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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCHBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Docket Nos. 50-250 OLA-5
50-251 OLA-5

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Plant, Units 3
and 4)(Technical Specifications
Replacement)**APPLICANT'S RESPONSE TO
NOTICE OF WITHDRAWAL FROM PROCEEDING**

Florida Power & Light Company ("Applicant") hereby responds to the "Notice of Withdrawal from Proceeding" ("Notice") submitted on behalf of Thomas J. Saporito, Jr., on April 1, 1990.

The Notice states that "Mr. Saporito hereby withdraws entirely and completely from these proceedings . . . and leaves the Nuclear Energy Accountability Project (NEAP) as the sole remaining Petitioner in these proceedings". It further states that "NEAP remains a Petitioner in these proceedings without any reliance on Mr. Saporito for standing. . . ." and that "NEAP holds no reliance on Mr. Saporito's standing in these proceedings to support its own standing. . . ." (Emphasis in original.) The Notice also suggests that any questions relating to NEAP's standing be addressed at oral argument. 1/

1/ Accordingly, Applicant considers the Notice to be the equivalent of a motion suggesting procedures to be followed as a result of the withdrawal.

By withdrawing as a party to this proceeding - asserting wholly unjustified accusations against the Applicant as the basis for the withdrawal - Mr. Saporito has revived the formerly resolved issue of NEAP's standing to participate. As demonstrated in earlier pleadings and despite ample opportunity to do so, NEAP has not established standing other than as a representative of Mr. Saporito. It is therefore Applicant's position that, in consequence of Mr. Saporito's withdrawal, NEAP does not now have standing and that the Licensing Board should deny the pending petition for leave to intervene as it relates to NEAP and terminate this proceeding.

Applicant strongly disagrees with the allegations made by Mr. Saporito in the Notice concerning the asserted basis for his withdrawal from this proceeding. The Notice asserts that a March 7, 1990 letter signed by John T. Butler and requesting confirmation of Mr. Saporito's employment in the Miami area was "unlawful and unethical" and was intended to intimidate Mr. Saporito and others. Those accusations are entirely unfounded.

As was obvious from the face of the March 7, 1990 letter to the ATI Career Training Center and as was subsequently explained in Mr. Butler's March 19, 1990 letter to Mr. Saporito, the March 7 inquiry "was intended solely for the purpose of verifying the factual bases for the assertion in the NEAP amended petition with respect to standing." The March 7 letter was written solely to assist Applicant's counsel in determining whether to contest or concede the Petitioners' standing. Such an

attempt at confirmation or verification was a responsible exercise of counsel's duty to his client and was not intended to intimidate or coerce any person or organization. Nor, as far as we are aware, has it been interpreted as having such an intent by anyone other than Mr. Saporito.

It certainly has not been so interpreted by the U.S. Department of Labor. The March 7 letter constituted the basis for a complaint which Mr. Saporito has recently filed against the Applicant under the "Whistleblowing" Statute, Section 210 of the Energy Reorganization Act (42 U.S.C. § 5851). An investigation by the Department of Labor followed, and Mr. Saporito's charge was dismissed by a letter to him dated April 2, 1990, from Jorge Rivero, Assistant Director, Employment Standards Administration, Wage and Hour Division, U.S. Department of Labor. The letter states:

An investigation was conducted. Our investigation did not verify that discrimination was a factor in the action comprising your complaint. Our further finding, based on your own statement, was that ATI Career Training Center, your present employer, has not done anything prejudicial to you beyond simply asking you for an explanation of Florida Power & Light's inquiry.

Moreover, in response to the March 7, 1990 letter, the ATI Career Training Center confirmed Mr. Saporito's employment within the zone of interest. The Applicant therefore conceded Mr. Saporito's standing and, through its representation of him, NEAP's standing. The NRC Staff also conceded both Petitioners'

standing. Consequently, but for Mr. Saporito's withdrawal, the pivotal issue of standing would have been put to rest in this proceeding. Mr. Saporito has now chosen to revive that issue with respect to NEAP.

The question of NEAP's standing has been comprehensively addressed in pleadings earlier submitted in this proceeding. 2/ Essentially, the position which both the NRC Staff and the Applicant have taken concerning NEAP's claim to standing (to the extent that it does not rely upon Mr. Saporito's relationship with that organization) is that NEAP's alleged activities and interests are insufficient to confer independent standing upon it and that, therefore, to establish standing it must do so as a representative of at least one NEAP member who resides in or is otherwise engaged in substantial activities within the zone of interest and who has identified an injury in fact to his or her interests related to the issuance of the

2/ See Request for Hearing and Petition for Leave to Intervene, dated December 27, 1989, pp. 1-2; Licensee's Answer in Opposition to Request for Hearing and Petition for Leave to Intervene, dated January 10, 1990, pp. 7-14; NRC Staff Response to Request for Hearing and Petition for Leave to Intervene of Nuclear Energy Accountability Project and Thomas J. Saporito, dated January 16, 1990, pp 8-9; Petitioners Amended Petition for Intervention and Brief in Support Thereof, dated March 5, 1990, pp. 15-16; Applicant's Response to Amended Petition to Intervene, dated March 16, 1990, p. 6 n.9; NRC Staff Response to Petitioner's Amended Petition for Leave to Intervene, dated March 19, 1990, pp. 8-10.

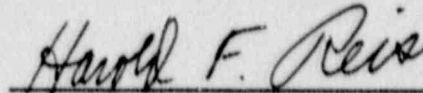
requested operating license amendments. 3/ The Applicant and Staff pleadings further demonstrate that what has been needed for this purpose is at least one affidavit, or its evidentiary equivalent, which identifies a specific individual as a NEAP member and such an injury and authorizes NEAP to represent him or

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- 3/ Of course, there is clearly no basis for a grant of discretionary intervention to NEAP. Given Mr. Saporito's withdrawal and assuming NEAP is not legally entitled to intervene, the question presented is not whether intervenors who cannot establish legal standing should be permitted to participate in a proceeding which will, in any event, be conducted because other parties legally entitled to a hearing have requested one. The question presented is whether a person not legally entitled to a hearing will, nevertheless, be permitted to launch one which would not otherwise be conducted. Assuming it may ever be appropriate to permit this, the need for a strong showing as to potential contribution is especially pressing in such circumstances. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1422 (1977). NEAP has not made that showing. It merely states that its request for discretionary intervention is based upon the allegedly valuable contribution which Mr. Saporito could make. See Petitioners Amended Petition for Intervention and Brief in Support Thereof, at p. 21 and attached Affidavit of Thomas J. Saporito, Jr. However, the affidavit does no more than identify Mr. Saporito's experience as an Instrument and Control Technician. That experience may qualify him to perform a calibration or test required by a procedure specified in a technical specification. It does not qualify him to analyze and make judgements concerning the safety related bases for that specification. He has not asserted any expertise in performing, and does not appear to be qualified to perform, safety evaluations of the adequacy of the type of technical specifications limits that are the subject of the proposed contentions. Particularly, in view of the variety of technical subject matters covered by the surviving asserted contentions, it would be wholly inappropriate to initiate a proceeding solely upon the basis of Mr. Saporito's alleged ability to contribute to it.

her in this proceeding; however, what has been submitted by NEAP to establish such representational standing is insufficient. 4/

NEAP has had knowledge, at least since the mid-January Licensee and Staff responses to the initial petition for leave to intervene, of what is required for an organization to establish standing on the basis of representation of its members. Although it has therefore had more than adequate opportunity, it has not made the necessary showing. Applicant submits that this is a sufficient basis for the Licensing Board now to deny the petition to intervene and that it should do so.

Respectfully submitted,



Harold F. Reis
Steven P. Frantz

Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 955-6600

Co-Counsel:

John T. Butler, Esq.
Steel Hector & Davis
4000 Southeast Financial Center
Miami, FL 33131-2398
(305) 577-2939

Dated: April 13, 1990

Attorneys for Applicant
Florida Power & Light Company

4/ Applicant takes the additional position that, in order to confer representational standing on NEAP, it will have to be demonstrated that the affiant's membership confers upon her at least some control over the organization. Licensee's Answer in Opposition to Request for Hearing and Petition for Leave to Intervene, supra at pp. 12-13.

Atomic Safety and Licensing Board Panel
Adjudicatory File
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
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Atomic Safety and Licensing Appeal Board Panel
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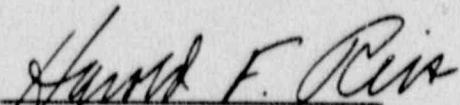
Thomas J. Saporito, Jr.
Executive Director
Nuclear Energy Accountability Project
P.O. Box 129
Jupiter, Florida 33468-0129

Janice E. Moore, Esq.
Patricia A. Jehle, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard Goddard, Esq.
Regional Counsel
U.S. Nuclear Regulatory Commission
Region II
101 Marietta Street, N.W., #2900
Atlanta, GA 30323

John T. Butler, Esq.
Steel, Hector & Davis
4000 Southeast Financial Center
Miami, Florida 33131

April 13, 1990


Harold F. Reis
Newman & Holtzinger, P.C.
1615 L St., N.W., Suite 1000
Washington, D.C. 20036