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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-3 50-251 OLA-3
	)	
(Turkey Point Plant, Units 3 and 4)	)	(Increased Fuel Enrichment)

LICENSEE'S RESPONSE TO AMENDED PETITION TO INTERVENE

I. Introduction

On July 12, 1984, the Center for Nuclear Responsibility, Inc. ("Center") and Joette Lorion (jointly referred to herein as "Petitioners") filed a "Request for Hearing and Petition for Leave to Intervene" ("Petition") in the above captioned proceeding. Florida Power & Light Company ("FPL" or "Licensee") and the NRC Staff filed answers to the Petition on July 27 and 31, 1984, respectively, which objected to the Petition in part. 1/ In an Order Scheduling Prehearing Conference dated February 7, 1985, the Licensing Board directed the Petitioners to file a supplement to their Petition, including a list of the contentions which the Petitioners seek to have

1/ "Licensee's Answer to Request for a Hearing and Petition for Leave to Intervene with respect to Increased Fuel Enrichment" (July 27, 1984) (Licensee's Answer); "NRC Staff Response to Request for Hearing and Petition for Leave to Intervene regarding Amendments to Allow Storage of Fuel with Increased Enrichment" (July 31, 1984).

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litigated, by February 25, 1985, and directed the Licensee and the NRC Staff to file responses thereto by March 11 and March 18, 1985, respectively.

The Petitioners did not file a supplement to their Petition by February 25, 1985, as ordered by the Board. In a conference call among the Board, Licensee, NRC Staff, and Petitioners held on March 6, 1985, the Licensing Board directed the Petitioners to file a supplement by March 7, 1985 (together with a justification for the late filing) and directed the Licensee and NRC to file any answer by March 21, 1985.

On March 7, 1985, the Petitioners filed their "Amended Petition to Intervene" ("Amended Petition") and a "Motion to File Not in Accordance with the Board But in Accordance with the Rule" ("Motion"). The Motion requested that the Board extend the filing date for the Amended Petition from February 25, 1985, until March 7, 1985, and sought to justify the untimely filing under the five factors enumerated in 10 C.F.R. § 2.714(a).

The Licensee opposes the grant of the Motion to extend the time for filing the Amended Petition to March 7, 1985. Petitioners have wholly failed to show "good cause," as required by 10 C.F.R. § 2.714(a)(1)(i), for filing late. Although Ms. Lorion initially told the Board in the March 6, 1985 conference call that she mistakenly took the Licensee's March 11 date in the February 7 Order as Petitioners' date, Ms. Lorion now states that, although she "is a pro se litigant," she "was advised by counsel" or received "the vicarious advice of counsel" that the

supplemental petition to intervene could be filed "no later than 15 days prior to the holding of the first prehearing conference", i.e., no later than March 12, 1985. (Motion, pp. 1, 2). She does not identify counsel who allegedly so advised her. However, the prehearing conference order expressly required the Petitioners to file their supplement to the petition to intervene "by February 25, 1985," and the Licensee to respond to the supplement "on or before March 11, 1985," i.e., one day before Ms. Lorion states she thought the supplement was due. Ms. Lorion's interpretation was not merely inconsistent with the Board's instructions but also would have created an impossible situation for filing Responses. At a minimum, Ms. Lorion should have inquired further concerning her obligations in this proceeding. Her additional assertion that her personal "deadlines and time constraints" prevented her from making the February 25 deadline does not square with either her original explanation in the March ' conference call or her March 7 Motion and said assertion is unsubstantiated by any facts. Her explanation(s) should, therefore, not be accepted as establishing "good cause."

Second, the Petitioners have not identified any experts upon whom the Petitioners intend to rely in order to assist in developing a sound record as required by 10 C.F.R. § 2.714(a)(1)(iii). As emerges from the discussion in Section II, infra, the proposed contentions submitted by the Petitioners largely consist of issues which are outside the scope of this proceeding,

misunderstandings of the Commission's rules and the Staff's regulatory guidance, and vague and unparticularized allegations. The nature of these proposed contentions indicates that the Petitioners' participation in this proceeding is not likely to contribute to the development of a sound record but instead will likely result in substantial expenditures of resources by FPL, the Staff, and the Board in responding to undirected, unsubstantiated, and mistaken allegations regarding the safety of Turkey Point.

Licensee submits that, in the present circumstances, these two factors outweigh the other factors in 10 C.F.R. § 2.714(a)(1), and the late contentions should be denied. It, nevertheless, hereby submits its response to the Amended Petition as directed by the Licensing Board. Since the Licensee's Answer of July 24, 1984, addressed Petitioners' claims to standing to intervene in this proceeding, Licensee incorporates that discussion herein by reference and does not re-argue questions of standing in this pleading. 2/ We turn now to consider the contentions.

2/ The Center now attempts to base its claim of standing upon a factor not previously asserted. However, this factor is insufficient to establish its standing. The Amended Petition states that the Center "manages" a resource library that could be damaged as a result of an accident at the Turkey Point Plant. (Amended Petition p. 2). However, the Amended Petition does not explain how an accident at Turkey Point could possibly adversely affect such a library or adversely affect the Center in its capacity as the "manager" of the library. Thus, this allegation does not provide a sufficient basis for the standing of the Center to intervene.

II. Proposed Contentions

10 C.F.R. § 2.714(b) requires the proponent of a proposed contention to "set forth with reasonable specificity" the basis for each contention. The petition need not detail the evidence which will be offered to support the contentions, 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), however, a proposed contention must 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. 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). The basis must

provide "a clear articulation of the theory of the contention," Commonwealth Edison Co. (QuadCities Station, Units 1 and 2) LBP-81-53, 14 NRC 912, 916 (1981), and state the "reasons" for the petitioner's concern. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2) LBP-82-106, 16 NRC 1649, 1654 (1982). 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). With respect to a safety contention the petitioner must "either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent." Seabrook, supra, LBP-82-106, 16 NRC at 1656. Thus, the bare allegation that a particular facility or procedure is "unsafe" will not meet the particularity standard. 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).

As is demonstrated below, each of the Petitioners' proposed contentions suffers from a lack of specificity or basis or is otherwise infirm. Consequently, for the reasons discussed below, each of these proposed contentions should be rejected.

Proposed Contention 1

The storage of fuel with increased uranium enrichment and the increase in k_{eff} (neutron multiplication factor) for the existing new fuel storage racks constitutes a significant hazards consideration and requires that a public hearing be held on the amendments before issuance of such amendments.

Licensee's Objection

For the reasons presented in detail on pages 6-10 of the Licensee's Answer, which are incorporated herein by reference, the matter of whether the requested amendments involve a "significant hazards consideration" -- and, therefore, whether they may be issued prior to conducting a hearing -- is not one which may be decided in a hearing before a Licensing Board. Further, with the issuance of the requested amendments on September 5, 1984, this proposed contention has become moot. See Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 & 4 (Docket Nos. 50-250, -251-OLA)), Prehearing Conference Order, pp. 9-10 (May 16, 1984). Accordingly, the proposed contention should be rejected.

Proposed Contention 2

The proposed amendments are part of a broad agency program, pressure vessel flux reduction, and should become part of a single, program environmental impact statement on the pressure vessel flux program, as required by the National Environmental Policy Act of 1969. And, that the uranium enrichment amendments and vessel flux program are a major federal action that will effect the South Florida Environment.

Licensee's Objection

The Petitioners' allegation that the enrichment amendment is part of a "broad agency program" is asserted to be based upon a letter from FPL. 3/ This letter simply states that FPL's program to reduce the neutron flux at the reactor vessel wall will result in the loss of core reactivity, and that this reactivity will be recovered by increasing the amount of U-235 loaded in the core. 4/ However, an increase in fuel enrichment is not necessary to flux reduction and will not result in any reduction in neutron flux, and the Petitioners have not alleged any facts to the contrary. Consequently, the fuel enrichment amendment cannot properly be considered as a part of any FPL program to reduce reactor vessel flux. Accordingly, this proposed contention should be rejected for lack of a basis.

Even if it is assumed arguendo that the fuel enrichment amendment is part of an FPL program to reduce flux at the reactor vessel wall, the proposed contention still would not be admissible. A programmatic environmental impact statement (EIS) is only required for federal programs, not for programs by non-federal entitites. Duke Power Co. (Amendment to Materials License SNM-1773), ALAB-651, 14 NRC 307, 312-13 (1981). The Petitioners have not provided, nor could they provide, any basis for alleging that the FPL Turkey Point flux reduction program is

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3/ Letter from Robert E. Uhrig (FPL) to Steven A. Varga (NRC) (March 25, 1983).

4/ Id., Attachment B, Section 5, page 3.

part of any NRC program. Consequently, there is no basis for Petitioners' contention that a programmatic EIS is necessary for FPL's flux reduction program.

Furthermore, even if it is assumed arguendo that the Turkey Point flux reduction program is equivalent to an NRC program, the NRC would still be permitted to approve part of the program without a programmatic EIS if that part (1) has independent utility, and (2) does not foreclose agency action on subsequent portions of the overall plan. Duke Power, supra. Petitioners have not alleged, and have provided no basis for an allegation, that the fuel enrichment amendment fails to satisfy either of these two tests. Consequently, Proposed Contention 2 should be rejected for lack of specificity and basis.

Finally, even if it is assumed arguendo that the fuel enrichment amendment is part of the flux reduction program, and that this program is a federal program, and that the amendment does not have independent utility and would foreclose subsequent NRC action, Proposed Contention 2 would still be objectionable. Section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C), requires the preparation of an EIS only for "major Federal actions significantly affecting the quality of the human environment." Petitioners have provided no basis for any contention that the flux reduction program for Turkey Point will significantly affect the quality of the human environment. Consequently, the contention that an EIS is necessary for the program should be rejected for lack of a basis.

Proposed Contention 3

That the uranium enrichment amendments increase the chances of a criticality accident occurring in the fresh fuel pool and establishes a clear reduction in the safety margin of the fresh and spent fuel pool.

Licensee's Objection

The Petitioners provide two bases for this proposed contention. First, Petitioners state that the increase in the limits on U-235 loading in fuel stored in the spent fuel pool will result in a k_{eff} of 0.95, with "no margin of safety". (Amended Petition, p. 5). However, since criticality occurs for a k_{eff} of 1.0, obviously a limit of 0.95 on the maximum k_{eff} provides a margin of safety. In fact, the NRC Staff has long employed a limit of 0.95 on k_{eff} for spent fuel pools. 5/ Since the Petitioners have provided no basis for contending that a limit of 0.95 on k_{eff} does not provide an adequate margin of safety, this proposed contention should be rejected.

Second, the Petitioners state that the increase from 0.95 to 0.98 in k_{eff} for the fresh fuel pool 6/ will push the k_{eff} of the pool closer to 1.0, thereby increasing the

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5/ See "NRC Position for Review and Acceptance of Spent Fuel Storage Handling Application" (April 14, 1978), p. III-3.

6/ The proposed contention refers to the fresh fuel pool. There is no such pool. New fuel is stored in an area with racks in a dry configuration at Turkey Point. However, new fuel may occasionally be stored in the spent fuel pool. See, e.g., the Safety Evaluation Report (SER) for the Fuel Enrichment Amendment, pp. 3, 10, attached to letter dated September 5, 1984 from Daniel G. McDonald, Jr. (NRC) to J.W. Williams, Jr. (FPL).

Contrary to the allegations of the Petitioners, the limit on K_{eff} for fresh fuel storage is not being increased from 0.95 to 0.98. Prior to issuance of the fuel enrichment amendment, the technical specifications for Turkey Point impose a limit of 0.95 on K_{eff} for new fuel storage under fully flooded conditions. The amendment leaves this limit unchanged and imposes an additional limit of 0.98 for K_{eff} under conditions of optimum moderation. 7/ This change is consistent with the long-standing position of the NRC Staff that K_{eff} for new fuel storage should be less than 0.98 under conditions of optimum moderation and 0.95 for storage of new fuel in unborated water. 8/ The Petitioners have provided no basis for alleging that a limit of 0.98 in k_{eff} for new fuel storage under conditions of optimum moderation is insufficient to protect the public health and safety. Consequently, this proposed contention should be rejected for lack of a basis.

Finally, it should be noted that the limits on k_{eff} discussed above with respect to the new fuel storage are design basis limits. The actual maximum value for k_{eff} for new fuel storage for Turkey Point is predicted to be only 0.925. 9/ Thus, the new fuel storage will have an actual k_{eff} far below the

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7/ See SER, pp. 5-6. As these pages explain, the NRC Staff identified a new condition for optimum moderation (fog, mist, or foam) which had not been previously evaluated. This new condition was then evaluated against the additional limit of 0.98 for k_{eff} under conditions of optimum moderation.

8/ See NUREG-0800, Standard Review Plan, Section 9.1.1 (July 1981), ¶ III.2.a.

9/ SER, pp. 3, 6.

design basis limits.

Proposed Contention 4

The increase in U-235 loading and increase in the possibility of an accident as a result of the increase in k_{eff}, will increase the amount of fission product, such as radioactive iodine and krypton 85 that are available to be released in normal or abnormal occurrences and will cause the licensee to exceed the limits of 10 C.F.R. Parts 20, 50, 51, 100, NEPA, and FWPA, and will pose a threat to the health and safety of the public, workers, and the Biscayne Bay environment.

Licensee's Objection

This proposed contention is vague, unspecific, and lacks any basis, and therefore it should be rejected.

Initially, it should be noted that the Petitioners have provided no basis for their allegation that an increase in U-235 loading will increase the amount of fission products available for release. As the NRC Staff has noted, radiological consequences are not dependent upon U-235 loading but instead upon fuel burnup (which is unaffected by the fuel enrichment amendment). 10/

Additionally, the Petitioners have provided no basis for their allegation that the increase in U-235 loading will increase the probability of an accident. As was discussed previously, the fuel enrichment amendment satisfies the NRC Staff's criteria for k_{eff}, which contain sufficient margins of safety to protect the public health and safety. Since the

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10/ SER, p. 4.

Petitioners have provided no basis for alleging that the NRC Staff's criteria are inappropriate, this proposed contention should be rejected.

Finally, Petitioners allege that releases will occur as a result of the fuel enrichment amendment and will exceed the "limits of 10 C.F.R. Parts 20, 50, 51, 100, NEPA, and FWPA." 11/ Initially, it should be noted that 10 C.F.R. Part 51, NEPA, and FWPA do not contain any numerical limits on radioactive releases; that the NRC has no responsibility for enforcing the FWPA, Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978); and that neither Part 50 nor Part 20 contain any limits applicable to accidental releases. See, e.g., Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-14, 13 NRC 677, 702-03, aff'd ALAB-660, 14 NRC 987 (1981). Furthermore, the Petitioners have provided no basis for alleging that any releases as a result of the fuel enrichment amendment would exceed the limits on normal operation in Parts 20 and 50 or the limits on accidental releases in Part 100. Consequently, this proposed contention lacks any basis, is inconsistent with applicable law, and accordingly should be rejected.

11/ Presumably, Petitioners are referring to the Federal Water Pollution Control Act.

III. Conclusion

A balancing of the five factors in 10 C.F.R. § 2.714(a) weighs against acceptance of the untimely filing of the Amended Petition and of the Motion to file out of time. Additionally, each of the proposed contentions raised by the Petitioners is objectionable for lack of specificity or basis or for other reasons. Consequently, the Petitioners' request to intervene should be denied.

Respectfully submitted,

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Dated: March 21, 1985

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-3
	)	50-251 OLA-3
(Turkey Point Nuclear	)	
Generating Units 3 and 4)	)	(Increased Fuel Enrichment)

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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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 OLA-3
	)	50-251 OLA-3
(Turkey Point Plant,	)	
Units 3 and 4)	)	(Increased Fuel Enrichment)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Amended Petition to Intervene" in the above captioned proceeding, together with a Notice 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
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Dated this 21st day of March, 1985

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* additional service by messenger

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