



NUCLEAR ENERGY ACCOUNTABILITY PROJECT

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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

October 5, 1989

* * * * *
In the Matter of
Florida Power & Light Co.
Turkey Point Nuclear Plants
Units 3 and 4
* * * * *

Docket Nos. 50-250
50-251

10 C.F.R. 2.206

ANSWER TO DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

DISCUSSION

On June 20, 1989, Thomas J. Saporito, Jr., (hereinafter petitioner), submitted a request to the Nuclear Regulatory Commission (NRC) pursuant to 10 C.F.R. 2.206. The June 20, 1989 petition requests immediate action by the NRC to cause the cold shutdown of the Turkey Point nuclear facilities and to suspend the licensee's operating licenses DPR-31 and DPR-41. Finally, the June 20, 1989 petition requests the NRC to cause an immediate investigation to determine the extent of the drug usage problem and order remedial action in accordance with the new Fitness for Duty rule adopted by the NRC.

Substance Abuse

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 3 that "The arrested employee was a fossil plant operator. As the protected area for the Turkey Point nuclear plant also encompasses the fossil plants, the arrested employee had access to the protected area....However, this employee did not have access to vital areas of the nuclear plants which contain equipment required for safety."

Contrary to the above, it would appear that the arrested employee did have access to areas of the nuclear plants which contain equipment required for safety. Some of these areas would include the Black Start diesel generators for which the licensee takes credit as equipment supportive of the nuclear facilities.

The arrested employee also had access to the steam generator main feedwater pump rooms and access to the service air and instrument air compressor equipment. Additionally, the arrested employee had access to numerous secondary equipment systems which he could have manipulated in such a way as to adversely effect the operation of the reactors. Finally, the arrested employee had access to many other licensee employees who worked on the fossil and nuclear facilities.

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 4 that "Since the arrest of the fossil plant employee on June 14, 1989, and as of August 7, 1989, approximately 1950 persons with authorized access to Turkey Point have been tested for substance abuse. This represents approximately 60 percent of the persons with authorized access to Turkey Point as of that date. Of the approximately 1950 persons tested, 6 were reported as having confirmed positive test results....On the basis of the data received to date, there is no indication of a widespread problem of substance abuse at the Turkey Point Nuclear Plant."

It would appear that the NRC has prematurely reached a conclusion that a widespread problem of substance abuse at the Turkey Point Nuclear Plant does not exist. The basis for our position is that the NRC analyzed incomplete data wherein only 60 percent of the work force was tested. The 40 percent of the work force which was not tested leaves reasonable assurance that a substance abuse problem may in fact exist at the Turkey Point Nuclear Plant.

It would appear that the NRC failed to require the licensee to initiate any remedial actions to deter or prevent a future occurrence of substance abuse at the Turkey Point nuclear facilities. The NRC appears not to have reviewed and evaluated any program which the licensee may have to assist the substance abuser with medical care and treatment in an effort to rehabilitate the

employee. The NRC appears not to have evaluated any historical data concerning the fitness for duty of employees who have been rehabilitated and if these rehabilitated employees eventually return to substance abuse.

The NRC appears not to have evaluated the adequacy of the licensee's substance abuse program to determine if the licensee's program realistically can provide the employee with a substance abuse problem, the needed monies and proper rehabilitative medical services to encourage the employees to voluntarily come forward for treatment.

Finally, for all the above reasons germane to substance abuse, reasonable assurance that the substance abuse problem is not wide spread at the Turkey Point nuclear facilities does not exist and therefore cannot be relied upon by the NRC.

Reactor Vessel Materials Surveillance

On June 22, 1989, petitioner submitted a request to the NRC pursuant to 10 C.F.R. 2.206 requesting immediate action to cause the suspension of Operating Licenses DPR-31 and DPR-41 and to take immediate actions concerning the licensee's program for reactor vessel materials surveillance and analysis.

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 7 that "The Petitioner, in raising this issue, is seeking to use 10 C.F.R. 2.206 procedures to reopen a matter that was the subject of an amendment that was noticed in the Federal Register

and fully considered. The Petitioner had the opportunity to request a hearing and failed to do so. The principle is firmly established that parties must be prevented from using 10 C.F.R. 2.206 procedures as a vehicle for reconsideration of issues previously decided, or for avoiding an existing forum in which they more logically should be presented. E.g., General Public Utilities Nuclear Corp. (Three mile Island Nuclear Station, Units 1 and 2) (Oyster Creek Nuclear generating Station), CLI-85-4, 21 NRC 561, 563 (1985)."

Petitioner was not cognizant of the NRC procedures germane to Federal Register notices or even what a Federal Register Notice was at the time of the amendment issuance as referred to above, therefore, Mr. Murley's position on this part of the issue is without merit or substance.

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 8 that "As discussed in the Safety Evaluation for the amendments, the NRC staff found that (1) the revised pressure-temperature limits were in compliance with the fracture toughness requirements of Appendix G to 10 C.F.R. Part 50; (2) the integrated surveillance program complies with Appendix H to 10 C.F.R. Part 50, and (3) the reactor vessel critical materials at Units 3 and 4 will remain below the pressurized thermal shock (PTS) screening criteria for their licensed life in compliance with the requirements of 10 C.F.R. 50.61.

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 9 that "As stated in the Atomic Safety and Licensing Board order, hearings on the admitted contentions are scheduled to commence on December 12, 1989...As described above, the NRC staff evaluated reactor vessel embrittlement in Unit 4 in conjunction with Amendments 134 and 128 to Operating Licenses DPR-31 and DPR-41, respectively, and determined that there are no public health or safety concerns associated with the continued operation of Unit 4. If any concerns raised in the hearing are determined to be valid, the staff will take the appropriate action at that time. Moreover, all of the documentation relied on by the Petitioner was considered when the amendments were issued. Therefore, further action on this concern is not warranted. General Public Utilities Nuclear Corp., supra, 21 NRC at 563.

We are actively involved with the Center for Nuclear Responsibility concerning the ALSBP hearing scheduled for December 12, 1989 and we know for a fact that Contention 3 germane to the ALSBP hearing was withdrawn by the Center for Nuclear Responsibility, therefore Mr. Murley's belief that the subject of this contention (correct copper percentage/RTNDT), is misplaced.

Mr. Murley's reliance on the NRC staff's evaluation of reactor vessel embrittlement relevant to license Amendments 134 and 128 to Operating Licenses DPR-31 and DPR-41 respectively, and that no public health or safety concerns associated with the

continued operation of Unit 4 exist, is misplaced because;

(1) we have addressed embrittlement issues associated with both Unit 3 and Unit 4 and not just Unit 4;

(2) Mr. Murley's reliance on the scheduled ALSBP hearing taking place and (if any concerns raised in the hearing are determined to be valid, the staff will take the appropriate action at that time), is misplaced because the licensee has filed summary disposition documents which may terminate the scheduled proceedings;

(3) Mr. Murley's statement that (moreover, all of the documentation relied on by the Petitioner was considered when the amendments were issued. Therefore, further action on this concern is not warranted), is misplaced wherein we have exhaustively reviewed the NRC staff's safety analysis relevant to the aforementioned licensing amendments 128 and 134 and we have not determined that all of Petitioner's documentation was considered by the NRC staff during their safety evaluation. In fact, the safety evaluation speaks for itself and evidences that all Petitioner's documentation was not considered by the NRC staff;

(4) The NRC staff performed their safety analysis of the P/T Limits for 20 EFPY based on NRC Reg. Guide 1.99 rev. 2 May 1988. Our review of NRC Reg. Guide 1.99 rev. 2 evidences that a conflict may now exist between the requirements of NRC Reg. Guide 1.99 rev. 2 and the requirements of the NRC PTS rule in 10 CFR 50.



Additionally, the NRC Reg. Guide 1.99 rev. 2 may not be the most conservative method of establishing new P/T operating parameters for existing older nuclear plants wherein the percentage of copper content of the reactor vessels material properties is not considered in the formulas relied upon in the NRC Reg. Guide 1.99 rev. 2 in the determination of revised P/T operating parameters for continued operation and instead operational data derived from newer operating reactors is relied upon to establish these P/T curves.

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 10 that "Operation beyond 20 EFPYs will require the submittal of another amendment and further evaluation by the NRC staff. As discussed previously, there are no public health or safety concerns associated with operation up to 20 EFPYs. Therefore, the information requested in the May 31, 1988, letter to justify 40 EFPYs of operation is not required immediately and no action by the NRC is necessary at this time."

Our review of the May 31, 1988 NRC letter does not indicate any consideration for operation of the Turkey Point units for 40 EFPY and instead identifies a possible violation of NRC requirements regarding Upper Shelf Energy (USE) of the Turkey Point nuclear facilities. This position is further supported by the licensee's response letters L-89-32 dated Jan. 31, 1989 and L-89-190 dated June 16, 1989.



Therefore, we believe that the information requested in the May 31, 1988 letter to justify conformance to the (USE) NRC requirements is required immediately and action by the NRC is necessary at this time in the interest for public health and safety.

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 11 that "With respect to Category (3) above, the reference temperature value of 300°F (for circumferential weld materials) which is used in PTS screening is specified in 10 C.F.R. 50.61. The Petitioner's request is, in effect, a request to change the requirements of 10 C.F.R. 50.61, and , as such, is not appropriate for consideration under 10 C.F.R. 2.206."

Mr. Murley appears to have misinterpreted our request regarding Category (3). We in fact, are not requesting a rule change by the NRC, and if we were, we are cognizant of the NRC procedures embraced within 10 C.F.R. 2.802 for such a request. Indeed, we seek consideration germane only to the Turkey Point nuclear facilities in that the 300 degree screening criteria relevant to the PTS rule should be lowered for operational safety reasons supported by the voluminous documentation relevant to the embrittlement issue of the Turkey Point nuclear facilities.

Operations Superintendent Qualification

In a Director's Decision issued on September 25, 1989, Thomas E. Murley, NRC Office of Nuclear Reactor Regulation stated, at page 12 that "The July 3 submittal appears to be an attempt to circumvent the rules for timeliness. The submittal raises the same issues in the Request for hearing and Petition for Leave to Intervene dated May 16, 1989, which was denied by the Commission on May 30, 1989. Furthermore, the submittal does not raise any new issues not previously considered by the Commission in the issuance of the amendments. Therefore, further action regarding this concern is not warranted.

We take exception to Mr. Murley's inferences of an attempt on our part to circumvent the rules for timeliness. The timeliness issue of the Petition for Leave to Intervene is a matter of poor performance by the NRC to timely document license amendment requests in to the PDR facilities. Furthermore, we properly exhausted our avenues pursuant to NRC requirements for a late filed petition. Because the NRC failed to grant a public hearing on this matter and because this matter concerns operation of the Turkey Point nuclear facilities which could adversely affect public health and safety, we believe that our only recourse was to request license action pursuant to 10 C.F.R. 2.206.

Mr. Murley appears to have erred in his statement that "the submittal does not raise any new issues not previously considered by the Commission in the issuance of the amendments. Therefore, further action regarding this concern is not warranted." because we supplied probative evidence in our Petition for Leave to Intervene and in our 2.206 petition which evidences that on at least one occasion, the Turkey Point Operations Superintendent did in fact participate in a plant technical specification determination for the operation of the Turkey Point nuclear facilities. This evidence raises a new issue not previously considered by the Commission in the issuance of the amendments. Therefore, further action regarding this concern is warranted.

CONCLUSION

The NRC through the actions of Thomas E. Murley, appears to be in collusion with the licensee. We have filed numerous petitions pursuant to 10 C.F.R. 2.206 and germane to the Turkey Point nuclear facilities, and in each occasion where a Director's decision was rendered, the petition was denied in whole or in part and at no time has the NRC ever taken licensing action or enforcement action upon the licensee.

We believe that Mr. Murley appears to have exercised exhaustive measures and NRC resources to research NRC requirements and cite previous legal decisions in an effort to deny our petitions and support the licensee's actions. We believe that Mr.

Murley's actions appear to be a violation of public trust for the position which he holds, and therefore public health and safety could adversely be affected by Mr. Murley's actions.

For all the reasons discussed above and those embraced within the respective 10 C.F.R. 2.206 petitions, a basis exists for the NRC to take actions requested in the Petition, since substantial health and safety issues have been raised by the Petitioner which demonstrate that reasonable assurances for public health and safety do not exist and therefore cannot be relied upon by the NRC.

We request that a copy of this ANSWER TO DIRECTOR'S DECISION be filed with the Secretary for the Commission's review and additionally that a copy of this ANSWER TO DIRECTOR'S DECISION be filed with the Federal Register and also placed in the appropriate Public Document Rooms.

Dated at Jupiter, Florida
this 5th day of October, 1989

Respectfully submitted,



Thomas J. Saporito, Jr.
Executive Director, NEAP

cc: Stewart Ebnetter, Administrator NRC Region II
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