

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

**FPL Energy Point Beach, LLC
(Point Beach Nuclear Plant
Unit 1)**

Docket Nos. 50-266-LA

ALSBP No. 08-870-01-LA-BD01

Date: 20-SEP-2008

**PETITIONER'S RESPONSE TO ANSWERS BY THE
NUCLEAR REGULATORY COMMISSION STAFF AND BY THE
FLORIDA POWER AND LIGHT COMPANY**

INTRODUCTION

On 15-SEP-2008, the U.S. Nuclear Regulatory Commission NRC ("Staff") filed NRC Staff's Answer to Saporito Energy Consultants' Petition to Intervene and Request for Hearing ("Petition") in the above-styled matter. Consequently, on 11-SEP-2008, the Florida Power and Light Company ("FPL") filed Answer of FPL Energy Point Beach, LLC to Request for Hearing and Petition for Leave to Intervene of Saporito Energy Consultants in the above-styled matter. Both the NRC Staff and FPL argue that the Petition filed by Saporito Energy Consultants ("SEC") and its President, Thomas Saporito ("Saporito")(herein after "Petitioners"), should be denied for failure of Petitioners to demonstrate standing and to submit an admissible contention.

DISCUSSION

1. Legal Standards

a. Legal Standards Governing Standing

In their Answer, the Staff argues in relevant part that,

" . . . In support of SEC's standing, the Petition merely lists Thomas Saporito, the president of SEC, with a street address in Jupiter, Florida. . . . Petitioners claim that Mr. Saporito, as a U.S. citizen, has 'an inherent right under the [AEA] to be made a party to the proceeding,' and therefore, based on Mr. Saporito's citizenship and his status as president of SEC, SEC has a right to be made a party as well. . . . Petitioners also state that Mr. Saporito and SEC have 'real property and personal property and financial interests *through their prospective business partners and clients* of which can be adversely affected' if operations at BPNP 'cause a release of radioactive particles into the environment.' . . . Specifically, Petitioners claim that such a release 'could render Petitioners' prospective business partners and clients' home and property unavailable for human contact or use for many years or forever,' and 'could forever compromise the environment where the Petitioners' prospective business partners and clients reside, live and do business and therefore economically harm Petitioners."

Id. at 7. The Staff continues that,

" . . . Neither Mr. Saporito, as an individual, nor SEC, as an organization, has made the required showing to support standing. First, . . . there is no 'inherent right' under the AEA, based on U.S. citizenship or otherwise, to participate as a party in a proceeding. . . . Second, Petitioners' vague assertion of possible harm resulting from injury to unidentified 'prospective business partners and clients' do not amount to a showing of 'concrete and particularized' injury to Mr. Saporito's interests or SEC's interests that is 'actual or imminent, not conjectural or hypothetical.' . . . Petitioners have not identified any actual business partners or clients who would be

affected; therefore, Petitioners' assertion is merely speculative, hypothetical and insufficient to support standing. . . Third, Petitioners vaguely assert that the alleged harm could result from 'operations at. . . Point Beach,' . . and fail to demonstrate that such injury would result *from the challenged license amendment*. . . Finally, Petitioners cannot rely on the proximity presumption to support their standing. The addresses provided in Jupiter, Florida are over 1200 miles from Point Beach, far beyond the 50-mile radius that would grant them proximity standing in a construction permit or operating license proceeding.'

Id. at 8-9. FPL's Answer in this proceeding parrot that of the Staff's Answer and therefore need not be redressed herein since FPL' arguments duplicate those of the Staff in likeness and in all respects.

b. Petitioners Have Standing as a Matter of Right

Petitioners aver here that they have standing in the above-styled proceeding as a matter of right. SEC's President, Thomas Saporito, is the owner and operator of SEC which operates its business across the continental United States of America ("USA"). *See*, <http://saporitoenergyconsultants.com>. *See, also*, Affidavit of Thomas Saporito.

Thus, it is of no consequence that SEC ("company") and Saporito have a mailing address and/or a physical address shown in Jupiter, Florida since the company's business involves the geographical area well within the NRC's 50-

mile zone of interest¹ described by the Staff. Moreover, it is of no consequence whether or not the Point Beach Nuclear Plant ("PBNP") is in a state of construction or are fully operational (as it currently exist) because SEC business operations encompass the geographical area well within the NRC's 50-mile zone of interest. As SEC's President, Saporito requires physical access to SEC's potential customer base located within 50-miles or closer to PBNP, both Saporito and SEC have requisite standing in the instant matter. Notably, part of SEC's business plan is to have its President travel to the greater area near and within 50-miles of the PBNP to ascertain a client base and to ascertain partnerships with existing businesses. See, Saporito affidavit. Thus, it is clear that SEC has standing through its president and Saporito has standing due to his need to conduct SEC business within a 50-mile radius of the BPNP. See, *Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-19, 65 NRC 423, 426 (2007), citing *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989).

c. Petitioners' Are Subject to Injury-In-Fact Resulting From the LAR and Therefore Have Standing

¹ See, *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1&2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 23 (2002).

To the extent that Petitioners' business activities involve physical access to areas within the NRC's 50-mile zone of interest of the PBNP, Petitioners assert that they are subject to injury-in-fact as a direct or indirect result of License Amendment Request ("LAR") where changes to the PBNP technical specifications have reduced the degree of the margin of safety in operation of the PBNP Unit 1. Specifically, Petitioners assert here that the License Amendment Request ("LAR-257") changes the existing technical specifications of PBNP and makes assumptions with respect to the inspection of PBNP Steam Generator ("SG") tubes, degradation of the SG tubes, pull-out of SG tubes, cracking of SG tubes and plugging of the SG tubes which are less conservative and will result in operation PBNP with less of a degree of a margin of safety and therefore could result in an accident involving leakage of primary (radioactive water) to secondary SG water inventory and thereby release radioactive particles into the environment in and around the area where Petitioners conduct business. See, Saporito affidavit. Petitioners further assert that such an accident could render the affected area described above uninhabitable to humans and thereby adversely affect the business of SEC.

2. Petitioners' Contentions

In their Answer, the Staff contends that, the Petitioners' four contentions are inadmissible because they challenge the Staff's no significant hazards consideration ("NSHC") determination. *Id.* at 10. In addition, the Staff alleges that Petitioners' contentions are also inadmissible 'because they fail to satisfy, or even address, the Commission's contention pleading requirements as set forth in 10 C.F.R. §2.309(f)(1)'. *Id.* at 10.

a. Petitioners' Amended Contentions

In accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings at 10 C.F.R. 2.309, Petitioners hereby collectively amend their 4-contentions previously submitted in the instant matter.

Overview of the License Amendment Request

This amendment proposes a one cycle revision to the PBNP TS. Specifically, TS 5.5.8, "Steam Generator (SG) Program," and TS 5.6.8, "Steam Generator Tube Inspection Report," will be revised to incorporate an interim alternate repair criterion into the provisions for SG tube repair for use during the PBNP Unit 1

2008 fall refueling outage (Ul R31) and the subsequent operating cycle.²

3. Amended Contention(s)

Petitioners contend here that the proposed amendments for PBNP changes the existing technical specifications of PBNP and makes assumptions with respect to the inspection of PBNP Steam Generator ("SG") tubes, degradation of the SG tubes, pull-out of SG tubes, cracking of SG tubes and plugging of the SG tubes which are less conservative and will result in operation PBNP with less of a degree of a margin of safety and therefore could result in an accident involving leakage of primary (radioactive water) to secondary SG water inventory and thereby release radioactive particles into the environment in and around the area where Petitioners conduct business. See, Saporito affidavit.

3.1 The Technical Justification for Use of Interim Alternate Repair Criterion is Not Applicable to PBNP's Unit-1 Reactor

The technical justification for use of Interim Alternate Repair Criterion ("IARC") makes the assumption that as a ". . . product of a jointly-funded effort among a

² See, Letter from James H. McCarthy, FPL Energy Point Beach, LLC, to the NRC Document Control Desk, "License Amendment Request 257, Technical Specifications 5.5.8 and 5.6.8, Steam Generator Program & Steam Generator Tube Inspection Report Interim Alternate Repair Criteria (IARC) for Steam Generator Tube Repair," dated May 28, 2008 ("LAR-257").

number or utilities for the development of the IARC, the technical justification was developed as a bounding case for the affected plants with hydraulically expanded Alloy 600TT tubing, including Point Beach Unit 1". . . and that ". . . the technical justification . . . applies directly to Point Beach Unit 1."³ Petitions contend however that the PBNP Unit-1 operates with parameters which are different from the operating parameters of the nuclear plants relied upon in the licensee's technical justification in the development of the IARC for LAR-257. Therefore, despite the use of Alloy 600TT in the PBNP Unit-1, there exists operational parameters such as pressure, temperature, flow, tubesheet bending, etc. which are specific to the PBNP Unit-1 that may adversely affect the calculations relied upon in the licensee's technical justification in the development of the IARC for LAR-257. To the extent that the licensee's LAR-257 relies on operational parameters of other nuclear plants to justify use of the IARC for the PBNP Unit-1, Petitioners contend that the LAR-257 is flawed and should not be allowed. Petitioners further contend that reliance on the licensee's technical justification in the development of the IARC for LAR-257 could result in

³ See, internal Westinghouse letter dated May 23, 2008 Subject: Applicability of the IARC Technical Justification to Point Beach 1 which was included in the licensee's LAR-257 package submitted to the NRC.

significant leakage of highly radioactive primary water from within the tubes of the PBNP Unit-1 SG to the secondary water inventory and ultimately released into the environment. See, Saporito affidavit.

3.2 TS 5.5.8 at 3(c) Would be Changed to Lessen the Degree of the Margin of Safety Which Would Otherwise Exist Without LAR-257

Petitioners contend here that LAR-257 lessens the degree of the margin of safety which would otherwise exist without the amendment. Specifically, LAR-257 would allow the licensee to operate PBNP Unit-1 at full power despite an in-service inspection which showed SG tubes having a flaw with a circumferential component less than or equal to 203 degrees found in the portion of the tube below 17-inches from the top of the tubesheet and above 1-inch from the bottom of the tubesheet do not require plugging. *Id.* at 5.5-8. Petitioners contend here that the operational parameters for the PBNP Unit-1 could cause any flaws discovered during an in-service inspection which have a circumferential component less than or equal to 203 degrees located in the tube section within 17-inches from the top of the tubesheet and above 1-inch from the bottom of the tubesheet require plugging. Petitioners further contend that the failure to plug the aforementioned flawed tubes could result in substantial growth of the flaws due to the operational stresses

imposed on the flawed tubes and thereby increase any leakage of highly radioactive primary water to the secondary water within the SG and ultimately released into the environment. See, Saporito affidavit.

3.3 It is Not Acceptable to Count the Overlapped Portions Only Once in the Total of Circumferential Components

In LAR-257, the licensee proposes that ". . . When the circumferential components of each of the flaws are added, it is acceptable to count the overlapped portions only once in the total of circumferential components. . ." *Id.* at 5.58-a. Petitioners contend here that any overlapped portions of discovered SG tube flaws must be counted individually and additively applied to the total of circumferential components. Notably, LAR-257 would allow the licensee to ignore SG tube flaws in tubes found with overlapped portions to the extent that the total of circumferential components is artificially less than the actual and existing circumferential component total. Thus, Petitioners contend here that the licensee's LAR-257 is technically flawed and could cause a significant amount of highly radioactive primary water to enter the SG secondary water inventory and ultimately be released into the environment. See, Saporito affidavit.

3.4 LAR-257 Fails to Identify the PBNP Unit-1 as an Affected Domestic Plant in Table 4-1 of the LAR

In its LAR-257 submission at Enclosure 4, p.2, the licensee states that,

". . . the resulting minimum ligament and required undergraded length of tube below the top of the tubesheet can be safety applied for any of the affected domestic plants identified in Table 4-1."

Petitioners aver here that Table 4-1 of the licensee's LAR-257 does not identify the PBNP Unit-1 as a domestic plant for which the technical justification relied upon by the licensee in LAR-257 was made. Thus, Petitioners contend here that the licensee's LAR-257 is technically flawed and could therefore cause highly radioactive primary water to leak from within the PBNP Unit-1 SG tubes to the secondary SG water inventory and ultimately be released into the environment. See, Saporito affidavit.

3.5 The IARC Fails to Meet 10 C.F.R. Part 100 Guidelines or GDC-19 Requirements

In its LAR-257, the licensee states, in relevant part, that, that the IARC for the tubesheet region is designed to meet the rigors of 10 C.F.R. Part 100 and GDC-19. *Id.* at Enclosure 4, p.3. Specifically, the "potential primary-to-secondary leak rate during postulated design basis accidents shall not exceed the offsite radiological dose consequences required by 10 C.F.R. Part 100 guidelines or the radiological consequences to control room personnel

required by GDC-19, or other NRC-approved licensing basis.”

Id. In addition the licensee’s LAR-257 relies on the performance criteria of NEI 97-06 Rev.2 (Reference 2-1) for the basis of its analysis. *See*, Enclosure 4 at p.3.

Petitioners contend that the licensee’s LAR-257 is flawed insofar as it mis-interpreted the structural integrity criterion stating that tube pullout from the tubesheet is equivalent to a tube burst and must, therefore, be prevented and relied on criteria that was not specific to the operational parameters of the PBNP Unit-1. *Id.* Petitioners contend here that the licensee’s LAR-257 should have made a technical assessment specific to the PBNP Unit-1 operational parameters and that the structural integrity criterion should have been interpreted to mean that all in-service steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cool down and all anticipated transients included in the design specifications) and design basis accidents. *See*, NEI 97-06, Rev.2 (Reference 2-1). Here, in LAR-257, the licensee admittedly interprets structural integrity to mean only that tube pullout from the tubesheet is equivalent to a tube burst. Petitioners

contend here that the licensee's interpretation of structural integrity as it relates to the safety requirements of NEI 97-06 Rev.2 (Reference 2-1) are too narrowly defined and could therefore cause highly radioactive primary water to leak from within the PBNP Unit-1 SG tubes to the secondary SG water inventory and ultimately be released into the environment. See, Saporito affidavit. Moreover, Petitioners contend that movement in the SG tubesheet could necessarily cause unexpected growth of existing cracks in the PBNP Unit-1 SG tubes and violate the safety margins in the performance criteria of NEI 97-06 Rev.2 (Reference 2-1). Petitioners once again aver here that the licensee's LAR-257 is not specific to, nor does it rely, solely on the operational parameters for the PBNP Unit-1 and is therefore inherently flawed and could result in a release of highly radioactive particles into the environment as described above.

3.6 LAR-257 Relies on Tube Geometries of Steam Generators Model D, Model F, and Model 44F and Fails to Identify the PBNP Unit-1 Steam Generators as Being Specific in Design and Operation to These SG Models

In LAR-257, the licensee relies on three SG models for use of the IARC in its analysis of the PBNP Unit-1 SGs. Specifically; the licensee identifies SG models "D", "F",

and "44F" in LAR-257. However, the licensee fails to state whether the PBNP Unit-1 SGs are identical in design and operation to the three models which were analyzed in LAR-257. Consequently, the licensee's LAR-257 is technically flawed and cannot be relied upon to ascertain the safety implications of using the IARC for the PBNP Unit-1 SGs. Petitions further contend that use of the licensee's flawed technical justification in LAR-257 could result in a release of highly radioactive particles into the environment as described above.

CONCLUSION

For all the foregoing reasons, the Petition filed by SEC through its President, Thomas Saporito, should be found by this Atomic Safety and Licensing Board Panel ("ASLBP") to be in full compliance with the standing requirements at 10 C.F.R. §2.309(d) and the contention admissibility requirements at 10 C.F.R. §2.309(f)(1). Therefore, the request for hearing and leave to intervene should be GRANTED.

Respectfully submitted,

/Thomas Saporito/

Electronically Signed
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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

**Florida Power and Light Company
(Turkey Point Nuclear Plant,
Units 3 and 4)**

**Docket Nos. 50-250/251-OLA
ALSBP No. 08-869-03-OLA-BD01**

CERTIFICATE OF SERVICE

I hereby certify that a copy of **PETITIONER'S RESPONSE TO ANSWERS BY THE NUCLEAR REGULATORY COMMISSION STAFF AND BY THE FLORIDA POWER AND LIGHT COMPANY** in the above-styled matter was served on the following relying on the United States Government's Electronic Information Exchange this 20th day of September, 2008:

/Thomas Saporito/
By: _____
Electronically Signed

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AFFIDAVIT OF THOMAS SAPORITO

BEFORE ME, the undersigned Notary, on this 20 day of September, 2008 personally appeared **Thomas Saporito**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I am Thomas Saporito the President of Saporito Energy Consultants (SEC) identified in the matter of ALSBP No. 08-870-01-LA-BD01, FPL Energy Point Beach, LLC ("PBNP").
2. As the President of SEC, I require physical access to SEC's potential customer base located within 50-miles or closer to the PBNP.
3. Part of SEC's business plan is to have its President travel to the greater area and within 50-miles of the PBNP to ascertain a client base and to ascertain partnerships with existing businesses.
4. The License Amendment Request ("LAR-257") changes the existing technical specifications of PBNP and makes assumptions with respect to the inspection of PBNP Steam Generator ("SG") tubes, degradation of the SG tubes, pull-out of SG tubes, cracking of SG tubes and plugging of the SG tubes which are less conservative and will result in operation PBNP with less of a degree of a margin of safety and therefore could result in an accident involving leakage of primary (radioactive water) to secondary steam generator(SG) water inventory and thereby release radioactive particles into the environment in and around the area where Petitioners conduct business.
5. The proposed amendments for PBNP change the existing technical specifications of PBNP and makes assumptions with respect to the inspection of PBNP SG tubes, degradation of the SG tubes, pull-out of SG tubes, cracking of SG tubes and plugging of the SG tubes which are less conservative and will result in operation PBNP with less of a degree of a margin of

safety and therefore could result in an accident involving leakage of primary (radioactive water) to secondary SG water inventory and thereby release radioactive particles into the environment in and around the area where Petitioners conduct business.

6. The technical justification for use of Interim Alternate Repair Criterion ("IARC") makes the assumption that as a ". . . product of a jointly-funded effort among a number of utilities for the development of the IARC, the technical justification was developed as a bounding case for the affected plants with hydraulically expanded Alloy 600TT tubing, including Point Beach Unit 1". . . and that ". . . the technical justification . . . applies directly to Point Beach Unit 1." However, the PBNP Unit-1 operates with parameters which are different from the operating parameters of the nuclear plants relied upon in the licensee's technical justification in the development of the IARC for LAR-257. Therefore, despite the use of Alloy 600TT in the PBNP Unit-1, there exists operational parameters such as pressure, temperature, flow, tubesheet bending, etc. which are specific to the PBNP Unit-1 that may adversely affect the calculations relied upon in the licensee's technical justification for LAR-257. To the extent that the licensee's LAR-257 relies on operational parameters of other nuclear plants to justify use of the IARC for the PBNP Unit-1, LAR-257 is flawed and should not be allowed. Furthermore, reliance on the licensee's technical justification in LAR-257 could result in leakage of highly radioactive primary water from within the tubes of the PBNP Unit-1 SG to the secondary water inventory of the SGs and ultimately be released into the environment.
7. LAR-257 lessens the degree of the margin of safety which would otherwise exist without the amendment. Specifically, LAR-257 would allow the licensee to operate PBNP Unit-1 at full power despite an in-service inspection which showed SG tubes having a flaw with a circumferential component less than or equal to 203 degrees found in the portion of the tube below 17-inches from the top of the tubesheet and above 1-inch from the bottom of the tubesheet do not require plugging. The operational parameters for the PBNP

Unit-1 could cause any flaws discovered during an in-service inspection which have a circumferential component less than or equal to 203 degrees located in the tube section within 17-inches from the top of the tubesheet and above 1-inch from the bottom of the tubesheet that require plugging. Petitioners further contend that the failure to plug the aforementioned flawed tubes could result in substantial growth of the flaws due to the operational stresses imposed on the flawed tubes and thereby increase any leakage of highly radioactive primary water to the secondary water within the SG and ultimately released into the environment.

8. Any overlapped portions of discovered SG tube flaws must be counted individually and additively applied to the total of circumferential components. LAR-257 would allow the licensee to ignore SG tube flaws in tubes found with overlapped portions to the extent that the total of circumferential components is artificially less than the actual and existing circumferential component total. The licensee's LAR-257 is technically flawed and could cause a significant amount of highly radioactive primary water to enter the SG secondary water inventory and ultimately be released into the environment.
9. Table 4-1 of the licensee's LAR-257 does not identify the PBNP Unit-1 as a domestic plant for which the technical justification relied upon by the licensee in LAR-257 was made. Thus, Petitioners contend here that the licensee's LAR-257 is technically flawed and could therefore cause highly radioactive primary water to leak from within the PBNP Unit-1 SG tubes to the secondary SG water inventory and ultimately be released into the environment.

Affidavit of Thomas Saporito
ASLEP No. 08-870-01-LA-BD01
FPL Energy Point Beach, LLC
Point Beach Nuclear Plant, Unit-1

/Thomas Saporito/

Thomas Saporito
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State of Florida
County of Palm Beach

Sworn to (or affirmed) and subscribed before me this 20th
day of September, 2008 by Thomas Saporito.

Notary Public - State of Florida