UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Michael C. Farrar, Chairman
Richard S. Salzman
Dr. W. Reed Johnson

In the Matter of	
FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Unit No. 2)	Docket No. 50-389

INTERVENORS MOTION FOR STAY PENDING APPEAL AND MOTION FOR ORAL ARGUMENT

Intervenors motion, pursuant to 10 CFR 2.764 and in accordance with the good cause requirements contained therein, that the Atomic Safety and Licensing Appeal Board stay the effectiveness of the Initial Decision issued April 19, 1977 to the extent it allows issuance of a Construction Permit for the proposed facility until this Appeal Board and the Commission have reviewed and decided Intervenors exceptions regarding the adequacy of the alternative sites review and need for power as stated in Intervenors Exceptions to Initial Decision filed April 27, 1977, prusuant to 10 CFR 2.762.

The Office of Nuclear Reactor Regulation issued a construction permit to the Applicant utility Company on May 2, 1977 authorizing construction of the St. Lucie Nuclear Power Plant, Unit 2, on Hutchinson Island.

Intervenors further motion pursuant to 10 CFR 2.755 that they be granted on an expedited basis, an opportunity to present oral argument on their motion for stay and, further, that in any event this Board issue a stay until said argument on motion has been heard or at the barest minimum restrict pendente lite work activity including assembling workers on site which the applicant may pursue under their authority (See Public Service Commissinn of New Hampshire et. al. Seabrook Station, Units 1 and 2, ALAB-338, July 14, 1976 NRCI-76/7 at 11. Upon information and belief the utility company is in the process of assembling construction workers at the site and intends to have work fully resumed by the end of May 1977.

"A meaningful number of workers will be onsite by the end of the month."

-Gene Van Curen, FPL Manager Stuart, Fla.
Palm Beach Post Times, Sat. May 21, 1977.

Intervenors have previously filed on April 27, 1977 a Motion for Stay Order before the Atomic Safety and Licensing Board (ASLB) because they interpreted the Seabrook case (supra) to require "that in accordance with prevailing federal judicial practice, as stay pending appeal must initially be sought from the trial tribunal unless it is not practicable to do so;"

"We adhere to the view reflected in those decisions that normally a party should look to the Licensing Board for a stay pending appeal before coming to us."

-Public Service Company of New Hampshire
Seabrook Station, Unit 1 and 2
ALAB-338, NRCI 76/7, at 12.

On April 27, 1977 Intervenors counsel was without knowledge that ASLB Chairman Edward Luton, was at that time unavailable. Upon information and belief Mr. Luton first received Intervenors Motion for Stay Order and companion Motion for Expedited Decisional Procedure on May 3, 1977 since he had previously been in attendance at hearings on the Three Mile Point Nuclear Power Plant. In a telephone conference call with the parties, on May 3, 1977, Mr. Luton pointed out to Intervenors counsel that since the CP had been issued the previous day (May 2, 1977) some amendment of the wording of Intervenors' Motion might be required. INtervenors thereupon filed Intervenors Amended Motion for Stay Order dated May 5, 1977.

Intervenors in seeking their motion for stay did not extensively brief their motion for stay because their counsel originally prepared it as a precautionary measure on rather short notice and also because it was his feeling that, unlike this Appeal Board, the Licensing Board having just reviewed the testimony in this case and the pleadings of the Intervenors was charged with the knowledge of the conflicts existing in the NRC Staff's case which Intervenors undertake to brief in some detail herein and in their accompanying Brief of Exceptions to the Alternative site review.

On May 11, 1977 the ASLB issued an Order denying Intervenors' Motions for Stay which was first received by Intervenors counsel on Saturday, May 14, 1977.

Although the construction permit has been issued, an Atomic Safety and Licensing Appeal Board:

> "remains fully empowered to suspend the effectiveness of the construction permit or to restrict pendente lite the activities which the applicants may pursue under their authority."
>
> -Public Service Company of New Hampshire, Seabrook Station supra foot note 1, at 11.

This Board has previously held in the Seabrook case (supra) that:

> "It is well settled that, in "determining" whether good cause exists for staying under 10 CFR 2.764 the effectiveness of an initial decision, we apply the criteria established by the Court of Appeals for the District of Columbia Circuit in its land-mark decision in Virginia Petroleum Jobbers association v. Federal Power Commission, 259 F.2d 921, 925 (1958)." Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-192, 7 AEC 420 (1974), and cases there cited. See also e.g. Southern California Edison Co. (San Onofre Nuclear Generating Station Units 2 and 3), ALAB-199,7 AEC 478, 479 (1974); Diablo Canyon, ALAB-320, supra. Those criteria are;
>
> (1) Has the movant made a strong showing that it is likely to prevail on the merits of its appeal?
>
> (2) Has the movant shown that, without such relief, it will irreparably injured?
>
> (3) Would the issuance of a stay substantially harm other parties interested in the proceeding?
>
> (4) Where lies the public interest?"
>
> -ALAB-338 NRCI 76/6 P 13.

LIKELIHOOD OF PREVAILING ON THE MERITS

The Intervenors are likely to prevail on the merits as a matter of fact as well as a matter of law because the Initial Decision of the Atomic Safety and Licensing Board (ASLB) is based upon testimony that is conflicting and misleading as it relates to certain vital elements of the alternative site review. Specifically the Atomic Safety and Licensing Board (ASLB) ruled:

> "This time, actual visits to several specific sites were made by the Staff evaluators. Particularly, the proposed site at Hutchinson Island, and sites known as DeSoto, South Dade, Martin, Slerno, and Juno Beach were inspected on August 17-18, 1976, by aerial survey, on-site examination, or both. The available technical literature concerning each of these places was reviewed and characteristics of each of the sites were discussed with the Applicant's personnel. A detailed comparison of the proposed St. Lucie No. 2 site to each of the other sites investigated is contained in Table 2, Testimony of J. R. Young, November 1976, pp. 19-21 (following TR 5443.) Staff witnesses have given testimony about each of the sites as viewed from the witness' own field of expertise. This testimony covers terrestrial and aquatic ecology and hydrology. (Testimony of Frank B. Hungate, Site Alternative Analysis Update; Testimony of NRC Regulatory Staff by Duane H. Fickheisen; Testimony of Robert G. Baca on Hydrological Aspects of Alternative Site Analysis Update; following TR 5443).
>
> -Initial Decision ASLB 4-19-77 p.16

This ASLB finding relies upon testimony by John R. Young of Battelle entitled Supplemental Testimony of NRC Staff[illegible] on Alternative Sites Evaluation. This Young testimony as relied upon by ASLB is simply not confirmed by the whole transcript and indeed is controverted by the statements on cross examination of the members of his Technical Team. The Applicant cited and relied upon this misleading supplemental testimony by John R. Young (supra) in supporting their successful argument opposing granting Intervenors Motion for a Stay Order before the Licensing Board. See Applicants Response in Opposition to Motion for Stay Order filed filed by the Applicant the 29th of April, 1977 before the ASLB, which stated in part;

> "Criticism number 7 is that the Batelle reviewers lacked familiarity with available technical data relating to alternative sites. However, the movants entirely ignore the considerable amount of literature concerning the alternative sites which was reviewed before the site visit. This included:

1. "Florida Power & Light Company Response to State of Florida Power Plant siting Act, 1976-1984," submitted to Department of Administration, Division of State Planning, April 1, 1975.

2. "Coastal Site Study for Florida Power & Light Company," Brown & Root, Inc., November, 1975.

3. Brochure, "DeSoto Site, April, 1976," Florida Power & Light. This brochure contains aerial photographs of the DeSoto site, Pearl River, Hardee Site, and transmission corridor from Miami to site; sketches of proposed facilities; location maps; and general data sheet.

4. "DeSoto Plant Initial Site Information," Florida Power & Light Company, 1976, Brown & Root, Inc.

5. "Inland Florida Cooling System Study," Florida Power & Light Company, 1976, Brown & Root, Inc,

6. "South Dade Plant Initial Site Information, June 1975, "Florida Power & Light Company.

7. "South Dade Project, Summary Report on Site Development," Florida Power & Light Company, 1976.

8. "Martin Plant Environmental Impact Statement," Florida Power & Light Company, February, 1973.

9. Letter, R.S. Cleveland to V.A. Moore, "South Dade Site-Florida Power & Light: January 28, 1976 Briefing by Florida Power & Light on Use of Floridian Aquifer for Make-up for Cooling System," February 12, 1976.

In addition, they had available to them the backgound of their 1973 evaluation which included the Environmental Reports for both St. Lucie Units 1 and 2, and FES for St. Lucie 1. In addition, appropriate descriptive material for Southern Florida had been studied. (Initial Decision pp. 6-7, paras, 8 and 9.)

With this backgound the contention that the 1976 site review "was cursory and of too few days duration" is without merit. This becomes particularly evident in view of the fact that the trip was made by Mr. Lynch, the NRC Environmental Project Manager, an experienced health physicist, (See professional qualifications of Oliver D.T. Lynch, Jr., follows TR 4572) and Messrs. Hungate, Baca and Fickeisen, experts in the fields of terrestrial and aquatic ecology and hydrology. The qualifications of each are set out following TR 5443. As a result of the visit it was possible for the team to prepare a table making a detailed comparison of the Hutchinson Island site with the DeSoto, South Dade, Martin, Salerno and Juno Beach sites, taking into account, among other things, aquatic and terrestrial biological impacts, seismic conditions and costs. In addition, they updated and corrected previous information relating to cooling water availability and liquid waste disposal. (See Supplemental Testimony of John R. Young and testimony of Messrs. Lynch, Hungate, Baca and Fickeisen, all following TR4443. Consequently, while the visit to the other sites may be considered brief*/, it cannot be said to have been cursory."

Applicants Response in Opposition to Motion for Stay Order April 29, 1977 pp.11-13.

*/ Intervenors are gratified to note that at least the Applicant concurs in Intervenors belief that NRC alternative site review was brief in duration

In support of their Motion for Stay Intervenors had originally raised 8 points in areas where they were likely to prevail on the merits:

"1. That said site review was cursory and of too few days duration.

2. That said site review was inadequate, since John R. Young, the Team Leader testified such reviews were "almost window dressing. TR 5613

3. That detailed studies of distribution or exact location of populations or milk producing animals within a 50 mile radius of the alternative sites were not performed.

4. That hence, no radiological dose calculations were performed for populations residing within a 50 mile radius around any alternative site.

5. That no evacuation feasibility studies were performed for any alternative site or compaired sufficiently with Hutchinson Island.

6. That no meteorological studies were performed at the Martin site.

7. That as late as the date of the December 1976 site review, when site review hearings began the Batelle reviewers still lacked familiarity with the available technical data conceiving the alternative sites such as the South Dade studies and the Martin Environmental Impact Statement (EIS).

8. That any subsequent site review such as that of August, 1976 should have been performed by a reviewer, independent of Batelle since the quality of the Batelle methodology was being challenged at that time."

-Intervenor's Motion for Stay Order, dated 4-27-77, pp2-3.

As a sample demonstration to this Appeal Board of the quality of their case, Intervenors will in this Motion, brief in some detail show why items No. 1, 2 and 7 of their earlier Motion for Stay before the ASLB should have been ruled in their favor. The remainder of the Intervenors argument will be briefed in their accompanying brief of Exceptions which they here incorporated by reference.

The NRC Staff case relies upon the Supplementary testimony of NRC Staff on Alternative Sites Evaluation prepared in November 1976 and filed and attested by John R. Young in testimony on Friday afternoon Dec. 3, 1976. That testimony states among other things that:

"A re-evaluation of alternative sites was made during August 1976. A second site visit was made in August 1976 and included aerial and

ground inspection of specific alternative sites to assure that no better alternative sites have been identified since issue of the FES and to assure that the FES analysis is current. This supplemental testimony summarizes the results of that re-evaluation".....
-Supplemental Testimony of NRC Staff on Alternative Sites follows TR 5443 at p. 3.

Included with the Young testimony is testimony of the four other individuals as Batelle Team members. They are Messrs. Baca, Hungate, Fickeisen and Sandusky. The Young testimony goes on to state at page 12 that:

"Available literature describing alternative power plant sites in southern Florida was obtained and reviewed. The specific documents reviewed* were:

(1) "Florida Power & Light Company Response to State of Florida Power Plant Siting Act, 1975-1984," Submitted to Department of Administration, Division of State Planning, April 1, 1975.

(2) "Coastal Site Study for Florida Power & Light Company," Brown & Root, In., November, 1975.

(3) Brochure, "DeSoto Site, April, 1976," Florida Power & Light. This brochure contains aerial photographs of the DeSoto site, Pearl River, Hardee Site, and transmission corridor from Miami to site; sketches of proposed facilities; location maps; and general data sheet.

(4) "DeSoto Plant Initial Site Information," Florida Power & Light Company, June, 1975.

(5) "Inland Florida Cooling System Study, Florida Power & Light Company, 1976, Brown & Roote, Inc.

(6) "South Dade Plant Initial Site Information, June 1975," Florida Power & Light Company.

(7) "South Dade Project, Summary Report on Site Development," Florida Power & Light Company, 1976.

(8) "Martin Plant Environmental Impact Statement," Florida Power & Light Company, February, 1973.

(9) Letter, R. S. Cleveland to V.A. Moore, "South Dade Site - Florida Power & Light: January 28, 1976 Briefing by Florida Power & Light on Use of Floridan Aquifer for Make-up for Cooling System," February 12, 1976.
-Supplemental Testimony of NRC Staff on Site Alternatives Evaluation Testimony by John R. Young pp 12-13.

*Emphasis Supplied

This language seems to imply that all members of the Battelle Team reviewed the "available literature", listed above. If such an inference was drawn by the ASLB, it was an incorrect one.

It is significant to note that a day after the Young testimony which was dated November 1976 and came into the record on December 3, 1976 and almost four months after the alleged August 1976 site review, the Battelle PNWL Technical Team Members testified they had not seen the Martin Site Environmental Impact Statement EIS (item #8 of "available literature" as described by Mr. Young in the November 1976 Supplemental Testimony) nor any other data as was implied in the aforementioned Supplemental Testimony. Besides Mr. Young there were four members of the Battelle Team and here is what they said:

FRANK HUNGATE

Frank Hungate of Battelle, the terrestrial biologist testified as follows:

> Q. Did you see the Martin Environmental Impact Statement dated February 1973?
>
> A. I have
>
> Q. When did you first see it sir?
>
> A. Last Night.
>
> Q. Have you seen any thingelse about any other site that is any- other alternat e sites that you visited August 17 and 18, 1976?
>
> A. No..... -Frank Hungate Dec. 4, 1976 PM Tr 5673.

Indeed Mr. Hungate admitted at later hearings he hadn't drawon any cost benefit comparison on the Martin Site versus St. Lucie.

By Mr. Coll;

> "Is the fact that the Martin Site has been prepared and cleared for fossil plants and (SIC) economic advantage when compared to the site preparation which has occurred at the St. Lucie site for a nuclear unit?"
>
> A. (By Dr. Hungate) Is it an economic advantage?
>
> Q. For the Martin site?
>
> A. I really havent (SIC) in the economics, of the advantages one versus the other."
>
> -Frank Hungate TR 6000 Dec. 16, 1976 AM.

These responses nearly four years after the Martin EIS was published and two and one half years after the FES for Unit 2 and almost six months after the ALAB-335 Decision of June 29, 1976 and remand is not only typical of the lack of effort of the Battelle reviewers butcontradicts the implication of the Young statement that available literature on alternative sites was reviewed.

Mr. Hungate then went on to justify his position in favor of the Hutchinson Island site (even though he had just admitted he had reviewed no data on any other alternative site) on the basis of the existing site preparation on Hutchinson Island in conjunction with Unit 1.

DUANE FICKEISEN

The same question was aked of Mr. Duane Fickeisen, the Battelle aquatic biologist, on Dec. 4, 1976 PM.

Q. The Martin Environmental Statement dated Feb. 1973. When did you first see that Sir?

A. Two days ago.

Q. Two days ago?

A. Yes

Q. That was after* you prepared this testimony?

A. That is correct.

*Emphasis Supplied TR 5664 Duane Fickeisen Dec. 4, 1976 PM.

Indeed, when asked what data was provided to Battelle or the NRC on alternative sites Mr. Fickeisen could not identify any. This is again contrary to and contradicts the suggestion in the Young testimony that such available alternate site literature had been reviewed.

Q.....Have you analyzed any specific data such as you just described at any of the alternative sites since May 1974?

A. No, I have not.

-Duane H. Fickeisen Dec. 4, 1976 PM.

See also generally TR 5663-5666 where Mr. Fickeisen references only oral communications of the applicant's personel during the helicopter over flights of alternate sites on August 17, 18, 1976, concerning characteristics of the alternative sites, and is unable to cite any of the nine documents listed on p. 12-13 of the Nov. 1976 Young Supplemental Testimony, with the sole exception of the Martin EIs which he saw for the first time "two days ago", which was brought to his attention no doubt by Intervenors' counsel.

It was not necessary to cross examine Mr. Fickeisen to prove he had seen no technical data since he had stated in the Nov. 1976 Supplemental testimony filed on Dec. 3, 1976:

> "Base line environmental data was not available for any case other than the proposed site, consequantly, my conclusions are based on professional judgement rather than a rigorous analysis of detailed designs or an extensive review of environmental studies."
> -Testimony of NRC Regulatory Staff on alternative site analysis Duane H. Fickeisen p. 1 follows TR 5443

This testimony apparently was prepared as late as November 1976 and filed on Dec. 3, 1976 PM

WILLIAM F. SANDUSKY

Mr. William F. Sandusky, the third Battelle PNWL team member, had responsibilities including meteorological analysis and support for consideration of alternative sites. Yet surprisingly, on Dec. 4, 1976 PM he testified he had never visited any of the alternative sites or participated in the August 1976 alternative site review. On cross examination by Intervenors' counsel he stated:

> Q. "Then there was a helicopter ride around alternative sites on August 17 and 18, 1976. I am asking you which one were you on?
>
> A. I was not on the second site visit.
>
> Q. You didn't go for the helicopter ride?
>
> A. Right. I base that information on telephone conversations I have had with FPL personnel....."
> -William F. Sandusky TR 5561 Dec. 4, 1976 PM.

When asked about whether he had reviewed any meteorological data on the alternative sites, although he knew the applicant was acquiring meteorological data at South Dade(TR 5652), Mr. Sandusky testified:

> Q." Did you ever obtain any meteorological data from the Applicant on any other site other than DeSoto?
>
> A. No, I did not."
> -William F. Sandusky TR 5653 Dec. 4, 1976 PM.

It appears from Sandusky's testimony that not only did he not participate in the subsequent alternative site review during August 1976 but that he too did not review any of the "available literature" on the alternative sites that the Supplemental Testimony by John R. Young filed Dec. 3, 1976 indicates had been reviewed by the Battelle PNWL team.

ROBERT G. BACA

The fourth member of the Battelle PNWL team was Robert G. Baca whose testimony was designed to:

> "Provide supportive information related to the alternative sites Analysis update presented in the testimony of Mr. John R. Young."
> *Emphasis Supplied
> -Testimony of Robert G. Baca Hydrology Aspects of Alternative site Analysis up date filed Dec. 3, 1976 follows TR 5443 p. 1.

This testimony is short consisting of about two pages. It is base on "general visual inspections." (Baca Testimony Supra P. 2) and references no review of "available literature" as suggested by Mr. Young.

The hearings were adjourned Saturday, Dec. 5, 1976. Ten days later on Wed, Dec. 15, 1976, cross examination of the Battelle and Staff witnesses was resumed. It should be pointed out that by this time all the Battelle team members would now testify that they had now seen the Martin EIS in the past few days. See TR 5936-5938 generally. But the point is, that with the exception of Mr. Young, they had not seen the Martin EIS until it was brought to their attention in early December 1976 by Intervenors' counsel and their testimony had been prepared before they saw it. See Objections of Intervenors counsel at TR 5938 which was overruled.

Now a review of the Transcript of the resumed hearings from pages 5770-5780 on Wed, Dec. 15, 1976 demonstrably shows that even after this 10 day hearing break in med-December 1976 the vast bulk of the nine documents described as "available literature and listed as having been reviewed in Mr. Young's November 1976 Supplemental Testimony had even then escaped the notice, consideration and review of each one of the Battelle Team members besides other than Mr. Young. Here are excerpts from the transcripts of that Dec. 15, 1976 hearing;

YOUNG

Q. " Was that request ever complied with?

A. We were given information during that site visit, for instance, we were given the Martin Environmental Impact Statement; we were given brochures on the DeSoto site, on the South Dade site.

Q. Was Mr. Hungate with you on that site visit?

A. In August of 1976?

Q. Yes, August of '76.

A. Yes.

Q. He testified the first time he saw the Martin Environmental Impact Statement was about December 8 of this year; was there any reason for his not showing that to your terrestrial biologist?

A. No.

Q. Who saw the impact statement, just you or other members of your team?

A. I had it and I thought I told the members of the team that I had it, but apparently I did not.

Q. Do you think it is important that they see it in performing their update of the alternative site analysis?

A. I think that each one of them would have to answer that, because they are the ones that have reviewed it since that time to see if it had important information.

Q. How can they review it if they don't have it to review?

A. They saw it within the last two weeks.

Q. What you are saying is that they have seen it subsequent to their filing of their prepared testimony at these hearings.

A. Right.

TR. 5771-5772 · Dec. 15, 1976

HUNGATE

Q. Mr. Hungate, did you do any additional site evaluation subsequent to August 17 and 18, 1976 when you returned to Washington state, or the State of Washington?

A. (By Mr. Hungate) In terms of preparing the testimony that was submitted, yes.

Q. Did you review any data submitted to you by anyone as a basis for any new data, as a basis for your update of your testimony?

A. Not in terms of data. I merely reconfirmed in terms os the site, the specific site visits. That was merely visual reinforcement for a conclusion that had been made earlier. The basis for this was derived from the work done on St. Lucie 1 and on St. Lucie 2.

Q. Is it your testimony, sir, that you did not avail yourself of any new data subsequent to August 17 and 18 of '76?

A. That is correct.

Q. Did you avail youself of any new data subsequent to June of 1974?

A. I guess I am a little hazy by what you imply by "new data."

Q. Well, you testified that first time you saw the Martin Environmental Impact Statement was the evening of December 8,'76, the night before I asked you about it.

A. That particular document, correct.

Q. Had you seen the DeSoto, anything on the DeSoto site or the South Dade site?

A. No, not specifically the documents.

Q. Have you ever seen anything on South Dade or DeSoto?

A. I have never seen anything specifically. I have not been totally without access to knowledge of those sites."

TR 5773-5775

SANDUSKY

Q. "How about you, Mr. Sandusky, have you done any meteorological review subsequent to that one you performed for the June 1974 FES for Unit 2, aside from the site visit and looking at maps that Mr. Young had described which took place on August 17 and 18, 1967?

A. (By Mr. Sandusky) Well, first of all, I was not on the site visit of August of this year.

Q. Okay.

A. I reviewed certain information before I prepared my affidavit of November 1975.

Q. Did you have available to you any specific data such as the Environmental Impact Statement on the Martin Site, or any environmental reports or other data prepared for either SouthDade or DeSoto sites at the time you updated your earlier testimony for presentation at this hearing?

A. Well, I never have updated my affidavit of November 1975, and before I prepared that affidavit I did not see the Martin Environmental Report.

Q. When was the first time you saw that?

A. Two or three days prior to us being placed on the stand.

Q. In other words, you first saw it at these hearings; is that not true?

A. Right.

-Tr 5775-5776

BACA

Q. "Mr. Baca, have you reviewed any data on the Martin site, the South Dade site, the DeSoto site or any other alternative site subsequent to that review you performed for the June '74 FES for Unit 2, and I would say, in addition to what you did on your site visit of August 17, and 18, 1976?

A. (By Mr. Baca) No. sir.

Q. When you made the site visit on August 17 and 18, 1976, Mr. Baca, did you do anything more than visit the site and look at maps of them?

A. Yes. I think following the visit, returning to Battelle, I consulted standard sources of data on flow rates of various rivers.

Q. Was this done, sir, after you returned to Washington?

A. Yes." -Tr. 5776-5777

FICKEISEN

Q. "Mr. Fickeisen, when you visited the alternative sites for St. Lucie 2 on August 17 and 18, 1976, did you do anything more at that time than look at the alternative sites and maps.

A. (By Mr. Fickeisen) Well, we discussed aspects of the site with members of the Applicant's staff during that site visit.

Mr. Hodder: Have you used any data to update your original efforts as representative of the FES, for Unit 2, dated June 1974, since the publication of that FES, to the present time; and I want to reference you to such things as the South Dade or the Martin environmental impact statement , and whatever data might or might not have been available to you for the DeSoto site?

Mr. Fickeisen: I used only the information which was gathered during that site visit on August 17th and 18th.

Mr. Hodder: When you made the site visit, did you see the environmental impact statement for the Martin Site?

Mr. Fickeisen: I don't recall that I did or did not.

Mr. Hodder: Would it be fair to say that you then did not use it in preparing your updated testimony?

Mr. Fickeisen: That's correct.

Mr. Hodder: How about the, any reports to the South Dade Site, have you ever seen any of them?

Mr. Fickeisen: No. I have not.

Mr. Hodder: I am holding up here a summary report on site development for the South Dade Site, dated 1976 by FP&L; have you ever seen it before?

Mr. Fickeisen. I have not, no.

Mr. Hodder: Have you seen any data or information on the DeSoto Site?

Mr. Fickeisen: No, I have not.

Mr. Hodder: I am holding up here the Florida Power & Light Company's ten-year power plant site plan; submitted to the State of Florida, April 1, 1976; have you ever seen this document?

Mr. Fickeisen; No:

Mr. Hodder; Have any of you gentlemen, Mr. Baca, Mr. Fickeisen, Mr. Hungate, Mr. Sandusky, ever seen this document?

(Negative response.)

Mr. Hodder: Have any of you ever seen the South Dade project, dated 1976?

Mr. Sandusky: I have.

Mr. Hodder; Let the record reflect that Mr. Sandusky indicates he has seen it."

-TR5777-5779 Dec. 15, 1976

Even at this late hour Mr. Young was unable to profess any in-depth familiarity with the Martin EIS:

A." (By Mr. Young) I first received that document in August of this year, at the tiem of our site visit and that is the first time I looked at it, read it, browsed through it. I did not read it in detail."

-John R. Young Tr. 5930-5931 December 15, 1976.

The Intervenors have regretted the length and extensive detail of this narrative but they feel it was necessary to prove no alternative site data was reviewed by the Staff. Intervenors would further refer the Board to the first portion of the argument in their brief as it capsules this point and its significance to the entire case.

It is of final significance to note that the Supplemental Testimony referred to throughout this argument is entitled "Supplemental Testimony of NRC Staff on Site Alternatives Evaluation" as prepared by John R. Young. It is not entitled the "Supplemental Testimony of Joh R. Young etc". The distinction is fine but of some importance to the Intervenors' case.

CURSORY REVIEW

The Applicant in its sucessful opposition to Intervenors Motion for Stay Order argued after citing the "considerable amount of literature" referred to earlier;

> "In addition they had available to them the backgound of their 1973 evaluation which included Environmental Reports for both St. Lucie Units 1 and 2 and the FES for Lucie 1."
>
> -Applicants Response in Opposition to Intervenors Motion for Stay Order, April 29, 1977.

This however was not entirely true since Mr. Young testified that his notes and material for the earlier review had been destroyed:

> Chairman Luton: "Something was written down, is that right?
>
> Witness Young: But these were destroyed about one year ago, so I had to redevelop some of that information but this type of information was destroyed because its thetype of information that you develop in a matter of five minutes by looking at maps and known characteristics."
>
> -John R. Young Tr. 5610 lines 7-12

Apparently five minutes is the time Mr. Young dedicated to preparation of a comparison of alternative sites for the proposed facility beyond that data provided by the Applicant which he apparently declined to share with his other Battelle PNWL team members. When questioned by Dr. Hooper, Mr. Young indicated that the notes were the basis for his"final report."

> DR. HOOPER: Let me see if I really understand. Could you develop these right now in ten minutes, all your notes?
>
> WITNESS YOUNG: Yes, just by looking at maps. If you look at the information on page 8 in our last testimony you can look at a map or look at the information that is available in the Environmental Report or in the FES and you can develop every one of these just from knowledge of Southern Florida, use of a highway map--that type of information. There's nothing difficult about developing this information.
>
> Now the problem here I can see is that I do this routinely on a daily basis. This is my expertise. I have done literally hundreds of site alternatives analyses and I can turn out data like this one on any site in a very minimum time, so I do not keep records.
>
> DR. HOOPER: Well, I don't understand how you can do it in five minutes It seems to me you would need a computer and about 20 staff assistants to do....."
>
> -Tr. 5611, lines 4-22

Mr. Young then candidly told the Board what he thought about site visits;

> ...."But as a general rule, many of these site visits are almost window dressing."
>
> -John R. Young Tr 5613

When asked about the site visit of August 17, 18, 1976 Mr. Young said:

> BY MR. HODDER:
>
> Q. May I ask you if you consider that your other site visits on August 17 and 18 of 1976 were also window dressing to the other alternative sites?
>
> A. (Witness Young) Partially. We did have information on the South Dade site and it's always convenient to visit the site to be sure the information is correct.
>
> Q. Well, that's just it. I beg to differ with you. Isn't it true if you visit the site you might see a cooling pond there or the people, the tourists in their Winnebagos there.
>
> A. Oh, yes.
>
> Q. If you troubled yourself to visit and look, don't you think it's really more than window dressing?
>
> A. I said in some cases it's almost window dressing. I didn't say in all cases.
>
> John R. Young Tr. 5613-5614 lines 21-10

Intervenors, in their concern about this type of review, urge each member of the Appeal Board Panel to read the testimony in the actual Dec. 4, 1976 P.M. transcript to become acquainted with the attitude of this man and this Battelle Agency charged with the responsibility for the health, welfare and safety of the millions of people around any nuclear reactro site to be reviewed by Battelle. This attitude should be changed.

SEABROOK DECISION

There has been a recent decision in the Seabrook Case. At page 29, the Commission stated in setting aside an Appeal Board Stay:

> "Were it generally applicable--a matter disputed by both staff and applicants--the approach suggested by the court's order in the Hodder case would seem to require suspension of outstanding construction permits whenever the NEPA requirement of consideration of alternate sites was found not to have been met. We do not need to decide whether that approach is applicable here."
>
> -In the Matter of Public Service Company of New Hampshire, et. al. Seabrook Units 1 and 2 NRC Dockets 50-443 and 50-444.

The Commission distinguishes in foot note 19 the Hodder (St. Lucie) Case from Seabrook:

> "We note that there are major distinctions between the Hodder case and this case. In particular, in Hodder the Appeal Board found that the FES treated the alternate site analysis in a "cavalier and misleading fashion" which appeared to reflect significant failures of effort by responsible parties. Florida Light and Power Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-335, NRCI 76/6 at 830, 839-40 (1976). Here, the problem arises from the Licensing Board's statements regarding closed-cycle acceptability and EPA's unanticipated about-face."
>
> -Seabrook (supra)

Apparently where a"cavalier" and "misleading" analysis is found to exist or persist a stay pending appellate review may be granted, the decision in Seabrook supra not withstanding.

IRREPARABLE HARM

Intervenors would experience irreparable harm to the environment in which they live if this construction were to begin at this time at the Hutchinson Island Site. The Intervenors are representative of the many persons that might incur harm in the event the proposed facility is built on Hutchinson Island. Intervenors, E. Gardner Prime and Valerie Prime, reside at 168 Riverside Drive, Stuart, Florida which is by the Applicant's own estimate "approximately 10 miles" from the proposed plant site. This is certainly close enough to be benefited by the moving of the proposed plant with its attendant radioactive emissions and risk of accident to a sparsely populated site in southwest Florida even if no other Intervenor were so benefited. Clearly the farther away from population centers the greater the reduction of risk of all forms to an Intervenor be he one in Stuart such as the Primes ten miles away or one such as Hodder 100 miles away in Miami. There is a need to recognize that like the many tourists and residents in the area, the Primes as well as the other Intervenors own automobiles and therefore, posess mobility and might be expected to visit the Hutchinson Island Beaches, marinas, resort motels, camp grounds. Travel Trailer Parks, residences of friends be they single family or condominium all of which land uses abound on Hutchinson Island in close proximity to the proposed plant site. Verily, development and land uses on the island are increasing at a ever greater frequency with capacity crowds reported in all resort motel and camp grounds. It has been not mentioned lately, but conceivably even the sea turtles and other minutenance might suffer unnecessary adverse effects if additonal construction is permitted at

the Hutchinson Island site when it has not been fully determined that this is the best site as required by the National Environmental Policy Act of 1969. The Applicant has argued in this case, as Applicant utilities do, (See Seabrook NRCI 76/7 at 15) that no dire environmental impact will occur and hence activities confined to a 50 acre site can have no adverse effect on Intervenors.

But this technique is not unknown and was condemned by the Court in Calvert Cliffs. It is known as incremental rule making. To the extent the Applicant alleges their investment in Hutchinson Island forecloses consideration of other alternative sites in the present, Judge Wright addressed and resolved that issue quite clearly in Calvert Cliffs, when he wrote:

> "In order that the pre-operating license review be as effective as possible, the Commission should consider very seriously the requirement of a temporary halt in construction pending its review and the "backfitting" of technological innovations. For no action which might minimize environmental damage may be dismissed out of hand. Of course, final operation of the facility may be delayed thereby. But some delay is inherent whenever the NEPA consideration is conducted--whether before or at the license proceedings. It is far more consistent with the purposes of the Act to delay operation at a stage where real environmental protection may come about than at a stage where corrective action may be so costly as to be impossible.* Thus we conclude that the Commission must go further than it has in its present rules.
>
> *Emphasis Supplied Calvert Cliffs Coordinating Committee v. U.S. AEC 449 F 2d at 1128.

PUBLIC INTEREST

It is in the best interest of the consumers and rate payers of the State of Florida that issues as basic as the one of site selection be fully resolved before the utility company be again allowed to begin construction at a site that may not be the most suitable of the available alternative sites. Normally a private investor-owned utility company uses money derived either directly or indirectly from its stock holders and lenders for new plant construction. Such may not be the case for Florida Power and Light Company. That Company has recently filed for a $349 million dollar rate increase with the Florida Public Service Comm. (PSC) (the State regulatory Agency) where they seek a portion of the money to construct new power plants to be paid by from the payments of

customers of the utility. The company wants an automatic charge on customers bills to pay the cost to construct new nuclear power plants (Miami Herald Nov. 1, 1976). This is a novel request in the experience of Florida utilities and currently is under consideration by Florida PSC. If this measure receives favorable consideration then the risk of any financial loss due to the company's failure to select proper sites would fall on all members of the Florida public, who are FPL rate payers, not just those who are investors in the company.

That no party would suffer substantial harm since no construction is presently underway and the appeal on alternative site selection is likely to be decided without unreasonable delay and further that it would be in the best interest of the Applicant, utility company if a stay were granted until an appeal is decided since it might have the effect of sparing them the cost of a second "false start" on the proposed construction at Hutchinson Island.

When the initial stay was ordered by the Court of Appeals District of Columbia Circuit in October 1976, there was a construction force of some 300 onsite. Since no workers are presently assembled onsite, it is in the best interest of these workers to be assembled, that construction not be allowed to begin at this site if the Board feels there is a strong showing by Intervenors that they are likely to prevail on the merits lest the workforce be disbanded with the resultant adverse effect on the lives of those FPL employees and their families.

FPL has argued that the base load generating capacity represented by the addition of St. Lucie Unit No. 2 would be needed for the peak load anticipated in the summer of 1983. Actually, this need would materialize only if FPL had growth occur at the upper spectrum of growth projections. Mr. Ed Bivans, FPL Vice president in charge of systems planning testified if system growth occured at the lower spectrum of growth forecast, the system reserve in 1985 would be 11.5% (TR 4962) without St. Lucie 2. He further testified that the actual rate of growth of the system since 1973 was occuring at levels below their previous growth forecasts. Mr. Bivans also testified that FPL had offered some of the capacity represented by St. Lucie 2 for sale to certain municipals and rural electric coops. (TR 4974) And that if St. Lucie 2 is built, it might have surplus capacity to sell the Florida Power Corporation (TR 4907) Clearly the Applicant estimate need for power is not as great as it may appear.

When the Applicant Utility, Florida Power and Light Company began construction in June of 1976 under the Limited Work Authorization (LWA) which was stayed by the Court in October 1976, they did so at their own financial risk and had under NRC Rules 10 CFR 50 (e)(4) committed to redress the site in the event that a construction permit for St. Lucie Unit No. 2 were ultimately denied by the Court or the NRC. No such commitment to protect the public exists here under the full construction Permit as now issued by NRC to FPL. It is not in the best public interest if FPL be allowed to begin development of a site that may be ultimatelyfound by a court of review to be unsuitable. To avoid this most objectionable incremental relemaking, issues so basic as alternative site selection, which have been described by the courts as the very linchpin of the Final Environmental Statement as mandated by the National Environmental Policy Act of 1969 (NEPA), must be resolved before construction at a given site can be allowed. If this Appeal Board believes that the Intervenors are likely to prevail on the merits of this basic site selection issue, then for construction at this site to commence now would not be in the best public interest.

President Carter in addressing the natio's energy crisis on national television said (paraphrased) that until the nation completed its transition to coal and new energy sources, yet to be developed, it would have to rely on the nuclear power provided by the present generation of light water reactors "away from people". That's what this case is all about. The applicant utility proposes to build their second nuclear power plant along Floridas Atlantic Coast on property bisected by Highway A1A on Hutchinson Island, 4.5 miles from the municipal boundary of the City of Ft. Pierce, Fla., 4.5 miles from the City of Port St. Lucie and about 8 miles from the City of Stuart, Fla. in an area that is rapidly developing as a high density condominium center with vast numbers of recreation centers and activities growing in close proximity to the nuclear reactor. All of this is occurring on a 22 mile long barrier island with limited means of ingress and egress, which migh prevent, safe, rapid, evacuation in the event of a nuclear accident.

Clearly there is no public interest more paramount that the one expressed by President Carter that these plants be moved "away from

people". Here the applicant utility has almost clandestinely been developing a plant-site with a cooling pond designed to accomodate future nuclear units in sparsely populated western Martin County in the same Eastern Division Service Area as the Hutchinson Island Site which was so planned as early as March 17, 1972.

> A. Certainly the site was designed to accomodate future nuclear units. As I said...
>
> -R. J. Gardner, Vic President Florida Power & Light Co. TR 6341 Dec. 17, 1976.

This is the same Martin site which Mr. Young was unable to obtain information on during his 1973-1974 alternative site review, said failure contributing to the failure of the Staff's first alternate site review effort.

In his efforts to perform the original alternative site review, Mr. Young through his superior, Mr. Widrig, did during a six month period from May 17, 1973 till October 16, 1973 make three separate and repeated requests for additional information on alternate sites which were relayed in three separate letters from the AEC to the Applicant, FPL. (See TR 5780-5784, also a composite Board exhibit).

Mr. Young testified that he never received an adequate response to the request for additional information alternative sites contained at page 6, item 28 of the May 17, 1973 Battelle letter from Mr. Widrig to Mr. St. Mary. (aBoard composite exhibit See Tr 5782)

Mr. Young then explained that during the St. Lucie-Hutchinson Island site visit in September 1973 a FPL representative told him the company was developing two inland sites suitable for nuclear generation, Martin and South Dad. (TR 5565-5566)

Mr. Young added that these sites were not properly identified, their reference being only a name with no location or description or studies showing their suitability for nuclear generation (TR 5564)

He stated that the AEC Environmental Project manager made the decision that "w don't want to go see them." (TR 5565-5566)

In an almost sad note Mr. Young testified:

> "We wrote three letters that -I don't know what you mean by demand. The most we could do was request. We cannot order FP&L to give us any --in other words, all we can do is transmit our letters to the AEC and say this is the type information we would like to have. " (TR 5784)

In response to a Board question Mr. Young stated, "it was October of 1973 that the Battelle Team gave up their effort to obtain additional information on alternative sites form FPL." TR 5784 line 19-22.

Equity as well as the Public Interest demand a stay of construction on Hutchinson Island untill a proper alternative site analysis performed by unbiased and competent reviewers may be obtained.

Dated; May 23,1977

Martin Harold Hodder

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the "Intervenors Motion for Stay Pending Appeal and Motion for Oral Argument" and a "Brief of Exceptions to the Alternative site review" has been mailed this 23rd day of May, 1977 by deposit in the U.S. Mail to the following:

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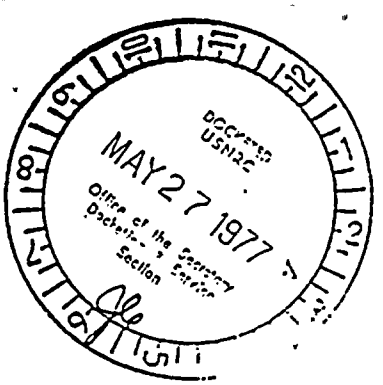

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Michael C. Farrar, Chairman
Richard S. Salzman
Dr. W. Reed Johnson

IN THE MATTER OF	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-389
(St. Lucie Nuclear Power Plant, Unit No: 2)	)	

INTERVENORS' BRIEF OF EXCEPTIONS

In a pleading filed April 27, 1977, the Intervenors listed nine exceptions to the Initial Decision of the ASLB dated April 19, 1977. With limited time and resources the Intervenors will undertake to brief as many of these exceptions as they are able:

1. The major argument will be presented on Exceptions 1 and 2 in a combined fashion.
2. Exceptions 3 and 4 will not be briefed.
3. Exceptions 5 will be treated incidentally.
4. Exception 7 will be addressed.
5. Exception 8 will be addressed.
6. Exception 9 will be addressed in the sense it encompasses the other argument raised herein.

Argument on Exceptions 1 and 2 regarding Alternative Site And Need CAlculation

Intervenors have presented argument which they have briefed in some detail in support of their Motion for Stay Pending Appelate Review which is attached hereto and they hereby incorporate by reference each and every argument raised therein as being supportive of this brief.

That argument addressed the adequacy and quality of the alternative site review performed by the Staff and Battelle during August 1976 and after their original alternative sites analysis as reported in the FES for Unit 2.

The Staff's FES of June 1974 was previously found by the Atomic Safety Licensing and Appeal Board to be "cavalier", "misleading" and to have contained indications "contrary to fact". (ALAB-335 NRCI 76/6 at 18) The Board remanded the case for further proceedings before the licensing board. The Licensing Board in their Initial Decision of April 19, 1977 found concerning the Staff's alternative site analysis during 1973 and 1974:

> ..."We believe that NEPA demanded more. Upon consideration of all the evidence in this regard, we conclude that the alternate sites analysis performed by the Staff in the year 1973 and reflected in its FES did not, in the circumstances of this case, constitute reasonable compliance with the requirements of the National Environmental Policy Act."
>
> -ASLB Initial Decision 4-19-77
> NRCI para. 17, p. 15.

That finding of the licensing Board dealt mainly with the enadequacy and unacceptability of the hypothetical imaginary or composite site technique utilized by the Battelle consultants in their alternative sites analysis. (See generally para. 15, 16, 17 of Initial Decision of 4-19-77) That, of course, was properly the responsibility of the Licensing Board since the Appeal Board on remand had ordered:

> "in either case, the parties shall brief--and the Board below decide--whether the staff's technique satisfied NEPA."
>
> -ALAB-335 NRCI 76/6 at 20.

It is significant to note, however, that the appeal board had an additional problem with the FES for Unit 2, beyond the selection and choice of methodology. That was the reference in the FES to the <u>"specific example used"</u> in drawing a comparison between the St. Lucie site and another site. They stated:

> "This manifestly indicates---contrary to fact--that the Staff had reviewed and rejected at least one other actual site on Florida's east coast".....
>
> -ALAB-335 NRCI 76/6 at 18.

This misleading phraseology which it developed on cross-examination was composed by Mr. John R. Young of Battelle (TR) closely resembles the similar misleading phraseology, also authored by Mr. Young, "The specific documents reviewed were;" followed by a listing of 9 documents that appear at page 12-13 of the Testimony entitled "Supplemental Testimony of NRC Staff on Site Alternatives Evaluation" by John R. Young dated November 1976 (Follows Tr. 5443) The Intervenors have shown at painstaking of the 9 documents described as "available literature describing alternative power plant sites in southern Florida" by John R. Young in the Testimony entitled Supplemental Testimony of NRC Staff on Site Alternatives Evaluation (Follows Tr. 5443).

Therefore, the Intervenors argued that since they had shown the Staff testimony was misleading and cavalier and contained indications contrary to fact, they had met the test established by the Commission in the Seabrook case at Footnote 19 which would not prevent issuance of a stay pending review:

> "We note that there are major distictions between the Hodder case and this case. In particular, in Hodder the Appeal Board found THAT THE FES treated the alternate site analysis in a "cavalier and misleading fashion" which appeared to reflect significant failures of effort by responsible parties. Florida Light and Power Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-335, NRCI 76/6 at 830, 839-40 (1976). Here, the problem arises from the Licensing Board's statements regarding closed-cycle acceptability and EPA's unanticipated about-face."
>
> -Public Service Company of New Hampshire Seabrook Station, (Units 1 & 2) CLI-77/3 March 31, 1977, (Slip Op; concerning Op. p.1)

NEWBOLD ISLAND

The Newbold Island case fits this case in very respect, except the manner of treatment of the case by the successor agency to the AEC, the NRC. In a letter dated October 5, 1973, the AEC Staff Director of Regulation L. Manning Muntzing advised the president of the Public Service Electric and Gas of New Jersey (PSEG of N. J.) of the following:

> "An important requirement in the preparation of an environmental impact statement for a nuclear power plant is, of course, a consideration of alternative sites. On the basis of balancing all the various factors whichmust be considered at this location, including, particularly, population distribution, the Staff concludes that the alternative location of these facilities at Artificial Island, adjacent to Salem Units 1 and 2, which are presently under construction, is a more desirable alternative from an environmental stadpoint. This conclusion will be incorporated in the Final Environmental Statement for the Newbold Island nuclear power

plants. The principal factor leading to this conclusion is the fact that the population density at the Newbold site is significantly larger than at Salem location. For instance, our projections for 1980 show that within five miles distance, the Salem location will have a population of about 4,700 persons, and the Newbold Island site will have approximately 125,00 persons. Within a 30-mile radius in 1980. Salem will have about 1,000,000 persons whereas Newbold Island will have over 4,500,000."
-Letter of L. Manning Muntzing Oct. 5, 1973 to PSEG of N.J.

The Newbold Case is a fine illustration of a concrete application and utilization of a concept of viable alternative site consideration. The Calvert Cliffs decision has made it well settled that a federal regulatory agency must consider viable alternatives to a proposed federal action.

"NEPA requires that an agency must--to the fullest extent possible under its other statutory obligations--consider alternatives to its actions which would reduce environmental damage. That principle establishes that consideration of environmental matters must be more than a pro forma ritual. Clearly, it is pointless to "consider" environmental costs without also seriously considering action to avoid them. Such a full exercise of substantive discretion is required at every important, appropriate and nonduplicative stage of an agency's proceedings.
-Calvert Cliffs Coord. Com. v. U.S.A.E.C. Comm. 449 F. 2d 1109 1971.

The Newbold Island case dovetails perfectly with the Hutchinson Island case, even to the similarity to the "Island" designation in their names. The PSEG of N.J. had proposed to build twin nuclear reactors on an island in the Delaware River between Bucks County, Pa. and Bulington County N.J. with a proposed 1 mile LPZ. *FPL also presently proposes a one mile LPZ for St. Lucie No. 2 on Hutchinson Island. In the Newbold Island Island case PSGE of N.J. had submitted population projections for the surrounding area up to 50 miles as required by AEC Regulation. The Newbold Island project drew some formidable opposition and quickly became a hotly contested proceeding.

A partial list of Intervenors in the Newbold Island case included:

1. The Commonwealth of Pennsulvania.
2. The Bucks County Commissioners
3. Environmental Coalition on Nuclear Power.
4. Various lower Bucks County municipalities.
5. Various environmental interest groups.
6. Rep. J. Eilberg, D-Philadelphia.
7. Rep. Edwin Forsythe, R-Burlington.
8. State of New Jersey.

*FPL originally proposed a five mile LPZ at St. Lucie 2 on Hutchinson Is. but has agreed to install emergency safety features and thereby reduce the LPZ to 1 mile.

The very close scrutiny of the submittals of the applicant utility, PSEG of N.J., resulted in the revelation that, as in the Hutchinson Island proceedings the applicant utility company had grossly underestimated population projections.

On June 16, 1972 the Honorable Samuel Jensch ASLB Chairman for the Atomic Energy Commission suspended the hearings and in reference to the Applicant PSEG of N.J. population studies stated, "there are some things in this initial presentation that seem quite defficient to the Board".

-See Evening Times, Trenton, N.J. June 16, 1972 or Transcipt of that Hearing.

Sixteen months of on again off again hearing proceeding ensued. The last recess was ordered to produce a more detailed evacuation plan. Ultimately L. Manning Muntzing wrote his historic letter of October 5, 1973, reccomending the plant be built in sparsely populated Salem County next to two similar power plants then under construction.

In a press conference in November of 1973 L. Manning Muntzing in explanation of the AEC rejection of the Newbold Island site, there would be about 125,000 people within the zero to five miles radius of New Bold Island by 1980 while only about 4500 would live in a five mile area around Artificial Island. (Salem Site)

Except for the fortuitous St. Lucie name change, the Hutchinson Island case matches the Newbold Island case on its very four corners and it was probably the first time the commission applied the standard of "obvious superiority" as enunciated by the Commission in the recent Seabrook case. It is the position of the Intervenors that not only is the alternative site review by the Staff been shown to be seriously defective but that by the same criteria that resulted in the Newbold Island facility relocation so should the Hutchinson Island plant be moved to a sparsely populated site such as the Western Martin County site, a nuclear sized cooling pond site in the same Eastern Division service area as the Hutchinson Island site.

THE SEABROOK CASE

The rule that seems to have been applied in Newbold Island is eloquently stated in the concurring opinion of Commissioner Kennedy in the Seabrook case where he stated:

"Under the test the Commission adopts today, an applicant may have his site found acceptable by a licensing board after a full review, only to have it rejected because an "obviously superior" site is put forward, perhaps at a later time. The obviously superior test applies not only where a recomparison of sites is being made but also in initial selection. The opinion asserts that NEPA mandates not only a comparison of alternate sites, but that it also mandates rejection by the Federal agency of wholly acceptable sites when much better ones can be found.

-Public Service Company of New Hampshire Seabrook Station, Units 1 & 2) CLI-77/3 March 31, 1977, (Slip Op; concerning Op. p. 1)

The Intervenors have argued and presented testimony in the recent hearings that indicates the "obvious superiority" of the MartinSite in comparison with the Hutchinson Island site as was found in the Initial Decision by the ASLB at para. 19:

"Intervenors have pressed the position that St. Lucie Un-t No. 2 should not be constructed at the site on Hutchinson Island, but, rather, should be constructed at eh Martin site. Intervenors' principal witness on alternative sites was Dr. Karl Z. Morgan (Testimony Recommending the Location of St. Lucie No. 2 at More Suitable Site Than Hutchinson Island by Karl Z. Morgan, following Tr. 6192). Dr. Morgan testified that the site on Hutchinson Is. has many undesirable features. He listed the following: (1) the density of the population and the prospect of a rather rapid increase in neighboring populations over the operating lifetime of the plant; (2) difficulties of egress and safe evacuation in time of emergency; (3) shipment of fuel to and from St. Lucie 2 by truck instead of rail; (4) the lack of holdup of cooling water before discharge and the insufficient capacity to hold up intermediate hight level liquid discharges; (5) the doubling of population exposures resulting from adding St. Lucie 2 to a site already containing one nuclear reactor; and (6) the likelihood of common made failures where two units are operated by the same utility at a single site. Dr. Morgan concludéd that there are other sites that avoid certain of these shortcomings, that the Martin County site would "score the highest" of these other sites, and that it would score better than the site on Hutchinson Island on each of the above enumerated features (Morgan, pp. 1-4, 6)."

- para 19 Initial Decision ASLB NRCI 77/4

Indeed, although the staff witness Young testified that the population within a 50 mile radius of the Martin Site is greater than that within a 50-mile radius of the Hutchinson Island site, he also testified:

A. "(By Mr. Young) Yes.

Q. Would you tell me then how those populations within five miles of the Hutchinson Island site, in the revised FES, compare with the population in the environmental impact statement for the Martin site within five miles?

A. The 1970 census data for the Martin site is 310 persons within five miles. The estimate population within five miles of the Hutchinson Island site in 1974 is 7,000--approximately 7,000 persons. -John R. Young Tr 6062.

Mr. Young went on to testify that within ten miles of the Martin site the population is 3,975 and within ten miles of the Hutchinson Island site was 71,900 as estimated in 1974. Tr 6064. In response to a question by Dr. Hooper, Mr. Young testified that:

"In terms of numbers, close in, probably the growth around the Martin site would be lower" and "The Martin site, now is a low population area." Tr 6066, 6065. One is reminded again of the coincidental similarity of the Newbold Island and Hutchinson cases since the Newbold Island site was criticized by Mr. Muntzing due to the"significantly larger" population at the Newbold site when compared to the alternate Salem site. (USAEC Letter L. Manning Muntzing to Robert I. Smith PSEG of N.J. dated 10-5-73.)

Clearly the Martin site possessed obvious superriority to the Hutchinson Island site as was testified by Dr. Karl Z. Morgan, emminently qualified (See Tr 6423-6437) former director of Health Physics at the Oak Ridge National Laboratories, now a Neeley professor at the Georgia Institute of Technology on behalf of the Intervenors case. Dr. Morgan testified the Martin site was preferable in a cost benefit analysis to the Hutchinson Island site. Tr 6455 in the categories of transportation, emergency evacuation, and discharge of radiation into the Public Domain which were items 7, 14 and 15 respectively of his testimony, entitled Table A "Deficiencies of Table 2 in the NRC Supplemental Testimony." Dr. Morgan testified that radiological dose to populations around the Martin plant due to spent fuel shipment due to the rail line there would be 1/10 of the dose at Hutchinson Island, where it would be necessary to ship spent fuel offsite by truck. (See Tr 6466 generally.) Indeed, the Martin site presented real advantages in terms of emergency as well as routine shipments (Tr 6467)

Dr. Morgan testified that at the Martin site discharge into a privately owned cooling pond was far preferable to discharge into the public domain of the ocean at the Hutchinson Island site. He explained how radioactive contaminants could beheld up at the Martin cooling pond site till radioactive decay occurred where as at the Hutchinson Island site they very possibly could be directly discharged into the marine environment.

He said:

> "You would have very great difficulty doing that on the Hutchinson Island site because your tanks are not adequate to hold up that much water."
>
> -Dr. Karl Z. Morgan Tr 6475 Jan 11, 1977

Dr. Morgan's words were prophetic because later on in the Spring of 1977, the St. Lucie Unit 1 had an accident and 4000 gallons of highly radioactive water equivalent to primary coolant, were accidentally spilled and captured in a settling pond onsite. Within a few days later the utility discharged this 1 3/4 curies of radioactivity directly into the marine environment (ocean) as Dr. Morgan said they might. Hence we may appreciate first hand one major advantage of a cooling pond site. The remainder after extensive objections by Applicant and Staff of Dr. Morgan's testimony appears at (Tr 6490) a & b.

Intervenors bring to the attention of the Appeal Board their objection the record at (Tr 6491) to the Board rulings on the Dec. 16, 1976 and Jan. 11, 1977 testimony objections of Dr. K. Z. Morgan. It is the position of Intervenors that the Board improperly allowed all testimony offered by the applicant and staff to come in with the sole exception of one sentence by Mr. O. D. T. Lynch, Jr., the NRC Staff Environmental Project Manager drew a legal conclusion. For example, a great glut of confusing, duplicative and contradictive staff testimony was admitted on behalf of the NRC Staff following Tr 5143, but poor Dr. Morgan's Table A Deficiencies of Table 2 in the NRC supplementary Testimony was carved up like a week-old Thanksgiving turkey! Dr. Arthur Tamplin's, another Intervenors witness, testimony was so destructed by sustain objections it was hardly recognizeable.

Intervenors had filed on March 17, 1977 Written Motion to Strike Portions of Testimony Directed to this staff on the grounds it was Incompetent and biased as pertains to the testimony of the Battelle consultants of the NRC Staff. Mr. O.D.T. Lynch the NRC Staff Environmental project manager presented evidence that was hearsay and incompetent and Intervenors objected on their March 17, 1977 Motion. This Motion was overruled. Intervenors incorporate by reference each into this brief and every statement of their Motion to Strike Portions of Testimony and accompanying Intervenors Response to Proposed Findings and Briefs OF Applicant and Staff filed March 17, 1977.

Reconnaisance Type Investigations

Mr. Young, the Battelle Technical Team leader admitted under cross-examination that he didn't use Reg. Guide 4.2 as revised in July 1976 by assigning the various nomenclature in chapter 9.2. (Tr 6012) Hence there was no distinguishment between the sites or the available terms including region of interest, candidate areas, potential sites, candidate sites and proposed sites. Mr. O.D.T. Lynch the NRC Environmental Project manager explained how, all that was conducted by them, was a reconnaisance-type site review. (Tr 6014) which consisted of the helicopter overflights over a two day period of five sites the first day and one site the second day. See Supplemental Testimony of Oliver D.T. Lynch (Follows Tr 5443)

Apparently, Mr. Lynch believed that mere inspection from the air of alternative sites was all that was required of the Staff. It should be remembered, however, that this Sugust 17, 18, 1976 alternative site review was conducted in atime frame when the staff and Battelle both still had confidence in their composite as hypothetical siting technique and it is certainly conceiveable they felt more effort was not warranted under the circumstances. Intervenors feel that the Staff in failing to follow their own Reg. Guides and performing this cursory aerial review broke with the mandate of the court in Calvert Cliffs where it was stated;

> "Sec. 102 (2) (D) requires all agencies specifically to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.". This requirement, like the "detailed statement." requirement seeks to ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance. Only in that fashion is it likely that the most intelligent, optimally beneficial decision will ultimately be made. Moreover, by compelling a formal "detailed statement" and a description of alternatives. NEPA provides evidence that the mandated decision making process has in fact taken place and, most importantly, allows those removed from the initial process to evaluate and balance the factors on theri own."
>
> -Calvert Cliffs Coord. Com. v. U.S. A.E.C. 449 F. 2d 1109 (1971)

In expressing the mandate of the court, Judge Wright made it unmmistakably clear tht the efforts of federal regulatory agencies in performing

considerations of alternatives he performed "to the fullest estent possible":

> "Of course, all of these Section 102 duties are qualified by the phrase "to the fullest extent possible." We must stress as forcefully as possible that this language does not provide an escape hatch for footdragging agencies; it does not make NEPA's procedural requirements some how "discretionary." Congress did not intend the Actto be such apaper tiger. Indeed, the requirement of environmental consideration "to the fullest extent possible" sets a high standard for the agencies, a standard which must be regorously enforced by the reviewing courts."
> -Calvert Cliffs' Coord. Com. v. U.S. AEC 449 F.2d 1109(1971)

Financial Ability of the Applicant

The applicant has increased their cost estimate for the St Lucie Unit No. 2 from 360 million dollars to nearly one billion over the past four years, at a time when their bonds are receiving only A ratings from New York. Firms such as Moody's and Standard and Poors; If bond ratings slip further, the company may have impaired ability to borrow additional money.

Coupled with this, leaks of a serious nature are reported to exist in the early generation steam generators at the companies. Turkey Point Units 3 & 4 Nuclear Power Plants. These leaks have the potential of shutting these plants down for up to two years. This warning was given by the company to its stockholders in the annual report dated Feb 7, 1977. That document reports that the costs are expected to run from 30 to 50 million dollars per unit. There exists the possibility as reported in the Miami Herald (4-18-77) that the problems with the early type Westinghouse steam generators similar to VEPCO's Surry Plants could cost the company up to 380 million dollars. This coupled with the fact that

the company is seeking a 349 million dollar rate increase from the Florida Public Service Commission.

Fuel Cycle Table S-3

Intervenors, due only to shortness of time, incorporate by reference each and every word of the statement of their counsel on the record at hearings on Jan 11, 1977 at TR 6518-6521 and TR 6538-6542

Intervenors would add that they specifically take exception to the fact that the revised table S-3 as found in NUREG-0116, improperly, does not give any value for high level wastes after permanent interrment. This coupled with incomplete accounting of material unaccounted for (MUF) makes a mockery in the view of Intervenors of any effort to quantitate the adverse effects of the fuel cycle

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