

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

3/1/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
FLORIDA POWER AND LIGHT COMPANY
(Turkey Point Nuclear Generating
Unit Nos. 3 and 4)

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250/251

Docket Nos. 50-570 OL
50-321 OL
(Proposed Amendments to Facility
Operating Licenses to Permit
Steam Generator Repair)

NRC STAFF RESPONSE TO PETITION FOR
LEAVE TO INTERVENE FILED BY MARK P. ONCAVAGE

On December 13, 1977, the Nuclear Regulatory Commission published in the Federal Register (42 F.R. 62569) a notice of "Proposed Issuance of Amendments to Facility Operating Licenses" (Notice). The Notice was published in connection with the license amendment application filed by the Florida Power and Light Company (FPL or Licensee) to repair the steam generators now in use at its Turkey Point Nuclear Generating Unit Nos. 3 and 4. The Notice provided an opportunity for any person whose interest might be affected by the proceeding to file a petition for leave to intervene no later than January 13, 1978. The Notice further provided that non-timely petitions for leave to intervene would not be granted in the absence of a substantial showing of good cause for the late filing, encompassing the five factors set forth in 10 CFR §2.714(a).

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On February 9, 1979, nearly thirteen months late, an untimely petition for leave to intervene in the form of a request for a hearing (Petition) was filed by Mark P. Oncavage (Petitioner). For the reasons set forth below,

the NRC Staff believes that no good cause for the late filing has been shown, and that the Petition should be denied.

Petitioner attempts to show good cause for his late filing (the first of the five factors), solely on the ground that the September 20, 1977 license amendment application, and supporting material, were not available for public use at the NRC local public document room identified in the Notice until January 22, 1979. We are informed by the librarian, Ms. Rene Daily, that the documents have, in fact, been in the local PDR since October 4, 1977, though probably misfiled for a part of the time. However, even assuming the pertinent documents were not present in the library at all, Petitioner's extreme delay in seeking a hearing in this matter can scarcely be excused on that ground. There clearly existed several means by which the petitioner could have obtained the documents he desired, and it seems reasonable to expect that if genuinely interested in the proposed action, he would have availed himself of one of these alternate means. Specifically, Petitioner could have made a direct request of the NRC in Washington, D.C. (directed to the officials whose titles and addresses appeared in the Notice) or he could have requested that the local document room obtain the documents for him. Having failed to pursue either of these available courses, Petitioner cannot properly ground his thirteen month delay upon the asserted absence of the desired material in the local library.



Moreover, the Commission has made it clear that a late petitioner may be admitted, despite a failure to show good cause for untimeliness, only if an adequate showing is made as to the remaining factors set forth in 10 CFR §2.714(a):^{1/}

- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

and that when a late petitioner fails to furnish a good excuse for untimeliness, he must shoulder a heavier burden with respect to these factors than would otherwise be the case.^{2/}

In the present matter, the letter submitted by the Petitioner does not address any of the above factors, and thus, on its face, does not

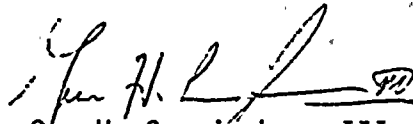
^{1/} See Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975); see also Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC ____ (February 26, 1979); Virginia Electric and Power Co. (North Anna Station, Units 1 and 2), ALAB-289, 2 NRC 395 (1975); Long Island Lighting Co. (Jamesport Nuclear Power Station), ALAB-292, 2 NRC 631 (1975).

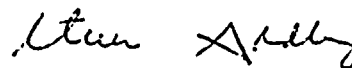
^{2/} USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); North Anna, supra, n. 1 at 398.

establish sufficient grounds to justify its late filing. Accordingly, the present petition - in its current form - is insufficient as a matter of law and therefore must be denied as untimely filed.^{3/} Cf., Public Service Co. of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC ____ (slip op. at 5) (November 2, 1978) (failure to discuss the section 2.788 factors, standing alone, mandates denial of a stay motion); Motion to reconsider denied, ALAB-508, 8 NRC ____ (November 24, 1978).

CONCLUSION

For the foregoing reasons, the exceedingly untimely Petition of Mark P. Oncavage should be denied.


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Assistant Chief Hearing Counsel


Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 1st day of March, 1979.

^{3/} As provided by 10 CFR §2.714(a)(3), Petitioner may amend his petition to fully meet the requirements of §2.714. In view of the thirteen month delay which has already occurred, and the fact that the Staff review of the amendment application is nearly complete, the Staff would hope that any such amendment would be filed promptly.