

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD



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

RESPONSE OF FLORIDA POWER & LIGHT COMPANY
TO BOARD ORDER OF MAY 9, 1979

INTRODUCTION

During the prehearing conference on May 2, 1979, Petitioner Mark P. Oncavage moved orally for leave to submit an entirely new set of 19 contentions, many with numerous subparts, to supersede those offered earlier. (Tr. 65, 87-90, 98, 108).^{*} The Board reserved ruling on the motion. (Tr. 121.)

Later, however, on May 9, 1979, the Board issued an "Order Relative to Petitioner's Contentions Submitted on May 2, 1979." In that Order, the Board noted that although both Florida Power & Light Company (FPL) and the NRC Staff had opposed the motion at the prehearing conference on the

^{*} Reference to the transcript of the Prehearing Conference will be (Tr. .). The "List of Contentions" is bound into the transcript following Tr. 122.

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grounds of untimeliness, it was not now disposing of the motion on such grounds. The Order then stated:

"In our consideration of 2.714(a)(1)(iii), relative to 'the extent to which the Petitioner's participation may reasonably be expected to assist in developing a sound record', we believe it necessary to include a review of the new contentions. Before we proceed in our review, we think it appropriate to give FP&L and the NRC Staff an opportunity to submit their positions on what the expectations are that the new contentions may contribute to a sound record. We will expect a response from FP&L ten (10) days and the Staff fifteen (15) days from the receipt of this order."

This response of FPL is submitted pursuant to that provision of the Order. In essence, the discussion below demonstrates that the proliferation of issues represented by Petitioner's new List of Contentions, coupled with his own limited knowledge and technical resources, make it more unlikely than ever that his participation would "assist in developing a sound record." This conclusion is reinforced because the new contentions indicate that, even at this late date, Petitioner appears still not to have familiarized himself with essential, available information. The response also discusses the untimeliness of the motion and demonstrates why, for that reason alone, it should be denied.

ARGUMENT

Petitioner's Ability to Contribute

The Order of May 9, 1979 asks that FPL submit to the Board its position

"on what the expectations are that the new contentions may contribute to a sound record."

In this connection the Board refers to 10 CFR § 2.714(a)(1)(iii), which requires that an evaluation of an untimely petition consider and balance, inter alia,

"The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record."

Petitioner's occupation is that of a music teacher (Tr. 105.) Since September 1976 he has been pursuing a Bachelor's degree in "environmental studies" at Florida International University. (Tr. 22, 105.) There is no indication, however, that -- either by virtue of formal training or experience -- Petitioner would be able to contribute materially to a proceeding concerning the proposed steam generator repair. In fact, based on a number of the contentions, just the opposite is likely to be true since they reveal that he apparently lacks even a basic understanding of the activity in question. As did the revised petition

of March 18, 1979, in ¶¶ 3(a), 3(b), 6, 7, 9, 10, 11, 13, 15 and 16 Petitioner again requests factual information relevant to proposed monitoring procedures, anticipated releases, alternatives, and comparative costs.* In addition, the new "List of Contentions" requests factual information about anticipated post-repair steam generator performance (¶ 14) and installation of non-nuclear components not the subject of the proposed license amendments (¶ 17).

As noted in our previous response of March 30, 1979, these general subjects have been addressed in the Steam Generator Repair Report (SGRR) and its various revisions. See, e.g., Steam Generator Repair Report, § 3.3.3, Questions 33, 34, 35 and 41, App. A, Question 1, App. B (control of airborne radioactivity and surface contamination); § 3.3.4, Question 44, App. A, Question 2, App. B (supplemental personnel monitoring requirements); Questions 30, 32, App. A, Question 6, App. D (liquid releases); § 6.5 (radiological monitoring). See also Questions 46, 47, 48, App. A, Questions 1, 2, 3, App. D. (storage of replaced

*/ FPL also notes that a number of the contentions raised by Petitioner, e.g., those embodied in ¶¶ 1, 4 and 19 concerning continued operation of the Turkey Point units prior to shutdown for the steam generator repairs, do not "raise . . . claims involving matters arising directly from the proposed change" and are, therefore, beyond the scope of the instant proceeding. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245 8 AEC 873, 875 (1974). In fact, every one of Petitioner's so-called "contentions" is defective and FPL assumes that, should it become appropriate, an opportunity would be afforded for parties to discuss these deficiencies in detail.

steam generators); Questions 2, 6, App. D. (monitoring of stored replaced steam generators); Question 30, App. A (storage and processing of primary coolant); § 3.3.6.3, Questions 30, 32, App. A (storage, processing and discharge of laundry waste water); § 7 (alternatives) and § 8 (cost-benefit analysis); Questions 20-29, App. A (post-repair steam generator performance). This information is and has been available to the public including Petitioner. The continued failure of the Petitioner to take this information into account in formulating contentions is a further indication of the unlikelihood that he would contribute to "developing a sound record."

As for technical support, Petitioner's counsel stated that he "probably will be able to present witnesses who have technical expertise and are able to address the issues presented for review before the Licensing Board." (Tr. 47.) At least Petitioner "[c]ertainly . . . intends to do this and it is his hope and expectation that he will be able to do it." (Id.) However, a mere "probability" of supplying expert witnesses is legally insufficient to demonstrate the kind of commitment necessary to find that Petitioner can contribute to the development of a sound record. Detroit Edison Company (Greenwood Energy Station), ALAB-476 7 NRC 759

(1978). See also, Long Island Lighting Company (Jamesport Nuclear Power Station), ALAB-292 2 NRC 631, 649 (1975).

There has been no adequate showing by this Petitioner. The record reflects that to date Petitioner "or one of his designates or assistants" has contacted two "national" potential witnesses, MHB Technical Associates and Robert Pollard, and two "local" ones, Walter Goldberg, a Ph.D. in biology from Florida International University, and Dr. Raymond McAllister, from the Department of Ocean Engineering at Florida Atlantic University. (See Tr. 49-52.) No evidence was presented on the nature of the contacts, the scope of any testimony relative to any contention, original or revised, or the relationship of any testimony to the steam generator repairs.

Petitioner merely suggested this list of "individuals . . . may grow" and that "contacts have been made in each case and explorations made as to whether these individuals could assist in developing this hearing record." (Tr. 51.) How or when the list would grow was not explained. Nor is there any indication that the "explorations" to date with potential witnesses included a review of the revised contentions. Indeed, the record suggests the contrary. (Tr. 65.) Moreover, there has been no showing that any of the potential witnesses has ever reviewed the SGRR, or is

in any way familiar with the Turkey Point plant or the details of the proposed activity for which the license amendments are sought by FPL.

Of those witnesses contacted, only two are apparently "firm," Drs. Goldberg and McAllister. (Tr. 67.) These men, however, do not possess qualifications or expertise in areas of discipline appropriate to addressing the new contentions. Dr. Goldberg has a Ph.D. in oceanography and "would address the impact on biota of radionuclides on marine organisms and marine environments." (Tr. 50.) Dr. McAllister is a hydrologist and "has expertise in the area of aquifer permeability, the impact of radiation release, or hurricane or flood on the water table and water systems in this region." (Tr. 51.) The new contentions do not pertain to matters to be addressed by witnesses with the described expertise. But more than that, how the expertise of these witnesses relates to the proposed steam generator repairs remains unstated.

Moreover, additional statements, made through Petitioner's counsel, indicate that Petitioner will not make the requisite commitment for experts necessary for the development of a sound record on the revised contentions. Indeed, Petitioner made it clear that he might not present a case with any

witnesses. Through his counsel, he stated that he felt that "mere submission on the part of an intervenor of witnesses shouldn't be a criteria for granting status to intervene." (Tr. 67.) Rather, an intervenor could present his case through cross-examination and discovery, that is, it wouldn't have to be an affirmative case, but it could be an exploration of the areas considered." (Tr. 68 (emphasis added).) This approach, of course, would go far toward eliminating the burden now facing the Petitioner under NRC rules. It also raises serious doubts about the quality of any possible contribution by Petitioner to the development of a sound record. Further, Petitioner has also expressly rejected the NRC Staff's suggestion that a subsequent submission be made by him on the commitments which he has or may receive from prospective witnesses and the substance of their testimony. (Tr. 59-60.) Petitioner made it clear that no more information would be provided to the Board:

"We don't feel that the Board needs to delay their consideration of this case after today. We feel that what is going to be presented here this morning is a sufficient basis for a decision of this Board, no matter where the chips fall" (Tr. 62.)

"[W]e have satisfied any reasonable requirement that might be exacted from us as to the nature and extent of expert witness testimony that we would provide at a forthcoming hearing." (Tr. 68.)

"But I think we have done enough on that point." (Tr. 69.)

Timeliness

The matter of timeliness is an important one -- particularly in view of the history of this proceeding -- and should not be overlooked.

As has been demonstrated numerous times already, the Petitioner's request for a hearing came over one year late, and absent any showing of good cause for untimeliness. See, e.g., Licensee's Response to Untimely Request for Hearing of Mark P. Oncavage (Mar. 9, 1979); NRC Staff Response for Leave to Intervene Filed by Mark P. Oncavage (Mar. 1, 1979). This deficiency has been compounded by an untimely motion for leave to amend, with no attempt by Petitioner to excuse that tardiness as required by 10 CFR § 2.714(a)(3). Petitioner's counsel has only stated that:

"Last night, quite late, because as I said earlier I just returned from Washington, D. C. where I filed a case in the U. S. Supreme Court, I went over these contentions with Mr. Oncavage. In a brief period of time I suggested re-writing them, and we have some contentions rewritten here which I wish now to read into the record of this hearing. These are the contentions that Mr. Oncavage seeks to raise in this proceeding. With the Board's permission, I would like to read them now."

(Tr. 65.)

FPL respectfully submits that the requirements of 2.714(a)(3) have not been met, and that the motion for leave to amend should be denied for this reason alone.

CONCLUSION

As demonstrated above, and assuming for the sake of argument that the Board were to grant the instant motion and accept some of the newly submitted contentions, there has been no showing whatever that Mr. Oncavage's participation would likely "assist in developing a sound record." Petitioner is unable to demonstrate how he, or expert witnesses presented by him, could develop any record which involves the revised contentions. Commitments by experts to assist Petitioner are tenuous at best, and their areas of expertise do not coincide with matters which Petitioner calls "contentions" and about which he wishes to litigate. Petitioner intends to make his case, if at all, by "cross-examination."

Further, as noted by the Board in the Order of May 9, 1979, "[T]he board is faced with an evaluation of a late petition." In addition, the Board has now been presented with an untimely motion for leave to amend that late petition, with no attempt by Petitioner to excuse that untimeliness as required by 10 CFR § 2.714(a)(3).

We respectfully submit that the requirements of 2.714(a)(3) have not been met, and that the motion for leave to amend should be denied.

We also submit that the Board, in its evaluation of the pending untimely petition, must find that the factor described in 10 CFR § 2.714(a)(1)(iii) weighs against Petitioner.

Respectfully submitted,

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Dated: May 21, 1979

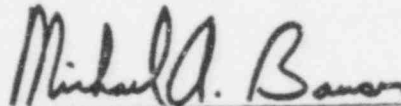
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