to take advantage of this opportunity. Consequently, the proposed amendments should not be accepted by the Board, and Contention 1 should be dismissed for lack of specificity. */

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*/ As we understand, the Board did not, by granting the Intervenor leave to file "appropriate" amendments to Contention 1, thereby rule that any amendment subsequently proferred by the Intervenor would be automatically admitted as a contention. So viewed, the proposed amendments do not have the status of admitted contentions unless and until the Board formally admits them; and, as a technical matter, summary disposition might be inappropriate as a procedure for disposing of the proposed amendments. On the other hand, the staff indicated it wished to address the legal status of the amended contention by way of summary disposition and this Board has permitted it so to proceed. (Tr. 52-53). We do not believe the technical distinction is significant here, particularly since the NRC staff has both moved for summary disposition of Contention 1 and objected to the proposed amendments. This pleading may be treated both as a response in support of the NRC Staff's motion to dismiss Contention 1 and as an objection to the admissibility of the proposed amendments.

In this regard, it should be noted that the Board is not required to recast these proposed amendments to make them acceptable. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). In the instant case, it would be particularly inappropriate for the Board to do so. The NRC Staff issued an Environmental Impact Appraisal for the Turkey Point steam generators' repairs in June 1979. The Draft Environmental Statement (DES) was issued in December of 1980. Consequently, the Intervenor has had adequate time to develop, clearly articulate and specify those matters which should be considered pursuant to NEPA. Moreover, the Intervenor was clearly warned by the Board at the March 24 prehearing conference that Contention 1 lacked the requisite specificity. Yet after being provided with the opportunity to submit appropriate amendments, the Intervenor still failed to submit specific proposed amendments. In these circumstances, the Board should reject the proferred amendments without further consideration of the means, if any exist, by which the proposed contentions might be made acceptable.

The discussion which follows indicates the defects in each proposed amendment and the reasons why it should not be accepted as an admissible contention in this proceeding. In some instances, several proposed amendments will be discussed as a group since they raise similar issues.

II. Discussion of Individual Proposed Amendments

A. Proposed Amendments 1 and 2

Proposed Amendment 1 states:

> The EIS failed to follow section 1501.7 of the NEPA regulations in that the Staff failed to invite interested persons to participate in a scoping process in which the scope of the EIS was to be decided.

Proposed Amendment 2 states:

> No record of decision was prepared for the Turkey Point Project in violation of 40 CFR 1505.2.

The Staff Pleading (pp. 6-7) demonstrates that both contentions, which refer to regulations of the Council on Environmental Quality (CEQ), are factually erroneous. The NRC conducted a process involving meetings and the publication of, first, an Environmental Impact Appraisal and then a DES with public notice, distribution to public agencies, governmental bodies and the Intervenor himself, together with a request for comment. Consequently, adequate opportunity was given to "interested persons," including the Intervenor, to comment on the impact statement and its scope. Even if any deviation from strict conformity with 40 CFR § 1501.7 occurred, it could hardly have affected the Intervenor's ability to contribute to the environmental evaluation process. So far as proposed Amendment 2 is concerned, the Staff Pleading also makes it clear that a decision has not yet been reached by this Board; consequently a record of decision need not yet be prepared.

However, even if a technical violation of a CEQ regulation could be determined to exist, proposed Amendments 1 and 2 would be inadequate. Both of these proposed amendments contain the implicit assumption that the FES is legally invalid because the NRC failed to comply with the regulations of the Council on Environmental Quality (CEQ), 40 CFR Parts 1500-1508. As demonstrated below, the Commission has not endorsed the regulations of the CEQ, and the existing rule in 10 CFR Part 51 governs the procedures for preparing and issuing an EIS in connection with NRC licensing activities.

10 CFR Part 51 "sets forth the Nuclear Regulatory Commission policy and procedures for the preparation and processing of environmental impact statements and related documents pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with the Commission's licensing and regulatory activities." 10 CFR § 51.1(b). After the adoption of Part 51, the President issued Executive Order No. 11,991 (3 CFR 123 (1977), reprinted in 42 U.S.C. § 4321 (1977)). This Order generally states that federal agencies shall "comply with the regulations issued by the Council [on Environmental Quality] except where such compliance would be inconsistent with statutory requirements." In response to the promulgation of regulations by the CEQ, the Commission determined

"'that a sound accommodation can be reached between NRC's independent regulatory responsibilities and CEQ's objective of establishing uniform NEPA procedures,'" and the Commission published a proposed revision of 10 CFR Part 51 "to take account voluntarily, subject to certain conditions," of the regulations of the CEQ. 45 Fed. Reg. 13739 (March 3, 1981). However, the Commission also stated that "[u]ntil a final rule is adopted, the Commission's present regulations will remain in effect." Id., 45 Fed. Reg. at 13740. A final rule has not yet been adopted by the Commission.

Thus, it is readily apparent that the Commission has not yet adopted the regulations of the CEQ, that the Commission does not consider itself bound by the regulations of the CEQ, and that the existing 10 CFR Part 51 governs the procedures for preparation and issuance of an EIS by the NRC Staff. Consequently, a contention which alleges that the NRC Staff failed to abide by the regulations of CEQ is an attack upon the Commission's regulations in 10 CFR Part 51, and it should be rejected. See 10 CFR § 2.758(a); Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 88-89 (1974).

B. Proposed Amendment 3

Proposed Amendment 3 states:

> The EIS is not a programatic [sic] EIS and a programatic [sic] EIS is required

as a result of the steam generator repairs that would be required nationally.

A programmatic environmental impact statement (PEIS) is not legally required in connection with the Turkey Point steam generator repairs. Therefore, the failure to issue a PEIS for the repairs does not render the FES legally invalid, and this proposed amendment should be rejected.

A programmatic EIS is required for several activities if there is a single proposal for major federal action with respect to the several activities or if there are several proposals pending currently before the agency with respect to activities which will have a cumulative or synergistic environmental impact. Kleppe v. Sierra Club, 427 U.S. 390, 399, 410 (1976). Neither of those situations is present in the instant case. The application for the Turkey Point steam generator repairs is not part of a proposal to conduct such repairs on a national basis. Moreover, the FES clearly indicates, and the Intervenor has not alleged to the contrary, that any environmental impacts attributable to the Turkey Point repairs will only occur on a local, and not a national basis. Consequently, a national PEIS is not required for the Turkey Point repairs.

This conclusion is fully consonant with NRC decisions with respect to activities similar to the Turkey Point repairs.*/

Finally, as was emphasized in Duke Power Company (Oconee/McGuire), 12 NRC 459, 473 (footnote omitted), "the scope of the environmental statement or appraisal must be at least as broad as the action being taken." Here the FES examines the environmental impacts, including accidents and radiological and nonradiological impacts, of the repair, and reasonable alternatives. It also examines the impacts of both storage of removed assemblies on site and shipment off-site. In short, the scope of the FES "is as broad as the action being taken."

C. Proposed Amendment 4

Proposed Amendment 4 states:

> The final EIS fails to comply with NEPA in that the EIS does not address (to the fullest extent possible) all environmental effects of proposed actions as

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*/ In Virginia Electric and Power Co. (Surry Power Station, Units 1 and 2), DD-79-19, 10 NRC 625, 639-42 (1979), the Director held that the Surry steam generator repairs did not require a PEIS. This decision was not disturbed by the Commission upon review. CLI-80-4, 11 NRC 405 (1980). Similarly, the Appeal Board has held that an amendment to an operating license to permit a spent fuel pool modification does not require a PEIS since such an expansion would only produce a local environmental impact. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 267-68 (1979).

well as all irreversible and irretrievable resources.

Obviously, this amendment is completely vague. It does no more than string together some phrases excerpted from Section 102 of NEPA to which it adds the word "all." There is no specification of the way in which "environmental effects" or "irreversible or irretrievable" commitments of resources were not addressed "to the fullest extent possible." Consequently, the basis for the amended contention is not set forth with sufficient specificity to comply with 10 CFR § 2.714(b).

The proposed amendment also contains an incorrect statement of law. NEPA embodies a "rule of reason" and does not require an EIS to address "all" theoretically possible environmental impacts of a proposed action; an EIS need only consider those significant impacts which could affect the outcome of the decision and those impacts which are likely to occur. Minnesota v. NRC, 602 F.2d 412, 418-19 (D.C. Cir. 1979); affirming Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48 (1978); Concerned About Trident v. Rumsfeld, 555 F.2d 817, 828 (1977); Environmental Defense Fund, Inc. v. Corps of Engineers, 348 F. Supp. 916, 933 (N.D. Miss. 1972), affirmed 492 F.2d 1123 (5th Cir. 1974); Duquesne Light Co. (Beaver Valley Power Station,

Unit No. 1), LBP-78-16, 7 NRC 811, 820 (1978), affirmed ALAB-484, 7 NRC 984 (1978). Consequently, this proposed contention is contrary to established law and should be rejected. In addition, as the Staff Pleading points out (pp. 7-8), the FES does in fact consider reasonably calculable environmental impacts and irreversible and irretrievable commitment of resources, and thus the FES complies with the appropriate legal standard.

D. Proposed Amendment 5

Proposed Amendment 5 states:

> The EIS fails to look at the socio-economic effects upon Florida Power and Light rate payers. Such effects must be examined fully within the EIS because the project entails direct significant environmental effects which are intertwined with the socio-economic effects.

This amendment also lacks any specificity or basis. Obviously the phrase "socio-economic effects" is so broad as to cover an almost limitless number of impacts. In addition, as discussed with respect to proposed Amendment 4, not all environmental effects related to a proposal must be considered in connection with the EIS for that proposal. Effects which are remote and highly speculative need not be evaluated in an EIS. Environmental Defense Fund, Inc. v. Hoffman, 566 F.2d 1060, 1067 (8th Cir. 1977); Concerned About Trident v. Rumsfeld, supra. Similarly, trivial or

insignificant impacts need not be considered in an EIS. Environmental Defense Fund, Inc. v. Corps of Engineers, supra; Beaver Valley Power Station, supra.

Socio-economic impacts upon rate-payers as a result of the Turkey Point repairs would be highly attenuated. Evaluation of such an impact would include many variables, including the actions of various state agencies. In short, the reference to socio-economic effects upon rate-payers as a result of the repairs is a catch-all for uncertain, remote and speculative consequences which are outside the purview of the "rule of reason" embodied in NEPA.*/

Since the "socio-economic effects" of the repairs upon rate-payers need not be considered in the FES, the FES is not legally invalid on this ground. Consequently, this proposed amendment of Contention 1 should not be accepted.

E. Proposed Amendment 6

Proposed Amendment 6 states:

> The EIS contains no glossary or table of definitions and consistently uses terminology beyond the ken of lay people.

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*/ It should be noted the the FES, § 4.2, concludes that the repairs will produce a net economic benefit in comparison to not undertaking the repairs. Consequently it appears that at least one "socio-economic" effect upon rate-payers will actually be minimized by performing the repairs. So viewed, failure to consider the socio-economic impacts did not affect the conclusion in the FES in favor of the repairs.

There is no requirement in NEPA that an EIS contain a glossary or definition of terms. The courts have indicated that an EIS "must be written in language that is understandable to non-technical minds and yet contain enough scientific reasoning to alert specialists to particular problems within the field of their expertise." Environmental Defense Fund, Inc. v. Corps of Engineers, supra. The Intervenor has not alleged that the FES is inconsistent with this standard, and thus this proposed amendment should be rejected.

The steam generator repairs involve technical subjects. Naturally, the FES reflects this fact and it discusses, as is necessary under NEPA, technical issues. Nevertheless, on its face, the language in the FES is adequate for its intended function of enabling the public to understand and consider meaningfully the factors involved in the repairs. See Sierra Club v. Morton, 510 F.2d 813, 819 (5th Cir. 1974). This proposed amendment should be rejected.

F. Proposed Amendment 7

Proposed Amendment 7 states:

> The estimates of worker exposure provided for in the final EIS are unreasonably low.

This proposed amendment is totally lacking in specificity or basis. The FES § 4.1.1.4 provides an estimate of the occupational exposures expected to be incurred during the repairs, and provides a basis for the reasonableness of

that estimate. In contrast, the Intervenor has not offered his own estimate and has not presented a basis for his allegation that the estimate in the FES is unreasonably low. Consequently, the proposed amendment does not conform with the requirements of 10 CFR § 2.714(b), and it should not be admitted as a contention.

G. Proposed Amendment 8

Proposed Amendment 8 states:

> The analysis of deaths and health effects likely to result from the action is invalid because it is based on outmoded scientific information.

This proposed amendment also lacks specificity or basis in that it does not identify the scientific information upon which the FES is based is "outmoded." Nor does it specify how the use of other scientific information would alter the conclusions in the FES. Consequently, this proposed amendment should be rejected.

It should be noted that the mere fact that the Intervenor may disagree about the validity of the scientific theory accepted in the FES is not a sufficient basis for attacking the legality of the FES. As long as an issue has been adequately discussed in an EIS, a difference of opinion among experts is not a ground for rejecting the explanations in the EIS. Sierra Club v. Morton, 431 F. Supp. 11, 19 (S.D. Tex. 1975). Since the FES fully explores the

health effects attributable to occupational exposures and bases its position on responsible scientific authority,*/ the FES is legally adequate. Consequently, this proposed amendment should not be admitted in this proceeding.

H. Proposed Amendment 9

Proposed Amendment 9 states:''

> The economic analysis in the EIS is invalid in that it fails to consider the possibility that replacement or repair of the steam generators may be necessary a second time.

The statement embodied in this proposed amendment is plainly incorrect. The FES does consider the possibility that the need to perform the repairs may recur and rejects it by concluding:

> A number of changes have been made in the materials, the design, and the operating procedures for the replacement steam generators to assure that the corrosion and denting problems will not recur.

FES § 3. And in Section 8.6.24, the FES states:

> It is assumed that the life of the repair is the remainder of the plant life, or about 30 years. There is no guarantee of this plant life; however, the staff safety review found no reason to doubt that the steam generators would last the life of the plant.

Furthermore, it should be noted that this is not the first time the Intervenor has attempted to raise this issue.

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*/ FES, §§ 4.1.1.6 and 8.6.8, Appendix B.

The Intervenor previously alleged that the utility "has failed to consider the cost of future recurring steam generator repairs."*/ The Board rejected this contention with the comment that there is "[n]o basis for this speculation."**/ After more than a year-and-a half the Intervenor still has not provided a basis to accompany the allegation that a need for the repairs will recur. The proposed amendment should be rejected.

I. Proposed Amendments 10 and 12

Proposed Amendment 10 states:

> The entire EIS fails to comply with a good faith consideration as is required under NEPA.

Proposed Amendment 12 states:

> The final EIS as a whole fails to adequately address the impact of the steam generator repair on the human environment because it tends to explore the positive effects that the repair will have while down-playing the negative impact.

Both of these proposed amendments contain absolutely no specificity or basis. In fact, neither proposed amendment even attempts to raise a factual issue. Both proposed amend-

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*/ See Letter from Norman A. Coll to Licensing Board (Aug. 31, 1979), Contention 11(a).

**/ "Order Relative to Contentions and Discovery" (Sept. 25, 1979), p. 5.

ments simply provide summary legal conclusions. Consequently, the proposed amendments do not satisfy 10 CFR § 2.714(b) and should be rejected.

J. Proposed Amendments 11 and 13

Proposed Amendment 11 states:

> The analysis of alternatives is inadequate under NEPA.

Proposed Amendment 13 states:

> The EIS fails to adequately discuss the alternatives to the proposed action.

These proposed amendments also lack specificity and a basis. The Intervenor does not identify which alternatives, if any, have not been considered, nor does he indicate any inadequacy in the evaluation of those alternatives which were considered in the FES. As comments by the Supreme Court indicate:

> [T]he term "alternatives" is not self-defining. . . .
>
> Common sense also teaches us that the "detailed statement of alternatives" cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man. . . .
>
> [I]t is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenor's position and contentions. . . .
>
> Indeed, administrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic

> and obscure reference to matters that "ought to be" considered and then, after failing to do more to bring the matter to the agency's attention, seeking to have the agency determination vacated on the ground that the agency failed to consider matters "forcefully presented."

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551-54 (1978); (emphasis supplied). Since these proposed amendments lack specificity and a basis, they should be rejected.

K. Proposed Amendments 14 and 15

Proposed Amendment 14 states:

> The EIS fails to adequately discuss the relationsip between local short term use of man's environment and maintenance and enhancement of the long term productivity.

Proposed Amendment 15 states:

> The EIS fails to discuss the irreversible and irretrievable commitment of resources involved in the proposed action.

Again, the amendments merely parrot some of the language of NEPA without specifying the manner in which the requirements of that Act have not been met. Again, the proposed amendments lack any specificity or basis, and raise no factual issue. Consequently, the proposed amendments lack a basis.

Further, both of these proposed amendments are based upon incorrect factual premises. The FES does consider the relationship between local short term use of man's environment and maintenance and enhancement of the long term productivity

and it does consider the irreversible and irretrievable commitment of resources involved in the proposed action. See FES § 8.6.17.

To the extent that the Intervenor is arguing that the FES is inadequate because these considerations were not embodied in separate sections but were incorporated in sections discussing other issues, the proposed amendment is legally without merit. There is no requirement that an EIS contains sections with specific titles such as "Irreversible and Irretrievable Commitment of Resources." As long as the EIS contains the requisite substantive considerations, questions of format reside with the discretion of the issuing agency. Scientists' Institute for Public Information, Inc. v. AEC, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

This proposed amendment should be rejected.

L. Proposed Amendment 16

Proposed Amendment 16 states:

> The final EIS fails to adequately discuss the environmental impact of a hurricane if one occurs during the repair process. */

As the Staff Pleading points out (p. 11), the environmental impact of a hurricane striking the site during the repairs

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*/ The Licensee assumes that this proposed amendment refers to the environmental impact caused by the repairs as a result of a hurricane striking the site during the repairs. A literal interpretation of the proposed amendment would encompass impacts not associated with the repairs and therefore would be outside the scope of this proceeding.

is in fact addressed in the FES in the discussion of accidents contained in Sections 4.4 and 8.6.5 of the FES.

Moreover, there is no requirement that the FES contain such a discussion. As mentioned previously, NEPA does not compel a consideration of remote and speculative occurrences; and the affidavit accompanying the Staff Pleading demonstrates that a hurricane having adverse impacts during the repair is remote and speculative. Under the "rule of reason," an EIS need only include a consideration of those reasonably foreseeable effects. Carolina Environmental Study Group. v. United States, 510 U.S. 796, 798 (D.C. Cir. 1975). Since the Intervenor has not provided any basis for concluding that the environmental impacts as a result of a hurricane during the repairs would be anything but insignificant and remote and speculative, this proposed amendment should be rejected.

M. Proposed Amendment 17

Proposed Amendment 17 states:

> The final EIS fails to consider the long term effects of a nuclear waste building next to Biscayne Bay.

The factual premise upon which this contention is based is incorrect. The FES § 8.6.5 does consider possible impacts resulting from the location of the steam generator storage compound. Consequently, this proposed amendment should be rejected.

III. Conclusions

All of the proposed amendments to Contention 1 are legally insufficient. Some of the proposed amendments are based upon invalid legal assertions. Others are premised upon incorrect factual predicates. Finally, others totally lack specificity and a basis. Consequently, the Licensing Board should not accept any of the proposed amendments, and should dismiss admitted Contention 1 for lack of specificity.

Furthermore, the Board should not grant the Intervenor additional time to supplement his proposed amendments to make them acceptable. Any delay for the purpose of allowing the Intervenor to supplement his proposed amendments would be highly prejudicial to the interests of the Licensee and would be unlikely to contribute meaningfully to a full and adequate consideration of the repair project.

The Intervenor was admitted as a party to this proceeding after filing a petition to intervene more than a year after the filing deadline. The Licensee opposed the admission of the Intervenor for numerous reasons, including the possibility this his admission "could deny Licensee the ability to commence repairs without delay."*/ The Licensee's objective

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*/ See "Order Ruling on the Petition of Mark P. Oncavage" (Aug. 3, 1979), p. 23.

was "to be ready to perform the reapirs when it becomes necessary or economically desirable to do so," such as during "unplanned repair outages."*/ The Board admitted the Intervenor over these objections, stating that FPL had failed to specify "when it would be necessary or economical to initiate the repair program"**/ and that "the effective delay of granting the petition would amount to a few months, at most." ***/

Nevertheless, for a variety of reasons, the hearing in this proceeding has been delayed for almost one and a half years. Circumstances have changed significantly since then. By letter to the Board dated June 3, 1980, FPL informed the Board and the parties that it had decided to begin the repairs in October of 1981; and by letter dated February 13, 1981, FPL pointed out that a delay beyond that date "would create the risk of an unacceptable reserve margin in the summer of 1983." In addition, it remains FPL's objective to be in a position to begin the repairs at any time before October 1981 if it should be necessary or economically desirable to do so.

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*/ Id., p. 25.

**/ Id., p. 24.

***/ Id., p. 26 (Emphasis in original).

Additionally, the Licensee opposed the admission of the Intervenor on the ground that it doubted whether "he or expert witnesses that might be presented by him could assist in developing any record."*/ After a year and a half of discovery which included extensive interrogatories, requests for production of documents, and a site inspection, the Intervenor presented no case in response to motions for summary disposition of seven of his contentions. Although directed by the Board to provide specificity, the Intervenor has yet to contribute anything but generalities with respect to Amended Contention 1 and is apparently unable to provide a basis for that contention. In short, given the Intervenor's participation to date, it is extremely unlikely that any further delay to enable the Intervenor to supplement his proposed contentions would contribute meaningfully to an adequate and full consideration of the repairs. Amended Contention 1 should be dismissed.

Respectfully submitted,

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Dated: April 30, 1981

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*/ Id., p. 32 (Opinion of Dr. Paris).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket No. 50-250-SP
	)	50-251-SP
FLORIDA POWER AND LIGHT COMPANY	)	(Proposed Amendments to
	)	Facility Operating License
(Turkey Point Nuclear Generating Unit Nos. 3 and 4)	)	to Permit Steam Generator Repairs)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing "Licensee's Response in Support of NRC Motion for Summary Disposition of Amended Contention 1 and Objections to the Amended Contention" were served on the individuals whose names appear on the attached service list by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below. Additional service by hand or courier was made upon the individuals next to whose name an asterisk (*) appears.

Harold F. Reis

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April 30, 1981

Attachment

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket No. 50-250
	)	50-251
FLORIDA POWER AND LIGHT COMPANY	)	(Proposed Amendments to
	)	Facility Operating
(Turkey Point Nuclear Generating Unit Nos. 3 and 4)	)	Licenses to Permit Steam Generator Repair)

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April 30, 1981

*Additional Service By Hand or Courier

TO: Document Control Desk, 016 Phillips

FROM: Docketing & Service Branch, Office of the Secretary

SUBJECT: REQUEST FOR DISTRIBUTION SERVICE THROUGH REGULATORY INFORMATION DISTRIBUTION SYSTEM (RIDS)

NOTE: The attached document, which relates to a specific licensing docket, is the DOCUMENT CONTROL ACTION COPY. It is certified by the Office of the Secretary as the best available copy.

RIDS CODES AND TITLES

Rids Code	Description
DS01	Antitrust Issuances
DS02	Non-Antitrust Issuances
DS03	Filings (Not Originated by NRC)
DS04	Antitrust Filings (Originated by Non-Parties)
DS05	Non-Antitrust Filings (Originated by Non-Parties)
DS06	ELD Filings (Antitrust)
DS07	ELD Filings (Non-Antitrust)
DS08	Antitrust Filings (Not Originated by NRC)

Add: