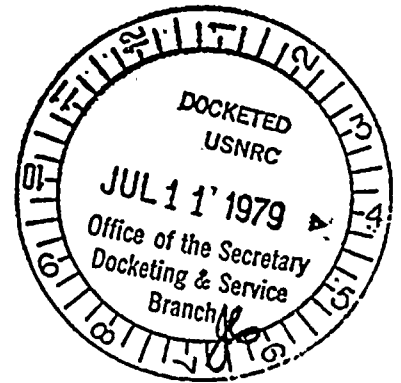


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Michael C. Farrar, Chairman
Richard S. Salzman
Dr. W. Reed Johnson



In the Matter of

FLORIDA POWER & LIGHT COMPANY

(St. Lucie Nuclear Power Plant,
Unit No. 2)

SERVED

JUL 12 1979

Docket No. 50-389

MEMORANDUM AND ORDER

July 11, 1979

(ALAB-553)

1. As part of our review of the Licensing Board's decision to allow the applicant to construct a second nuclear unit at the St. Lucie site, we have taken up the matter of the stability of the applicant's electrical grid and the adequacy of the facility's emergency power systems generally. This subject first came to our attention as a result of a letter that Robert D. Pollard (formerly a Commission staff member) had written to the Attorney General of the United States. ^{1/} On April 5th of this year, we decided that this

^{1/} The merits of this issue remain before us; another aspect of it, involving the question of whether the boards had been kept properly informed of the facts, was handled and resolved by the Commission itself. See ALAB-537, 9 NRC ___, fn. 5 (April 5, 1979).

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safety matter could not be resolved without a hearing.^{2/}
In that connection, we indicated that the staff and applicant should be able to file their prepared written testimony (which was to include answers to certain questions we posed) within forty-five days,^{3/} i.e., by May 21st.

Before that date arrived, the staff asked for approximately a month's extension of the filing deadline, to June 22nd. In routinely granting that unopposed motion, we made the extension applicable to both the staff and applicant, as had been requested. The applicant duly filed its testimony by June 22nd; indeed, a portion of it was filed well in advance of that date.

The staff, however, did not file its testimony at that point. Rather, it has requested a further extension of ninety days duration. This would move its filing time to September 21, 1979. The staff's papers make clear that the cause of its inability to prepare its testimony in timely fashion has been (and will continue to be) its assignment of a higher priority to matters stemming from the recent accident at Three Mile Island, with the result that adequate manpower is not being devoted to this proceeding.^{4/}

^{2/} ALAB-537, supra.

^{3/} Id. at __, text accompanying fn. 31.

^{4/} See the staff's letters of April 12 and June 13 and its motions dated May 11 and June 21.

Upon receipt of the staff's motion, the applicant advised us by telephone (in response to our inquiry) that it would not be filing any formal opposition. However, it withheld expressing any consent to the grant of the motion.

For their part, the intervenors have filed a paper opposing the relief sought by the staff. They point out that the reactor in question is now under construction (their stay request having been denied by us).^{5/} Thus, they say, there is reason to question the propriety of additional delay in the resolution of the still-outstanding safety issues concerning the facility. And, while conceding that sufficient justification for some delay may eventually be found to exist, the intervenors assert that thus far the staff's assignment of reasons has been inadequate for that purpose. Then, referring to our decision in Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978), the intervenors go on to suggest that we hold a hearing to determine more precisely the reasons for, and reasonableness of, the extension of time now being requested.

2. Notwithstanding the other parties' discontent with the situation, we are not in position to second-guess the

^{5/} See ALAB-537, supra, 9 NRC at ___ (slip opinion pp. 22-23); see also ALAB-415, 5 NRC 1435 (1977) and ALAB-435, 6 NRC 541, 546 fn. 18 (1977) (refusing to halt construction pending our consideration of other issues).

staff's ranking of priorities.^{6/} Perhaps if we were to hold the hearing suggested by the intervenors, we could gain additional insight into how the staff decides which of its many safety-related tasks have the more urgent claims on its finite resources. But we do not believe such an undertaking would be worthwhile. To the contrary, the suggested collateral hearing would further tax the parties' resources; in the present circumstances, this would most likely result in putting off longer the day on which we will finally reach the merits of the issues before us.^{7/}

Nonetheless, the intervenors' reference to Offshore Power was not inappropriate. For we believe it fitting to do here what we there suggested that licensing boards might want to do in somewhat analogous circumstances. Specifically, we are noting for the record what has occurred. And by this order we are calling the matter to the attention of the Commission, which has supervisory authority over the staff. The Commission is more familiar than we are with how the Three Mile Island accident has affected day-to-day agency

^{6/} But see Puget Sound Power & Light Co. (Skagit Units 1 and 2), ALAB-552, 10 NRC _____ (July 9, 1979) (slip opinion, pp. 9-11), citing Duke Power Co. (Cherokee Units 1, 2 and 3), ALAB-440, 6 NRC 642, 644 (1977).

^{7/} In this connection, no one has suggested that we ought to deny the staff's motion outright and proceed directly to a hearing on the merits of the applicant's testimony in the absence of the staff's independent evaluation of it. In our judgment, it would be inappropriate to follow such a course here.

operations outside of the adjudicatory arena. If the Commission believes that the manner in which the staff is allocating its resources is not prudent, it can deal with the situation. If, on the other hand, the Commission is satisfied that its intercession is unnecessary or undesirable, its silence will leave undisturbed the full extension of time now allotted.

Staff motion granted.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Bishop
C. Jean Bishop
Secretary to the
Appeal Board

Mr. Salzman participated in the preliminary consideration of this matter but did not review the final version of this memorandum.

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NUCLEAR REGULATORY COMMISSION

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FLORIDA POWER AND LIGHT COMPANY)

(St. Lucie Plant, Unit No. 2))
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Docket No.(s) 50-389

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document (s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D. C. this
12th day of July 1979.

Peggy T. Downing
Office of the Secretary of the Commission

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