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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD JUN 25 P3:54

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	Docket Nos. 50-250 OLA-5
)	50-251 OLA-5
FLORIDA POWER & LIGHT COMPANY)	
(Turkey Point Plant, Units 3)	(Technical Specifications
and 4))	Replacement)

APPLICANT'S RESPONSE IN OPPOSITION TO PETITIONERS'
REQUEST FOR EXTENSION OF TIME

By letter to the Board Members dated June 20, 1990, Ms. Billie Pirner Garde, Esq., recently retained counsel for the Petitioners, requested (p. 2) "an additional two weeks to respond to the Board's June 15, 1990..." Memorandum and Order in this proceeding. As described by counsel, the purpose of this request is to evaluate the issues of standing and potential intimidation or harassment. Counsel states (p. 4):

I need time to evaluate the matter and present to this Board a pleading that will lay out the relevant issues and prepare a motion for reconsideration and/or request for modification of the Board's June 15, 1990, Order on the issue of standing. I also need to evaluate how to proceed before this Board on the issue of deliberate retaliation of the Licensee against Mr. Saporito for participating in this proceeding, if appropriate.

Treating the letter as a motion, Applicant, Florida Power & Light Company, hereby submits this response in opposition.

The issue of standing has been considered by the parties and the Board extensively since the request for hearing

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and petition to intervene were submitted, approximately six months ago, on December 27, 1989. 1/ Further protraction of this proceeding for new counsel to reevaluate the question would be wholly inconsistent with orderly process and administrative efficiency. In any event, the requested extension of time is unnecessary. Simultaneous with this response, Applicant is submitting a motion for reconsideration and dismissal of the petition to intervene based on the fact that Petitioner Thomas Saporito is no longer employed within the geographical zone of interest upon which his standing and that of Petitioner NEAP were premised. Petitioner's new counsel will have adequate time to make additional argument on the question of standing in response to that motion.

Nor should the Board complicate and further extend the issue of standing by entertaining evidentiary proceedings duplicative of those now being conducted by the Department of Labor relating to Petitioner Saporito's discharge from ATI Career

1/ The question of NEAP's standing has been comprehensively addressed in pleadings submitted earlier in this proceeding. 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, fn. 9; NRC Staff Response to Petitioner's Amended Petition for Leave to Intervene, dated March 19, 1990, pp. 8-10; Applicant's Response to Notice of Withdrawal from Proceeding, April 13, 1990, p. 4-6.

Training Center, as Ms. Garde's letter appears to suggest. Rather, the appropriate action in these circumstances is to recognize the primary jurisdiction conferred upon the Secretary of Labor by Section 210 of the Energy Reorganization Act (42 U.S.C. § 5851) to investigate and conduct hearings arising from charges that an employee has been discharged or otherwise discriminated against for engaging in activities protected by the Act. This is the obvious intent of the Memorandum of Understanding which the NRC and the Department of Labor entered into on October 25, 1982 (47 Fed. Reg. 54,585, December 3, 1982), which specifies areas of cooperation between the two agencies. It also makes it clear that investigations and hearings concerning employee complaints of discrimination will be conducted by the Department of Labor, but that the NRC may also take appropriate enforcement action against licensees who have violated the Act. 2/ The Memorandum or Understanding states

The NRC and DOL have complementary responsibilities in the area of employee protection. DOL has the responsibility under section 210 of the Reorganization Act to investigate employee complaints of discrimination and may, after an investigation and hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with backpay, and award compensatory damages, including attorney fees. NRC, though without direct authority to provide a remedy to an employee, has independent authority under the Atomic Energy Act to take appropriate enforcement

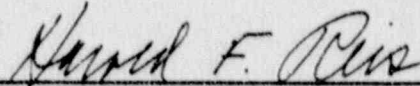
2/ The Commission has adopted regulations upon which enforcement action may be based. See, e.g., 10 C.F.R. §§ 19.20 and 50.7.

action against Commission licensees that violate the atomic Energy act, the Reorganization Act, or Commission requirements. Enforcement action may include license denial, suspension or revocation or the imposition of civil penalties.

Emphasis supplied. For the Licensing Board to entertain the duplicate proceedings suggested in the extension request would clearly be inconsistent with the objectives of the Memorandum of Understanding.

For the foregoing reasons, Applicant urges the Board to deny the requested extension of time and rule promptly, after receipt of responses from the parties, upon Applicant's motion for reconsideration and dismissal.

Respectfully submitted,


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June 22, 1990

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FLORIDA POWER & LIGHT COMPANY)

(Turkey Point Plant, Units 3
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(Technical Specifications
Replacement)

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CERTIFICATE OF SERVICE

I hereby certify that copies of the following documents
in the above captioned proceeding, all dated June 22, 1990:

1. "Applicant's Motion for Reconsideration and
Dismissal of Petition to Intervene";
2. "Applicant's Response in Opposition to
Petitioner's Request for Extension of Time"; and
3. "Notice of Appearance of Counsel"

were served on the persons designated below by deposit in the
United States mail, first-class postage paid on this date.

Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
Dr. George C. Anderson
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Seattle, WA 98115

Administrative Judge
Elizabeth B. Johnson
Oak Ridge National Laboratory
P.O. Box 2008
Bethel Valley Road, Bldg. 3500
Mail Stop 6010
Oak Ridge, TN 37831

Atomic Safety and Licensing Board Panel
Adjudicatory File
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board Panel
Adjudicatory File
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Chief Docketing and Service Section
(Original plus two copies)

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June 22, 1990

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