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RE: In the Matter of Florida Power & Light Company
(St. Lucie Nuclear Power Plant Unit No. 2 - Docket 50-389)

Dear Members of the Board:

Enclosed herewith is "Trial Brief for Applicant on the Alternative Sites Contention, Contention 1.6(b)."

Very truly yours,

Norman A. Coll

NAC/pv
Enclosure

389
Hf

cc: See Attached Certificate of Service

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
FLORIDA POWER AND LIGHT COMPANY	)	DOCKET NO. 50-389
(St. Lucie Nuclear Power Plant	)	
Unit No. 2).	)	
	)	
	)	

TRIAL BRIEF FOR APPLICANT

ON THE ALTERNATIVE SITES CONTENTION, CONTENTION 1.6(b)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

TRIAL BRIEF FOR APPLICANT ON INTERVENORS' CONTENTION 1.6(b) PERTAINING TO ALTERNATIVE SITES

I. Introduction

In a Partial Initial Decision on environmental and site suitability matters dated February 28, 1975, Florida Power and Light Co. (St. Lucie Unit No. 2), LBP-75-5, 1 NRC 101, and Supplement to the Partial Initial Decision, dated April 25, 1975, Florida Power and Light Co. (St. Lucie Unit No. 2) LBP-75-25, 1 AEC 463 (1975), this Board concluded, among other things, that the environmental review conducted by the Regulatory Staff pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C.A. § 4321 et seq.) as further augmented and modified by the decision, is adequate. Numerous exceptions to the decision were filed, and on June 29, 1976, the Appeal Board affirmed the Partial Initial Decision with respect to all of the exceptions but one. See Florida Power & Light Company (St. Lucie Nuclear Power Plant,

Unit No. 2), ALAB-335, NRCI 76/6 830. The Appeal Board held that the Licensing Board had erred in summarily disposing of Intervenors' Contention 1.6(b):

> Whether the Staff's Final Environmental Statement has sufficiently considered alternatives to the proposed action including***alternative sites especially sparsely population [sic] areas such as Southwest Florida***.

See Id. at 834-41.

Because neither the Final Environmental Statement for St. Lucie 2 nor any other relevant documents filed with the Licensing Board "set out the process that the Staff had followed with anything approaching sufficient clarity to permit the result the Staff advocated to be put summarily beyond challenge, the Appeal Board reinstated this contention for resolution, stating that "[o]nly after a full explanation was forthcoming could the intervenors be held accountable for failing to counter a motion for summary disposition of the issue". NRCI 76/6 at 840.

The Staff had filed affidavits by John R. Young dated November 10, 1975 and December 19, 1975 with the Appeal Board which outlined the process which the Staff had originally followed in considering alternative sites. This process was labeled by the Appeal Board a "best possible case approach" whereby the evaluation of alternative sites was based upon a "composite of characteristics which would typify the best

alternative coastal site." Id. at 838 (footnote omitted).

The Appeal Board, however, declined to consider whether this process satisfied NEPA. Instead, as part of its remand, it ordered the parties to brief and the Licensing Board to decide whether the Staff's approach complied with NEPA. See ALAB-335, NRCI 76/6 at 838-41. This brief is submitted in response to that direction.

II. Statement of Facts

The Staff's methodology was thoroughly explored during the course of the hearing. In response to this Board's direction extensive discovery was conducted before hearings began. During the course of the hearings the chronology of the Staff's review of the application for St. Lucie 2 and of the Staff's treatment of alternative sites, including the Staff's requests for information and the responses received, was examined in detail. Three witnesses for the Applicant and two for the Intervenors testified on the issue of alternative sites. The affidavits of Mr. John R. Young which had been filed with the Appeal Board were incorporated in the record. Follows TR. 5443. In addition, six witnesses testified on behalf of the Staff, including Mr. Young. These witnesses were subjected to detailed cross-examination by Intervenors and the Applicant's counsel as well as active questioning by the members of the Board.

The facts which emerged are described in detail in "Applicant's Proposed Supplemental Findings of Fact and Conclusions of Law in the Form of an Initial Decision," filed with this Board on January 31, 1976, paras. 40-113. [hereinafter cited as APF].

Rather than restate the facts as there set out, we incorporate them herein by reference. We believe it sufficient

here to highlight certain aspects of the facts. These are, first, that the alternative sites evaluation conducted in 1973 was carried out in the manner described in the affidavits filed with the Appeal Board, APF, Paras. 61-66, 85. A best "characteristics" or "best regional" site evaluation method was employed. Florida was divided into five general siting regions. Three were immediately eliminated because of major relevant considerations. The remaining two regions were then divided into fourteen sub-regions. Six were eliminated because of excessive population or longer transmission distances, leaving eight candidate regions with the best potential for siting. Examination of the six remaining inland regions showed that the best region would be one near the south end of Lake Okeechobee because of the shorter transmission distance and more favorable transportation facilities. This resulted in three final candidate siting regions:

1. A Hutchinson Island site (represented by the proposed St. Lucie 2 site),

2. A Jupiter Island site (representing the best coastal site), and

3. A Lake Okeechobee site (representing the best inland site).

The characteristics of these three sites or siting regions were then compared, using twenty normal site evaluation factors, and the conclusion reached that the characteristics of the Hutchinson Island site were better than the characteristics

of any other site. The primary reasons for this conclusion were:

1. At least a $94,000,000 lower economic cost for construction at Hutchinson Island; and

2. An equal or lower total environmental effect for the Hutchinson Island site because of no new terrestrial impact, and probably an equally insignificant aquatic impact for all sites.

One characteristic of the alternative coastal sites could be rated as better than for Hutchinson Island. This was the shorter transmission distance, but this advantage was more than offset by the higher total population within fifty miles as a result of a shorter distance to the West Palm Beach population center and a generally higher population within ten miles. All other characteristics of the alternative sites, both inland and coastal, appeared to be equal to or less attractive than for the Hutchinson Island site.

Thus, the analysis, conducted in 1973 and 1974 prior to the preparation of the Final Environmental Statement, showed that no environmental advantages were apparent for the alternative sites that could offset the $94,000,000 additional economic cost, the small additional environmental impact on Hutchinson Island resulting from St. Lucie 2, and the reduced system reliability during the at least one year delay in plant start-up if the power plant were not built at Hutchinson Island. It was these advantages that persuaded the Staff that it did not have to visit specific sites within the sub-regions

surviving the screening process.

The information upon which this evaluation was based included the Applicant's Environmental Report for both St. Lucie Unit 1 and St. Lucie 2, information supplied by the Applicant, a literature check, discussion of the St. Lucie 1 Environmental Report with those who had prepared it, discussions with members of the Battelle evaluation team who had been former residents of Florida, review of numerous power plant siting documents and general site inspections of both inland and coastal regions. APF, Paras. 62, 73.

On August 17 and 18, 1976, subsequent to the issuance of ALAB-335, and at the request of the NRC, a team made up of the NRC Environmental Project Manager, Mr. Lynch, Mr. Young, and three other members of the Battelle evaluation team visited five possible alternative sites for St. Lucie 2 which had been referred to in the course of this proceeding. The visit was part of a reevaluation to determine if any new information had developed as a result of the identification of specific sites which would alter the conclusion that Hutchinson Island would still be the best site. APF, Para. 89. Before making the visit a considerable amount of literature concerning the alternative sites was reviewed. This included material relating to such specific sites as DeSoto, South Dade and Martin and more general studies either prepared by the Applicant for its own use or for filing with Florida and other govern-

mental authorities. APF, Para. 93.

The site evaluation team conducted on-site examinations and aerial reconnaissance of the Hutchinson Island, DeSoto, Martin and South Dade sites and aerial reconnaissance of the Juno Beach and Salerno sites. Each member of the team testified at the hearing. Three testified with respect to a special area of expertise, including terrestrial and aquatic ecology and hydrology. APF, Paras. 91, 92. Mr. Young's testimony contains a detailed comparison of the five sites with Hutchinson Island on the basis of the updated information and visit. Basically the comparative factors remained the same as those contained in the affidavit which Mr. Young submitted to the Appeal Board on November 10, 1975. That affidavit had indicated that an inland site would have questionable cooling water availability and that liquid waste disposal would be difficult. The 1976 visit included the Applicant's Martin site where a 7,000 acre reservoir is now being constructed for fossil fuel plants. The comparison of specific alternate sites made in 1976 took this new information into account, and for the purposes of the present discussion, the availability of both cooling water and liquid waste disposal facilities at Martin are assumed. APF, Paras. 94, 95.

The 1976 reexamination of specific sites led the NRC Staff to conclude that none of those sites are competitive NEPA alternatives to Hutchinson Island. No question was raised about this conclusion by Intervenors except with respect to the Martin site.

We demonstrate in the following portions of this brief that (1) the Staff's analysis undertaken in 1973 and 1974 met the requirements of NEPA; (2) even if there were any infirmities in that analysis, they were cured in 1976; (3) that as a result of the consideration of the alternative sites issue in this hearing the only site which was suggested as a possible alternative to St. Lucie is Martin and that sufficient consideration was given to it fully to justify the conclusion on the existing record that Hutchinson Island is the preferable alternative.

ARGUMENT

A. THE NRC STAFF ANALYSIS OF ALTERNATIVE SITES IN 1973 AND 1974 MET THE REQUIREMENTS OF NEPA.

Section 102(2)(C) of NEPA provides that

> [A]ll agencies of the Federal Government shall--
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment a detailed statement by the responsible official on --
>
> * * *
>
> (iii) alternatives to the proposed action

42 U.S.C.A. § 4332(2)(C).

The purpose of this provision is to permit reviewing bodies to see what the agency has done and, generally with help from the public, to determine whether the agency has properly balanced environmental costs and benefits under NEPA. Unless alternatives, especially, are considered, the agency may approve action which might not be necessary or which might result in greater environmental harm than some other viable course. See, generally, Trout Unlimited v. Morton, 509 F.2d 1276, 1282 (9th Cir. 1974); NRDC v. Morton, 458 F.2d 827, 835 (D.C. Cir. 1972); Calvert Cliffs' Coord. Comm. v. AEC, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

NEPA, however, is silent concerning the manner in

which alternatives are to be considered. As a result, the courts, and to some extent administrative agencies, have filled the void and interpreted section 102(2)(C) in light of a "rule of reason." E.g., Concerned About Trident v. Rumsfeld, ____ F.2d ____, 9 ERC 1370, 1378 (D.C. Cir. Oct. 13, 1976); Sierra Club v. Morton, 510 F.2d 813, 819 (5th Cir. 1975).

One of the first cases to articulate the rule of reason was NRDC v. Morton, 458 F.2d 827 (D.C. Cir. 1972). In that case the court emphasized that, with respect to alternatives and environmental effects, consideration need not be exhaustive:

> What is required is information sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned.

Id. at 836.

In a more recent case, it was held that NEPA demands a study of reasonable alternatives:

> that is to say, "realistic alternatives that will be reasonably available within the time the 'decision making' official intends to act." (citation omitted)

Fayetteville Area Chamber of Commerce v. Volpe, 515 F.2d 1021 (8th Cir. 1975).

Within the agency, the Appeal Board has applied NRDC v. Morton standards to the specific question of alternative site evaluation. In the Bailly case the Appeal Board considered an FES which compared the best of two types of

sites, i.e., the choicest riverside site (Schahfer) and the best lakeshore location (Bailly). Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-224 8 AEC 244, 256-66 (1974), aff'd, 533 F.2d 1011 (7th Cir.), cert. denied, 45 U.S.L.W. 3346 (1976). In Bailly, the Appeal Board first noted that, under NRDC v. Morton, "[T]he NEPA requirement to discuss alternatives to a proposed course of action presupposes that the alternatives be reasonable." 8 AEC at 267. The Appeal Board then held:

> The . . . District of Columbia case cited . . . establishes "that the discussion of environmental effects of alternatives need not be exhaustive. What is required is information sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned." Natural Resources Defense Council, Inc. v. Morton, supra, 458 F.2d at 836. The review of alternative sites in this proceeding satisfied that requirement.

8 AEC at 268-69 (footnote omitted) (emphasis added).

In order to generate sufficient information, the responsible federal agency need not compile mass studies for each alternative. It need only collect "as much data as will be necessary for the [agency] to determine that the alternative is either infeasible or warrants further attention." Cape Henry Bird Club v. Laird, 359 F.Supp. 404, 421-422 (W.D. Va 1973) aff'd 484 F.2d 453 (4th Cir. 1973). The courts have recognized that "[I]t is expected that equal

resources will not be expended in an examination of alternatives as will be expended in studying the proposed action." United Family Farmers v. Kleppe, ____ F.Supp. ____, 9 ERC 1513, 1521 (D.S.D. 1976). In that regard, the responsible agency, may in addition, draw on its previous knowledge of alternatives in its NEPA analysis:

> NEPA does not preclude an agency from relying on past experience, judgment, and knowledge of the area when it makes a determination about the feasibility of a project's alternatives. If such a determination is made in good faith and without bias, then the collection of voluminous amounts of data is unnecessary.

Cape Henry Bird Club v. Laird, supra, 359 F.Supp. at 422. Consequently, an exploration of alternatives is sufficient if it is focused "upon those alternatives which there is reason to believe might, if adopted, provide a significant difference in environmental impact." Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1004 (1973), aff'd 524 F.2d 1291 (D.C. Cir. 1975). An alternative which would result in similar or greater environmental harm, or one of speculative feasibility, need not be considered. Sierra Club v. Morton, 510 F.2d 813, 825 (5th Cir. 1975); Concerned About Trident v. Rumsfeld, supra, 9 ERC at 1376.

Finally, the sufficiency of the environmental consideration of alternatives cannot be separated from the particular

facts and circumstances surrounding the project. NRDC v. Callaway, 524 F.2d 79, 93 (2d Cir. 1975); Iowa Citizens for Environmental Quality, Inc. v. Volpe, 487 F.2d 849, 852 (8th Cir. 1973). This principle is particularly significant in a NEPA discussion of alternatives to a nuclear power plant site. NEPA's focus is on environmental comparisons, some of which may include impacts resulting from radiological health and safety matters. NEPA also requires a consideration of the applicant's need for power. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, RAI-74-2, 159, 175 (1974). Hence, the nature of the proposal--the approval of a nuclear power plant site under the Atomic Energy Act to meet an expected demand for power by a determined date--must be considered in determining the reasonableness of each alternative and the amount of investigation and discussion of it required under NEPA.

In this proceeding, the FES prepared and published by the NRC Staff in May 1974 contains no comparison of the Hutchinson Island site with specific alternate sites. The record developed on remand shows that no specific sites were originally compared in the FES because no competing site regions survived the screening process used by the Staff in its analysis. APF, Paras. 63-67.

The record demonstrates that the NRC Staff review of alternative sites for St. Lucie 2 was based upon "information

sufficient to permit a reasoned choice of alternatives." Bailly, supra, 8 AEC 244, 268-69. The initial analysis of alternatives employed a logical, methodical approach which began with an initial evaluation of general alternatives and progressed through various stages to the consideration of more specific alternatives.

Moreover, in its initial review of St. Lucie 2, the Staff properly relied, in part, on its previous experience with St. Lucie 1. See NRC Regulatory Staff's Affidavit in Response to the Atomic Safety and Licensing Appeal Board Order dated October 23, 1975, p. 4 (Nov. 10, 1975)(follows TR. 5443). In such circumstances, the agency was particularly justified in making the judgment that the available alternatives for St. Lucie 2 could be divided into classes or types, with generally common characteristics, against which the Applicant's proposed site could be compared. Cape Henry Bird Club v. Laird, 359 F.Supp. 404, 453 (W.D. Va.), aff'd, 484 F.2d 453 (4th Cir. 1973).

In addition, the overwhelming advantages of the St. Lucie site, consisting of less cost, less environmental impact, and less delay, supported the NRC Staff's decision not to visit or compare specific alternative sites. APF, Para. 67.

It is true that although the Staff was aware in 1973 of the Applicant's inland Martin site and associated fossil

plant development plans (see, e.g., TR. 5538-39), its analysis did not take into account the availability[1/] of a man-made cooling pond as one of the best regional characteristics of an inland site. See, e.g., Young Supplementary Testimony, p. 10. Consequently, the inland site was found to have "questionable" cooling water availability, and "difficult" liquid waste disposal, when originally compared to Hutchinson Island. Later analysis, in 1976, confirmed the availability of both cooling water and liquid waste disposal facilities at the inland Martin site, because of the man-made cooling pond now being built there. The comparison of specific alternate sites by the Staff in 1976 uses this updated information, and the analysis now gives Hutchinson Island no comparative advantage over Martin for these two factors. However, the other competitive advantages for Hutchinson Island remain.

Consequently, the analysis used by the NRC Staff in its initial consideration of alternative sites was wholly reasonable in the circumstances, and met the requirements of NEPA.

B. THE NRC STAFF ANALYSIS OF ALTERNATIVE SITES, AS UPDATED IN 1976, MET THE REQUIREMENTS OF NEPA.

In the latter half of 1976, the original St. Lucie 2 site analysis was reviewed to determine if new information

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1/ Construction of fossil fueled units at Martin began by the fall of 1973. TR. 6349-50.

had become available which would change the conclusions presented in the FES. APF Para. 89.

The 1976 reexamination of specific sites and update led the NRC Staff to conclude that none of those sites are competitive NEPA alternatives to Hutchinson Island. APF, Para. 96. The information developed and presented to the Board as a result of the update in 1976 confirmed that the Staff's initial analysis in 1973 and 1974 was reasonable and met the requirements of NEPA.

C. SUFFICIENT INFORMATION WAS DEVELOPED BY THE NRC STAFF IN ITS ANALYSIS OF ALTERNATIVE SITES TO DETERMINE THAT THE MARTIN SITE WAS NOT A REASONABLE ALTERNATIVE.

Intervenors' original contention 1.6(b) suggested that "sparsely population (sic) areas such as Southwest Florida" contained alternative sites for St. Lucie 2 which had not been considered by the NRC Staff. The entire region containing such sites had, however, been considered and rejected early in the initial staff analysis in 1973 and 1974. APF, Para. 64. Subsequently, Intervenors changed their position, during these proceedings, to suggest that the Martin site was better than the Hutchinson Island site for St. Lucie 2. APF, Paras. 97-100. The subregion in which the Martin site was actually located had also been rejected by the Staff in its initial analysis in 1973 and 1974. APF 65. The 1976 update by the Staff confirmed

that the Martin site was not a reasonable alternative. Although Intervenors asserted that the Martin site was preferable because of some lower population density, the availability of transportation of spent fuel by rail, and the discharge of liquid effluents into a closed system instead of the environment, APF, Para. 99, Applicant and Staff demonstrated that none of these considerations have a material effect on the cost/benefit analysis of alternative sites to the proposed site on the Hutchinson Island. APF, Paras. 100-107. Furthermore, it has not been shown that they or any other characteristics of any site will weigh favorably when compared to the insignificant additional environmental impact at Hutchinson Island, APF, Para. 110; the $165,000,000 cost advantage of St. Lucie 2, Young, Supplemental Testimony, p. 19, Table 2, APF, Para. 111; and, in view of Applicant's need for power by the time St. Lucie 2 is scheduled for completion, APF, Paras. 14-39, the two to four and one-half year delay to complete St. Lucie 2 at any other site. Young, Supplemental Testimony, p. 20, Table 2, APF, Para. 112.

CONCLUSION

The totality of evidence received by the Board and made a part of the record of these proceedings on remand demonstrates that the Staff's analysis of alternative sites undertaken in 1973 and 1974 was reasonable and met the requirements of NEPA. The update of that analysis in 1976 confirms that the original analysis was reasonable and sufficient to meet the requirements of NEPA. Moreover, sufficient information was developed, and made a part of the record of these proceedings on remand, to demonstrate that the Hutchinson Island site is the preferred alternative to the Martin site.

The Final Environmental Statement, as modified by the record of these proceedings on remand, has adequately considered alternative sites to the proposed site under NEPA.

Respectfully submitted,

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By /s/ Norman A. Coll
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand or mail, this 7TH day of FEBRUARY, 1977, to the following:

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