UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250-SP
	)	50-251-SP
FLORIDA POWER & LIGHT COMPANY	)	
	)	(Proposed Amendments to Facility
(Turkey Point Nuclear Generating Units 3 and 4)	)	Operating License to Permit Steam Generator Repairs)

9/18/79

LICENSEE'S STATEMENT CONCERNING INTERVENOR'S AUGUST 30, 1979, CONTENTIONS

Introduction

On September 20, 1977, Florida Power & Light (FPL or Licensee) submitted to the Nuclear Regulatory Commission (NRC) a Steam Generator Repair Report (SGRR), which described the Licensee's program for repair of its steam generators at the Turkey Point Plant, Units 3 and 4. On December 6, 1977 (42 F.R. 62569, December 13, 1977), the NRC issued a public notice stating that the repair:

> program will entail amendments of Facility Operating Licenses Nos. DPR-31 and DPR-41. Accordingly, notice is hereby given that the NRC has under consideration amendments to these licenses which would authorize the licensee to repair the steam generators now in use in each facility, replacing major portions of such steam generators with new components, and to return the units to operation using the steam generators, so repaired. The work on each unit would be carried out while the other unit is in operation.

The notice stated that the Licensee, or, by way of a petition to intervene, other persons whose interest may be affected may file a request for a hearing. It specifically required that each petitioner to intervene file an affidavit:[1/]

> identifying the specific aspect or aspects of the subject matter of the proceeding as to which he wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. Contentions shall be limited to the matters within the scope of the amendments under consideration. A petition that sets forth contentions relating only to matters outside the scope of the amendments under consideration will be denied. Persons whose petitions are denied for such reason, and persons whose contentions are denied as outside of the scope of the amendments under consideration, may file requests with respect to such matters with the Director of the Office of Nuclear Reactor Regulation in accordance with 10 CFR 2.206.

Ibid. More than a year after the issuance of the notice, Mark P. Oncavage requested a "full hearing." In consequence, there were initiated the procedures described in this Board's August 3, 1979, "Order Ruling on the Petition of Mark P. Oncavage" (August 3 order). The order granted Mr. Oncavage's petition to intervene and admitted six of nineteen contentions which Mr. Oncavage had submitted at a

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1/ The affidavit requirement was dropped by virtue of a subsequent amendment of 10 CFR § 2.714. See 43 F.R. 17798, April 26, 1978. However, the requirements of specificity and particularization have been retained in the regulation in its current form.

May 2 Special Prehearing Conference. The Board also suggested that the parties meet to attempt to reach an agreement on the remaining thirteen contentions upon which the Board did not rule and to try to agree on a realistic discovery schedule.

Accordingly, the parties met on August 30, 1979. By letter of August 31, 1979, the Licensee reported to the Board that the parties had agreed to a discovery schedule which had the effect of initiating discovery on the six admitted contentions; in addition Licensee and the Intervenor had, subject to the Board's approval and reservations stated in the letter, agreed to dates for filing prepared testimony and for the evidentiary hearing. On September 4, 1979, the Licensee filed a motion requesting the Board to adopt the schedule.

The August 31 letter forwarded a new list of the Intervenor's contentions, dated August 30, which "now supersede all prior contentions and contain all of the matters which Intervenor wishes to litigate in this proceeding." However, the letter explained that the parties had failed to agree on the "refinement" of the six admitted contentions (now renumbered as Contentions 1 through 6 of those transmitted with the August 31 letter) or the admissibility of the unadmitted contentions (now restated as Contention 7 through 14). Finally, the letter stated that each party would file a statement with the Board no later than September 14, 1979, setting forth its position concerning the contentions. This statement does so on behalf of the Licensee.

We first discuss the contentions not ruled upon in the August 3 order (now Contentions 7 through 14) and then turn to the contentions covered by that order. Preliminarily, however, it should be emphasized that there are inadequacies in practically every one of the contentions. As indicated by the August 31 letter, these include wholesale references to statutes and sets of regulations (e.g., "10 CFR Parts 20, 50, 51, NEPA or FWPCA") without specification of the particular part of the statute or the particular section of the regulations which it is alleged is being violated. Nor, in most cases, is there a reasonably specific description of the actions proposed to be undertaken by FPL which would constitute whatever violation is alleged. In short, although now represented by counsel, with respect to most contentions the Intervenor is still unable to identify particular actions which would violate specific provisions of law or regulation. Consequently, these contentions fail to meet the requirements of specificity and basis. 10 CFR § 2.714(b); Offshore Power Systems, LBP-77-48, 6 NRC 249 (1977); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-76-24, 3 NRC 725 (1976); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979). As reflected in the August 31 letter, the lack of such specificity and basis was one of the reasons counsel for the Staff and the Licensee were unable to agree to the new contentions.

I

The Unadmitted Contentions

New Contentions 7 and 8 are inadmissible because they are not within the scope of this proceeding. We discuss Contention 8 first and out of numerical order because it so clearly delineates the issues involved.

Contention 8. In this contention the Intervenor alleges:

> The continued operation of Turkey Point Units 3 and 4 should be suspended because:
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> a. the impaired condition of the steam generators poses the possibility of accidental loss of coolant;
> b. the impaired condition of the steam generators subjects onsite workers to unacceptable levels of radiation exposure;
> c. the impaired condition of the steam generators poses the possibility of offsite radiation releases endangering the public health and environment and violate the Federal Water Pollution Control Act by the discharge of primary coolant.

As the notice makes clear, this proceeding relates only to the issuance of amendments "which would authorize the licensee to repair the steam generators now in use in each facility . . ." and "[c]ontentions shall be limited to matters within the scope of the amendments under consideration." A determination to suspend (or not to suspend) operation without repair is not related to whether the repairs should be authorized, to the method of repair, to the return of the repaired units to operation or to any other matter

which would be covered by the amendments. Hence Contention 8 relates only to matters outside "the scope of the amendments under consideration" and should be denied.

The limitations imposed by the notice are wholly consistent with NRC precedent. It is well settled that the jurisdiction of a licensing board is confined to the issues delineated in the Commission's notices regarding the proceeding. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). An intervenor is correspondingly constrained to keep his contentions within the scope of the proceeding, and any contentions straying outside these bounds must be denied admission. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-524, 9 NRC 65, 70 (1979). The scope of a proceeding to amend an operating license is limited to the amendment itself; other issues cannot be considered. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 221-22 (1976). Only those "matters arising directly from the proposed change" in the facility are cognizable by a licensing board in an amendment proceeding. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974). Moreover, an intervenor cannot request a shutdown of a facility based upon factors which are outside of the scope of an amendment to an operating license. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 457 (1975).

Contention 7. This contention alleges:

> The Licensee has not considered in its cost benefit analysis in violation of 10 CFR Parts 50 and 51, and NEPA:
>
> a. the cost of a full-flow condensate polishing demineralizing system;
> b. the effluent release from a full-flow condensate polishing demineralizing system; or
> c. the environmental degradation caused by a full-flow condensate polishing demineralizing system.

This contention should not be admitted for a number of reasons. First, it incorrectly assumes that the installation of a condensate polishing demineralizer system is part of the repair program referred to in the notice. None of the relevant documents, i.e., the SGRR, the Safety Evaluation Report (SER) and the Environmental Impact Appraisal, mention that system.

It is true that FPL plans to upgrade the feedwater and condensate system on all of its nuclear units. The upgrading will include a condensate polishing demineralizer system and is designed to improve the quality of the secondary system water chemistry in order to reduce the potential for corrosion of secondary system materials, including the steam generators. However, the demineralizer and related improvements are independent of and in addition to the repair program here involved and do not involve a change in technical specifications or the need for a license amendment.

Second, 10 CFR Part 50 is inapplicable. It does not require the preparation of a cost-benefit analysis, and mere reference to Part 50 is an insufficient basis upon which to rest a contention.

10 CFR §§ 51.20 and 51.21 do require applicants for construction permits and operating licenses to prepare an environmental report containing a cost-benefit analysis. However, these sections explicitly state that an applicant must file an environmental report only if the proposed activity falls within 10 CFR § 51.5(a). Since an amendment to an operating license is covered in § 51.5(b), not in § 51.5(a), no environmental report, or cost-benefit analysis, need be submitted by the Licensee.

NEPA[2/] is also inapplicable. As the wording of the Act plainly indicates (42 U.S.C. § 4332(2)), only federal agencies, and not private persons, are obligated to take the actions there specified. Bradford Township v. Illinois State Toll Highway Authority, 463 F.2d 537, 540 (7th Cir. 1972), certiorari denied 409 U.S. 1047 (1972); Biderman v. Morton, 497 F.2d 1141, 1146-7 (2nd Cir. 1974). Consequently, the Licensee has no legal responsibility to conduct a cost-benefit analysis.

2/ National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et. seq.

In sum, Intervenor's Contention 7 relates to an activity outside the scope of this proceeding; and even if the activity referred to were within the scope of the proceeding, the contention contains no legally coherent description of a litigable issue.

Contention 9. This contention alleges that:

> The cumulative offsite radiation releases as a result of all activity at Turkey Point, during the proposed repairs, are contrary to 10 CFR Parts 20, 50, 51, 100, and the National Environmental Protection [sic] Act.

10 CFR Part 51 and NEPA are simply not applicable. Nothing contained in either regulates radioactive releases, on or off-site. Part 100 is also inapplicable. It governs the suitability of proposed sites; it does not deal with releases from existing plants. Consequently, the references to Parts 51 and 100 and to NEPA cannot form the basis for a contention.

Part 20 does have provisions relating to releases to unrestricted areas (see 10 CFR § 20.106 and Appendix B, Table II) as does Part 50 (see 10 CFR § 50.36a and Appendix I), but in each case the regulations are detailed and complex. A general statement that off-site releases "are contrary to" Parts 20 and 50 is conclusory and does not contain the requisite "reasonable specificity." 10 CFR § 2.714(b). Contention 9 should be denied.

Contention 10. This contention alleges that:

> The Commission's NEPA Analysis is inadequate in that it fails to adequately consider the following alternative procedures:
>
> a. arresting tube support plate corrosion;
> b. in-place tube restoration (sleeving);
> c. in-place steam generator tube replacement (retubing);
> d. derating;
> e. decommissioning;
> f. bioconversion;
> g. conservation;
> h. solar energy;
> i. natural gas; or
> j. coal

In considering the contention, it should be emphasized that this Board has already admitted the contention that an environmental impact statement should have been prepared (May 2 Contention 2; now Contention 1). If one was required, it would have had to consider alternatives as well as contain a cost-benefit analysis (10 CFR §§ 51.23, 51.26) and the adequacy of that consideration would have been subject to review pursuant to the substantial body of interpretative case law that has developed under NEPA. Since Contention 10 has been submitted--in addition to admitted Contention 1--we assume that what is being argued is that even in the absence of the requirement of an environmental impact statement the agency is required under NEPA to consider alternatives in some circumstances.

Assuming this to be the case, at most what is required is a "brief discussion of alternatives." See 40 CFR § 1508 9(b); Nucleus of Chicago Homeowners Association v. Lynn, 524 F.2d 225, 232 (7th Cir. 1975), certiorari denied 424 U.S. 967 (1976). What has been done here clearly meets that test.[3/] See Section 5 (pages 5-1 through 5-7) of the Environmental Impact Appraisal. That document describes the basic choices presented as repair; continuation of the present mode of operation; and replacement by generating plants of different design. Within this framework, some of the alternatives enumerated in Contention 10 are in fact considered. Thus, the Impact Appraisal expressly refers to the cost of new fossil units and gas turbine units (p. 5-1) and discusses the possibility of retubing (p. 5-3). In the context of "operation in the present mode," the Impact Appraisal considers the consequences of "derating" (p. 5-1; see also pp. 4-9 through 4-11).[4/] In no way does the contention indicate why the discussion "is inadequate" or "fails to adequately consider" those specific alternatives. Consequently, again there is an absence of the required "reasonable specificity."

3/ Indeed, the following discussion demonstrates that some of the alternatives which the Intervenor seeks to have considered would not have to be considered in an environmental impact statement.

4/ In fact, derating need not have been considered. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265-266, n. 6 (1979).

To the extent that this contention may suggest that there was a legal obligation for the NRC to consider the alternatives of total shutdown or reducing power generation (i.e., "conservation," "derating" and "decommissioning"), Intervenor is in error. Issuance of amendments to operating licenses need not depend upon "a prior exploration of the environmental impact of continued operation and consideration of the alternatives to that operation (e.g., energy conservation)." Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 46-47, n. 4 (1978), remanded on other grounds, Minnesota v. NRC ___ F.2d ___ (D.C. Cir., May 23, 1979). Nor is consideration of derating required. ALAB-531, supra. The issuance of the Turkey Point operating licenses was preceded by a full environmental review and nothing in NEPA "dictates that the same ground be wholly replowed in connection with the proposed amendment . . ." to the operating license. Ibid.

Nor is it adequate merely to enumerate without further elaboration certain alleged "alternatives" not expressly referred to in the Appraisal, e.g., "bioconversion," "conservation," and "solar energy." The Supreme Court has made it clear that even in environmental impact statements "every alternative device and thought conceivable by the mind of man" need not be considered. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978). Such "alternatives" should not have to be addressed unless intervenors make at

least some minimal showing "sufficient to require reasonable minds to inquire further." 435 U.S. at 554. Although more than adequate opportunity has been available, Intervenor has simply failed to show why these are realistic alternatives.

Contention 10 should be denied.

Contention 11. Contention 11 alleges:

> The utility has failed to provide an accurate cost/benefit analysis contrary to 10 CFR Parts 50 and 51, and the National Environmental Policy Act, and the FWPCA because:
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> a. it has failed to consider the cost of future recurring steam generator repairs;
> b. it has used the inaccurate figure of $300,000 per day per unit for replacement power costs for reactor outage;
> c. the use of a radiation exposure value guideline of $1,000 per man-rem for plant workers is inaccurate;
> d. it has failed to provide a cost/benefit analysis for an additional commitment of land resources for the creation of a nuclear waste storage facility;
> e. it has failed to consider the costs of addition of a full flow condensate demineralizer and of condenser retubing;
> f. it has failed to consider the additional costs caused by inflation and delay.

Like Contention 7, this contention relates to alleged omissions or inaccuracies in the cost-benefit analysis. In the preceding discussion of Contention 7, we

have demonstrated that in these circumstances the "utility" is not required to perform a cost-benefit analysis by 10 CFR Parts 50 or 51 or by NEPA. Contention 11 adds a reference to the FWPCA but does not explain the relevance of that statute. In fact, the NRC has no responsibility for enforcing or authority to enforce the provisions of the FWPCA, since that Act delegates that responsibility to the Environmental Protection Agency and to the states. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978). Therefore, the FWPCA is irrelevant to the instant amendment proceedings.

For these reasons alone the contention should be denied. The specific allegations of failures or inaccuracies do not cure the defects and are inadmissible for separate reasons.

Subpart (a) states that in the cost-benefit analysis, FPL "has failed to consider the cost of future recurring steam generator repairs." Even if a cost-benefit analysis were required, Intervenor offers nothing to support the assumption that "future recurring steam generator repairs" will be necessary and that, therefore, the costs of such repairs should be included. To the contrary, Sections 2.2 and 2.2.3 of the SGRR reveal that the proposed changes are designed to prevent denting and degradation of the steam generators, i.e., to prevent the need for "recurring" repairs.

The NRC Staff confirms this judgment (SER, Section 3.1, p. 3-2; Environmental Impact Appraisal Section 6.0, p. 6-1), and Intervenor offers nothing to place it in issue. Subpart (a) wholly fails to meet the requirements of specificity and basis.

Subparts (b) and (c) simply assert that the Licensee's analysis is "inaccurate" without offering any basis for such an allegation. They, too, are inadmissible for they lack of specificity and basis.

Subpart (d) assumes that the Licensee is committing additional resources of land for the storage of the steam generators. Actually, it is presently planned to store the steam generators on-site (SGRR § 3.4.2) and will not require the expenditure of any future land resources. Subpart (d) is unnecessary to any cost-benefit analysis.

Subpart (e) is essentially a duplication of the Intervenor's Contention 7, which has been discussed previously. For the reasons stated in that discussion and to avoid repetition, subpart (e) should be eliminated. Offshore Power Systems, LBP-77-48, 6 NRC 249, 253 (1977).

Subpart (f) is irrelevant. At the present time, no delays are projected for the repair and none are referred to in the statement. Consequently, this factor need not be evaluated. More fundamentally however, inflation operates to increase the costs of both the proposed repair and of any alternatives. As a general projection, while inflation may

increase the cost of the repair in absolute dollars, it will also increase the cost of alternatives proportionally. In the absence of specificity, it is impossible to determine the comparative impact of the effect of inflation on costs and benefits, and a mere reference to inflation without such specificity is without meaning.

Contention 12. This contention alleges that:

> The programs and procedures proposed to be followed by the Licensee in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational radiation exposures at a reasonably safe level and at a level within 10 CFR Parts 20 and 51.

The contention is defective for a number of reasons. First, 10 CFR Part 51 does not contain substantive provisions regulating occupational exposures. Therefore, any reference to Part 51 is irrelevant and should be omitted.

Second, 10 CFR Part 20 does not contain a "reasonable safe level" standard. The appropriate standard is "as low as is reasonably achievable" (ALARA). 10 CFR § 20.1(c). If the Intervenor is attempting to question the validity of the ALARA standard or add another, he has a vehicle for doing so under 10 CFR § 2.758. It is not proper for the Intervenor to attack the Commission's regulations in the present proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63 (1978). Therefore the phrase "reasonably safe level" should be eliminated.

Third, with the foregoing necessary excisions, this contention is essentially a duplicate of admitted Contentions 2 and 5. To avoid repetition, Contention 12 should be eliminated. Offshore Power Systems, supra.

Finally, the contention is wholly unspecific concerning how "the programs and procedures" involved fail to meet the standards referenced. It should be denied for lack of specificity and basis.

Contention 13. The contention alleges:

> The proposed method of radiation monitoring during repair of the steam generators is inadequate in that it fails to comply with 10 CFR Parts 20, 50, 51, 100, NEPA and FWPCA.

Again Intervenor has included references to statutes and regulations which are totally irrelevant to the subject of his contention. 10 CFR Part 51 and NEPA contain no substantive standards dealing with radiation monitoring; 10 CFR Part 100 pertains to proposed siting of reactors, not to monitoring of repairs for existing plants; and the FWPCA is not within the jurisdiction of the NRC.

And again Intervenor has failed to state in what respect "[t]he proposed method of radiation monitoring" is "inadequate" or how it "fails to comply" with any relevant regulation. Therefore, the contention fails to comply with 10 CFR § 2.714(b) and should be denied.

Contention 14. This contention alleges:

> The measures proposed to be taken to protect against fire hazards associated with the steam generator repairs are inadequate to protect against radioactive releases in violation of 10 CFR Parts 20, 50, 51, 100, NRC guidelines, and NEPA.

In respect to 10 CFR Part 51 and 100 and NEPA, the foregoing comments on Intervenor's Contention 13 are wholly applicable. Nor does the reference to NRC guidelines add anything. Guidelines are not mandatory and failure to comply with them will not necessarily render a proposal invalid. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-217, 8 AEC 61, 68 (1974); Project Management Corp. (Clinch River Breeder Plant), LBP-76-14, 3 NRC 430, 432 (1976).

The Commission's regulations governing fire prevention are designed to prevent impairment of safety-related systems by fire or explosion. See 10 CFR Part 50, App. A, Criterion 3. Thus the regulations are intended to reduce the likelihood of a fire which might hinder the performance of systems designed to ensure the safe operation and shutdown of the reactor. However, in the case of the steam generator repair, the reactor core is totally unloaded. In these circumstances, the need for the specificity and basis required by 10 CFR § 2.714 is especially great, and their absence requires denial of the contention.

II

The Admitted Contentions

The Intervenor's final list of contentions of August 30, 1979, contains the six contentions found to be "acceptable for litigation" by the Board in its August 3 order.[5/] Licensee's efforts to have the parties jointly refine these contentions at the meeting of August 30, 1979, were unsuccessful. Both Intervenor and the NRC Staff Counsel[6/] declined further refinement because the contentions had been admitted by the Board. The six contentions are therefore included as originally framed.

Licensee acknowledges that the August 3 order precludes further argument on the admissibility of the subject matters contained in the six contentions. Licensee submits, however, that the order suggests that improvement or modification of the wording of those contentions may be in order.

Chairman Bowers referred to "non-specific 'bare bones' contentions" and Dr. Paris described the "filings as far less than perfect" (August 3 order, pp. 19, 30; see also p. 20). In addition, the order (p. 28) described the admitted contentions as directed at four areas of inquiry: 1) "the adequacy

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5/ Contentions 2, 5, 6, 7, 12 and 18 from the May 2, 1979, submittal of Intervenor are now numbered 1 through 6, respectively, in the attachment to the Licensee's report to the Board of August 31, 1979.

6/ NRC Staff Counsel reserved the right to submit that certain statutes and regulations referenced in the six contentions were inapplicable.

of the method proposed for storing the steam generator assemblies with regard to protecting the assemblies from storm floods . . ."; 2) "whether the occupational exposure during the repair, especially of transient workers, can be kept ALARA . . ."; 3) "whether the liquid effluent that will be discharged as a result of the repair will meet the requirements of Parts 20, 50, 51 and NEPA"; and 4) whether an "Environmental Impact Statement should be issued in connection with the repair."

Consequently Licensee submits that the six contentions should be refined to combine those involving the same subject matter, to specifically address concerns expressed by the Board in the August 3 order and to focus upon those statutes and regulations which are relevant. The Board has the power to rewrite contentions to make them acceptable. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2) LBP-79-6, 9 NRC 291 (1979). However, if the Board should decide that retention of the original wording is appropriate, Licensee reserves the right to later contend, by motion for summary disposition or by way of other appropriate procedure, that certain statutes and regulations referenced therein are inapplicable.

1. Preparation of an Environmental Impact Statement. Licensee submits that Intervenor's Contention 1 of August 30, 1979 (formerly Contention 2 of May 2, 1979), should be refined to read:

> Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. § 4332(2)(C)) or 10 CFR § 51.5 requires the preparation of an Environmental Impact Statement prior to the issuance by the Nuclear Regulatory Commission of amendments to the operating licenses for Turkey Point Units Nos. 3 and 4 (Facility Operating Licenses Nos. DPR-31 and DPR-41) authorizing the Licensee to repair the steam generators now in use in each facility.

This revised contention omits any reference to 10 CFR Part 50, including in particular 10 CFR § 50.90 because those regulations do not address the issuance of an environmental impact statement (EIS), and are irrelevant. To the extent that the reference by the Intervenor to 10 CFR § 50.90 is meant to suggest that an amendment to an operating license requires an EIS, 10 CFR § 51.5 clearly distinguishes an amendment from an original operating license in relation to the need for an EIS. Moreover, not all amendments to an operating license require the issuance of an EIS. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-77-51, 6 NRC 265 (1977).

2. Occupational Exposures. Licensee submits that Intervenor's Contentions 2 and 5 of August 30, 1979 (Contentions 5 and 12 of May 2, 1979), should be combined and refined to read:

> A. The programs and procedures proposed to be followed by the Licensee in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational radiation exposures as low as is reasonably achievable (ALARA) within the meaning of 10 CFR Part 20 or that it will not comply with 10 CFR § 20.101, in that the Licensee intends to use transient workers with unknown radiation exposure histories.
>
> B. A sufficient work force, both skilled and unskilled, cannot be obtained to perform the repairs without violating the limits on individual exposures contained in 10 CFR § 20.101.

The revised contention omits any reference to NEPA and 10 CFR Part 51, which do not contain any substantive standards regulating occupational exposure, and therefore are inapplicable. The environmental effects of occupational exposures are more appropriately considered under Contention 1, as revised.

Reference to the FWPCA is also eliminated under the authority of Tennessee Valley Authority (Yellow Creek Nuclear Plant Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

The revision is also intended to address the concerns about occupational exposure raised by Dr. Paris in the August 3 order (pp. 43-49).

3. Release of Radioactive Material. Licensee submits that Intervenor's Contentions 3 and 4 of August 30, 1979 (Contentions 6 and 7 of May 2, 1979), should be combined and refined to read:

> During the course of the repairs proposed by the Licensee, (a) the handling, processing, storing or discharging of primary coolant or (b) the discharging of laundry waste water is likely to result in the release of radioactive material to unrestricted areas in violation of 10 CFR Part 20 or of radioactive effluents to unrestricted areas in quantities which will not be as low as is reasonably achievable within the meaning of 10 CFR Parts 20 and 50.

This revised contention omits any reference to NEPA and 10 CFR Part 51 because they contain no substantive standards regulating effluents, and therefore are inapplicable. The environmental effects of the release of radioactive effluents are more appropriately considered under Contention 1, as revised. Reference to the FWPCA is eliminated under the authority of the Yellow Creek decision, supra.

Reference to 10 CFR Part 100 is also omitted. Part 100 is intended to guide "the Commission in its evaluation of the suitability of proposed sites for stationary power" reactors. 10 CFR § 100.1(a). It has no relevance to amendments to operating licenses of existing plants. 10 CFR Parts 20 and 50 contain the relevant regulations governing amendments to operating licenses which might result in the release of radioactive effluents to the areas surrounding the site. Any site-related factors affecting radioactive releases and exposures in unrestricted areas are taken into account in 10 CFR Parts 20 and 50, and Part 100 is irrelevant to any of the issues in this proceeding.

4. On-site Storage of Steam Generator Assemblies.

Licensee submits that Intervenor's Contention 6 of August 30, 1979 (Contention 18 of May 2, 1979), should be refined as follows:

> There are likely to occur radioactive releases from one or more stored assemblies to unrestricted areas which violate 10 CFR Part 20 or are not as low as is reasonably achievable within the meaning of 10 CFR Part 50, as a result of:
>
> a. substantial immersion of the steam generators in sea water during a hurricane;
> b. movement of steam generators while so immersed;
> c. impact of such moving steam generators upon the walls of the structure in which they are stored or upon another object or objects;
> d. corrosion resulting from moisture, sea water, or salt spray; or
> e. leakage through the floor beneath the stored steam generators.

This revised contention is intended to reflect the concerns about radioactive releases identified by Dr. Paris in the August 3 order (pp. 34-43). It eliminates the lack of specificity contained in the original contentions, and sets forth a basis for the allegation that the storage facility will not be in compliance with the regulations. A reference to 10 CFR Part 20 has also been included.

The redrafted contention also eliminates any issue as to whether the Licensee can create a nuclear waste

storage facility under 10 CFR Part 50. The present operating licenses for Turkey Point Units 3 and 4 (issued on July 19, 1972, and April 10, 1973, respectively) permit the Licensee to possess all radioactive wastes generated by operation of the plant. Therefore, the question of whether the Licensee is legally permitted to store the steam generators is not an issue in this proceeding.

The revised contention eliminates any reference to the National Environmental Policy Act and 10 CFR Part 51, which contains the NRC regulations implementing NEPA. Neither NEPA nor Part 51 specifies any limits on effluents, nor do they specify any other substantive requirements regarding storage facilities. Therefore, they are inapplicable to this contention.

If the Intervenor intends to argue that storage will produce environmental costs that must be evaluated, the appropriate place to consider these effects is under Contention 1, as revised.

Reference to the FWPCA has also been eliminated under the authority of the Yellow Creek decision, supra.

III

Conclusion

For the reasons set forth in detail above, Licensee requests that the Board issue an order which finds (a) that

proposed Intervenor Contentions 7 through 14 of August 30, 1979, are not acceptable for litigation in this proceeding; and further finds (b) that the six contentions previously found by the Board to be "acceptable for litigation" in its August 3 order should be combined and refined into the four contentions described above which correspond to the four areas of inquiry referred to in the Board's August 3 order.

Respectfully submitted,

Harold F. Reis

HAROLD F. REIS
1025 Connecticut Avenue, NW
Washington, DC 20036

Norman A. Coll
Southeast First National
Bank Building
Miami, FL 33131

Attorneys for Licensee
FLORIDA POWER & LIGHT COMPANY

OF COUNSEL:

LOWENSTEIN, NEWMAN, REIS,
AXELRAD & TOLL
1025 Connecticut Avenue, NW
Washington, DC 20036

STEEL, HECTOR & DAVIS
Southeast First National
Bank Building
Miami, FL 33131

DATE: September 14, 1979

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(Turkey Point Nuclear Generating Units Nos. 3 and 4)	)	Operating License to Permit Steam Generator Repair)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the attached "Licensee's Statement Concerning Intervenor's August 30, 1979, Contentions" captioned in the above matter, were served on the following by deposit in the United States mail, first class, properly stamped and addressed, this 14th day of September, 1979:

Elizabeth S. Bowers, Esquire
Chairman
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Oscar H. Paris
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Emmeth A. Luebke
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety & Licensing Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Mark P. Oncavage
12200 S.W. 110 Avenue
Miami, FL 33176

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Steven C. Goldberg, Esquire
U. S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington, DC 20555

Bruce S. Rogow, Esquire
NOVA Law School
3301 College Avenue
Fort Lauderdale, FL 33314

Norman A. Coll, Esquire
Steel, Hector & Davis
Southeast First National Bank Building
Miami, FL 33131

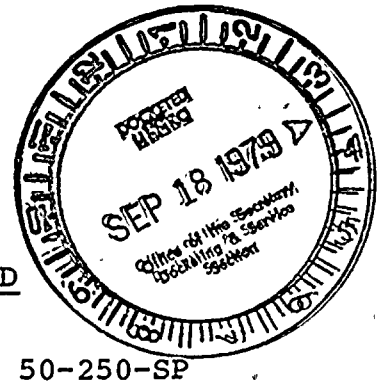
Harold F. Reis

HAROLD F. REIS

LOWENSTEIN, NEWMAN, REIS
AXELRAD & TOLL
1025 Connecticut Avenue, NW
Washington, DC 20036

Telephone: (202) 862-8400

Dated: September 14, 1979



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250-SP
	)	50-251-SP
FLORIDA POWER & LIGHT COMPANY	)	
	)	(Proposed Amendments to Facility
(Turkey Point Nuclear Generating Units 3 and 4)	)	Operating License to Permit Steam Generator Repairs)

LICENSEE'S STATEMENT CONCERNING
INTERVENOR'S AUGUST 30, 1979, CONTENTIONS

Introduction

On September 20, 1977, Florida Power & Light (FPL or Licensee) submitted to the Nuclear Regulatory Commission (NRC) a Steam Generator Repair Report (SGRR), which described the Licensee's program for repair of its steam generators at the Turkey Point Plant, Units 3 and 4. On December 6, 1977 (42 F.R. 62569, December 13, 1977), the NRC issued a public notice stating that the repair:

> program will entail amendments of Facility Operating Licenses Nos. DPR-31 and DPR-41. Accordingly, notice is hereby given that the NRC has under consideration amendments to these licenses which would authorize the licensee to repair the steam generators now in use in each facility, replacing major portions of such steam generators with new components, and to return the units to operation using the steam generators, so repaired. The work on each unit would be carried out while the other unit is in operation.

Copy

The notice stated that the Licensee, or, by way of a petition to intervene, other persons whose interest may be affected may file a request for a hearing. It specifically required that each petitioner to intervene file an affidavit:[1/]

> identifying the specific aspect or aspects of the subject matter of the proceeding as to which he wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. Contentions shall be limited to the matters within the scope of the amendments under consideration. A petition that sets forth contentions relating only to matters outside the scope of the amendments under consideration will be denied. Persons whose petitions are denied for such reason, and persons whose contentions are denied as outside of the scope of the amendments under consideration, may file requests with respect to such matters with the Director of the Office of Nuclear Reactor Regulation in accordance with 10 CFR 2.206.

Ibid. More than a year after the issuance of the notice, Mark P. Oncavage requested a "full hearing." In consequence, there were initiated the procedures described in this Board's August 3, 1979, "Order Ruling on the Petition of Mark P. Oncavage" (August 3 order). The order granted Mr. Oncavage's petition to intervene and admitted six of nineteen contentions which Mr. Oncavage had submitted at a

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1/ The affidavit requirement was dropped by virtue of a subsequent amendment of 10 CFR § 2.714. See 43 F.R. 17798, April 26, 1978. However, the requirements of specificity and particularization have been retained in the regulation in its current form.

May 2 Special Prehearing Conference. The Board also suggested that the parties meet to attempt to reach an agreement on the remaining thirteen contentions upon which the Board did not rule and to try to agree on a realistic discovery schedule.

Accordingly, the parties met on August 30, 1979. By letter of August 31, 1979, the Licensee reported to the Board that the parties had agreed to a discovery schedule which had the effect of initiating discovery on the six admitted contentions; in addition Licensee and the Intervenor had, subject to the Board's approval and reservations stated in the letter, agreed to dates for filing prepared testimony and for the evidentiary hearing. On September 4, 1979, the Licensee filed a motion requesting the Board to adopt the schedule.

The August 31 letter forwarded a new list of the Intervenor's contentions, dated August 30, which "now supersede all prior contentions and contain all of the matters which Intervenor wishes to litigate in this proceeding." However, the letter explained that the parties had failed to agree on the "refinement" of the six admitted contentions (now renumbered as Contentions 1 through 6 of those transmitted with the August 31 letter) or the admissibility of the unadmitted contentions (now restated as Contention 7 through 14). Finally, the letter stated that each party would file a statement with the Board no later than September 14, 1979, setting forth its position concerning the contentions. This statement does so on behalf of the Licensee.

We first discuss the contentions not ruled upon in the August 3 order (now Contentions 7 through 14) and then turn to the contentions covered by that order. Preliminarily, however, it should be emphasized that there are inadequacies in practically every one of the contentions. As indicated by the August 31 letter, these include wholesale references to statutes and sets of regulations (e.g., "10 CFR Parts 20, 50, 51, NEPA or FWPCA") without specification of the particular part of the statute or the particular section of the regulations which it is alleged is being violated. Nor, in most cases, is there a reasonably specific description of the actions proposed to be undertaken by FPL which would constitute whatever violation is alleged. In short, although now represented by counsel, with respect to most contentions the Intervenor is still unable to identify particular actions which would violate specific provisions of law or regulation. Consequently, these contentions fail to meet the requirements of specificity and basis. 10 CFR § 2.714(b); Offshore Power Systems, LBP-77-48, 6 NRC 249 (1977); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-76-24, 3 NRC 725 (1976); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979). As reflected in the August 31 letter, the lack of such specificity and basis was one of the reasons counsel for the Staff and the Licensee were unable to agree to the new contentions.

I

The Unadmitted Contentions

New Contentions 7 and 8 are inadmissible because they are not within the scope of this proceeding. We discuss Contention 8 first and out of numerical order because it so clearly delineates the issues involved.

Contention 8. In this contention the Intervenor alleges:

> The continued operation of Turkey Point Units 3 and 4 should be suspended because:
>
> a. the impaired condition of the steam generators poses the possibility of accidental loss of coolant;
> b. the impaired condition of the steam generators subjects onsite workers to unacceptable levels of radiation exposure;
> c. the impaired condition of the steam generators poses the possibility of offsite radiation releases endangering the public health and environment and violate the Federal Water Pollution Control Act by the discharge of primary coolant.

As the notice makes clear, this proceeding relates only to the issuance of amendments "which would authorize the licensee to repair the steam generators now in use in each facility . . ." and "[c]ontentions shall be limited to matters within the scope of the amendments under consideration." A determination to suspend (or not to suspend) operation without repair is not related to whether the repairs should be authorized, to the method of repair, to the return of the repaired units to operation or to any other matter

which would be covered by the amendments. Hence Contention 8 relates only to matters outside "the scope of the amendments under consideration" and should be denied.

The limitations imposed by the notice are wholly consistent with NRC precedent. It is well settled that the jurisdiction of a licensing board is confined to the issues delineated in the Commission's notices regarding the proceeding. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). An intervenor is correspondingly constrained to keep his contentions within the scope of the proceeding, and any contentions straying outside these bounds must be denied admission. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-524, 9 NRC 65, 70 (1979). The scope of a proceeding to amend an operating license is limited to the amendment itself; other issues cannot be considered. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 221-22 (1976). Only those "matters arising directly from the proposed change" in the facility are cognizable by a licensing board in an amendment proceeding. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974). Moreover, an intervenor cannot request a shutdown of a facility based upon factors which are outside of the scope of an amendment to an operating license. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 457 (1975).

Contention 7. This contention alleges:

> The Licensee has not considered in its cost benefit analysis in violation of 10 CFR Parts 50 and 51, and NEPA:
>
> a. the cost of a full-flow condensate polishing demineralizing system;
> b. the effluent release from a full-flow condensate polishing demineralizing system; or
> c. the environmental degradation caused by a full-flow condensate polishing demineralizing system.

This contention should not be admitted for a number of reasons. First, it incorrectly assumes that the installation of a condensate polishing demineralizer system is part of the repair program referred to in the notice. None of the relevant documents, i.e., the SGRR, the Safety Evaluation Report (SER) and the Environmental Impact Appraisal, mention that system.

It is true that FPL plans to upgrade the feedwater and condensate system on all of its nuclear units. The upgrading will include a condensate polishing demineralizer system and is designed to improve the quality of the secondary system water chemistry in order to reduce the potential for corrosion of secondary system materials, including the steam generators. However, the demineralizer and related improvements are independent of and in addition to the repair program here involved and do not involve a change in technical specifications or the need for a license amendment.

Second, 10 CFR Part 50 is inapplicable. It does not require the preparation of a cost-benefit analysis, and mere reference to Part 50 is an insufficient basis upon which to rest a contention.

10 CFR §§ 51.20 and 51.21 do require applicants for construction permits and operating licenses to prepare an environmental report containing a cost-benefit analysis. However, these sections explicitly state that an applicant must file an environmental report only if the proposed activity falls within 10 CFR § 51.5(a). Since an amendment to an operating license is covered in § 51.5(b), not in § 51.5(a), no environmental report, or cost-benefit analysis, need be submitted by the Licensee.

NEPA[2/] is also inapplicable. As the wording of the Act plainly indicates (42 U.S.C. § 4332(2)), only federal agencies, and not private persons, are obligated to take the actions there specified. Bradford Township v. Illinois State Toll Highway Authority, 463 F.2d 537, 540 (7th Cir. 1972), certiorari denied 409 U.S. 1047 (1972); Biderman v. Morton, 497 F.2d 1141, 1146-7 (2nd Cir. 1974). Consequently, the Licensee has no legal responsibility to conduct a cost-benefit analysis.

2/ National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et. seq.

In sum, Intervenor's Contention 7 relates to an activity outside the scope of this proceeding; and even if the activity referred to were within the scope of the proceeding, the contention contains no legally coherent description of a litigable issue.

Contention 9. This contention alleges that:

> The cumulative offsite radiation releases as a result of all activity at Turkey Point, during the proposed repairs, are contrary to 10 CFR Parts 20, 50, 51, 100, and the National Environmental Protection [sic] Act.

10 CFR Part 51 and NEPA are simply not applicable. Nothing contained in either regulates radioactive releases, on or off-site. Part 100 is also inapplicable. It governs the suitability of proposed sites; it does not deal with releases from existing plants. Consequently, the references to Parts 51 and 100 and to NEPA cannot form the basis for a contention.

Part 20 does have provisions relating to releases to unrestricted areas (see 10 CFR § 20.106 and Appendix B, Table II) as does Part 50 (see 10 CFR § 50.36a and Appendix I), but in each case the regulations are detailed and complex. A general statement that off-site releases "are contrary to" Parts 20 and 50 is conclusory and does not contain the requisite "reasonable specificity." 10 CFR § 2.714(b). Contention 9 should be denied.

Contention 10. This contention alleges that:

> The Commission's NEPA Analysis is inadequate in that it fails to adequately consider the following alternative procedures:
>
> a. arresting tube support plate corrosion;
> b. in-place tube restoration (sleeving);
> c. in-place steam generator tube replacement (retubing);
> d. derating;
> e. decommissioning;
> f. bioconversion;
> g. conservation;
> h. solar energy;
> i. natural gas; or
> j. coal

In considering the contention, it should be emphasized that this Board has already admitted the contention that an environmental impact statement should have been prepared (May 2 Contention 2; now Contention 1). If one was required, it would have had to consider alternatives as well as contain a cost-benefit analysis (10 CFR §§ 51.23, 51.26) and the adequacy of that consideration would have been subject to review pursuant to the substantial body of interpretative case law that has developed under NEPA. Since Contention 10 has been submitted--in addition to admitted Contention 1--we assume that what is being argued is that even in the absence of the requirement of an environmental impact statement the agency is required under NEPA to consider alternatives in some circumstances.

Assuming this to be the case, at most what is required is a "brief discussion of alternatives." See 40 CFR § 1508 9(b); Nucleus of Chicago Homeowners Association v. Lynn, 524 F.2d 225, 232 (7th Cir. 1975), certiorari denied 424 U.S. 967 (1976). What has been done here clearly meets that test.[3/] See Section 5 (pages 5-1 through 5-7) of the Environmental Impact Appraisal. That document describes the basic choices presented as repair; continuation of the present mode of operation; and replacement by generating plants of different design. Within this framework, some of the alternatives enumerated in Contention 10 are in fact considered. Thus, the Impact Appraisal expressly refers to the cost of new fossil units and gas turbine units (p. 5-1) and discusses the possibility of retubing (p. 5-3). In the context of "operation in the present mode," the Impact Appraisal considers the consequences of "derating" (p. 5-1; see also pp. 4-9 through 4-11).[4/] In no way does the contention indicate why the discussion "is inadequate" or "fails to adequately consider" those specific alternatives. Consequently, again there is an absence of the required "reasonable specificity."

3/ Indeed, the following discussion demonstrates that some of the alternatives which the Intervenor seeks to have considered would not have to be considered in an environmental impact statement.

4/ In fact, derating need not have been considered. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265-266, n. 6 (1979).

To the extent that this contention may suggest that there was a legal obligation for the NRC to consider the alternatives of total shutdown or reducing power generation (i.e., "conservation," "derating" and "decommissioning"), Intervenor is in error. Issuance of amendments to operating licenses need not depend upon "a prior exploration of the environmental impact of continued operation and consideration of the alternatives to that operation (e.g., energy conservation)." Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 46-47, n. 4 (1978), remanded on other grounds, Minnesota v. NRC ___ F.2d ___ (D.C. Cir., May 23, 1979). Nor is consideration of derating required. ALAB-531, supra. The issuance of the Turkey Point operating licenses was preceded by a full environmental review and nothing in NEPA "dictates that the same ground be wholly replowed in connection with the proposed amendment . . ." to the operating license. Ibid.

Nor is it adequate merely to enumerate without further elaboration certain alleged "alternatives" not expressly referred to in the Appraisal, e.g., "bioconversion," "conservation," and "solar energy." The Supreme Court has made it clear that even in environmental impact statements "every alternative device and thought conceivable by the mind of man" need not be considered. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978). Such "alternatives" should not have to be addressed unless intervenors make at

least some minimal showing "sufficient to require reasonable minds to inquire further." 435 U.S. at 554. Although more than adequate opportunity has been available, Intervenor has simply failed to show why these are realistic alternatives.

Contention 10 should be denied.

Contention 11. Contention 11 alleges:

> The utility has failed to provide an accurate cost/benefit analysis contrary to 10 CFR Parts 50 and 51, and the National Environmental Policy Act, and the FWPCA because:
>
> a. it has failed to consider the cost of future recurring steam generator repairs;
> b. it has used the inaccurate figure of $300,000 per day per unit for replacement power costs for reactor outage;
> c. the use of a radiation exposure value guideline of $1,000 per man-rem for plant workers is inaccurate;
> d. it has failed to provide a cost/benefit analysis for an additional commitment of land resources for the creation of a nuclear waste storage facility;
> e. it has failed to consider the costs of addition of a full flow condensate demineralizer and of condenser retubing;
> f. it has failed to consider the additional costs caused by inflation and delay.

Like Contention 7, this contention relates to alleged omissions or inaccuracies in the cost-benefit analysis. In the preceding discussion of Contention 7, we

have demonstrated that in these circumstances the "utility" is not required to perform a cost-benefit analysis by 10 CFR Parts 50 or 51 or by NEPA. Contention 11 adds a reference to the FWPCA but does not explain the relevance of that statute. In fact, the NRC has no responsibility for enforcing or authority to enforce the provisions of the FWPCA, since that Act delegates that responsibility to the Environmental Protection Agency and to the states. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978). Therefore, the FWPCA is irrelevant to the instant amendment proceedings.

For these reasons alone the contention should be denied. The specific allegations of failures or inaccuracies do not cure the defects and are inadmissible for separate reasons.

Subpart (a) states that in the cost-benefit analysis, FPL "has failed to consider the cost of future recurring steam generator repairs." Even if a cost-benefit analysis were required, Intervenor offers nothing to support the assumption that "future recurring steam generator repairs" will be necessary and that, therefore, the costs of such repairs should be included. To the contrary, Sections 2.2 and 2.2.3 of the SGRR reveal that the proposed changes are designed to prevent denting and degradation of the steam generators, i.e., to prevent the need for "recurring" repairs.

The NRC Staff confirms this judgment (SER, Section 3.1, p. 3-2; Environmental Impact Appraisal Section 6.0, p. 6-1), and Intervenor offers nothing to place it in issue. Subpart (a) wholly fails to meet the requirements of specificity and basis.

Subparts (b) and (c) simply assert that the Licensee's analysis is "inaccurate" without offering any basis for such an allegation. They, too, are inadmissible for they lack of specificity and basis.

Subpart (d) assumes that the Licensee is committing additional resources of land for the storage of the steam generators. Actually, it is presently planned to store the steam generators on-site (SGRR § 3.4.2) and will not require the expenditure of any future land resources. Subpart (d) is unnecessary to any cost-benefit analysis.

Subpart (e) is essentially a duplication of the Intervenor's Contention 7, which has been discussed previously. For the reasons stated in that discussion and to avoid repetition, subpart (e) should be eliminated. Offshore Power Systems, LBP-77-48, 6 NRC 249, 253 (1977).

Subpart (f) is irrelevant. At the present time, no delays are projected for the repair and none are referred to in the statement. Consequently, this factor need not be evaluated. More fundamentally however, inflation operates to increase the costs of both the proposed repair and of any alternatives. As a general projection, while inflation may

increase the cost of the repair in absolute dollars, it will also increase the cost of alternatives proportionally. In the absence of specificity, it is impossible to determine the comparative impact of the effect of inflation on costs and benefits, and a mere reference to inflation without such specificity is without meaning.

Contention 12. This contention alleges that:

> The programs and procedures proposed to be followed by the Licensee in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational radiation exposures at a reasonably safe level and at a level within 10 CFR Parts 20 and 51.

The contention is defective for a number of reasons. First, 10 CFR Part 51 does not contain substantive provisions regulating occupational exposures. Therefore, any reference to Part 51 is irrelevant and should be omitted.

Second, 10 CFR Part 20 does not contain a "reasonable safe level" standard. The appropriate standard is "as low as is reasonably achievable" (ALARA). 10 CFR § 20.1(c). If the Intervenor is attempting to question the validity of the ALARA standard or add another, he has a vehicle for doing so under 10 CFR § 2.758. It is not proper for the Intervenor to attack the Commission's regulations in the present proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63 (1978). Therefore the phrase "reasonably safe level" should be eliminated.

Third, with the foregoing necessary excisions, this contention is essentially a duplicate of admitted Contentions 2 and 5. To avoid repetition, Contention 12 should be eliminated. Offshore Power Systems, supra.

Finally, the contention is wholly unspecific concerning how "the programs and procedures" involved fail to meet the standards referenced. It should be denied for lack of specificity and basis.

Contention 13. The contention alleges:

> The proposed method of radiation monitoring during repair of the steam generators is inadequate in that it fails to comply with 10 CFR Parts 20, 50, 51, 100, NEPA and FWPCA.

Again Intervenor has included references to statutes and regulations which are totally irrelevant to the subject of his contention. 10 CFR Part 51 and NEPA contain no substantive standards dealing with radiation monitoring; 10 CFR Part 100 pertains to proposed siting of reactors, not to monitoring of repairs for existing plants; and the FWPCA is not within the jurisdiction of the NRC.

And again Intervenor has failed to state in what respect "[t]he proposed method of radiation monitoring" is "inadequate" or how it "fails to comply" with any relevant regulation. Therefore, the contention fails to comply with 10 CFR § 2.714(b) and should be denied.

Contention 14. This contention alleges:

> The measures proposed to be taken to protect against fire hazards associated with the steam generator repairs are inadequate to protect against radioactive releases in violation of 10 CFR Parts 20, 50, 51, 100, NRC guidelines, and NEPA.

In respect to 10 CFR Part 51 and 100 and NEPA, the foregoing comments on Intervenor's Contention 13 are wholly applicable. Nor does the reference to NRC guidelines add anything. Guidelines are not mandatory and failure to comply with them will not necessarily render a proposal invalid. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-217, 8 AEC 61, 68 (1974); Project Management Corp. (Clinch River Breeder Plant), LBP-76-14, 3 NRC 430, 432 (1976).

The Commission's regulations governing fire prevention are designed to prevent impairment of safety-related systems by fire or explosion. See 10 CFR Part 50, App. A, Criterion 3. Thus the regulations are intended to reduce the likelihood of a fire which might hinder the performance of systems designed to ensure the safe operation and shutdown of the reactor. However, in the case of the steam generator repair, the reactor core is totally unloaded. In these circumstances, the need for the specificity and basis required by 10 CFR § 2.714 is especially great, and their absence requires denial of the contention.

II

The Admitted Contentions

The Intervenor's final list of contentions of August 30, 1979, contains the six contentions found to be "acceptable for litigation" by the Board in its August 3 order.[5/] Licensee's efforts to have the parties jointly refine these contentions at the meeting of August 30, 1979, were unsuccessful. Both Intervenor and the NRC Staff Counsel[6/] declined further refinement because the contentions had been admitted by the Board. The six contentions are therefore included as originally framed.

Licensee acknowledges that the August 3 order precludes further argument on the admissibility of the subject matters contained in the six contentions. Licensee submits, however, that the order suggests that improvement or modification of the wording of those contentions may be in order.

Chairman Bowers referred to "non-specific 'bare bones' contentions" and Dr. Paris described the "filings as far less than perfect" (August 3 order, pp. 19, 30; see also p. 20). In addition, the order (p. 28) described the admitted contentions as directed at four areas of inquiry: 1) "the adequacy

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5/ Contentions 2, 5, 6, 7, 12 and 18 from the May 2, 1979, submittal of Intervenor are now numbered 1 through 6, respectively, in the attachment to the Licensee's report to the Board of August 31, 1979.

6/ NRC Staff Counsel reserved the right to submit that certain statutes and regulations referenced in the six contentions were inapplicable.

of the method proposed for storing the steam generator assemblies with regard to protecting the assemblies from storm floods . . ."; 2) "whether the occupational exposure during the repair, especially of transient workers, can be kept ALARA . . ."; 3) "whether the liquid effluent that will be discharged as a result of the repair will meet the requirements of Parts 20, 50, 51 and NEPA"; and 4) whether an "Environmental Impact Statement should be issued in connection with the repair."

Consequently Licensee submits that the six contentions should be refined to combine those involving the same subject matter, to specifically address concerns expressed by the Board in the August 3 order and to focus upon those statutes and regulations which are relevant. The Board has the power to rewrite contentions to make them acceptable. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2) LBP-79-6, 9 NRC 291 (1979). However, if the Board should decide that retention of the original wording is appropriate, Licensee reserves the right to later contend, by motion for summary disposition or by way of other appropriate procedure, that certain statutes and regulations referenced therein are inapplicable.

1. Preparation of an Environmental Impact Statement. Licensee submits that Intervenor's Contention 1 of August 30, 1979 (formerly Contention 2 of May 2, 1979), should be refined to read:

> Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. § 4332(2)(C)) or 10 CFR § 51.5 requires the preparation of an Environmental Impact Statement prior to the issuance by the Nuclear Regulatory Commission of amendments to the operating licenses for Turkey Point Units Nos. 3 and 4 (Facility Operating Licenses Nos. DPR-31 and DPR-41) authorizing the Licensee to repair the steam generators now in use in each facility.

This revised contention omits any reference to 10 CFR Part 50, including in particular 10 CFR § 50.90 because those regulations do not address the issuance of an environmental impact statement (EIS), and are irrelevant. To the extent that the reference by the Intervenor to 10 CFR § 50.90 is meant to suggest that an amendment to an operating license requires an EIS, 10 CFR § 51.5 clearly distinguishes an amendment from an original operating license in relation to the need for an EIS. Moreover, not all amendments to an operating license require the issuance of an EIS. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-77-51, 6 NRC 265 (1977).

2. Occupational Exposures. Licensee submits that Intervenor's Contentions 2 and 5 of August 30, 1979 (Contentions 5 and 12 of May 2, 1979), should be combined and refined to read:

A. The programs and procedures proposed to be followed by the Licensee in making the steam generator repairs demonstrate that it will not make every reasonable effort to maintain occupational radiation exposures as low as is reasonably achievable (ALARA) within the meaning of 10 CFR Part 20 or that it will not comply with 10 CFR § 20.101, in that the Licensee intends to use transient workers with unknown radiation exposure histories.

B. A sufficient work force, both skilled and unskilled, cannot be obtained to perform the repairs without violating the limits on individual exposures contained in 10 CFR § 20.101.

The revised contention omits any reference to NEPA and 10 CFR Part 51, which do not contain any substantive standards regulating occupational exposure, and therefore are inapplicable. The environmental effects of occupational exposures are more appropriately considered under Contention 1, as revised.

Reference to the FWPCA is also eliminated under the authority of Tennessee Valley Authority (Yellow Creek Nuclear Plant Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

The revision is also intended to address the concerns about occupational exposure raised by Dr. Paris in the August 3 order (pp. 43-49).

3. Release of Radioactive Material. Licensee submits that Intervenor's Contentions 3 and 4 of August 30, 1979 (Contentions 6 and 7 of May 2, 1979), should be combined and refined to read:

> During the course of the repairs proposed by the Licensee, (a) the handling, processing, storing or discharging of primary coolant or (b) the discharging of laundry waste water is likely to result in the release of radioactive material to unrestricted areas in violation of 10 CFR Part 20 or of radioactive effluents to unrestricted areas in quantities which will not be as low as is reasonably achievable within the meaning of 10 CFR Parts 20 and 50.

This revised contention omits any reference to NEPA and 10 CFR Part 51 because they contain no substantive standards regulating effluents, and therefore are inapplicable. The environmental effects of the release of radioactive effluents are more appropriately considered under Contention 1, as revised. Reference to the FWPCA is eliminated under the authority of the Yellow Creek decision, supra.

Reference to 10 CFR Part 100 is also omitted. Part 100 is intended to guide "the Commission in its evaluation of the suitability of proposed sites for stationary power" reactors. 10 CFR § 100.1(a). It has no relevance to amendments to operating licenses of existing plants. 10 CFR Parts 20 and 50 contain the relevant regulations governing amendments to operating licenses which might result in the release of radioactive effluents to the areas surrounding the site. Any site-related factors affecting radioactive releases and exposures in unrestricted areas are taken into account in 10 CFR Parts 20 and 50, and Part 100 is irrelevant to any of the issues in this proceeding.

4. On-site Storage of Steam Generator Assemblies.

Licensee submits that Intervenor's Contention 6 of August 30, 1979 (Contention 18 of May 2, 1979), should be refined as follows:

> There are likely to occur radioactive releases from one or more stored assemblies to unrestricted areas which violate 10 CFR Part 20 or are not as low as is reasonably achievable within the meaning of 10 CFR Part 50, as a result of:
>
> a. substantial immersion of the steam generators in sea water during a hurricane;
> b. movement of steam generators while so immersed;
> c. impact of such moving steam generators upon the walls of the structure in which they are stored or upon another object or objects;
> d. corrosion resulting from moisture, sea water, or salt spray; or
> e. leakage through the floor beneath the stored steam generators.

This revised contention is intended to reflect the concerns about radioactive releases identified by Dr. Paris in the August 3 order (pp. 34-43). It eliminates the lack of specificity contained in the original contentions, and sets forth a basis for the allegation that the storage facility will not be in compliance with the regulations. A reference to 10 CFR Part 20 has also been included.

The redrafted contention also eliminates any issue as to whether the Licensee can create a nuclear waste

storage facility under 10 CFR Part 50. The present operating licenses for Turkey Point Units 3 and 4 (issued on July 19, 1972, and April 10, 1973, respectively) permit the Licensee to possess all radioactive wastes generated by operation of the plant. Therefore, the question of whether the Licensee is legally permitted to store the steam generators is not an issue in this proceeding.

The revised contention eliminates any reference to the National Environmental Policy Act and 10 CFR Part 51, which contains the NRC regulations implementing NEPA. Neither NEPA nor Part 51 specifies any limits on effluents, nor do they specify any other substantive requirements regarding storage facilities. Therefore, they are inapplicable to this contention.

If the Intervenor intends to argue that storage will produce environmental costs that must be evaluated, the appropriate place to consider these effects is under Contention 1, as revised.

Reference to the FWPCA has also been eliminated under the authority of the Yellow Creek decision, supra.

III

Conclusion

For the reasons set forth in detail above, Licensee requests that the Board issue an order which finds (a) that

proposed Intervenor Contentions 7 through 14 of August 30, 1979, are not acceptable for litigation in this proceeding; and further finds (b) that the six contentions previously found by the Board to be "acceptable for litigation" in its August 3 order should be combined and refined into the four contentions described above which correspond to the four areas of inquiry referred to in the Board's August 3 order.

Respectfully submitted,

Harold F. Reis

HAROLD F. REIS
1025 Connecticut Avenue, NW
Washington, DC 20036

Norman A. Coll
Southeast First National
Bank Building
Miami, FL 33131

Attorneys for Licensee
FLORIDA POWER & LIGHT COMPANY

OF COUNSEL:

LOWENSTEIN, NEWMAN, REIS,
AXELRAD & TOLL
1025 Connecticut Avenue, NW
Washington, DC 20036

STEEL, HECTOR & DAVIS
Southeast First National
Bank Building
Miami, FL 33131

DATE: September 14, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

In the Matter of	)	Docket Nos. 50-250-SP
	)	50-251-SP
FLORIDA POWER & LIGHT COMPANY	)	
	)	(Proposed Amendments to Facility
(Turkey Point Nuclear Generating Units Nos. 3 and 4)	)	Operating License to Permit Steam Generator Repair)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the attached "Licensee's Statement Concerning Intervenor's August 30, 1979, Contentions" captioned in the above matter, were served on the following by deposit in the United States mail, first class, properly stamped and addressed, this 14th day of September, 1979:

Elizabeth S. Bowers, Esquire
Chairman
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Oscar H. Paris
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Emmeth A. Luebke
Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety & Licensing Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Mark P. Oncavage
12200 S.W. 110 Avenue
Miami, FL 33176

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Steven C. Goldberg, Esquire
U. S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington, DC 20555

Bruce S. Rogow, Esquire
NOVA Law School
3301 College Avenue
Fort Lauderdale, FL 33314

Norman A. Coll, Esquire
Steel, Hector & Davis
Southeast First National Bank Building
Miami, FL 33131

Harold F. Reis

HAROLD F. REIS

LOWENSTEIN, NEWMAN, REIS
AXELRAD & TOLL
1025 Connecticut Avenue, NW
Washington, DC 20036

Telephone: (202) 862-8400

Dated: September 14, 1979