

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Harold R. Denton, Director

In the Matter of)	Docket Nos.
)	50-250,
FLORIDA POWER & LIGHT CO.)	50-251
(Turkey Point Power Plant,)	(10 CFR 2.206)
Unit Nos. 3 & 4))	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

By petition dated April 6, 1982, Mr. Joel Jaffer requested pursuant to 10 CFR 2.206 that the Nuclear Regulatory Commission suspend the license amendments previously granted to Florida Power & Light Co. for steam generator repair of Turkey Point Nuclear Units 3 & 4 until the Commission completes action on a rulemaking petition submitted by him. Mr. Jaffer asserts that the rule change he proposes "will determine a jurisdictional defect in the license amendments, as to the public hearing required under . . . Section 189a of the Atomic Energy Act."

For the reasons set forth below, Mr. Jaffer's request for suspension of license amendments authorizing repair of the Turkey Point Units 3 & 4 steam generators is denied.

I.

Background

The license amendments authorizing Florida Power & Light Company to repair the steam generators in its Turkey Point Nuclear Units 3 & 4 were issued by the Office of Nuclear Reactor Regulation (NRR) on June 24, 1981, following a decision by the Atomic Safety and



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Licensing Board (ASLB) authorizing their issuance. In a Memorandum and Order issued on May 28, 1981, LBP-81-14, 13 NRC 677, the ASLB granted summary disposition of all contentions involving the proposed repairs; on June 19, 1981, the Board issued a final order permanently cancelling the evidentiary hearing concerning the proposed amendments and authorizing the Director of NRR to issue the amendments. LBP-81-16, 13 NRC 1115. Mr. Jaffer was not a party to that proceeding.

Mr. Jaffer requested leave to file an amicus curiae brief before the Atomic Safety and Licensing Appeal Board in the appeal taken by Mark Oncavage, a party to the license amendment proceeding. Mr. Jaffer's request was denied on October 9, 1981, on the basis that the request was untimely and that he did not adequately show why it was not possible to have acted at an earlier date.

On November 30, 1981, the Appeal Board affirmed the decisions of the Licensing Board. ALAB-660, 14 NRC 987. That decision became final on February 18, 1982.

Mr. Jaffer also sought review of the ASLB decision in the U.S. Court of Appeals for the D.C. Circuit. The Court of Appeals denied his motion for leave to file a petition for review in forma pauperis and his motion for temporary restraining order and stay on the grounds that he was not a party to the administrative proceeding and therefore lacked standing to seek review. Jaffer v. NRC, No. 81-8035 (D.C. Cir., Oct. 2, 1981), rehearing denied (Dec. 7, 1981).

II.

On February 12, 1982, Mr. Jaffer, pursuant to 10 CFR 2.802 of the Commission's regulations, filed a one-page petition for rulemaking with the Commission seeking the "promulgation of rules giving legal and binding

effect to requests for information and authorized communications to appropriate employees of the Commission over WATS and business telephone lines which it supports and operates and public hearings in which the Commission and/or such employees are involved." Section 2.802(c) describes certain information which must be included in a petition for rulemaking in support of the action sought before a petition for rulemaking will be formally docketed for consideration. ^{1/}

On April 2, 1982, the Executive Director for Operations (EDO) of the NRC notified Mr. Jaffer that his petition was incomplete in that it did not meet the criteria established for petitions filed with the Commission. Specifically, the request did not clearly describe the problem to be corrected nor did it provide any proposed text of the amendment. In addition, the Executive Director stated, "It is not clear to us what

^{1/} The regulation states:

- (c) Each petition filed under this section shall:
- (1) Set forth a general solution to the problem or the substance or test of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;
 - (2) State clearly and concisely the petitioner's grounds for and interest in the action requested;
 - (3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.



you want the NRC to do, or how the NRC can amend its regulations to alleviate what you perceive to be a problem. In addition, your petition does not clearly and concisely state your interest in the action requested." 2/

Thus, Mr. Jaffer's petition for rulemaking is not currently before the Commission for consideration. Consequently, there is no action under consideration by the Commission which might have any impact on the effectiveness of the Turkey Point license amendments. Even if Mr. Jaffer's petition for rulemaking had been docketed, however, there is nothing in either the Commission's regulations or the apparent nature of the rule proposed by Mr. Jaffer which establishes a basis to suspend the license amendments granted to Turkey Points Units 3 and 4.

Section 2.802(d) of the Commission's regulations provides that a rulemaking petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking. That section has no application here for several reasons. Mr. Jaffer's petition for rulemaking is not currently before the Commission for action. Even if it were, no proceedings regarding the Turkey Point license amendments remain before any adjudicatory body in the Commission. Finally, as noted

2/ In accordance with 2.802(f), Mr. Jaffer has 90 days from April 2, 1982 to submit additional data to complete his petition. If he does not submit the required additional information, his petition will be returned without prejudice to his right to file a new petition.

above, Mr. Jaffer, was not a party to the license amendment proceeding and therefore would not be entitled to invoke Section 2.802(d) in any event.

Mr. Jaffer's substantive argument appears to be that if his proposal were adopted, then "legal effect" would be given to telephone communications to "appropriate employees" of the Commission in public hearings in which such employees are involved. Mr. Jaffer apparently believes that adoption of such a proposal would then give "legal effect" to some communications made by him in the Turkey Point proceeding and thereby create a "jurisdictional defect in the license amendments" and presumably render them invalid. In neither his rulemaking nor his 2.206 petition is Mr. Jaffer clear as to the exact nature of the "legal effect" to be given to certain telephone calls or the jurisdictional defect which might result. If, however, the jurisdictional defect to which Mr. Jaffer refers is the failure to hold an evidentiary hearing at his request in the license amendment proceedings, that matter was, in effect, decided by the D.C. Circuit's October 2, 1981, decision, in Jaffer v. NRC. As the Commission noted in its Opposition to Petitioner's motion before the court, Mr. Jaffer never filed a petition to intervene in the license amendment proceeding; at most he filed a request to make a "limited appearance" statement pursuant to 10 CFR 2.715(a) if an evidentiary hearing were held. Despite Mr. Jaffer's apparent familiarity with the NRC's rules of practice, he did not exercise any opportunity to petition to intervene as described in those regulations. The Court concluded that Mr. Jaffer was not a party to the administrative proceeding. Given Mr. Jaffer's apparent familiarity with the Commission's regulations and the requirements for a petition to intervene at the time of the Turkey Point



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proceedings, he has offered no justification why his proposed rule, even if it were under consideration, should be applied retroactively to a completed licensing action. A potential party to agency proceedings must act affirmatively to protect his rights to participate; he may not await the outcome of a case and only then attempt to take part in the process. Easton Utilities Commission v. Atomic Energy Commission, 424 F.2d 847, 851-52 (D.C. Cir 1970) (en banc).

III.

Mr. Jaffer has provided no adequate basis for suspension of the license amendments for Turkey Point Units 3 and 4 authorizing steam generator repair. Consequently, his request is denied.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).



Harold R. Denton, Director
Office of Nuclear Reactor
Regulation

Dated at Bethesda, Maryland
this 5th day of May, 1982.



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