

4/16/81

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
 )  
FLORIDA POWER & LIGHT COMPANY )  
 )  
(St. Lucie Nuclear Power Plant, )  
Unit No. 2 )  
 )  
 )  
 )

Docket No. 50-389-OL

April 16, 1981



APPLICANT'S RESPONSE TO LETTER  
OF HELEN SHEA WELLS

I. Introduction

On April 3, 1981, counsel for Applicant Florida Power & Light Company (FPL) received from the Docketing and Service Section of the Nuclear Regulatory Commission a copy of a letter,<sup>1/</sup> dated

1/ For purposes of this Response, Applicant is treating the document as a petition for leave to intervene in the St. Lucie 2 operating license proceeding. However, it is by no means clear from the face of the letter that it was so intended. Although the term "petition" is used, and reference is made to the "interest of the petitioner," nowhere is there an explicit request for intervention. Furthermore, the letter was served on neither the Secretary of the Commission nor counsel for Applicant as required by the regulations and the relevant Federal Register notice. See 10 C.F.R. § 2.701; 46 Fed. Reg. 15,831, 15,832 (Mar. 9, 1981). More importantly, however, Ms. Wells' own language raises considerable doubt regarding intent. The letter states:

The Hutchinson Island Coalition . . . is aware that the NRC staff will conduct safety and environmental reviews before it grants any license. However, we want  
[FOOTNOTE CONTINUED ON NEXT PAGE]

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March 23, 1981, addressed to the "U.S. Nuclear Regulatory Commission, Office of Public Affairs" from Helen Shea Wells.<sup>2/</sup> For the reasons set forth below, the letter fails to meet the legal requirements necessary for a proper petition to intervene and -- considered as such -- should be denied.

## II. Discussion

Not only does the letter submitted by Ms. Wells fail to unambiguously request a hearing and participation as a full-party intervenor, it lacks the specificity and clarity necessary to be treated as a legally sufficient petition to intervene. Under the Commission's regulations a petition must set forth "with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding,

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1/ [Continued from page 1]

to go on record with you to emphasize the urgent need for proper safety precautions. We hope that there will be a plan for evacuation just as soon as possible and we would appreciate your assistance in this matter at your earliest convenience.

Letter, p. 2 (emphasis added). These statements indicate that the "petitioner" has no desire to become a full-fledged party to this proceeding but intended merely to alert the Commission to particular concerns.

2/ The letter was docketed by the NRC Docketing and Service Section on March 31, 1981. Because service on FPL was not provided in accordance with the Federal Register notice granting interested persons an opportunity to intervene in this proceeding, 46 Fed. Reg. 15,831, 15,832 (Mar. 9, 1981), Applicant is filing this Response based upon an assumed date of actual service (by the Docketing and Service Section) of April 1, 1981 -- the day after the Petition was docketed by the NRC -- and sections 2.710 and 2.714(c) of the Commission's regulations.

including the reasons why petitioner should be permitted to intervene . . . and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2) (emphasis added).

Particular reference is to be made to

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

Id., § 2.714(d).

These requirements are not simply matters of technical form. In the absence of cognizable issues raised by way of intervention, there need be no formal hearing on operating licenses. The detailed requirements of the regulation help to ensure that "potential intervenors . . . have a real stake in the proceeding." Cincinnati Gas & Electric Co. (William Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976) (Zimmer); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222 (1974). As such, "[p]articular attention" should be paid to the elements of section 2.714 in operating license proceedings. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979).

In the present case, the time within which intervention petitions may be submitted has expired. Ms. Wells' letter represents the only submission to the NRC which could arguably

be construed as an effort to intervene in this proceeding on safety and environmental issues. Under these circumstances the Board's decision on the status of this letter will determine whether or not a formal hearing will be conducted concerning health and safety and environmental matters in connection with issuance of the St. Lucie 2 operating license. It, therefore, becomes essential that the Board be fully satisfied, not only as to Ms. Wells' intent, but that her interest is sufficient to warrant a formal hearing. Zimmer, supra, at 9-10. See also, Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 582 (1978) (Fermi 2).

The letter's general references to matters concerning traffic congestion and population density clearly fail to satisfy the legal requirement that a petitioner set forth interest "with particularity." It contains not a single reference to any alleged personal injury. The letter also fails to delineate the specific aspects of the proceeding as to which intervention is sought, as well as the possible effect of any order which may be entered on Ms. Wells' interest. In short, the letter lacks the degree of specificity which is necessary and contemplated in both NRC regulations and case law to establish a basis for intervention by Ms. Wells to represent any personal interest in this licensing proceeding.<sup>3/</sup> See, e.g., Virginia Electric and Power Co. (North

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<sup>3/</sup> Although it is not necessary at this stage to submit contentions, Applicant wishes to stress that the letter does not even attempt to set forth even a single contention "with reasonable specificity." 10 C.F.R. § 2.714(b).

Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402 (1979). See also Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976).

Similarly, the letter does not present a legally sufficient basis for this Board to grant Ms. Wells intervenor status as the representative of "1500 property owners." Nowhere has she stated that any of these other persons has expressly authorized her to undertake such representation, or offered any facts to indicate that the Hutchinson Island Coalition (Coalition) has as "one of its continuing and primary concerns . . . nuclear power and that its commitment to nuclear questions is large and well established enough to justify the assumption that its commitment is known to its members and approved by them." Commonwealth Edison Company (Dresden Station, Units 1 & 2, and Quad Cities Station, Units 1 & 2), 2 Nuc. Reg. Rep. (CCH) ¶ 30,393 at 28,996. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1) ALAB-535, 9 NRC 377, 396 (1979) (Allens Creek). In short, no authorization by any other person to allow Ms. Wells to represent his or her interest in this proceeding is expressed in her letter, nor can such a conclusion be properly implied by the Commission as a matter of law. And since, as pointed out above, there has been absolutely no showing that Ms. Wells -- the only identified member of the Coalition -- has any interest to support standing in this proceeding, the letter cannot be treated as a sufficient petition to allow intervention by the Coalition. See also Allens

Creek, supra, at 390, 393-94; Fermi 2, supra, at 583.

But even beyond these purely legal points, the letter in question demonstrates a lack of awareness of several important facts which cast further doubt on the sufficiency of the document as a vehicle for intervention. For example, the letter states that there exists a "complete lack of any safety precautions in the event of a nuclear accident." However, in fact, a detailed emergency plan covering the operation of both St. Lucie Units 1 and 2 has already been submitted. See Final Safety Analysis Report, St. Lucie Plant Unit No. 2, p. 13.3-1. In addition, the NRC recently promulgated a new rule governing emergency planning. 45 Fed. Reg. 55,402 (Aug. 19, 1980). Pursuant to the rule, Applicant must submit detailed implementing procedures no less than 180 days prior to scheduled issuance of the operating license for St. Lucie 2. Applicant has already made numerous revisions to its emergency plan to meet the new requirements and, of course, will comply.

The letter also asserts that:

7. Presently there exists no public warning system and there seems to be a dispute between the Department of Disaster Control in Martin & St. Lucie Counties as to which system should be used and whether Fla. Power & Light should pay for this system.

Again, this simply is not so. Current plans for use do, indeed, include a system for public warnings and notification if necessary. See, e.g., Florida Bureau of Disaster Preparedness,

Florida Radiological Emergency Plan for Nuclear Power Facilities (Draft) Annex P, pp. P-15 to -16; Appendix C of Attachment 2 to Annex P, pp. P-46 to -47; Appendix C of Attachment 3 to Annex P, pp. P-112 to -113. Nor does there presently exist any dispute over who will pay for the public warning system in the vicinity of the plant. In fact, Applicant has committed to provide funds for establishing a public notification system to meet the requirements of the Commission's new rule governing emergency planning.

### III. Conclusion

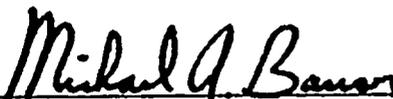
The March 23 letter directed to the Commission by Ms. Wells does not clearly state a desire to intervene and participate as a full party intervenor in a formal licensing proceeding. Moreover, when viewed as a petition to intervene, the letter fails to meet the requirements of NRC regulations and case law governing intervention, so as to allow Ms. Wells to represent any personal interest; much less the interest of any other individuals, in this proceeding as a matter of right.<sup>4/</sup> This is especially so

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<sup>4/</sup> As for discretionary intervention, the Commission has established several discrete factors bearing upon the exercise of such discretion. Foremost among these is whether participation would likely produce "a valuable contribution" to the decisionmaking process. See, e.g., Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145 (1977). However, the letter makes no showing with respect to such a contribution nor, indeed, is one even attempted. Accordingly, there is no basis for a grant of discretionary intervention.

in light of the standards applicable to operating license proceedings. Accordingly, intervention should be denied. Should the Board entertain any doubt as to the correctness of such a result, however, it should act to clarify matters further.<sup>5/</sup> Although the record now before the Board would appear adequate for a decision Applicant would suggest that, should there be any doubt, a special prehearing conference be convened prior to a ruling concerning the letter to consider further any factual matters which might require clarification. See, generally, e.g., Fermi 2, supra, at 584; Consumers Power Company (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 277n.1 (1978).

Respectfully submitted,

  
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<sup>5/</sup> In this connection, Applicant notes that Ms. Wells' letter deals exclusively with matters concerning offsite emergency planning and preparedness. Under the Commission's newly adopted regulations pertaining to emergency plans (45 Fed. Reg. 55,402) the NRC's finding on such matters is to be based "on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented." 10 C.F.R. § 50.47(a)(2). In view of the initial involvement of FEMA, Ms. Wells' concerns might be more properly presented to that agency. This is especially so in view of the indications in Ms. Wells' letter that she does not desire to become a full-party participant in an NRC licensing proceeding.





Elizabeth S. Bowers, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
United States Nuclear Regulatory Commission  
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Dr. Peter A. Morris, Administrative Judge  
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Dated this 16th day of  
April, 1981.