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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250 OLA-1
	)	50-251 OLA-1
FLORIDA POWER & LIGHT COMPANY	)	
	)	ASLBP No. 84-496-03 LA
(Turkey Point Nuclear Generating	)	(Vessel Flux Reduction)
Units 3 & 4)	)	

LICENSEE'S RESPONSE IN OPPOSITION  
TO INTERVENORS' MOTION TO  
SUSPEND OR REVOKE LICENSE AMENDMENTS

During the prehearing conference held on March 26, 1985, the Center for Nuclear Responsibility and Joette Lorion (Intervenors) hand delivered to all parties "Intervenors' Motion to Suspend or Revoke License Amendments" (Motion). The Motion requests that the Licensing Board "suspend or revoke license amendments No. 93 and No. 99, issued for the Turkey Point nuclear reactors on December 23, 1985 [sic], until the Board has determined that a valid technical basis . . . has been established." (Motion, p. 1). Florida Power & Light Company (FPL or Licensee) hereby submits its response in opposition to the Motion on the grounds that it is wholly without merit and that, in any event, this Board does not possess the authority to grant the relief which the Motion requests.

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Initially we address the latter question. Fairly read, the Motion appears to request this Board to suspend or revoke the operating license amendments which are the subject of this proceeding prior to the holding of hearings on the amendments as required by Section 189a of the Atomic Energy Act, (42 U.S.C. § 2239(a)) and 10 C.F.R. Part 2 of the Commission's regulations. 1/ Despite Intervenor's contrary assertion (Tr. 95), the Intervenor's Motion is a request for enforcement action for it requests suspension or revocation of the amendments. As such, it should have been submitted to the Director, Office of Nuclear Reactor Regulation, in accordance with 10 C.F.R. § 2.206 because the licensing board has no authority to consider a motion for an order to show cause to modify, suspend, or revoke a license. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 12 NRC 765, 767, rev'd on other grounds, ALAB-605, 12 NRC 153 (1980). See also Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2) LBP-78-11, 7 NRC 381, 386 aff'd ALAB-470, 7 NRC 473 (1978). Consequently, Intervenor's Motion should be denied as an improper attempt to circumvent the Commission's rules in 10 C.F.R. Part 2, Subpart B.

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1/ If the Intervenor's are simply claiming that the matter raised in the Motion should be considered in the hearings on the amendments and that the matter is sufficient to warrant the Board's refusal to authorize issuance of the amendments, the Intervenor's should have raised this matter by means of a proposed contention under 10 C.F.R. § 2.714 and not a motion to suspend or revoke the license amendments.

Even if it is assumed, arguendo, that the Board does have authority to consider the merits of Intervenor's Motion, the Motion is without any valid basis and should be denied. The Motion relies solely upon a letter dated March 18, 1985, from Licensee's counsel to the Board. Intervenor's allege that this letter "informs that there is no valid technical basis for the WREFLOOD BART [sic] computer model." (Motion, p. 1). However, as is apparent on its face, no such statement appears in the letter. Instead, it simply states that Westinghouse has determined it necessary "to revise the ECCS evaluation model procedure by which the core flooding rate information generated by the WREFLOOD code is introduced into the BART heat transfer coefficient calculation . . ." and that use of the revised procedure results in a peak clad temperature "well below the 2200° F. limit established by 10 C.F.R. § 50.46."

Further, the uncontroverted testimony of Mark J. Parvin and Michael P. Young at the prehearing conference of March 26, 1985 fully explains the reasons for the revisions of Westinghouse's data transfer procedure and the results of using the revised procedures and places the peak clad temperature at 2051° F. which is well within the limits of 10 C.F.R. § 50.46(b)(1). (Tr. 124-130). Consequently, Intervenor's

allegation that the amendment lacks a valid technical basis is without support in the record and their Motion should be denied. 2/

The lack of merit in the request to suspend or revoke the amendments is also evidenced by the contradictory and ambivalent attitude expressed with respect to it by the Intervenor themselves as the proceeding progressed on March 26, 1985. They served the Motion at the opening of the proceeding. (Tr. 94-95). However, following the Parvin and Young testimony, Intervenor's counsel expressed the view that "that puts the BART model back into the realm of certainty. . ." and withdrew the Motion as "moot." (Tr. 216). Thereafter, at his clients' urging he requested and received permission to reinstate the Motion (Tr. 219-225). However, he did so without in any way challenging the

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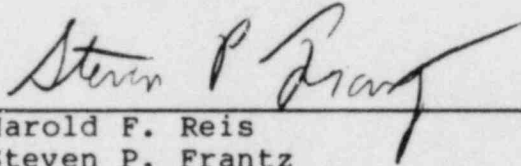
2/ The Motion also states, without explanation, that the letter "clearly identifies at least one disputed issue of material fact." (Motion, p. 2). However, the Motion does not identify this issue. In actuality, the only change in "Licensee's Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard With Respect to Intervenor's Contention (b)" made necessary by the revised procedure is a non-material increase in the peak clad temperature from 1972° F. to 2051° F. identified in paragraph (4) of the Statement. The Motion also alleges, without providing any basis, that the revised procedure "undermines" the no significant hazard consideration determination. (Motion, p.2). However, the Board has already ruled in this proceeding that such a contention is moot and offers nothing to litigate. (See "Prehearing Conference Order", May 16, 1985, pp. 9-10). Furthermore, the Commission's no significant hazards consideration determination is beyond the scope of this proceeding and not cognizable by this Board. See "Licensee's Answer to Request for a Hearing and Petition for Leave to Intervene with Respect to Spent Fuel Pool Expansion", Docket Nos. 50-250 and 251 OLA-2, July 24, 1984, pp. 7-10.



Parvin and Young testimony and apparently more as a request for additional information concerning "the figure they have given today. . ." (Tr. 219) than as a serious request for suspension or revocation.

In sum, the Board has no authority to grant Intervenor's Motion to suspend or revoke the license amendments for the Turkey Point Plant and, in any case, the Motion is entirely lacking in merit. Consequently, the Motion should be denied.

Respectfully submitted,



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April 4, 1985

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	)	50-251 OLA-1
FLORIDA POWER & LIGHT COMPANY	)	
	)	
(Turkey Point Plant,	)	ASLBP No. 84-496-03 LA
Units 3 and 4)	)	(Vessel Flux Reduction)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response in Opposition to Intervenor's Motion to Suspend or Revoke License Amendments" in the above-captioned proceeding were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below.

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

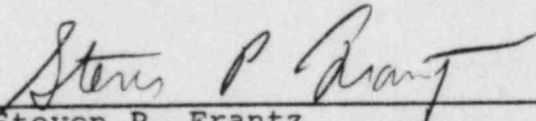
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Dated this 4th day of April, 1985

  
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