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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION FEB 28 P1:26

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

INTERVENORS' RESPONSE TO LICENSEE'S MOTION
FOR RECONSIDERATION OR CLARIFICATION OF ORDER

On February 11, 1985, the Atomic Safety and Licensing Board ("Board") issued an Order Scheduling Prehearing Conference in the above captioned proceeding, convening on March 26, 1985, in the greater Miami area.

Subsequently, on February 19, 1985, the Florida Power and Light Company ("FPL" or "Licensee") filed Licensee's Motion for Reconsideration or Clarification of Order ("Motion"). A sense of urgency was conveyed by the Licensee, since they served their Motion both by deposit in the mail, hand delivery by a courier service, and telephonic notification to Counsel for the Intervenors, all on February 19, 1985.

Thus, Intervenors have promptly and carefully considered the Board's Order and the Licensee's "Motion". Intervenors have determined that they support the novel concept of the Board in taking information provided in a "didactic manner (by the Licensee)

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through its experts to questions and issues raised in various filings," to the extent that the testimony taken be limited to the motions for summary disposition as to the issue of a disputed issue of material fact now pending before the Board, and if all other parties be provided equal opportunity to cross examine the Licensee's experts.

Intervenors do not feel that this, a prehearing conference occasion, would be an appropriate one for presentation of their case as allowed under the Commission's Rules of Practice at 10 C.F.R. Part 2.700 et seq., and hence the Intervenors hereby advise the parties that their participation in the March 26, 1985, prehearing conference would not, nor would it be expected to by them, consist of presentation of their affirmative case on the merits of the issues raised.

Therefore, Intervenors support in part some of the suggestions of the Licensee in their "Motion" as stated at page 8, para 2 of the "Motion" and only to the extent that resolution of the motion not further delay these proceedings unnecessarily. That is, the Intervenors agree with the Licensee that the Board should allow the parties to examine the experts:

If the Board, nevertheless, desires to hear oral testimony, it could utilize the same procedure outlined above, and then allow for the parties and the Board to examine the experts. A decision by the Board on Licensee's motions for summary disposition would then be based upon all the pleadings, the written responses to the questions, and the oral testimony upon examination." - FPL "Motion" p. 8, para 2.

The Licensee has correctly pointed out that while the Commission's own Rules of Practice have never previously envisioned the procedure announced by the Board, that decisions arising under the Federal Rules of Civil Procedure do; and specifically " may serve as guidelines to licensing boards in applying 10 C.F.R. 2.749." (Citing Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), 16 N.R.C. 512, 519 (1982). - Cited in FPL "Motion" at page 4.

Since, those federal cases which have considered the issue have found that, "the courts should use oral testimony on a summary judgement motion sparingly and with great care." - FPL "Motion at page 5, 6. (Citing Hayden v. First National Bank of Mt. Pleasant, Texas, 595 F. 2d 994, 997 (5th Cir. 1979) citing 10 Wright & Miller, Federal Practice), Intervenor's wish to reiterate their view that the Board's taking of testimony at the prehearing conference should be limited to a determination of the question of whether the Intervenor's have raised substantial issues of material fact in their contentions (b) and (d). Further, there should be a subsequent opportunity provided to Intervenor's to rebut any presentation by the Licensee's experts that Intervenor's deem inaccurate, prejudiced, misleading, or improper.

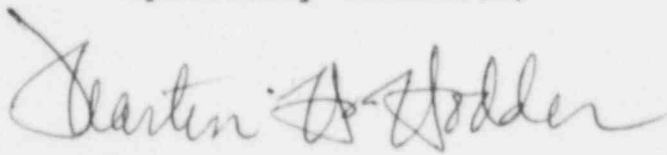
Finally, the Intervenor's submit that with the scheduled prehearing over a month away, taken together with the promptness and supportive aspects of the Intervenor's' own reply here, as well as the mandate that federal administrative agencies achieve maximum economies of operation*, there is no need to postpone the

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presently scheduled prehearing date of March 26, 1985.

Intervenors submit that they have raised substantial issues of material fact, and that absent further proof otherwise, a hearing on the issues presented is mandatory.

Respectfully submitted,

A handwritten signature in cursive script, reading "Martin H. Hodder".

Martin H. Hodder
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*Intervenors note that the Board has separately scheduled Prehearing Conferences on Spent Fuel Pool Expansion and Uranium Enrichment on March 27, and March 28, 1985.

Dated: February 25, 1985

UNITED STATES OF AMERICA
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)	50-251-OLA-1
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CERIFICATE OF SERVICE

I hereby certify that copies of "Intervenors' Response to Licensee's Motion for Reconsideration or Clarification of Order" dated this 25 day of February, 1985, were served on the following by first class mail, postage prepaid, on the date shown below:

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Dated: February 25, 1985