

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Date: 04-OCT-2008

FPL Energy Seabrook, LLC

Docket Nos. 50-443-LA

(Seabrook Station, Unit 1)

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

PETITIONERS' OPPOSITION TO FPL ENERGY SEABROOK, LLC'S
MOTION TO STRIKE SAPORITO'S REPLY AND FOR SANCTIONS

INTRODUCTION

On October 3, 2008, the licensee, FPL Seabrook, LLC ("FPL") filed FPL Seabrook, LLC's Motion to Strike Saporito's Reply and for Sanctions ("FPL Motion"). In its motion, FPL requests that the presiding Atomic Safety and Licensing Board ("ASLB") strike the amended contentions in Saporito's Reply and the new arguments and affidavit in support thereof. . .and that the ASLB certify to the Commission the question whether to impose sanctions against Saporito and SEC. . ." *Id. FPL Motion at 1-2.* For the reasons set-out below, the ASLB should deny FPL's motion in its entirety.

DISCUSSION

FPL first argues that Petitioner Saporito's ". . . 20 years of abusive, vexatious, and meritless litigation against FPL Group's subsidiaries. . ." is somehow relevant to the instant

proceeding before the ASLB.¹ *Id.* at 4. It is not relevant and should not be considered by the presiding ASLB. The ASLB in the instant action has authority only to pass upon the intervention petition. *See, Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 73 (1978). *See also, Commonwealth Edison Co.* (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 366 (1981), citing *Pacific Gas and Electric Co.* (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175 (1977).

FPL continues in their motion that,

“. . . Saporito filed amended contentions in an impermissible attempt to cure his clearly inadmissible initial contentions. . . Requesting leave of the Board is a requirement for filing new or amended contentions after a petitioner's initial filing. . . ”

Id. at 4. FPL then provides a lengthy discussion related to issues which are more properly brought before the ASLB at a hearing. *FPL Motion* at 5-12. Finally, FPL argues that “. . . Even though the time for requesting a hearing had yet to pass,

¹ Petitioners object to FPL's assertion that Petitioners have engaged in abusive, vexatious, and meritless litigation against FPL Group's subsidiaries over the last 20-years. Instead, Petitioners draw the ASLB's attention to the fact that Petitioner Saporito has engaged in "protected activity" in bringing nuclear safety concerns regarding FPL's nuclear operations to the attention of the U.S. Nuclear Regulatory Commission ("NRC") over the last 20-years. In addition, Petitioner Saporito has engaged FPL before the U.S. Department of Labor ("DOL") in bringing retaliation complaints against FPL under the Energy Reorganization Act ("ERA") over the last 20-years as a direct result of FPL's continuing violation of the ERA in retaliating against [h]im for engaging in protected activities as defined under 10 C.F.R. 50.7 and as defined under 42 U.S.C.A. §5851 accordingly.

Saporito's September 20 contention amendment was procedurally defective because he failed to seek leave of the Board to file a new or amended contention. . ." *FPL Motion at 14*. According to FPL, the ASLB should certify to the Commission the question whether the Commission should direct the Office of the Secretary to summarily reject any non-conforming pleadings. *Id. at 16-17*.

Petitioners aver here that as a rule, *pro se* petitioners will be held to less rigid standards for pleading. *See, Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487 (1973); Shieldalloy Metallurgical Corp., CLI-99-12, 49 NRC 347, 354 (1999)*. Although the requirements of 10 C.F.R. §2.309 must ultimately be met, every benefit of the doubt should be given to the potential intervenor in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects. *See, Sequoyah Fuels Corp., (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116 (1994)*. As such, petitioners will usually be permitted to amend petitions containing curable defects. *See, Virginia Electric & Power Co., (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631 (1973); Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 NRC 15, 40 (1991); Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit*

1), LBP-91-7, 33 NRC 179, 195 (1991); *Sequoyah Fuels Corporation and General Atomics*, (Gore, Oklahoma Site), LBP-94-19, 40 NRC 9, 15 (1994). Notably, even where a petitioner has not expressly requested a hearing on its petition, but where it seems clear from the petition as a whole that a hearing is what the petitioner desires, the Commission will not dismiss that petition on the basis of such a technical pleading defect. See, *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 5 (1966).

To the extent that Petitioners appear *pro se* before the ASLB and do not possess the polished skills of FPL's attorneys at law, Petitioners respectfully request that the ASLB provide Petitioners a wide-latitude in the instant proceeding and accept their amended petition accordingly.²

CONCLUSION

For all the foregoing reasons and because public participation through intervention is a positive factor in the licensing process and that intervenors perform a valuable function and are to be complimented and encouraged,³ the

² See, *Houston Lighting and Power Co.*, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546 (1980); *Consumers Power Co.*, (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 578 (1982).

³ See, *Virginia Electric & Power Co.* (North Anna Power Station, Units 1 & 2), ALAB-256, 1 NRC 10, 18 n.9 (1975); *Consolidated Edison Co. of N.Y., Inc.* (Indian Point Nuclear Generating Station, Unit 2), ALAB-243, 8 AEC 850, 853 (1974); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power

presiding ASLB should deny FPL's motion in its entirety
including FPL's request for sanctions against Petitioners in
certification of a question to the Commission as a direct result
of Petitioners bringing the instant action.

Respectfully submitted,

/Thomas Saporito/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **PETITIONERS' OPPOSITION TO FPL ENERGY SEABROOK, LLC'S MOTION TO STRIKE SAPORITO'S REPLY AND FOR SANCTIONS** in the above-styled matter was served on the following relying on the United States Government's Electronic Information Exchange this 4th day of October, 2008:

/Thomas Saporito/

By: _____
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