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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA-4 50-251 OLA-4
	)	
(Turkey Point Plant, Units 3 and 4)	)	(P/T Limits)

FPL'S OPPOSITION TO MOTIONS TO CHANGE THE LOCATION OF ORAL ARGUMENT

In response to the Appeal Board's order of June 25, 1990, Florida Power & Light Company ("FPL") hereby submits its opposition to the motions filed by (1) Thomas J. Saporito, Jr. and Nuclear Energy Accountability Project (collectively, "Saporito") and (2) Joette Lorion and the Center for Nuclear Responsibility (collectively, "Lorion") to change the location of the oral argument from Bethesda, Maryland to Miami, Florida. FPL opposes the motions because they do not supply an adequate basis for deviating from prevailing Appeal Board practice and because grant of the motions would impose unjustifiable expense upon the NRC, and, therefore, the public.

Under the Commission's rules of practice, it is ordinarily "anticipated that oral arguments will be conducted in either Washington, D.C., or Bethesda, Md." 10 CFR Part 2, Appendix A, IX(e). This practice represents Commission policy. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 280, n.5 (1982).

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Nevertheless, the appellants make a number of arguments 1/ in support of moving the oral argument elsewhere.

First, the Saporito petitioners argue (p. 2) that the public interest would be better served by holding appellate arguments of this type in the vicinity of the nuclear plant involved. However, it seems obvious that the practice of holding argument in the vicinity of the Commission headquarters was adopted as a result of weighing the conflicting considerations involved, including whatever benefits may accrue from holding argument in the vicinity of the affected plant, and concluding that the public interest generally weighs in favor of holding oral argument in or near NRC headquarters.

Second, the Lorion appellants contend (p. 3) that, in light of the financial burden and personal inconvenience involved, "procedural due process" requires that this appellate administrative argument be held in the Miami area. We are aware of no authority, including that cited in the Lorion motion, which

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1/ Some of these arguments are based upon errors of fact. For example, the Lorion intervenors state that the proceeding "centers on the very important issue of pressure vessel embrittlement . . . an unresolved safety issue before the NRC . . . ," apparently thereby referring to the pressurized thermal shock accident phenomenon. However, Unresolved Safety Issue A-49, relating to pressurized thermal shock, has been resolved (see NRC Generic Letter 89-21, dated October 19, 1989, Enclosure 1, "Unresolved Safety Issues for Which a Final Technical Resolution Has Been Achieved") and, in any event, in LBP-89-15, June 8, 1989, a memorandum and order which the Lorion petitioners have not appealed, the Licensing Board expressly held that subject to be beyond the scope of this proceeding. 29 NRC 473, 504. The Saporito petitioners state (p. 2) that FPL would not be aggrieved because its counsel "is located in Florida." On June 20, 1990, the Appeal Board and the parties were informed that argument on FPL's behalf would be presented by counsel whose offices are in Washington.

supports that proposition. Furthermore, since the Lorion intervenors are the ones who initiated the appellate process, it is now incongruous for them to argue that they should not be made to bear the normal costs associated with an appeal, including the costs of travel to the usual situs of oral argument. In this regard, the Appeal Board has stated on more than one occasion that persons who invoke the adjudicative process are expected to fulfill their obligations under the Commission's rules despite their limited funds. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-807, 21 NRC 1195, 1212 (1985).

With respect to the principal reason which the movants have advanced to change the place of argument - they cannot afford the costs of travel to Bethesda - the Appeal Board has stated that, given the prohibition on agency funding of intervenors, financial hardship may not of itself provide an adequate basis for a motion to move the location of oral argument out of the headquarter's area. Point Beach, supra, at 280, n.5. In any event, it is not unusual for intervenors and petitioners to possess limited financial resources. Neither the Saporito nor Lorion motion presents any cogent argument as to why in this particular proceeding their limited finances constitute a sufficient reason for deviating from the prevailing agency practice. Also, it is obvious that relocation of the argument to the Miami area will impose far greater financial burdens upon the

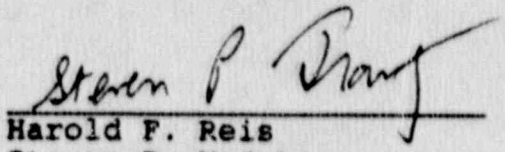
Nuclear Regulatory Commission and therefore the public than would be incurred if the argument is held in the vicinity of NRC headquarters. Relocation of oral argument would require the Commission to bear the travel expenses of the three members of the Appeal Board, together with whatever supporting personnel they may require, and Staff counsel, and whatever supporting personnel she may require.

In addition, the Appeal Board has stated that requests to dispense with oral argument and to submit the appeal on briefs "must be adequately supported. A bare declaration of inadequate financial resources such as that filed by intervenor[s] is clearly deficient." Point Beach at 279. We suggest that similar standards should be applied to the Saporito and Lorion requests to change the place of argument. Since neither the Saporito petitioners nor the Lorion intervenors have supported their claim of inadequate financial resources, their motions should be denied.

Finally, the Lorion petitioners have suggested that, if the place of argument is not changed, they should be permitted to present their oral argument by telephone. FPL does not object to such an arrangement if it can be conducted under conditions which would permit the judges and the parties to approximate the conditions under which all of the arguments can be heard and

understood in a manner substantially similar to that which occurs in open court.

Respectfully submitted,



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Dated this 5th day of July, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA-4
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(Turkey Point Plant,	)	
Units 3 & 4)	)	(P/T Limits)
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "FPL's Opposition To Motions To Change The Location Of Oral Argument" were served on the following by deposit in the United States mail, first class, properly stamped and addressed on the date shown below.

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