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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'90 JUN 25 P3:53

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of  
FLORIDA POWER & LIGHT COMPANY  
(Turkey Point Plant, Units 3  
and 4)

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

(Technical Specifications  
Replacement)

**APPLICANT'S MOTION FOR RECONSIDERATION AND  
DISMISSAL OF PETITION TO INTERVENE**

By Memorandum and Order issued June 15, 1990, ("Memorandum and Order"), the Atomic Safety and Licensing Board ordered the admission of the Nuclear Energy Accountability Project ("NEAP") as a party to this proceeding "based solely on its representation of its member, Mr. Thomas J. Saporito..." but "dependent on Mr. Saporito serving on this Board...a pleading in which he personally states his willingness to be represented by NEAP." 1/ On June 20, 1990, Mr. Saporito filed a pleading meeting this requirement. Consequently the terms of the Memorandum and Order have been met and, barring other facts, would operate to admit NEAP as a party. However, pursuant to 10 C.F.R. §§2.718 and 2.771, Florida Power & Light Company ("FPL" or "Applicant") hereby files this motion for reconsideration on the ground that a material change of circumstances has occurred since the March 23, 1990 prehearing conference at which the standing

1/ Memorandum and Order at pp. 50-51.

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issue was considered. Obviously unknown to the Licensing Board and as is now reported in a letter from Ms. Billie Pirner Garde, dated June 20, 1990, the sole factual basis for the conclusion that NEAP has standing, in fact, no longer existed at the time the Memorandum and Order was issued. 2/ Therefore FPL also requests that the Petition to Intervene be dismissed. 3/

It is clear that the Board based its determination that NEAP has standing solely on that organization's representation of a member, Mr. Saporito, who, in turn, possessed standing only because of his employment at the ATI Career Training Center ("ATI") in Miami, Florida. ATI is located within the "geographical zone of interest" of the Turkey Point facility. However, Mr. Saporito was discharged by ATI on May 10, 1990, and has not presented the Board with any other claim to presence or activity within the geographical zone of interest sufficient to establish standing. 4/ Therefore, the Board's determination is

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- 2/ At page 2 the letter requests "an additional two weeks to respond to the Board's June 15, 1990..." Memorandum and Order. Treating the letter as a motion, FPL is submitting. simultaneously with this motion, "Applicant's Response in Opposition to Petitioners' Request for Extension of Time.
- 3/ Presumably the Board will not act on this Motion until it receives responses from the petitioner and the NRC Staff. For this reason, Applicant also requests modification of Paragraph 10 of the Memorandum and Order (p. 52) which indicates that the time for initiating an appeal runs from June 20, 1990, the date upon which Mr. Saporito filed the required pleading.
- 4/ In the past Mr. Saporito asserted that he engaged in research activities at the legal library in Coral Gables and at the Florida International University Library. Petitioners Amended Petition for Intervention and Brief in
- (continued...)

based upon a factual error, and NEAP in fact lacks standing to intervene.

As stated by the Licensing Board:

With respect to the standing issue, the Board ruled at the prehearing conference that it would accept the position of Applicant and the Staff that Mr. Saporito had standing and that, based on his standing, NEAP--which Mr. Saporito serves as a director--also would have standing.<sup>2</sup>

\* \* \* \*

<sup>2</sup>Mr. Saporito works over 40 hours a week as a teacher at the ATI Career Training Center, 1 N.E. 19th Street, Miami, Florida 33132, and this is well within the 50 mile geographical zone of interest. 5/

It is therefore obvious that at the time it issued the Memorandum and Order the Licensing Board was unaware that Mr. Saporito had been discharged by ATI. 6/ To be sure, Mr. Saporito has instituted proceedings in the Department of Labor under Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. §

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4/ (...continued)

Support Thereof, at pp. 10-11 (March 5, 1990). However, he has supplied no details as to the extent of those activities.

5/ Memorandum and Order at pp. 2-3; emphasis supplied. The position of the Applicant and the Staff on standing was based solely upon Mr. Saporito's employment at ATI. See Applicant's Response to Amended Petition to Intervene, p. 6, fn. 9, March 16, 1990; NRC Staff Response to Amended Petition to Intervene, pp. 7, 9-10, March 19, 1990.

6/ Applicant did not bring the discharge (of which it was aware since Mr. Saporito has, in FPL's view wholly unjustifiably, accused it of having some responsibility for the action) to the Board's attention earlier because it accepted at face value Mr. Saporito's notice of personal withdrawal from the proceeding and withdrawal of himself as the basis for NEAP's standing.



5851; the "Whistleblowing" Act) protesting his discharge. But so far they have been unavailing. 2/ In any event there has clearly been a material change in circumstances since the March 23, 1990 prehearing conference at which time Mr. Saporito was employed within the geographical zone of interest. He now is no longer so employed. Therefore NEAP cannot now claim standing based on the representation of Mr. Saporito. Despite generous opportunities, NEAP and Mr. Saporito have failed to establish any other bases to sustain a claim to standing. Accordingly, the Board should

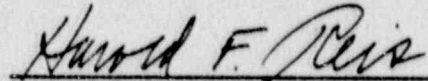
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- 2/ By letter dated June 4, 1990, from Joseph P. Armao, Acting District Director, Employment Standards Administration, Wage and Hour Division, Mr. Saporito was advised of the Department's determination, as follows:

Our investigation did not verify that prohibited discrimination was a factor in the action comprising your complaint. Our further finding was that the termination of your employment by ATI Career Training Center resulted from that school's evaluation of your performance. No evidence was disclosed indicating that extraneous considerations were involved.

Mr. Saporito is pursuing an administrative appeal from this determination within the Department of Labor (90-ERA-0047) and also one (90-ERA-0027) from the negative determination of his complaint against FPL which Applicant had earlier brought to the Board's attention and which is referred to in the Memorandum and Order at 5.

reconsider and revise its Memorandum and Order and deny the  
Petition for Intervention for failure to satisfy the requirements  
of 10 C.F.R. § 2.714.

Respectfully submitted,

  
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June 22, 1990

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UNITED STATES OF AMERICA  
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '90 JUN 25 P3:54

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

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  
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Administrative Judge  
Elizabeth B. Johnson  
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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  
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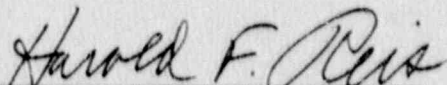
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