

DOCKET NUMBER

PETITION RULE PRM 50-70
(65 FR 30550)

Before the

NUCLEAR REGULATORY COMMISSION

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Petition for Rulemaking filed by :
Eric Joseph Epstein on May 12, 2000 : 10 CFR Part 50
Federal Register, Volume 65, Number 93, : Docket No: PRM-50-70
30550-30553 :

**Response to Florida Power Corporation's Request to
Deny Petitioner's Motions to Dismiss Delinquent Filings (1)
and Separate Pro Se Representations (2)**

ERIC JOSEPH EPSTEIN, *Petitioner*
4100 Hillsdale Road
Harrisburg, PA 17112

Annette L. Vietti-Cook
Secretary of the Commission
United States Nuclear Regulatory Commission
Rules and Directives Branch
Division of Administrative Services
Office of Administration
Washington, D.C. 20555-0001

Dear Madame Secretary:

1) On December 30, 1999, the Petitioner, Eric Joseph Epstein, (hereafter, "Petitioner" or "Epstein"), filed a **PETITION for RULEMAKING 10 CFR. CH 1. (1-1-99), EDITION**) (Hereafter the "Petition") SUBPART-H §2802:PETITION to AMEND THE FINANCIAL ASSURANCE REQUIREMENTS for DECOMMISSIONING NUCLEAR POWER REACTORS SECTION 50.75 REPORTING and RECORD KEEPING for DECOMMISSIONING PLANNING, Parts: (a), (b), (c), (d), (e), and (f) to INCLUDE UNIFORM REPORTING for PROPORTIONAL OWNERS of NUCLEAR GENERATING STATIONS and A REQUEST to PETITIONER'S RECOMMENDATIONS for NUCLEAR DECOMMISSIONING IDENTIFIED IN : II) STATEMENT of ISSUES: 9 (A), (B), (C), (D), (E) AND (F);

1 The Petitioner's Initial Motions were filed on August 15, 2000. An additional Set of Motions were filed on August 23, 2000. Florida Power Corporation's Request deals only with the Initial Set of Motions.

2 Florida Power Corporation's Initial Comments were filed by S.L. Bernhoft, Director, Nuclear Regulatory Affairs, Florida Power Corporation, Crystal River Energy Complex.

2) The Nuclear Regulatory Commission (NRC) docketed the Petition on January 3, 2000;

3) David L. Meyer acknowledged receipt of the Petition in a letter delivered by the United States Postal Service (USPS) to Mr. Epstein dated January 24, 2000;

4) The NRC notified the Petitioner, via the United States Postal Service on May 8, 2000, that the Petition was docket pursuant to 10 CFR 2.802 and assigned the number: PRM-5070;

5) Mr. Meyer notified the Petitioner through the USPS on August 7, 2000, and provided comments from eight interested parties (3);

6) The Commission solicited public comment and explicitly instructed interested parties to:

Submit comments by July 26, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

7) Despite advance notice, and 75 days in which to file timely comments, several parties failed to adhere to the submission standards established by the Commission (4);

3 Comments from New England Power Company and Ogelthorpe Power Corporation were entered through electronic submission and the USPS. Both formats continue to lack signature(s) or any other visible means of attestation as of **September 7, 2000**

28 USC APPENDIX - RULES OF CIVIL PROCEDURE Rule 11, TITLE 28 JUDICIARY AND JUDICIAL PROCEDURE, FEDERAL RULES OF CIVIL PROCEDURE, III. PLEADINGS AND MOTIONS, Rule. 11 Signing of Pleadings, Motions, and Other Papers:

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

4 Part 2, -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS, Subpart H -- Rulemaking; Section 2.805 participation by interested persons; and, Section 2.808 Authority of Secretary to rule on procedural matters.

8) The Petitioner filed Motions to Dismiss Delinquent Filings and Separate *Pro Se* Representations on August 15, 2000. An additional Set of Motions were filed on August 23, 2000, affecting only the North Atlantic Service Energy Company;

9) PPL Susquehanna (PPLS) filed a Response to Motions re Petition For Rulemaking by Eric Joseph Epstein (65 FR 30550);

10) Mr. Epstein's rebutted PPL's Response in a Response Motion filed on September 5, 2000;

11) Florida Power Corporation (FPC) filed a Response to Motions re Petition For Rulemaking by Florida Power Corporation on August 30, 2000, essentially paraphrasing PPLS's Responses (5);

12) The Florida Power Corporation restated and paraphrased PPL Susquehanna's position and distorted the Petitioner's argument:

Apparently, Mr. Epstein is guided by his experience with respect to rulemaking petitions in certain administrative proceedings in the Commonwealth of Pennsylvania and the rules of governing the practice of law before certain administrative agencies in the Commonwealth of Pennsylvania.

[Page 1, Paragraph 2, Lines 3-6]

While the Petitioner observed how certain administrative agencies in Pennsylvania deal with *Pro Se* representation and verifiable means of attestation, the crux of the Petitioner's argument actually read:

The signing of petitions submitted by corporate entities by legal counsel suggests that a fairly standard practice, which avoids the unauthorized practice of law, already informally and formally exists. To allow rulemaking petitions to be verified by non-attorneys also raises other substantial questions of law, such as whether the signatory is authorized to bind the submitting corporation to the allegations made within the submission, and whether other constraints bind the signatory, such as **Rule 11 sanctions under the Federal Rules of Civil Procedure**, due to the nature of their action; (**Bold face type added**) (Motion to Separate *Pro Se* Representation, (7), August 15, 2000);

⁵ The Florida Power Corporation has retained legal counsel. Mr. Epstein congratulates the FPC for their efforts on this matter.

13) The FPC's is arguing a moot point since it has secured R. Alexander Glenn, Esquire, Director, Regulatory Counsel Group, Florida Power Corporation;

14) The Florida Power Company suggests that,

In many cases, the comments provided to NRC regrading rulemaking issues are technical in nature, rather than "legal", and therefore, do not require any input form an attorney. Imposing a requirement that lawyers be involved would be ill advised, because it would lead to unnecessary expense and burden on the companies that submit the comments.
(FPC, Page 2, Paragraph 1, Lines 1-4).

This statement is disingenuous, runs counter to industry policy making, and is prepared by an **attorney**. Unless the Florida Power Corporation operates in a vacuum, industry comments are normally prepared in a collegial fashion, and the FPC is no exception. The Company involves its legal team in a collaborative rulemaking process, and should not object to formally acknowledging the input of salaried legal staff. (Page 2, Paragraph 1, Lines 9-11).

It is ridiculous to assert that an "unnecessary expense and burden" would be created by lifting a pen and affixing a signature;

15) Mr. Epstein agrees with the Florida Power Corporation that "individual's such as Ms. Bernhoft routinely communicate with the the NRC regrading issues affecting FPC and/or the industry as a whole" (Page 2, Paragraph 1, Lines 8-11). And as the Petitioner stated in his Response to PPL S's Response, the **overwhelming majority of commentaries on rulemaking petitions are prepared by representatives from the nuclear industry, attorneys representing the nuclear industry, or industry advocacy groups;** (6)

6 The NRC's "Current Rulemakings Available" (Please refer to Eric Joseph Epstein's *Enclosure* in his Response to PPL Susquehanna, September 5, 2000) clearly demonstrates that the overwhelming majority of rulemaking petitions are submitted by the nuclear industry, which then files comments in support of itself. States rarely comment, and almost all of these rulemaking petitions and announcements require technical, fiscal or public policy expertise.

16) In fact, on August 31, 2000, the NRC acknowledged the disproportionate amount of resources and influence the industry wields on the rulemaking process, and Proposed Guidelines for Including Industry Initiatives in the Regulatory Process (7);

17) It is an unreasonable, and an undue hardship, to expect consumer, environmental, or public interest groups, to retain "technical" resources at a level commensurate with an industry dominated by Fortune 500 actors; (8)

18) If an individual wants to speak on behalf of a corporation or industry actor, s/he can list the entity for **affiliation purposes only. The nuclear industry should not be allowed to subsidize *Pro Se* commentary through corporate resources;**

19) The NRC's own data clearly reflects that the existing system does not foster citizen participation; (9)

20) Yet Florida Power Corporation, with all of its resources, wants to codify the right to submit comments in rhythm with their corporate clock (Page 1, Paragraph 1, Lines 4-7). To legalize blatant disregard for rules and regulations in a Rulemaking Proceeding is a cavalier approach to time management, and would create regulatory anomie;

7 Federal Register: August 31, 2000 (Volume 65, Number 170)[[Notices][Page 53050-53058] From the Federal Register Online via GPO Access.

8 Florida Power Corporation's pending merger with Carolina Power & Light, also an interested party in this proceeding, is expected to be finalized in Fall 2000. This merger will produce one of the largest electric companies in North America.

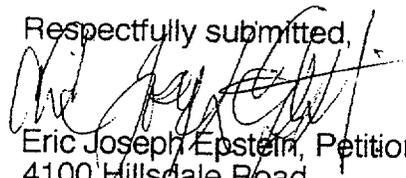
9 The petitioner has been involved with NRC processes for almost two decades, and actively participated in all facets of public participation. Most recently, Mr. Epstein filed comments on October 29, 1999 Nuclear Energy Institute's Petition for Rulemaking, 10 CFR 51, Docket No. PRM. 51-7, Nuclear Regulatory Commission, (September 2, 1999: Volume 64, Number 170, pp. 48117-48120). With the exception of Mr. Epstein, ten out of the eleven parties that filed comments represented the nuclear industry.

21) If the Florida Power Corporation promotes the finessing of deadlines, and the dilution of rulemaking before the Nuclear Regulatory Commission, why not extend this logic to other "administrative agencies"?

Mr. Epstein challenges the Florida Power Corporation and Carolina Power & Light (CP&L) to be true to what they put on paper, and requests that the FPC and CP&L Petition the Federal Energy Regulatory Commission (FERC) to set aside its approval of the pending merger so that Mr. Epstein can provide "insights, view points and other useful information", even though Mr. Epstein's comments would be "slightly late";

22) Florida Power Corporation not only wants the ability to file comments when they feel "it is practical to do so", but the Company contends that the process of affixing a signature to a document is burdensome and irrelevant (Page 1, Paragraph 1, Lines 4-7);

23) The Petitioner simply asks that the NRC recognize and enforce its own rules and regulations. Furthermore, the Commission should not deregulate the rulemaking process, or condone and countenance the industry's practice of failing to meet deadlines.

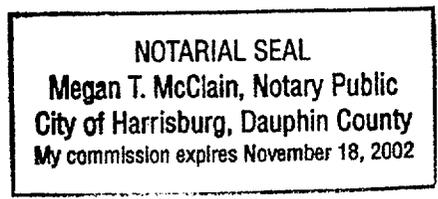
Respectfully submitted,

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Enclosures

DATED: SEPTEMBER 7, 2000


NOTARY

State of Pennsylvania
County of Dauphin
Sworn and subscribed before me this
..... day of September 2000



**Before the
NUCLEAR REGULATORY COMMISSION**

Petition for Rulemaking filed by :
Eric Joseph Epstein on May 12, 2000 : 10 CFR Part 50
65 Federal Register 30550 : Docket No: PRM-50-70

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery in .

Annette L. Vietti-Cook, Secretary
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Washington, D. C. 20055-0001
Attention: Rulemakings and Adjudication Staff

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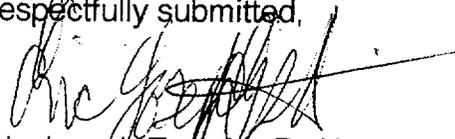
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DATE: September 7, 2000