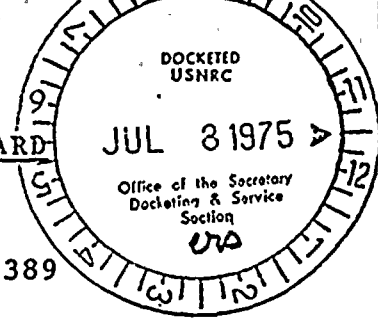


7-3-75
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
FLORIDA POWER & LIGHT COMPANY)
(St. Lucie Nuclear Power Plant,)
Unit 2.))

RELATED CORRESPONDENCE

Docket No. 50-389

MOTION FOR AWARD OFFINANCIAL ASSISTANCE IN THE FORM OF ATTORNEYS
FEES AND WITNESS AND OTHER EXPENSE

Intervenors by and through their undersigned counsel motion that they be awarded reasonable attorneys fees and witness and other expense since the Atomic Safety and Licensing Board (ASLB) in its Partial Initial Decision (PID) dated Feb. 28, 1975 found the case presented by Intervenors to be a meritorious one in many aspects and because the efforts contributed by the Intervenors constituted a material contribution thereby serving a valuable public purpose to the proceeding and thereby served a valuable public purpose. Direct Examples of the beneficial effect of intervenors case as enunciated in the PID consists of the following:

1. Revelations of Intervenors at Tr. 1463 et. seq. and elsewhere resulted in substantial modification of the FES for St. Lucie Unit No. 2 as appears following TR 2353..
2. The ASLB found Intervenors witness Richard W. Schmidt most qualified as an expert in demography and related fields.

(a) Applicants Witness Philip W. Moore:

"The Board was not as persuaded by his opinions on long range trends, which tended to extrapolate on past experience only."
(PID p.43 Par 61)

(b) Staffs witness Dr. Emile A. Bernard:

"Dr. Bernard provided fact and opinion testimony. The Board gave considerable weight as to the former; however, since he had little or no experience in making regional planning studies, and was not familiar with the usual methodology used in planning and projections the Board gave less weight to his opinions on population projections." (PID p.43, Par. 61)

(c) Intervenors witness Richard W. Schmidt:

Intervenor witness Schmidt, a professional urban and transportation regional planner was found by the Board to be well qualified to assess the likelihood of population levels in the vicinity of the proposed St. Lucie 2 site." (PID p. 43 par. 61)

3. Intervenors Witness Arnold L. Sugg.

The ASLB found: "Since Witnesses Hulman and Yeh had limited backgrounds in meteorology they did not appear qualified to use an analog methodology in predicting hurricane intensity and effects. Intervenors' witness Arnold L. Sugg, on the other hand, obviously had widespread experience as far as the meteorological characteristics of hurricanes, thier wind speeds and surge heights, and his practical experience witnessing erosional effects. However, the Staff apparently did not consider the situation

postulated by Intervenor's witness Sugg (erosion taking place over a period of 4 days). Thus there remains an area of uncertainty concerning damage in a situation in which several days of erosion from a maximum probable hurricane stalled off shore followed by this hurricane moving inland and producing a wave run up to the height proposed by Hulman (22 feet).....However, since the Staff did not formally consider stalled hurricanes, and since additional protection may be required for safety related structures in the event of this type of storm, the Board directs that the Staff and Applicant to specifically address the question of stalled hurricanes and their possible safety related affects on St. Lucie No. 2 at the health and safety hearings". (PID, p. 39, par. 59)

4. And last but by no means least regarding the Intervenor's eminently qualified witness, Dr. Karl Z. Morgan(U.S. AEC retired) the ASLB stated: "The Board was impressed by the thoughtful, and expert manner in which Dr. Morgan assisted in developing the record. In essence Dr. Morgan's testimony was that while the cost benefit balance favored the construction of St. Lucie 2, there were certain actions that could be taken to minimize the costs and optimize the benefits. However, the suggestions of Dr. Morgan contemplate revision of the Commission's Regulations, and as such are outside of the jurisdiction of this Board. Nevertheless, it appears to the Board on the basis of the record to date, that Dr. Morgan's opinion on the need for updating the calculations and methodology used by the Staff with respect to the "low as practicable" guidelines, and his opinion on the use of the "dose commitment" concept are of such importance as to require further development of the record. Such development will be undertaken during the course of the health and safety hearings so that the Board may determine if need exists for the referral of these matters to the Commission." (PID P. 84, par 112)

Counsel for intervenors expended no less than an average of 15 hours per week of his time on this proceeding during the entire period from October 23, 1973 when the original petition to Intervene was filed up until the present date. He was not paid because the Intervenor's could not afford to pay legal expense although they felt that the intervention was grounded upon valid issues of very serious weight.

Witness expenses fell into four categories such as:

1. Witnesses who testified for no fee but were paid travel and sustenance. e.g. (Dr. Karl Z. Morgan)
2. Witnesses who claimed moderate fees plus minimal travel and expenses e.g. (Arnold L. Sugg)
3. Witnesses who commanded substantial fees including travel and expenses. e.g. (Peat Marwick Mitchell-Richard W. Schmidt)
4. Witness who were subpoenaed and received mileage expenses. e.g. (law enforcement officers, civil defense directors and county employees)

Itemization of Intervenor's expenses including estimated attorneys fees, witness expense and other expense will be made available to the ALAB upon its request by Counsel for Intervenor's.

The Intervenor case in the proceeding has been a meritorious one. It could have been a far better one did there not exist the vast disparity of wealth and resources available to the Applicant utility company and U.S. Government funded Nuclear Regulatory Commission compared to the meager and virtually non-existent funds of the citizens, Intervenor herein.

The Intervenor at great personal sacrifice and armed with nothing more than nerve, courage and dedication have nevertheless established on the record, the existence of serious flaws and omissions of both the Applicant and the Staff. Failure of the ALAB and Commission to award financial assistance could only result in a retarding effect and discouragement of this type of positive and valuable participation by concerned public citizens.

By failure to assist financially were the Intervenor's case has proven merit would be to violate the due process clause of the Fifth Amendment of the United States Constitution as well as the spirit and intent of the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2011 et. seq. The National Environmental Protection Act of 1969 Public Law 91-190 42 U.S.C. 4321, et. seq. and the Federal Water Pollution Control Act, as amended, Public Law 92-500 86 Stat. 816, 33 U.S.C. 1251, et. seq.

Intervenor are aware of the selection of the firm of Boasberg, Hewes, Klores and Dass, located in Washington, D.C. to conduct a study of issues raised by requests for the Commission to provide financial assistance to intervenors in NRC licensing cases and other proceedings.

This award or assignment by the Commission merely serves to point up the very serious issues raised in this motion. That is, where there is a disparity of wealth between the parties that substantially adversely affects the rights of an impecunious intervenor. It is the fervent hope of Intervenor herein that the Nuclear Regulatory Commission and ALAB recognize that:

1. Intervenor need financial assistance or the promise of it at the very outset of their case.
2. that although assistance may be deferred in actual accrual, it should be at least promised prior to an intervenor presentation with a condition precedent that the intervenor present a meritorious case constituting a material benefit to the proceeding and thereby serving a valuable public purpose, or, failing that determination by an administrator or court of competent review upon rendering an Initial Decision, no financial assistance shall be awarded as a matter of law.
3. That any intervenor whose interest is established in a case, and whose filing of a petition to intervene is timely, be eligible to participate as an intervenor if such petition on its face is.

4. That Applicants be required to list their expenditures for legal expense, witnesses and other expense and that in each of these categories, intervenors be eligible for award of up to 50% of the Applicants expenditures in those areas in any NRC licensing proceeding or on some other pro rata calculation based on expenditures of Applicant and Staff.

5. That determination of merit be within the jurisdiction of the ASLB, the ALAB, the NRC and the U.S. Federal Court Structure.

6. That this rule apply to all NRC hearings including licensing, rulemaking and others.

7. To do otherwise such as create new bureaucracy in the form of an office of Public counsel would be to deny the individual citizen his right to equal protection of the laws. Also it would constitute duplication of the duties and responsibilities of the NRC Regulatory Staff who needing a system of check and balances, none the Less share the primary responsibility of safe regulation of U.S. Nuclear Technology.

Respectfully submitted,



Martin Harold Hodder
Counsel for Intervenors