

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

**FPL Energy Seabrook, LLC
(Seabrook Nuclear Plant,
Unit 1)**

Docket Nos. 50-443-LA

ALSBP No. 08-872-02-LA-BD01

Date: 24-SEP-2008

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

INTRODUCTION

On 23-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 22-SEP-2008, the Florida Power and Light Company ("FPL") filed Answer of FPL Energy Seabrook, 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 . . . which can be adversely affected' if operations at Seabrook Station 'cause a release of radioactive particles into the environment.' . . . Specifically, Petitioners claim that such a release 'could render Petitioners' prospective business partners and clients' homes 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. . . Finally, Petitioners cannot rely on the proximity presumption to support their standing. Both Mr. Saporito and SEC have listed addresses in Jupiter, Florida over 1200 miles from Seabrook Station and 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

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).

whether or not the Seabrook Nuclear Plant ("SNP") 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 SNP, 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 SNP 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 SNP. 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

To the extent that Petitioners' business activities involve physical access to areas within the NRC's 50-mile zone of interest of the SNP, Petitioners assert that they are subject to injury-in-fact as a direct or indirect result of the License

Amendment Request ("LAR") where changes to the SNP technical specifications have reduced the degree of the margin of safety in operation of the SNP Unit 1. Specifically, Petitioners assert here that the License Amendment Request ("LAR 07-04") changes the existing technical specifications of SNP and makes assumptions with respect to a proposed change to the SNP technical specifications to delete Surveillance Requirement 4.6.3.1, which specifies post-maintenance testing requirements for containment isolation valves ("CIV"). Notably, the proposed change will eliminate necessary testing and result in operation of the SNP with CIV operational testing requirements which are less conservative resulting in operation of the SNP with less of a degree of a margin of safety and therefore could result in an accident involving leakage of radioactive fission products from inside of the SNP containment building and 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' three contentions are inadmissible because "they fail to

satisfy, or even address, the Commission's contention pleading requirements. . . "Id. at 10. In addition, the Staff alleges that Petitioners' contentions "challenges that Staff's proposed no significant hazards consideration determination for this proposed amendment. . ." Id. at 11.

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 contentions previously submitted in the instant matter.

Overview of the License Amendment Request

A nuclear plant such as the SNP, has a nuclear reactor vessel in a containment building. Air ducts, sump discharge lines, service water lines and other non-process non-critical lines extending through the wall of the containment building can be isolated passively (i.e. without instrumentation and control systems or power) should a postulated event occur which raises the atmospheric temperature within the containment building. The passive containment isolation system includes an isolation valve disposed in the non-process line and an actuator responsive to the atmospheric temperature within the containment vessel. The actuator is operatively connected with the isolation valve for closing the non-process line in response to the atmospheric

temperature. The actuator is preferably disposed in or adjacent to a containment sump at the bottom of the reactor vessel or adjacent to the reactor vessel cavity where the temperature of the local atmosphere will likely rise rapidly during an event. In a commercial pressurized water reactor like the SNP, a nuclear steam supply system is enclosed by a large containment building which would prevent the release of radioactivity from the supply system to the surrounding environment in the event of a postulated loss of cooling accident such as a pipe break in the reactor coolant system. A containment isolation system is designed to prevent non-essential flows from the containment building such as air changes which might transmit released radioactivity out of the containment vessel after an event has occurred. Typically, an isolation system employs various in-containment temperature, pressure and other sensors which provide inputs to a plant computer monitoring the operation of the plant. Upon the occurrence of a postulated event, the computer would implement preprogrammed procedures to close isolation valves in air ducts and other non-essential lines. These systems and subsystems and their components require continuous maintenance, inspection and performance testing to assure their reliability and availability.

This amendment proposes a change to the Seabrook Station Technical Specifications to delete Surveillance Requirement 4.6.3.1, which specifies post-maintenance testing requirements for containment isolation valves.² Specifically, the SNP Technical Specification ("TS") SR 4.6.3.1 requires that "Each containment isolation valve shall be demonstrated OPERABLE prior to returning the valve to service after maintenance, repair, or replacement work is performed on the valve or its associated actuator, control, or power circuit by performance of a cycling test and verification of isolation time." *Id.* Pierre letter enclosure at 2.

3. Amended Contention(s)

Petitioners contend here that the proposed amendment for the SNP changes the existing technical specifications of the SNP and makes assumptions with respect to the inspection and testing of CIVs which are less conservative and will result in operation the SNP with less of a degree of a margin of safety and therefore could result in an accident involving leakage of fission products from inside of the containment building into the environment in and around the area where Petitioners conduct business. See, Saporito affidavit.

² See, letter dated February, 8, 2008, from FPL Energy Seabrook Station, Gene F. St. Pierre, Site Vice President, to U.S. Nuclear Regulatory Commission, Document Control Desk and its enclosure.

3.1 The Technical Justification for LAR 07-04 is Flawed and Not Valid in the Circumstances

The technical justification relied upon, in part, by the licensee assumes that CIV post-maintenance testing would not be required when, ". . . a maintenance activity that applies lubricant to a valve stem would neither render the valve inoperable nor adversely affect the valve's ability to function. . ." *Id.* Pierre letter enclosure at 2.

Here the licensee's assumes that the correct lubricant was used during the CIV maintenance activity and that all of the CIV operational components (i.e. actuator, control, or power circuit) along with prior verification of isolation time remained unchanged since the date of the last CIV cycling performance testing was completed. Petitioners contend here that the licensee's assumption in LAR 07-04 with respect to validation of CIV operational readiness by elimination of the rigors of SR 4.6.3.1 reduces the degree of the margin of safety which otherwise existed prior to the LAR. Petitioners further contend that the relaxation of SR 4.6.3.1 CIV performance testing requirements could result in an accident involving the release of fission products from within the SNP containment building into the environment where SEC and its president could

suffer an injury-in-fact during SEC business operations. See, Saporito affidavit.

3.2 TS SR 4.6.3.1 Would be Changed to Lessen the Degree of the Margin of Safety Which Would Otherwise Exist Without LAR 04-07

Petitioners contend here that LAR 04-07 lessens the degree of the margin of safety which would otherwise exist without the amendment. Specifically, LAR 04-07 would allow the licensee to operate the SNP Unit-1 at full power following maintenance activities performed on CIVs without the rigors of performance testing of the affected CIVs including verification of isolation time parameters. Notably, LAR 04-07 would permit the Senior Reactor Operator ("SRO") to authorize commencement of work to CIVs and at the conclusion of the work activity, determine post-maintenance testing requirements. *Id.* Pierre letter enclosure at 4.

Thus, Petitioners contend here that LAR 04-07 replaces the rigors of TS SR 4.6.3.1 with SRO subjective judgment and would not ensure that the public is protected in accordance with 10 C.F.R. 100 guidelines which require that upon receipt of a containment isolation signal, automatic containment isolation valves actuate to the closed position with valve stroke times that ensure any radioactive release to the environment during a

design basis accident is within the limits of 10 C.F.R. 100.

See, Saporito affidavit.

3.3 It is Not Acceptable to Rely on Plant Procedures to Control CIV Post-Maintenance Performance Testing

In LAR 04-07, the licensee proposes that "The plant procedure that controls post-maintenance testing states that the scope of such testing should be based on the extent of maintenance performed . . . ". *Id.* at Pierre letter enclosure at 4. Here again, the licensee makes assumptions base on supposed plant procedure which the licensee failed to include in its LAR 04-07 submittal to the U.S. Nuclear Regulatory Commission ("NRC"). Moreover, SNP procedures would appear to resolve the need for CIV testing to a subjective opinion related to the degree of maintenance activity rather than required CIV performance testing required by 10 C.F.R. 100. Thus, Petitions contend here that LAR 04-07 fails to adequately demonstrate that the CIV performance testing, including the verification of isolation time will be achieved in accordance with 10 C.F.R. 100 guidelines and results in a lessened degree of a margin of safety that would otherwise exist without the LAR. Petitioners further contend that such relaxation of CIV performance testing requirements as defined in the LAR could result in an accident releasing fission products from within the containment building

into the environment where SEC and its president business operations would be adversely affected. See, Saporito affidavit.

3.4 LAR 04-07 Fails to Address the Testing Requirements of 10 C.F.R. 50.55a (b)(2)(vii)

NRC requirements at 10 C.F.R. 50.55a (b)(2)(vii) require that CIVs must be individually analyzed in accordance with paragraph 4.2.2.3(e) of OM Part 10 and corrective actions for those valves must be made in accordance with paragraph 4.2.2.3(f) of OM Part 10. Part 10, paragraph 4.2.2.3(f) requires the valves to be declared inoperable when the leakage rates exceed the Owner specified limits. Notably, the NRC has documented several incidents where licensees have reported difficulty in satisfying leakage test requirements on containment isolation valves with resilient valve seats. The seat materials have been identified as neoprene and ethylene propylene. Furthermore, the cause of the excessive leakage has been determined to be either general degradation of the resiliency characteristics of the seal, cold temperatures and the associated "hardening" of the seal, or a combination of the two. In one case, the valve was continuously pressurized as part of a penetration pressurization system and it was determined that the valve leakage was cycling with the outside air temperatures. When the air temperature dropped at night, the

valve seat would contract away from the valve and leakage would begin. As temperature increased, the reverse would occur. If this isolation valve had not been under constant pressure monitoring this phenomenon would not have been observed unless a Type C local leak rate test had been performed to check the leakage under both temperature conditions. See, NRC IE Circular 77-11 (Sept. 6, 1977).

Here, LAR 04-07 fails to address the concerns identified in NRC IE Circular 77-11 or how the LAR would comply with the requirements at 10 C.F.R. 50.55a (b)(2)(vii) with respect to CIV performance testing. Petitioners contend here that LAR 04-07 relaxes the rigors of the SNP technical specifications and therefore fails to meet the requirements of CIV testing with respect to 10 C.F.R. 50.55a (b)(2)(vii) which could result in an accident releasing fission products from within the containment building into the environment where SEC and its president business operations would be adversely affected. See, Saporito affidavit.

CONCLUSION

For all the foregoing reasons and because FPL Energy Seabrook proposal to delete SR 4.6.3.1 on the basis that existing SRs 4.6.3.2 and 4.6.3.3 does not adequately demonstrate operability of the CIVs (including a verification of isolation

time), 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 24th day of September, 2008:

/Thomas Saporito/
By: _____
Electronically Signed

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AFFIDAVIT OF THOMAS SAPORITO

BEFORE ME, the undersigned Notary, on this 24 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. 08-872-02-LA-BD01, FPL Energy Seabrook, LLC, Seabrook Nuclear Plant, Unit-1, ("SNP").
2. As the President of SEC, I require physical access to SEC's potential customer base located within 50-miles or closer to the SNP.
3. Part of SEC's business plan is to have its President travel to the greater area and within 50-miles of the SNP to ascertain a client base and to ascertain partnerships with existing businesses.
4. The License Amendment Request ("LAR 04-07") changes the existing technical specifications of the SNP and the proposed change will eliminate necessary testing and result in operation of the SNP with CIV operational testing requirements which are less conservative resulting in operation of the SNP with less of a degree of a margin of safety and therefore could result in an accident involving leakage of radioactive fission products from inside of the SNP containment building and into the environment in and around the area where Petitioners conduct business.
5. The proposed amendment in LAR 07-04 with respect to validation of CIV operational readiness by elimination of the rigors of SR 4.6.3.1 reduces the degree of the margin of safety which otherwise existed prior to the LAR. Petitioners further contend that the relaxation of SR 4.6.3.1 CIV performance testing requirements could result in an accident involving the release of fission products from within the SNP containment building into the environment where SEC and its

- president could suffer an injury-in-fact during SEC business operations.
6. The LAR 04-07 replaces the rigors of TS SR 4.6.3.1 with SRO subjective judgment and would not ensure that the public is protected in accordance with 10 C.F.R. 100 guidelines which require that upon receipt of a containment isolation signal, automatic containment isolation valves actuate to the closed position with valve stroke times that ensure any radioactive release to the environment during a design basis accident is within the limits of 10 C.F.R. 100.
 7. The licensee makes assumptions base on supposed plant procedure which the licensee failed to include in its LAR 04-07 submittal to the U.S. Nuclear Regulatory Commission ("NRC"). Moreover, SNP procedures would appear to resolve the need for CIV testing to a subjective opinion related to the degree of maintenance activity rather than required CIV performance testing required by 10 C.F.R. 100. Thus, LAR 04-07 fails to adequately demonstrate that the CIV performance testing, including the verification of isolation time will be achieved in accordance with 10 C.F.R. 100 guidelines and results in a lessened degree of a margin of safety that would otherwise exist without the LAR. Relaxation of CIV performance testing requirements as defined in the LAR could result in an accident releasing fission products from within the containment building into the environment where SEC and its president business operations would be adversely affected.
 8. LAR 04-07 fails to address the concerns identified in NRC IE Circular 77-11 or how the LAR would comply with the requirements at 10 C.F.R. 50.55a (b)(2)(vii) with respect to CIV performance testing. LAR 04-07 relaxes the rigors of the SNP technical specifications and therefore fails to meet the requirements of CIV testing with respect to 10 C.F.R. 50.55a (b)(2)(vii) which could result in an accident releasing fission products from within the containment building into the environment where SEC and its president business operations would be adversely affected.

Affidavit of Thomas Saporito
ASLEP No. 08-872-02-LA-BD01
FPL Energy Seabrook, LLC
Seabrook Nuclear Plant, Unit-1

/Thomas Saporito/

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State of Florida
County of Palm Beach

Sworn to (or affirmed) and subscribed before me this 24th
day of September, 2008 by Thomas Saporito.

Notary Public - State of Florida