UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA
	)	50-251 OLA
(Turkey Point Nuclear Generating Units 3 & 4)	)	

LICENSEE'S ANSWER TO AMENDED PETITION TO INTERVENE

I. Introduction

On January 25, 1984, the Center for Nuclear Responsibility, Inc., and Joette Lorion (Petitioners) served an "Amended Petition to Intervene" (Amended Petition).*/ The Amended Petition provided additional information regarding the standing of the Center for Nuclear Responsibility, Inc., to intervene in this proceeding, requested the Board to enlarge the scope of this proceeding by consolidating the "subject matter" of this proceeding with the subject matter of a notice of proposed amendments as to which the Petitioners had not before petitioned to intervene or requested a hearing, and identified proposed contentions which the Petitioners desire to litigate in this proceeding. Pursuant to the

*/ On January 25, 1984, the Petitioners also served a "Discovery Request" upon the NRC Staff. The Licensee notes that formal discovery requests may not be submitted until the prehearing conference is held and contentions are admitted by the Board. See 10 CFR § 2.740(b)(1).

Board's Order of December 20, 1983, Florida Power & Light Company (FPL or Licensee) hereby submits its answer to the Amended Petition. Each of the matters raised in the Amended Petition are discussed separately below.

II. Standing of the Center for Nuclear Responsibility, Inc.

The Amended Petition states that Joette Lorion and other identified individuals residing within twenty-five miles of Turkey Point are members of the Center for Nuclear Responsibility, Inc. Based upon this statement and statements in Petitioners' "Request for a Hearing and Petition for Leave to Intervene" (Petition) regarding the interests of Joette Lorion, the Amended Petition appears to establish the representational standing of the Center for Nuclear Responsibility, Inc., to intervene in this proceeding.

III. Request to Enlarge this Proceeding

In the initial Petition served on November 4, 1983, Petitioners sought intervention with respect to applications for amendment of the Turkey Point licenses which were noticed at 48 Fed. Reg. 45862 (Oct. 7, 1983). In the Amended Petition, the Petitioners request the Board to enlarge this proceeding by consolidating the subject matter of this proceeding with the subject matter of applications for amendment of the Turkey Point licenses which were noticed at 48 Fed. Reg. 33076, 33080 (July 20, 1983). In effect, the Petitioners for the first time are seeking intervention and a hearing in response to the notice of July 20, 1983. Petitioners attempt

to excuse their failure to submit timely intervention petitions in response to the July 20, 1983, Federal Register notice and to justify consolidation on the ground that "the two notices treat identical subject matter" and that the July 20, 1983, notice was "misleading." However, as is demonstrated below, the Board has no jurisdiction over the Petitioners' request for intervention and hearing with respect to the notice on July 20, 1983, Petitioners have not submitted sufficient justification for their late request for intervention and hearing with respect to the notice of July 20, 1983, their request for consolidation is procedurally defective, and they have not established sufficient substantive grounds for consolidation.

A. Background

On June 3, 1983, FPL requested a set of license amendments to support a planned modification of the core design for Turkey Point. The planned modification consisted of replacing Westinghouse 15x15 low-parasitic (LOPAR) fuel with Westinghouse 15x15 Optimized Fuel Assemblies (OFA) with Wet Annular Burnable Absorber (WABA) rods. The purpose of the modification is to improve fuel management by switching to use of a core structural material which is less susceptible to parasitic capture of neutrons. A notice of FPL's request was published at 48 Fed. Reg. 33076, 33080 (July 20, 1983). The notice explicitly stated that the "core safety limits and associated setpoints in the current Technical Specifications" would be applicable for the amendments. The notice also provided that any petitions to intervene in

the proceeding on the requested amendments must be filed by August 22, 1983. No such petitions to intervene were filed within the specified period. On December 9, 1983, the NRC granted FPL's application and issued the requested amendments, which are hereinafter referred to collectively as the core design amendment.

On August 19, 1983, FPL requested changes to the Technical Specifications contained in its Turkey Point licenses. Among other things, these changes would increase the hot channel limit and the total peaking factor limit applicable to operation of the reactor core for Turkey Point. The purpose of these changes is to support FPL's program for reducing neutron flux at the reactor vessel wall and thereby to mitigate pressurized thermal shock. A notice of FPL's request was published at 48 Fed. Reg. 45862 (Oct. 7, 1983). In response to this notice the Petitioners submitted a timely petition to intervene in the proceeding on these requested amendments. On December 23, 1983, the NRC found that the requested amendments involved no significant hazards consideration and issued the amendments. These amendments are hereinafter referred to collectively as the core safety limit amendment.

B. Petitioners Have Not Submitted Sufficient Justification for Intervention and Hearing with respect to the Core Design Amendment

1. The Board has no jurisdiction over the Petitioners' request.

Petitioners' request for intervention and hearing with respect to the core design amendment noticed on July 20,

1983, was not filed until January 25 of this year, or more than five months after the deadline provided in the notice. Furthermore, their request for intervention and hearing with respect to the core design amendment was not filed until more than a month had elapsed since issuance of the amendments. Thus, not only is the Petitioners' request for intervention and hearing with respect to the core design amendment late, but it was also filed after final agency action on the application for the amendments.

Once the NRC has taken final action on an application, the proceeding is terminated and there is no longer any "proceeding" in which to intervene. Mere submission of a petition to intervene cannot serve to revive a terminated proceeding; otherwise, proceedings would never have an end. The principles of administrative finality demand that litigation come to an end at some point and, in this case, that point is the issuance of the license amendments. As the NRC has long recognized, a licensing board has no jurisdiction to grant a petition to intervene in a proceeding after final agency action has been taken in the proceeding and the proceeding has been terminated. Houston Lighting and Power Co. (South Texas Project, Unit Nos. 1 and 2), ALAB-381, 5 NRC 582 (1977); Florida Power & Light Co. (St. Lucie Plants, Units 1 and 2), LBP-77-23, 5 NRC 789, 791 (1977).*/ Thus, the

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*/ An additional point is worthy of note. A licensing board has "no independent authority to initiate any form of adjudicatory proceeding," South Texas, supra, 5 NRC at 592, and its jurisdiction is confined by the notice of the proceeding, Public Service Co. of Indiana (Footnote Continued)

Petitioners' request for intervention and hearing with respect to the core design amendment should be denied.

However, this does not mean that the Petitioners are left without a remedy if their claims have any merit. As the Appeal Board noted in South Texas, the proper course of action in a case such as this is to file a petition pursuant to 10 CFR § 2.206, not a petition to intervene. South Texas, supra, 5 NRC at 588, 591, 593. Under 10 CFR § 2.206, the Director of Nuclear Reactor Regulation will consider any claims which the Petitioners may desire to make.

The foregoing is sufficient to dispose of Petitioners' request for intervention and hearing with respect to the core design amendment. Nevertheless, even if it were assumed arguendo that the Board does have jurisdiction, Petitioners' request would fare no better, as is demonstrated in the next section.

(Footnote Continued)
(Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). See also Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516 (1980). Consequently, the Board has no authority to enlarge the scope of this proceeding or to grant the Petitioners' request for intervention and hearing with respect to the core design amendment since it was constituted to rule on petitions to intervene in only the core safety limit amendment proceeding. See notice of "Establishment of Atomic Safety and Licensing Board" (Nov. 9, 1983), 48 Fed. Reg. 52369 (Nov. 17, 1983).

2. Petitioners should not be granted late intervention.

As was indicated above, the Petitioners' request for intervention and hearing with respect to the core design amendment was filed five months late. According to 10 CFR § 2.714(a)(1), untimely petitions to intervene will not be entertained absent a determination that a request should be granted based upon a balancing of the following five factors:

> (i) Good cause, if any, for failure to file on time.
> (ii) The availability of other means whereby the petitioner's interest will be protected.
> (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
> (iv) The extent to which the petitioner's interest will be represented by existing parties.
> (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Petitioners have the burden of establishing that a balancing of these factors justifies late intervention, Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975), and failure to address these factors is a ground for rejection of an untimely petition, Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-615, 12 NRC 350, 352-53 (1980). The Petitioners have not even attempted to address these factors. Accordingly, they have not carried the burden imposed by 10 CFR § 2.714(a)(1), and their request for intervention and hearing with respect to the core design amendment should be summarily denied.

Furthermore, as is shown below, it is apparent that the Petitioners could not establish their right to late intervention even if they had addressed each factor.

(i) Good cause, if any, for failure to file on time

Petitioners concede that their request "could be considered untimely," but argue that this is excused because "the two notices treat identical subject matter" and because the notice of the core design amendment proceeding was "misleading to members of the public in that it failed to fairly present the consequences of the proposed changes to the fuel core design." Amended Petition, p. 2. However, neither excuse for the untimely filing can withstand scrutiny.

As is discussed in Section III.D, infra, the two amendments do not involve "identical subject matter." However, even if it is assumed that the amendments were similar, Petitioners would fare no better. The deadline for filing an intervention petition with respect to the core design amendment was August 22, 1983, or more than one month prior to the notice of the core safety limit amendment proceeding. Thus, it cannot be claimed that the Petitioners were induced not to file a timely petition on the core design amendment in the belief that their claims could be heard in the core safety limit amendment proceeding -- a proceeding which did not then exist.

Furthermore, the Petitioners cannot reasonably contend that they were induced not to file a timely petition on the core design amendment because they were "mislead" as to the "consequences of the proposed changes" resulting from issuance of the amendment. As is indicated by 10 CFR § 2.105(b), a notice is only required to set forth the nature of the proposed action and the manner in which a copy of the safety analysis may be obtained or examined. The notice at 48 Fed. Reg. 33080 fully complied with this requirement, since it identified the nature of the core design amendment and referred the reader to FPL's application of June 3, 1983, which contained a safety analysis. The notice was not required to describe the "consequences of the proposed changes," and consequently the Petitioners cannot claim that they were mislead by any omission of such a description. */ Finally, to the extent that the Petitioners are arguing that the notice of the core design amendment proceeding should have contained a description of the core safety limit amendment, their argument is untenable because a request for the latter amendment was not then before the Commission and because the two amendments are independent, as discussed in Section III.D, infra.

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*/ It may be noted that an NRC Staff description of the consequences of proposed changes resulting from issuance of the amendment must appropriately await NRC Staff evaluation of the proposed change and its issuance of a safety evaluation report.

In sum, the Petitioners were provided with notice of the core design amendment proceeding and simply chose not to file an intervention petition within the time limits specified therein. Instead, it now appears that the Petitioners are attempting to construct a post hoc rationalization to excuse their failure. As a result, Petitioners have not demonstrated good cause for their untimely request. Consequently, this factor weighs heavily against the Petitioners.

(ii) The availability of other means whereby the petitioner's interest will be protected

If in fact the Petitioners possess evidence indicating that operation is unsafe due to the change in the core, they may present this evidence for the NRC's consideration pursuant to 10 CFR § 2.206.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record

Petitioners have not offered any indication that they will be able to assist in developing a sound record. As the Appeal Board has repeatedly stated, a late petitioner "should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony." The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1766 (1982), quoting Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). The Petitioners have not

identified any witnesses nor summarized the testimony it intends to present and, therefore, it has not satisfied its burden under this criterion. Furthermore, it should be noted that, in the U.S. District Court proceeding which the Petitioners have initiated for review of issuance of these amendments, the Petitioners have conceded that they did not have any evidence to support the granting of injunctive relief against issuance of the amendments.*/ Thus, this factor weighs heavily against the Petitioners.

(iv) The extent to which the petitioner's interest will be represented by existing parties

Since no other persons have petitioned to intervene in the core design amendment proceeding, the Petitioners' interest will not be represented by existing parties. However, a full NRC Staff review of the core design amendment was, of course, conducted before the amendment was issued. Thus, the Petitioners' interests have been protected.**/

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*/ Center for Nuclear Responsibility, Inc. and Joette Lorion v. U.S. Nuclear Regulatory Commission, United States of America, and Florida Power and Light Co. (D.D.C. Civil Action No. 83-3570), "Plaintiffs' Response to Federal Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction and FPL's Statement of Points and Authorities in Opposition to Plaintiffs' Motion for Preliminary Injunction" (December 29, 1983), a copy of which is attached. In its order of January 6, 1984, (also attached) denying the request for a preliminary injunction, the court states: "Simply stated, plaintiffs have presented no evidence in support of their request."

**/ It is also relevant to note that, as has been stated in different context, in a case such as this where no hearing would be held absent grant of the intervention petition, "a licensing board should take the utmost care to satisfy itself fully" that the petition clearly should be granted. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding

Since no hearing on the core design amendment will be held unless the Petitioners' request is granted, it is obvious that the Petitioners' participation will both broaden the issues and cause delay. Consequently, this factor weighs heavily against the Petitioners.

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In balance, consideration of the five factors governing untimely intervention clearly weighs against grant of the request for intervention and hearing with respect to the core design amendment. Petitioners have not shown good cause for the late request, have not demonstrated an ability to contribute to the development of a sound record, and would broaden the issues and cause delay. Furthermore, the other two factors are of relatively little significance in this case and do not affect the overall consideration. Consequently, the Petitioners' untimely request to intervene in the core design amendment proceeding should be denied.

C. Petitioners' Request for Consolidation Is Procedurally Defective

Petitioners' seek to consolidate the subject matters of the core design amendment and the core safety limit amendment pursuant to 10 CFR § 2.716. See Amended Petition, p. 2. However, 10 CFR § 2.716 states as follows:

> On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other federal agencies on matters of concurrent jurisdiction, if it is found that such action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

Thus, Section 2.716 does not authorize licensing boards to consolidate "subject matters" as requested by the Petitioners but only to consolidate proceedings. Therefore, to the extent that Petitioners may be requesting the Board to enlarge the subject matter of this proceeding beyond the October 7, 1983, notice of this proceeding, Section 2.716 provides no vehicle for the granting of such a request, and such enlargement is prohibited by well-established precedent. See, e.g., Marble Hill, supra.

If, in fact, the Petitioners are requesting the Board to consolidate the core design amendment proceeding with the core safety limit amendment proceeding, their request fares no better. As is demonstrated in Section III.B.1, supra, there currently is no core design amendment proceeding because final agency action has been taken on the core design amendment. Consequently, there is nothing to consolidate.

Finally, even if it were assumed arguendo that a core design amendment proceeding does exist, Petitioners' request

would still be objectionable. As 10 CFR § 2.716 clearly states, only the Commission or the presiding officers of each affected proceeding may consolidate two proceedings. And as the statement of consideration accompanying promulgation of this section emphasizes, "[c]onsolidation would only be proper when such action is separately approved by each of the affected Licensing Boards." 43 Fed. Reg. 17798, 17800 (April 26, 1978). Thus, it is apparent that a licensing board in one proceeding may not unilateraly consolidate that proceeding with another proceeding.*/

The foregoing is sufficient to dispose of the Petitioners' request for consolidation. Nevertheless, even if it were assumed arguendo that the Board has authority to consolidate the "subject matters" of the core design amendment and the core safety limit amendment, consolidation would be inappropriate, as is shown in the following section.

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*/ As was demonstrated in the footnote beginning on page 5, supra, the Board only has jurisdiction over the core safety limit amendment proceeding and not over the terminated core design amendment proceeding. As a result, the Board may not, under 10 CFR § 2.716, unilaterally consolidate this proceeding with the terminated proceeding. Only the Commission itself would have such power.

D. Petitioners' Request for Consolidation Is Substantively Defective

Consolidation is appropriate if "such action will be conducive to the proper dispatch of . . . business and to the ends of justice." 10 CFR § 2.716. "This rule has been construed by the Commission as mirroring Rule 42(a) of the Federal Rules of Civil Procedure, which provides for consolidation of proceedings that, inter alia, involve common questions of law or fact." Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-81-31, 14 NRC 375, 377 (1981), citing Edlow International Co., CLI-77-16, 5 NRC 1327, 1328 (1977). The purpose of the rule is "to avoid costly and time-consuming duplication of effort" which would occur absent consolidation. 48 Fed. Reg. at 17800.

Despite Petitioners' unsubstantiated allegations to the contrary, the core design amendment and the core safety limit amendment do not "treat identical subject matter." In fact, the two sets of amendments are related only in that they both pertain to the Turkey Point reactor cores. Each amendment has independent utility and utilization of either amendment is not dependent upon utilization of the other. In short, it would be theoretically possible for FPL to operate Turkey Point with the new fuel and core design and the old core safety limits, or with the old fuel and core design and the new safety limits. Consequently, while FPL desires and is in fact operating under both amendments, the amendments are separable.

This point may be more clearly understood if FPL's applications and the NRC Staff's safety evaluation reports (SER) for the amendments are reviewed on their faces (without attempting to address the merits of the evaluations presented therein). In general, the core design amendment was evaluated to determine the mechanical integrity of the new fuel and core and to determine the impact (given the existing core safety limits) of changes in the structural materials for the core upon the thermal-hydraulic analysis and analysis of accidents and transients. In contrast, the core safety limit amendment was evaluated to determine the impact (given either the old or new fuel and core) of the change in core safety limits on the thermal-hydraulic analysis and the accident analysis. There is little or no overlap in the evaluations of these amendments. In sum, the two amendments do not involve common questions of fact and little time or cost would be saved by consolidating the subject matters of the two amendments. Consequently, consolidation would be inappropriate and Petitioners' request therefore should be denied.

IV. Contentions

The Amended Petition identifies eighteen proposed contentions, lettered (a) through (r), which the Petitioners desire to litigate.

10 CFR § 2.714(b) requires the proponent of a proposed contention to "set forth with reasonable specificity" the

basis for each contention. Although this section does not require that a petitioner plead evidence, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 547-49 (1980); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973), it does require that a proposed contention be presented with sufficient specificity and basis to put the parties on sufficient notice as to "what they will have to defend against or oppose." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). Thus, a proposed contention is not admissible if it contains only "vague generalized assertions, drawn without any particularized reference to the details of the challenged facility," Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173, 174 (1973), or if it does not "seek resolution of concrete issues," Peach Bottom, supra, ALAB-216, 8 AEC at 21. Furthermore, in order to satisfy the "basis" and "specificity" requirement, a petitioner cannot merely allege that a specific portion of the licensee's or the Staff's analysis is incorrect, but also must specify the basis for the allegation that the analysis is incorrect. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 801-02 n. 73 (1983). Thus, where the licensee or the Staff have identified a potential problem and have identified a solution to the

problem, it is incumbent upon the petitioner to specify why the licensee's or Staff's solution is inadequate. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 16 NRC 183, 188 (1982). Finally, it should be noted that a licensing board is under no obligation "to recast contentions offered by one of the litigants for the purpose of making those contentions acceptable." Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

In addition to these general principles controlling the admissibility of proposed contentions, a substantial body of case law has developed regarding the admissibility of contentions and consideration of issues in a license amendment proceeding. To be admissible in a license amendment proceeding, a contention must raise an issue "arising directly from the proposed change." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974). The jurisdiction of a licensing board in an amendment proceeding is limited by the notice of the proceeding and extends only to the issues fairly raised by the notice. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980). As a result, issues regarding plant operation which have no nexus to an amendment are not cognizable in an amendment proceeding but instead are properly raised by means of a

petition pursuant to 10 CFR § 2.206. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 570 (1980).

Applying these standards to the Petitioners' proposed contentions reveals that each of the proposed contentions is defective. Before each proposed contention is considered, the Licensee would note that there are certain basic defects common to many of the proposed contentions.

For example, Proposed Contentions (c), (i), (j), (k), (l), (m), (n), (p), and (q) each pertain to the core design amendment which has no nexus to the core safety limit amendment. Since the notice of this proceeding limits the scope of this proceeding to the core safety limit amendment, proposed contentions related only to the core design amendment are not cognizable in this proceeding. See Zion, supra. Consequently, each of the proposed contentions identified above should be rejected for that reason alone.

Similarly, Proposed Contentions (g), (h), (m), and (o) each relate to the matter of reactor vessel embrittlement and pressurized thermal shock. However, the Turkey Point amendments will not increase the probability or severity of reactor vessel embrittlement or pressurized thermal shock, and the Petitioners have not contended otherwise. Consequently, this matter does not bear the necessary nexus to this amendment proceeding, and contentions related to it

are beyond the scope of this proceeding.*/

Furthermore, even if the Petitioners were to allege that the Turkey Point amendments somehow increase the probability or severity of pressurized thermal shock, the general issue of pressurized thermal shock would not thereby be brought into question in this proceeding. Instead, all that would be at issue would be the extent of such increase and the need, if any, for measures to mitigate against such increase. The more general issues regarding pressurized thermal shock which are raised in the Petitioners' proposed contentions would not be affected by any such increase and therefore would be outside the scope of this proceeding.

The core safety limit amendment is in fact intended to support FPL's reactor vessel flux reduction program and thereby to mitigate against reactor vessel embrittlement and pressurized thermal shock. However, this fact alone does not bring the matter of reactor vessel embrittlement and pressurized thermal shock within the scope of this proceeding. As indicated by 10 CFR § 2.104(c),**/ the obligation of this

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*/ This is not the first time a petitioner has improperly attempted to raise issues regarding reactor vessel embrittlement and pressurized thermal shock in an amendment proceeding. See Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-88, 16 NRC 1335, 1342 (1982); LBP-82-33, 15 NRC 887, 890-91 (1982); and LBP-81-55, 14 NRC 1017, 1026 (1981).

**/ Although § 2.104(c) facially applies to operating license proceedings, procedures in operating license proceedings are generally applicable to operating license amendment proceedings. Cf. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-568, 10 NRC 554, 555-56 (1979).

Board is to decide issues within the purview of whether there is reasonable assurance that the activities to be authorized by the amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations. As long as the core safety limit amendment satisfies the above standard, the amendment shall issue regardless of whether or not the amendment is the ultimate resolution of the pressurized thermal shock issue. To the extent that the Petitioners are contending that the core safety limit amendment does not sufficiently resolve pressurized thermal shock and that the Licensee should be required to implement additional remedies, their sole recourse is a Section 2.206 petition and not intervention in this proceeding. See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980). See also Belloti v. NRC, __ F.2d ___ (D.C. Cir. Sept. 23, 1983). In short, the ultimate question at issue in this proceeding is whether the amendments satisfy the applicable safety standards and not whether the Licensee should have proposed a different amendment to resolve pressurized thermal shock. As a result, all of Petitioners' proposed contentions pertaining to reactor vessel embrittle-

ment and pressurized thermal shock should be rejected.*/

Each of Petitioners' proposed contentions are listed below, followed by the Licensee's objections to admission of the proposed contention.

Proposed Contention (a)

> The petitioners contend that the amendments requested involve a significant hazard consideration, because they will result in an increase in the authorized core peaking factors, an increase in the core power density and an increase in the operating temperature of the fuel. There can be no lawful issuance of the proposed license amendments before the holding of a formal hearing before the Atomic Safety and Licensing Board (ASLB).[2]

2/ The Commission Issuance of Operating License Amendments Nos. 92, 93, 98, and 99 for the Turkey Point Nuclear Power Plants Units nos. 3 and 4, constitutes final administrative action, mooting administrative consideration of the contention that a prior hearing was required before issuance of the amendments. Petitioners have challenged the final agency action in the United States District Court for the District of Columbia, in Case No. 83-3570, Center for Nuclear Responsibility, Inc. and Joette Lorion v. U.S. Nuclear Regulatory Commission and Florida Power & Light Company, in a complaint filed November 29, 1983.

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*/ Additionally, resolution of the pressurized thermal shock issue is not a proper subject for consideration in this proceeding for an entirely different reason. The Commission has initiated a rulemaking on pressurized thermal shock. See 49 Fed. Reg. 4498 (Feb. 7, 1984). It is a well-established principle that matters which are the subject of rulemaking are not appropriate for consideration in individual licensing proceedings. See e.g., Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816-7 (1981).

Licensee's Objection

Proposed Contention (a) is essentially identical to Proposed Contention (a) contained in the Petition of November 4, 1983. After the Petition was filed, Petitioners brought suit in U.S. District Court seeking review, inter alia, of expected NRC determinations that the Turkey Point amendments involve no significant hazards consideration. Those determinations were in fact made in conjunction with issuance of the amendments in December 1983. In footnote 2 to Proposed Contention (a), Petitioners state that Proposed Contention (a) is now moot as a result of issuance of the amendments. Licensee agrees. Consequently, this proposed contention should be rejected since it offers nothing to litigate in this proceeding.

Proposed Contention (b)

> Whether the entirely new computer model used by the utility, for calculating reflood portions of accidents meets the Commission's ECCS Acceptance Criteria: specifically, whether a 2.2% reduction in re-flood rate is misleading because for a small decrease in re-flood rate, there results a large increase in fuel temperature. Re-flood rates are critical if below 1 or 2 inches per minute.

Licensee's Objection

This proposed contention lacks specificity and basis. Both FPL and the NRC Staff have accounted for the 2.2% reduction in reflood rates in their evaluations and have determined that the resulting increase in core temperatures

satisfies all regulatory criteria.*/ The Petitioners have not identified any error in these evaluations, nor have they alleged that the evaluations are in any respect deficient or defective. Consequently, this proposed contention must be rejected. As the Appeal Board and other licensing boards have held, an acceptable contention must do more than merely identify subjects which the petitioner intends to litigate; it must also identify why the licensee's or the Staff's evaluation of the subject is inadequate. Diablo Canyon, supra; Dresden, supra.

Proposed Contention (c)

> Petitioners have been informed and believe amendment would increase the rod drop time from 1.8 to 2.4 seconds (a 33% increase in rod drop time). That increase would significantly and adversely reduce the safety margin and create the possibility or probability of a new or different kind of accident or an accident whose occurance or consequences have not been analyzed or which may increase the probability of an accident previously analyzed. Petitioners contend that Commission's tentative conclusion that safety limits "are met" is not supported by any evidence.

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*/ See pp. 11-13 of Attachment B to letter dated August 19, 1983, from Robert E. Uhrig (FPL) to Darrell G. Eisenhut (NRC) [hereinafter "FPL Analysis of Core Safety Limit Amendment"]; pp. 7-8 of Safety Evaluation attached to letter dated June 3, 1983, from Robert E. Uhrig (FPL) to Darrell G. Eisenhut (NRC) [hereinafter "FPL Analysis of Core Design Amendment"]; pp. 5-6, 10 of Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. 99 to Facility Operating License No. DPR-31 and Amendment No. 93 to Facility Operating License No. DPR-41, Florida Power and Light Company, Turkey Point Plant Unit Nos. 3 and 4, Docket Nos. 50-250 and 50-251, attached to letter dated December 23, 1983, from Daniel G. McDonald, Jr. (NRC) to Robert E. Uhrig (FPL) [hereinafter "SER for Core Safety Limit Amendment"].

Licensee's Objection

This proposed contention relates to the core design amendment, which specifically authorized an increase in the limits on the rod drop time from 1.8 to 2.4 seconds. Consequently, this proposed contention is outside the scope of this proceeding and should be rejected.

Furthermore, even if it were assumed arguendo that this infirmity does not exist, the proposed contention still would not be admissible. Both FPL and the NRC Staff have evaluated the consequences of the increase in rod drop time and have determined that the consequences are acceptable.*/ The Petitioners have not identified any error in either FPL's or the Staff's evaluation, and consequently this proposed contention should be rejected for lack of specificity and basis. Diablo Canyon, supra; Dresden, supra.

Proposed Contention (d)

> The proposed decrease in the departure in the nucleate boiling ratio (DNBR) would significantly and adversely affect the margin of safety for the operation of the reactors. The restriction of the DNBR safety limit is intended to prevent overheating of the fuel and possible cladding perforation, which would result in the release of fission products from the fuel. If the minimum allowable DBNR [sic]

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*/ See FPL Analysis of Core Design Amendment, pp. 7-8; pp. 12-14, 16, 20-21 of Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. [illegible] to Facility Operating License No. DPR-31 and Amendment No. 92 to Facility Operating License No. DPR-41, Florida Power and Light Company, Turkey Point Plant Unit Nos. 3 and 4, Docket Nos. 50-250 and 50-251, attached to letter dated December 9, 1983, from Daniel G. McDonald, Jr. (NRC) to Robert E. Uhrig (FPL) [hereinafter "SER for Core Design Amendment"].

> is reduced from 1.3 to 1.7 [sic] as proposed, this would authorize operation of the fuel much closer to the upper boundary of the nucleate boiling regime. Thus, the safety margin will be significantly reduced. Operation above the boundary of the nucleate boiling regime could result in excessive cladding temperatures because of the departure from the nucleate boiling (DNB) and the resultant sharp reduction in heat transfer coefficient. Thus, the proposed amendment will both significantly reduce the safety margin and significantly increase the probability of serious consequences from an accident.

Licensee's Objection

This proposed contention mischaracterizes the nature of the amendments. Operation of Turkey Point has been licensed on the basis that there be at least a 95% probability at a 95% confidence level that departure from nucleate boiling will not occur during normal operation or anticipated operational occurrences.*/ The license amendments for Turkey Point in no way modify this restriction.

The numerical value of the DNBR limit corresponding to the 95%-95% criterion varies depending upon the empirical correlation used to calculate DNBR. Consequently, if a different correlation is used, the DNBR limit may be increased or decreased and yet the 95%-95% criterion (or the "safety margin" to use the Petitioners' term) will be unaffected.

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*/ See Section B.2.1 of the Technical Specifications for Florida Power & Light Company Turkey Point Plant Units No. 3 & 4. See also Section 4.4 of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, NUREG-0800, Nuclear Regulatory Commission (July 1981) (hereinafter "SRP").

This is explained in both FPL's and NRC Staff's evaluations. */ In short, it is the 95%-95% criterion which is the true indicator of the safety margin, and since the amendments for Turkey Point do not modify this criterion, Petitioners' proposed contention that FPL is reducing safety margins is without basis and should be rejected.

In any case, even if it were assumed arguendo that the Petitioners are correct in their allegation that safety margins are being reduced, Petitioners have not offered any basis for an allegation that operation of Turkey Point with the allegedly reduced margins would be unsafe or would fail to comply with regulatory standards. The alleged reduction in safety margins is not a valid ground for rejecting an application as long as operation with the alleged reduced margins would still be safe. Consequently, this proposed contention should be rejected for failure to identify any impropriety in the activities authorized by the amendments.

Proposed Contention (e)

> The increased fuel core temperatures would reduce safety margins and would result in unacceptable swelling or bowing of fuel rods. During an accident, fuel rod swelling due to higher temperatures impedes emergency cooling water flow and increases the probability of fuel rod rupture during an accident. This could result in a significant increase in the possibility and/or consequences of an accident.

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*/ See FPL Analysis of Core Design Amendment, pp. 5-7; FPL Analysis of Core Safety Limit Amendment, pp. 3-7; SER for Core Design Amendment, pp. 7-12; and SER for Core Safety Limit Amendment, pp. 2-4.

Licensee's Objection

This proposed contention lacks a sufficient basis for admission. Both FPL and the NRC Staff have accounted for the effects of potential rod bowing in their evaluation and have determined that rod bowing would not be inimical to safety.*/ The Petitioners have offered no basis for challenging these evaluations and have not alleged that these evaluations are in any respect deficient. Consequently, this proposed contention should be rejected.

Proposed Contention (f)

> The National Environmental Policy Act of 1969 ("NEPA") imposes the requirement of an Environmental Impact Statement ("EIS") for this proposed major federal action.

Licensee's Objection

Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), only requires the preparation of an EIS for "major Federal actions significantly affecting the quality of the human environment." The Petitioners have not alleged, and have provided no basis for an allegation, that any incremental environmental impacts attributable to the issuance of the Turkey Point amendments would significantly affect the quality of the human environment. Petitioners also have provided no basis for the allegation that issuance of these amendments is a "major federal action." Consequently, the Petitioners have not provided a

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*/ See FPL Analysis of Core Safety Limit Amendment, pp. 5-7; SER for Core Safety Limit Amendment, pp. 2-4, 11.

sufficient basis for this proposed contention, and it should be rejected.

Proposed Contention (g)

> A NEPA cost-benefit analysis would probably establish that the preferred solution to the problem of pressurized thermal shock (PTS) and the impaired reactor pressure vessels could be better achieved by premature decommissioning or by derating the reactors' power levels. A full hearing is necessary to determine what, if any percent of deration would achieve safe levels of operation.

Licensee's Objection

This proposed contention has no apparent relevance to the Turkey Point amendments and instead relates only to pressurized thermal shock generally. Consequently, it is outside the scope of this proceeding and should be rejected.

Furthermore, it may be noted that the NRC is under no obligation to prepare a cost-benefit analysis unless it prepares an EIS. Dresden, supra, 16 NRC at 190. Since the Petitioners' have not established that an EIS must be prepared (see Licensee's Objection to Proposed Contention (f)), there is no ground for performing a cost-benefit analysis.

Similarly, the Petitioners have not alleged that the issuance of these license amendments would result in any incremental environmental impact beyond that presently occasioned by operation of Turkey Point. In the absence of any environmental impact, there is no requirement under NEPA to conduct a cost-benefit analysis or to consider alternatives. Public

Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 65 n. 33 (1981); Duke Power Co. (Oconee/McGuire), ALAB-651, 14 NRC 307, 321-22 (1981); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979). Consequently, this proposed contention should be rejected for lack of a basis.

Finally, even if it were assumed that the application for the amendments were to be denied in its entirety, there would still be no bar to operation of the Turkey Point units under their pre-existing license conditions. Consequently, the alternatives of decommissioning and derating are outside the scope of this proceeding. See Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 123 (1979).

Proposed Contention (h)

> Whether the determination of the Nuclear regulatory [sic] Commission in the final environmental impact statement for the Turkey Point Nuclear Plants, issued in July 1972, that accidents beyond the design basis of the plants (the Class 9) pursuant to proposed Annex A to Appendix D, 10 CFR 50, 36 Federal Register 22851, December 1, 1971, have a probability of occurance [sic] so low that their environmental risk is proportionately low and that they need not be considered in the Final Environmental Statement or its supplements is still a valid judgment in light of the reactor pressure vessel embrittlement being presently experienced by the Turkey Point Nuclear Power Plants.

Licensee's Objection

This proposed contention has no apparent relevance to the Turkey Point amendments and instead relates only to

pressurized thermal shock generally. Consequently, it is outside the scope of this proceeding and should be rejected.

Furthermore, under the Commission's Statement of Interim Policy, 45 Fed. Reg. 40101, 40103 (June 13, 1980), absent "special circumstances," an EIS prepared prior to the effective date of the Statement of Interim Policy may not be opened or reopened in any proceeding to consider the environmental impacts of severe accidents. Consequently, operating license amendment proceedings are not appropriate forums for the consideration of the impacts of Class 9 accidents. See Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), LBP-80-27, 12 NRC 435, 456, 457 (1980), aff'd ALAB-650, 14 NRC 43 (1981). Since the Petitioners have provided no basis for contending that the issue of pressurized thermal shock falls within the rubric of "special circumstances," this proposed contention should be rejected. Moreover, even if pressurized thermal shock were held to be a "special circumstance," the issue would not thereby come within the scope of this proceeding but instead would be more appropriately the subject of a separate action by the NRC Staff pursuant to a Section 2.206 petition.

Proposed Contention (i)

> That the FPL company be required to meet the requirements of NRC Report No. NUREG - 0609 (Assymetric Blowdown Loads on PWR Primary Systems, Unresolved Safety Issue A-2) and submit a plant specific analysis to evaluate fuel assembly structural adequacy and the design adequacy of reactor vessel supports and other

structures to withstand the loads when assymetric loss of coolant accident forces are taken into account. This is especially important because the new OFA and existing LOPAR fuel assemblies have slightly different structural properties and this mixed configuration should be analyzed for structural adequacy before the amendment is issued.

Licensee's Objection

To the extent that this proposed contention pertains generally to the generic issue of assymetric blowdown loads, it is outside of the scope of this proceeding and should be rejected. In amendment proceedings, licensing boards have jurisdiction over generic issues only to the extent that the amendment would render the issues "more serious;" it does not have jurisdiction over generic issues in general. See Carolina Power and Light Co. (H.B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 562 (1979). Similarly, since the design of reactor vessel supports and other structures of Turkey Point are unaffected by the Turkey Point amendments, assymetric blowdown loads on these items are also outside the scope of this proceeding and should be rejected.

Furthermore, an analysis of assymetric blowdown loads on the OFA or a mixed OFA/LOPAR core is only relevant to the core design amendment, not to the core safety limit amendment. Since the core design amendment is outside the scope of this proceeding, this proposed contention should be rejected. Finally, the Petitioners have not offered any basis for contending that the changes from LOPAR to OFA will render the issue of assymetric blowdown loads "more serious,"

and accordingly this proposed contention should also be rejected for lack of a basis. See Robinson, supra.

Proposed Contention (j)

> That the reduction in guide thimble rod control cluster (RCC) rodlet clearance will have an adverse effect on the extent of guide tube wear and consequently, the structural integrity of the 15 x 15 OFA will not be maintained with respect to the load carrying capability of the guide thimble tubes and "scramability" will be jeopardized. This could lead to the inability of the reactor to shutdown and increase the possibility of an accident other than those accidents previously evaluated or analyzed. This increase in risk that accidents, such as an anticipated transient without scram, might occur should require that FPL perform a PRA of the increased risk of such accidents occuring [sic] at Turkey Point 3 and 4.

Licensee's Objection

The reduction in guide thimble to rod control cluster rodlet clearance in the OFA fuel is only relevant to the core design amendment and not to the core safety limit amendment. Since the core design amendment is outside the scope of this proceeding, this proposed contention should be rejected.

Furthermore, both FPL and the NRC Staff have evaluated the potential for guide tube wear as a result of the reduction in clearance and have determined that there should be no adverse effect on the extent of guide tube wear.*/ The

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*/ Letter dated November 16, 1983, from J.W. Williams, Jr. (FPL) to Darrell G. Eisenhut (NRC), p. 2; SER on Core Design Amendment, pp. 5-6.

Petitioners have not contended that these evaluations are erroneous. Consequently, this proposed contention should be rejected for lack of basis.

Finally, it may be noted that there is no regulatory requirement that FPL prepare a probablistic risk assessment (PRA) in support of its applications for amendments, and the Petitioners have provided no reason for believing that a PRA on guide tube wear would provide any information which would be useful to the Board.

Proposed Contention (k)

> Whether hydraulic compatability exists between the OFA and LOPAR assemblies and whether the hydraulic flow conditions due to crossflow between fuel assemblies will adversely affect lift forces, pressure drops, cross flow and fuel vibrations, and fuel rod clad wear.

Licensee's Objection

The matter of hydraulic compatability between OFA and LOPAR is only relevant to the core design amendment and not to the core safety limit amendment. Since the core design amendment is outside the scope of this proceeding, this proposed contention should be rejected.

Furthermore, hydraulic compatibility has been evaluated by both FPL and the NRC Staff and has been found to be acceptable.*/ The Petitioners have not identified any errors in these evaluations. Consequently, this proposed contention should be rejected for lack of a basis.

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*/ FPL Analysis of Core Design Amendment, pp. 3-4; SER on Core Design Amendment, pp. 7.

Proposed Contention (l)

That the use of the Zircaloy grid will increase the amount of Zircaloy that can react chemically with water or steam and impede the acceptance criteria of ECCS in 10 CFR 50.46.

Licensee's Objection

The use of zircaloy grid material pertains to the core design amendment and not to the core safety limit amendment. Since the core design amendment is outside the scope of this proceeding, this proposed contention should be rejected.

Furthermore, the Petitioners have provided no basis for their allegation that the zircaloy grid material will react with water or steam or, if such a reaction were to occur, that it would affect compliance with the ECCS acceptance criteria in 10 CFR § 50.46. Consequently, this proposed contention should be rejected for lack of basis.

Proposed Contention (m)

That the demonstration experience with 17 x 17 OFA containing Zircaloy grids does not provide evidence of the satisfactory operation of the 15 x 15 OFA Zircaloy grids and that a plant specific analysis taking into account the deteriorated condition of the Turkey Point pressure vessel should be performed before the new fuel core design is implemented.

Licensee's Objection

Initially, it should be noted that this proposed contention is disjointed and essentially consists of a non sequitor. There is no relation between the demonstration

experience with OFA and the condition of a pressure vessel, and the Petitioners do not attempt to draw any connection. Consequently, this proposed contention should be rejected as being unintelligible.

Furthermore, the demonstration experience with OFA is only relevant to the core design amendment, not to the core safety limit amendment which is the subject of this proceeding. Similarly, reactor vessel integrity has no relevance to either of the Turkey Point amendments. Therefore, this proposed contention is outside the scope of this proceeding and should be rejected.

Finally, the Petitioners have provided absolutely no basis for their allegation that demonstration experience with 17x17 OFA does not provide evidence of satisfactory operation of the 15x15 OFA. In this regard, FPL has evaluated the demonstration experience with 17x17 OFA and has found that the data gained through this experience is applicable to the 15x15 OFA.*/ The Petitioners have not identified any error in FPL analysis. Consequently, this proposed contention should be rejected for lack of basis.

Proposed Contention (n)

> That as indicated in the Standard Review Plan Section 4.2.I.I. D. 3., a post irradiation fuel surveillance program should be established at Turkey Point to detect anomolies in the fuel. A similar program should be implemented for the WABA rods.

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*/ FPL Analysis of Core Design Amendment, p. 1.

Licensee's Objection

A post irradiation fuel surveillance program is only relevant to the core design amendment and not to the core safety limit amendment. Consequently, this proposed contention is outside the scope of this proceeding and should be rejected.

Furthermore, the Petitioners have provided no basis for requiring FPL to engage in such a program at Turkey Point. The Petitioners' reference to the Standard Review Plan (SRP) is unavailing since the SRP is not a regulation and FPL is not required to abide by it.*/ See Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772 (1977). Consequently, this proposed contention should also be rejected for lack of basis.

Proposed Contention (o)

> That inservice inspection program be implemented to monitor the deterioration of the pressure vessels in Turkey Point Units 3 and 4.

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*/ In fact, even the NRC Staff is not interpreting the SRP as requiring a special fuel surveillance program for the OFA at Turkey Point, since Turkey Point is not one of the two lead plants using OFA for which the Staff is requiring such a program. See SER for Core Design Amendment, p. 6.

Licensee's Objection

This proposed contention has no relevance to the Turkey Point amendments. Consequently, it should be rejected as outside of the scope of this proceeding. In any case, the Petitioners have provided no basis for requiring implementation of a special inservice inspection program to monitor the reactor vessel for Turkey Point, thereby providing an additional ground for rejection of this proposed contention. In this regard, it may be noted that FPL is required to implement an inservice inspection program pursuant to 10 CFR § 50.55a(g) and that FPL is complying with this requirement.

Proposed Contention (p)

> That the new fuel core design coupled with the eighteen month fuel cycle recently adopted by FPL will, and has caused, an increase in radioactive iodine and a higher coolant activity at Turkey Point as a result of fuel failure and that this increased activity in the primary system and four fold increase in radioiodine poses a threat to the health and safety of nuclear workers during refueling and maintenance of Turkey Point and is not in compliance with the requirements of 10 CFR Part 20, 50, 51, and 100.

Proposed Contention (q)

> That the increase in radioiodine and higher coolant activity poses a danger in the form of offsite releases that will not be in compliance with 10 CFR Parts 20, 50, 51, 100, NEPA, or the PWPCA [sic] and will pose a danger to the health and safety of the public and the Biscayne Bay environment.

Proposed Contention (r)

> That the new eighteen month fuel cycle at Turkey Point in light of the impaired condition of the pressure vessels and increased heat peak factors poses a danger of fuel failure and that Turkey Point 3 and 4 should be returned to their traditional twelve month refuelling cycle.

Licensee's Objections

Initially, it should be noted that the length of the fuel cycles for Turkey Point is not a subject of a license condition. Consequently, FPL can alter the length of its fuel cycle at will, consistent with the license conditions governing operation. In fact, FPL has utilized an eighteen month fuel cycle at times in the past prior to the issuance of the Turkey Point amendments in question. Consequently, it is apparent that the length of the Turkey Point fuel cycle is not relevant to the issuance of the Turkey Point amendments and is outside the scope of this proceeding.

Proposed Contentions (p) and (q) allege that there will be an increase in radioiodine in the reactor coolant as a result of the new fuel core design and the eighteen month fuel cycle. However, issues related to the core design amendment are outside the scope of this proceeding. Consequently, these proposed contentions should be rejected.

Proposed Contentions (p) and (q) also allege that increases in radioiodine in the reactor coolant will pose a threat to nuclear workers and pose a danger in the form of offsite releases. However, the Petitioners have provided no basis for either allegation. In this regard, it should

be noted that discharges of radioactivity from Turkey Point are subject to controls in Section 3.9.1 of the Technical Specifications for Turkey Point. These controls require FPL to comply with 10 CFR Part 20, Appendix B, Table II, Column 2, to monitor effluent releases, and to curtail releases if the applicable limits are not met. These Technical Specification limits have not been modified as a result of the Turkey Point amendments in question. Consequently, there is no basis for arguing that operation pursuant to these amendments will not comply with applicable regulations. */

Finally, Proposed Contention (r) is similar to Proposed Contention (m) in that both consist of non sequitors. There is no relation between the condition of the reactor vessel and the eighteen month fuel cycle or the possibility of fuel failure, and the Petitioners do not attempt to draw any connection. This proposed contention is unintelligible and consequently should be rejected.

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*/ Petitioners cite several regulatory provisions which have no relevance to their proposed contentions. For example, 10 CFR Part 100 pertains to reactor site criteria and does not govern either worker exposure or offsite releases from normal operation of a plant. 10 CFR Part 51 and NEPA govern preparation of environmental impact statements and are not relevant to the health and safety issues raised in these contentions. Finally, the NRC has no authority to enforce the Federal Water Pollution Control Act (FWPCA). See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1 (1978); Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

In preparing the proposed contentions, it is apparent that the Petitioners have done little more than search through FPL's and the NRC Staff's evaluations of the Turkey Point amendment and reiterate issues which were identified in those evaluations. In fact, in some instances, the proposed contentions even paraphrase the language in these evaluations.*/ However, in each case, having repeated issues previously identified by FPL or the NRC Staff, the Petitioners completely ignore FPL's and the NRC Staff's resolution of those issues and do not offer any basis for questioning the validity of these resolutions.

This tactic has been criticized before by both the Appeal Board and other licensing boards in rejecting proposed contentions. As the Appeal Board stated in Diablo Canyon, supra, 17 NRC at 801-02 n. 73:

> In addition to the TMI-related subjects that he sought to litigate, the Governor also proffered a number of subjects in which "the Governor quoted or paraphrased the actual language used by PG&E itself in PG&E's low power test motion." According to the Governor, these subjects should have been admitted because they "put into controversy the very claims and statements made by PG&E on the record." Br. at 51. The Licensing Board's exclusion of these subjects was also correct. For example, it is elementary that under 10 CFR 2.714, contentions submitted by interveners and subjects submitted by the representative of an interested state must set forth the basis for each contention or subject with reasonable specificity. See Northern States Power Co. (Prairie

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*/ For example, compare Proposed Contention (j) with the language in pages 5-6 of the SER on Core Design Amendment; and compare Proposed Contention (k) with the language in page 5 of FPL's Analysis of the Core Design Amendment.

> Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192 (1973), aff'd sub nom., BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974). In the context of the Governor's proffered subjects, therefore, it is not just the statement of what the Governor wishes to litigate that must meet the specificity requirement. Rather, it is the basis for his allegations that the statements from the applicant's motion are incorrect and that also must meet the specificity requirement. Here, the Governor's proffered subjects stated no basis at all and, on this ground, we affirm the result reached by the Licensing Board.

This same theme appears in the Licensing Board's decision in Dresden, supra, 16 NRC at 188:

> In these circumstances, we believe more is required to state acceptable Contentions. These Contentions do no more than point to the existence of a problem which Licensee and Staff have recognized and have resolved to their own satisfaction. Petitioners assert that there has been an inadequate evaluation of the decontamination, assuming an extended lay-up, because that lay-up will result in increased corrosion and exacerbation of cracks. They do not address the proposed solution to these identified problems. They do not give notice to the Board or the parties of the respects in which Petitioners regard the proposed solution as inadequate. They do not even say that Petitioners regard the proposed solution as inadequate. As they stand, the Contentions simply do not place any facts in issue. They are more conclusions than they are contentions. Because they do not give notice of facts which Petitioners desire to litigate, they fail to be specific enough to satisfy the requirements of 10 CFR § 2.714.

Most of the Petitioners' proposed contentions suffer the same defects as identified in the above passages and consequently

should be rejected. Additionally, the majority of the proposed contentions relate to pressurized thermal shock and/or the core design amendment, and do not relate to the core safety limit amendment. Consequently they should be rejected as outside the scope of this proceeding. Finally, each of the remaining proposed contentions lack an adequate basis and consequently is inadmissible.

V. Conclusion

The Petitioners' request for intervention and hearing with respect to the core design amendment should be denied because the Licensing Board has no jurisdiction over that matter and, in any case, because the Petitioners have not demonstrated that a balance of the five factors in 10 CFR § 2.714(a) weighs in favor of a grant of late intervention. Furthermore, the Petitioners' request to consolidate the subject matters of the core design amendment and the core safety limit amendment should be denied because the Board has no authority to consolidate the two matters and, in any event, consolidation is not warranted due to the absence of common questions of fact between the two amendments. Finally, each of Petitioners' proposed contentions is either outside the scope of this proceeding or lacks an adequate basis and therefore should be rejected. As a result, the Petitioners should be denied intervention for lack of one

admissible contention, and this proceeding should be terminated.

Respectfully submitted,

Harold F. Reis

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Dated: February 10, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR NUCLEAR RESPONSIBILITY INC)
AND JOETTE LORION)

Plaintiffs,)

v) Civil Action
No 83-3570

U S NUCLEAR REGULATORY COMMISSION,)
UNITED STATES OF AMERICA, and
FLORIDA POWER AND LIGHT COMPANY)

Defendants)

PLAINTIFFS' RESPONSE TO FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND FPL's STATEMENT OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

The Federal defendants[1/] and FPL oppose Plaintiffs' Motion for Preliminary Injunction on the ground that Plaintiffs have not met their burden to demonstrate irreparable harm and a probability of success on the merits warranting a stay.

This honorable Court has denied Plaintiffs' earlier motions for Temporary Restraining Order on December 1, 1983, and December 8 1983 respectively.

Subsequently the Nuclear Regulatory Commission has issued license amendments on December 9, 1983 and again on December 23, 1983 that has permitted the operation of the Turkey Point Plants as described in the July 20, 1983 and October 7, 1983 Federal Register notices and which is the very activity Plaintiffs had sought to prevent in their request for preliminary injunctive relief.

[1/] The federal defendants incluede the United States of America and the United States Nuclear Regulatory Commission.

Although, Plaintiffs believe irreparable injury has and is occurring, they do not anticipate pursuing their motion for preliminary injunction until they have obtained evidence of the type this court has found to be necessary to support the granting of injunctive relief by discovery or otherwise.[2/]

Plaintiffs submit that no action by the Court is required at the present time on their Motion for Preliminary Injunction since they are not actively pursuing it. If this Court decides to dismiss, it should be dismissed without prejudice.

Respectfully submitted

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[2/] Plaintiffs accept the admonition of this Court expressed at hearing on Dec. 1, 1983 and again on Dec. 8, 1983 that additional evidence would be required to support their request for the extraordinary relief sought in preventing the operation of the Turkey Point Plants. Plaintiffs are willing to withdraw their motion for preliminary injunction, if this court so decides but Plaintiffs request that withdrawal be without prejudice if the Court requires it, so that a motion to dismiss might be renewed when supportive evidence by affidavit or testimony becomes available.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR NUCLEAR RESPONSIBILITY
and JOETTE LORION,

Plaintiffs

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION, et al.,

Defendants

CA 83-3570

ORDER

This is before the Court on plaintiffs' motion for a preliminary injunction. After giving careful consideration to the motion, the opposition thereto, and the record in this case, the Court concludes that the motion must be denied.

The Court has previously denied two motions for temporary restraining orders. See Orders filed November 30, 1983 and December 9, 1983. In denying plaintiffs' earlier requests for injunctive relief, the Court noted that plaintiffs had failed to demonstrate that they will suffer irreparable injury in the event injunctive relief is denied. Perhaps more important is the fact that plaintiffs failed to present competent evidence, by testimony, affidavit, or otherwise, to warrant the entry of extraordinary relief against the defendants. Simply stated, plaintiffs have presented no evidence in support of their request.

Plaintiffs concede that they have failed to present evidence in support of their request for a preliminary injunction. See Plaintiffs' Response to Federal Defendants' Opposition to

Plaintiffs' Motion for a Preliminary Injunction (filed December 30, 1983) at 2. Accordingly, for the reasons set forth in the two earlier orders entered by the Court and set forth in the Court's oral findings of fact and conclusions of law made on November 30, 1983 and December 8, 1983, the motion for a preliminary injunction is denied.

It is hereby

ORDERED that plaintiffs' motion for a preliminary injunction is denied.

Dated: January 6, 1983

JOHN GARRETT PENN
United States District Judge

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA
	)	50-251 OLA
(Turkey Point Nuclear	)	
Generating Units 3 and 4	)	

AMENDED NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that Steven P. Frantz enters an appearance as counsel for Florida Power & Light Company in the above-captioned proceeding.

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Admissions:	District of Columbia Court of Appeals
Name of Party:	Florida Power & Light Company Post Office Box 14000 Juno Beach, FL 33408

Steve P Frantz

Steven P. Frantz

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Washington, D.C. 20036

Date: February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA
	)	50-251 OLA
(Turkey Point Nuclear Generating Units 3 and 4	)	

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Notice is hereby given that Michael A. Bauser enters an appearance as counsel for Florida Power & Light Company in the above-captioned proceeding.

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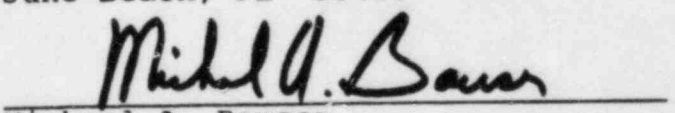

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Date: February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA
	)	50-251 OLA
(Turkey Point Nuclear Generating Units 3 and 4	)	

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA 50-251 OLA
	)	
(Turkey Point Nuclear Generating Units 3 and 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to Amended Petition to Intervene" in the above captioned proceeding, together with the attachments thereto, and three amended notices of appearance of counsel, were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below.

Dr. Robert M. Lazo, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Atomic Safety and Licensing Appeal Board Panel
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Office of Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

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Dated this 10th day of February 1984

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