

December 8, 2000

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-LR
	)	50-251-LR
(Turkey Point Nuclear Plant, Units 3 and 4)	)	

NRC STAFF'S RESPONSE TO REQUEST FOR HEARING AND  
PETITION FOR LEAVE TO INTERVENE FILED BY JOETTE LORION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby submits its answer to the request for hearing and petition for leave to intervene ("Petition"), dated November 22, 2000, filed by Ms. Joette Lorion ("Ms. Lorion" or "Petitioner").<sup>1</sup> For the reasons set forth below, the Staff does not contest that the Petitioner has standing to intervene in this matter.

BACKGROUND

On September 11, 2000, Florida Power & Light Company ("FPL") submitted an application to renew Operating Licenses DPR-31 and DPR-41 for its Turkey Point Nuclear Plant, Units 3 and 4, for an additional 20-year period. The Units 3 and 4 licenses expire on July 19, 2012 and April 10, 2013, respectively.

On September 26, 2000, the Staff published in the *Federal Register* a "Notice of Receipt of Application for Renewal of Facility Operating License Nos. DPR-31 and DPR-41 for an Additional

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<sup>1</sup>In accordance with the Atomic Safety and Licensing Board's Order dated December 1, 2000, the Staff is not addressing herein any contentions that may have been filed by the Petitioner.

Twenty-Year Period,” which indicated that the FPL application is available for public inspection on the NRC website and in the NRC’s Public Document Room. 65 Fed. Reg. 57,847 (2000). On October 12, 2000, the NRC published in the *Federal Register* a “Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of License Nos. DPR-31 and DPR-41 for an Additional Twenty Year Period.” 65 Fed. Reg. 60,693-94 (2000) (“Hearing Notice”). The Hearing Notice provided that by November 13, 2000,

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714.

*Id.* at 60,694. On November 6, 2000, in response to letters from Ms. Lorion, the Secretary of the Commission issued an order extending the time for Ms. Lorion to file an intervention petition and hearing request until November 27, 2000. Pursuant to this order, Ms. Lorion filed her Petition on November 22, 2000.

## DISCUSSION

### I. Legal Requirements For Intervention

As was more fully discussed in the Staff’s filing dated November 13, 2000, responding to Mr. Mark P. Oncavage’s request for hearing and petition for leave to intervene in this proceeding, any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so.<sup>2</sup>

In determining whether a petitioner has established standing, the Commission applies contemporaneous judicial concepts of standing. See, e.g., *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 188 (1999); *Gulf States Util. Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994); *Cleveland Electric Illuminating Co.*

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<sup>2</sup> NRC Staff’s Response to Request for Hearing and Petition for Leave to Intervene Filed by Mark P. Oncavage (Nov. 13, 2000).

(Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *review denied sub nom. Environmental & Resources Conservation Org. v. NRC*, 996 F.2d 1224 (9th Cir. 1993).

In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest, and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. *See, e.g., Georgia Power Co.* (Vogle Elec. Generating Plant, Units 1 & 2), CLI-93-16, 38 NRC 25, 32 (1993); *Public Serv. Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991), *citing Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the Atomic Energy Act ("AEA") or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

With respect to license renewals, the Commission has determined that, except for age-related matters, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide and maintain an acceptable level of safety for operation during the license renewal period, will not endanger the public health and safety, and would not be inimical to the common defense and security. *See* "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,463 (1995); "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943, 64,950 (1991). In relation to the matter of standing, then, it is wholly appropriate, in the context of a license renewal proceeding, to inquire beyond any assertion by a petitioner of geographic proximity alone, to assess any discernible injury and how it might be redressed by adjudication of the matter.

II. Petitioner Has Established Standing To Intervene

Petitioner has established standing to intervene in this proceeding by demonstrating an “injury in fact” to her interests that is fairly traceable to FPL’s license renewal request, and by identifying an aspect within the scope of this license renewal proceeding.

In order to establish standing, a petitioner must show that the proposed action will cause “injury in fact” to the petitioner’s interest, and that the injury is arguably within the “zone of interests” protected by the statutes governing the proceeding. *Vogtle*, CLI-93-16, 38 NRC at 32. Petitioner in this case states she lives within twenty miles of the Turkey Point plant. Petition at 1. In addition, Petitioner also states that operation of an “aged and embrittled nuclear power plant beyond its original license” could “increase the probability and consequences of a nuclear accident,” increasing the threat of injury to her and her property. Petition at 1. Petitioner’s identification of age-related concerns is sufficient to link the interests expressed by Petitioner to the license renewal application.

Pursuant to 10 C.F.R. § 2.714(a)(2), a petitioner is also required to state the “specific aspect or aspects of the subject matter of the proceeding” as to which she wishes to intervene. The purpose of this requirement is not to judge the admissibility of the issues, but to determine whether the petitioner specifies “proper aspects” for the proceeding. *Consumers Power Co.* (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). The requirement is satisfied by identifying general potential areas of concern that are within the scope of the proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990).

Petitioner has, in essence, identified an aspect within the scope of this proceeding. Ms. Lorion raises the concern that the Turkey Point plant is “embrittled.” Petition at 1. Later in the Petition, Ms. Lorion refers to Turkey Point’s alleged embrittled reactor vessels and states that the multiple failure of aging components could increase the probability of a nuclear accident. Petition

at 7. Concern regarding components subject to an aging-management review is an appropriate aspect for this license renewal proceeding.

CONCLUSION

The Staff does not contest that Ms. Lorion has standing to intervene in the license renewal proceeding. The Staff notes, however, that Petitioner must submit at least one valid contention pursuant to 10 C.F.R. § 2.714(b) before she may be admitted as a party to this proceeding.<sup>3</sup>

Respectfully submitted,



Kathryn M. Barber  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 8<sup>th</sup> day of December 2000

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<sup>3</sup> On page 6 of the Petition, Ms. Lorion states that she requests "pursuant to 10 C.F.R. 2.758, that the NRC waive its rule on generic environmental impact statements." On page 7 of the Petition, Ms. Lorion states that she "hereby requests pursuant to 10 C.F.R. 2.758" that the NRC waive its Pressurized Thermal Shock rule in this proceeding. Since only a party may file a petition under 10 C.F.R. 2.758(b), which must meet certain requirements not met here, the Petitioner's requests are inappropriate. Accordingly, the Staff is not filing a response at this time as would be permitted under 10 C.F.R. 2.758(b).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

FLORIDA POWER &  
LIGHT COMPANY

(Turkey Point Nuclear Plant,  
Units 3 and 4)

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Docket Nos. 50-250-LR  
50-251-LR

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Kathryn M. Barber

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Admissions: Supreme Court of Ohio

Name of Party: NRC Staff

Respectfully submitted,

  
Kathryn M. Barber  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 8<sup>th</sup> day of December, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
)  
FLORIDA POWER AND LIGHT ) Docket Nos. 50-250-LR  
COMPANY ) and 50-251-LR  
)  
)  
(Turkey Point Nuclear Power Plant, )  
Unit Nos. 3 and 4) )

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Steven R. Hom  
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State of California  
Name of Party: NRC Staff

Respectfully submitted,



Steven R. Hom  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 8th day of December 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
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FLORIDA POWER AND LIGHT ) Docket Nos. 50-250-LR  
COMPANY ) 50-251-LR  
 )  
(Turkey Point Nuclear Plant, )  
Units 3 and 4) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE FILED BY JOETTE LORION" and "NOTICE OF APPEARANCE" for Kathryn M. Barber and "NOTICE OF APPEARANCE" for Steven R. Hom in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 8<sup>th</sup> day of December 2000.

Thomas S. Moore, Chairman\*  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Richard F. Cole, Administrative Judge\*  
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A handwritten signature in black ink, appearing to read "Steven R. Hom", written over a horizontal line.

Steven R. Hom  
Counsel for NRC Staff