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

LICENSEE'S RESPONSE TO UNTIMELY REQUEST FOR HEARING OF MARK P. ONCAVAGE

INTRODUCTION

On December 13, 1977, the Nuclear Regulatory Commission (NRC) published in the Federal Register a "Notice of Proposed Issuance of Amendments to Facility Operating Licenses" concerning a repair program proposed by Florida Power & Light Company (Licensee) for the steam generators at Turkey Point Nuclear Generating Units Nos. 3 and 4 (Turkey Point). The notice offered an opportunity for "any person whose interest may be affected" to "file a request for a hearing in the form of a petition for leave to intervene", and established January 13, 1978 as the latest date for filing such a petition. 42 Fed. Reg. 62569.

No request for a hearing was filed on or before January 13, 1978.

More than one year later, on February 9, 1979, Mark P. Oncavage wrote a letter to the Nuclear Regulatory Commission

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which requests "a full hearing" on Licensee's proposed repairs to the steam generators at Turkey Point.*/

On February 27, 1979, an order was entered which established this Licensing Board "to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered".

Licensee submits that the request for hearing by Mr. Oncavage should be denied because it is untimely, fails to make a substantial showing of good cause for failure to file on time, fails to comply as to form and content with basic requirements imposed by the Commission's Rules for such requests, and fails to demonstrate any facts to support his standing to intervene. Moreover, granting a request for a hearing at this late date would severely prejudice Licensee. Each of these matters is fully addressed in this response.

Licensee further submits that the petition and/or request should be dismissed forthwith by this Board upon the review of the letters of February 9, 1979 and February 22, 1979, the NRC Staff Response dated March 1, 1979, and this Response of Licensee. The Board is fully empowered to take such action pursuant to 10 CFR §§1.11, 2.717 and 2.718, and no further procedures or filings are

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*/ Licensee was not served by Mr. Oncavage with a copy of the letter of February 9, 1979, or with a copy of a subsequent letter from Mr. Oncavage to the NRC dated February 22, 1979, which requests that his February 9, 1979 letter "be considered a petition for leave to intervene". Both were transmitted to counsel for the Licensee March 1, 1979 by the Secretary of the Commission. The time within which this response must be filed is to be calculated from the date of service by the Office of the Secretary. 44 Fed. Reg. 4459 (1979).

required as a condition precedent to such action.*/

I. TIMELINESS

The February 9, 1979 request for hearing of Mark P. Oncavage is patently untimely, since it was not filed until almost thirteen (13) months after the January 13, 1978 deadline specified in the Federal Register notice. Rule 2.714(a) in effect in 1977 provides in material part:**/

> "Non-timely filings will not be entertained absent a determination ... that the petitioner has made a substantial showing of good cause for failure to file on time ...".

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*/ The only situation where this may not be so is in a proceeding relating to the issuance of a construction permit or an operating license. 10 CFR §2.751a. That section directs that a special prehearing conference be held in such proceedings, and 10 CFR §2.714(a)(3) permits petitions to intervene to be amended fifteen days prior to the holding of that special prehearing conference, or the first prehearing conference where no special prehearing conference is held. However, neither these nor any other provisions of the regulations require that a prehearing conference be held in connection with a proceeding concerning the issuance of an amendment to an operating license. See, 10 CFR §2.752. We do not interpret footnote 3 at page 4 in the Staff's Response to suggest otherwise.

**/ With respect to lateness, the provisions of 10 CFR §2.714 before its recent amendment are applicable. Northern States Power Co. (Monticello Nuclear Generating Plant, Unit 1) CLI-73-31, 5 AEC 25 (1972). (Hereinafter Monticello.) However, because that amendment "codifies the Commission's decision" in Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975) (see 43 Fed. Reg. 17,798, 17,799 (1978)), the legal factors pertinent to evaluating the request as a result of its lateness are the same under either the amendment, 10 CFR §2.714(a)(1)(i) or the prior regulation, 10 CFR §2.714(a).

With respect to "good cause", the letter of February 9, 1979 only states:

> "I realize this request for a hearing falls after the deadline of January 13, 1978, as taken from the Federal Register (Dec. 13, 1977, Vol. 42, No. 239, Docket Nos. 50-250 and 50-251). However, this same entry in the Federal Register directs interested parties to view Florida Power & Light Company's letter of September 20, 1977 and other material at the 'Environmental and Urban Affairs Library' at Florida International University, Miami, Florida.
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> Unfortunately for the residents of South Florida, the licensee's letter of September 20, 1977 arrived at the Environmental and Urban Affairs Library on January 22, 1979, approximately thirteen months after the expiration date for filing for a hearing.
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> I feel that the failure of the licensee to provide information at the time specified in the Federal Register constitutes 'good cause' as required by 10 CFR art. 2.714, a, 1, i."

The letter of February 22, 1979 offers the same excuse for the lateness of the February 9 request.

The particular language in the Federal Register notice is:

> "For further details pertinent to these matters, see the Licensee's letter dated September 20, 1977, along with other material that may be submitted by the Licensee in support of this action, all of which are or will be available for public inspection at the NRC's public document room, 1717 H Street, N. W., Washington, D. C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199."

In his letters of February 9 and February 22, 1979, Mr. Oncavage does not state that he either (1) read the December 13, 1977 Federal Register notice prior to January 13, 1978, or (2) made any attempt to obtain the Licensee's letter of September 20, 1977, from the local NRC Public Document Room prior to January 13, 1978.

Equally significant is the fact that Mr. Oncavage does not make any attempt to show why the September 20, 1977 letter or information contained in it was necessary in order to seek a hearing, or why the requester could not have asked for the letter earlier, from either the Licensee or the Commission, and then sought additional time as necessary.*/

If Mr. Oncavage had sought to inspect the letter of September 20, 1977 in the Local Public Document Room prior to January 13, 1978, and if it had been determined at that time that the letter was not available, it is clear that the librarian would have readily obtained a copy.**/

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*/ A copy of the letter of September 20, 1977 is attached as an exhibit to this Response. The NRC Staff response served March 1, 1979 incorrectly states that Mr. Oncavage has asserted "... that the September 20, 1977 license amendment application, and supportive material, were not available for inspection ...". (Emphasis supplied). However, both the letter of February 9, 1979 and the letter of February 22, 1979 only claim that the September 20, 1977 letter was not in the Local Public Document Room. The Affidavit of G. D. Whittier, attached as an exhibit to this Response, establishes that the Local Public Document Room had timely received and on file the Notice of December 13, 1977, as well as the Steam Generator Repair Report and all subsequent Amendments.

**/ See Affidavit of G. D. Whittier, attached as an exhibit to this Response.

Consequently, the letters of February 9, 1979 and February 22, 1979 fail to establish good cause for the untimely request for hearing.

Whether late intervention should be allowed is dependent upon a balancing of all of the factors set forth in 10 CFR §2.714(a).

Having failed to establish good cause for filing late, the requester here is under a substantial burden to justify his tardiness with reference to the other four factors; a burden which is considerably greater than when a latecomer has a good excuse. See, Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). However, the letters of February 9, 1979 and February 22, 1979 make no attempt to even address these factors.

For these reasons alone, the request should be denied.

II. BASIC REQUIREMENTS AS TO CONTENT AND FORMAT

The letter of February 9, 1979 wholly fails to comply with the basic requirements of 10 CFR §2.714 in effect at the time the Federal Register notice was published December 13, 1977.*/ It is not under oath or affirmation; it is not accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the requester wishes to intervene and/or on which he bases his request for a hearing; it fails

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*/ With respect to these basic requirements, the provisions of Rule 2.714 before its recent amendment are again applicable. Monticello, 5 AEC 25.

to set 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; and it fails to set forth the interest of the Petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the Petitioner, including the facts and reasons why he should be permitted to intervene, with particular reference to the factors set forth in §2.714(d) which include (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest.

For this reason also, the request should be denied.

III. STANDING TO INTERVENE

In addition to the foregoing deficiencies, the letter of February 9, 1979 fails to contain any facts to show how or that Mr. Oncavage has standing to intervene and request a hearing, as a matter of right.

The reference in the request to public recreation areas near the plant which allegedly "would be highly susceptible to damage by liquid contaminants", or the suggestion that urban centers downwind from the plant would allegedly make "... large populations susceptible to accidental release of airborne contaminants," or that

"... further research may prevent a tragic accident to the South Florida community" asserts no specific injury to Mr. Oncavage sufficiently particularized to give him standing to intervene as of right. Portland General Electric Company (Pebble Springs Nuclear Plant Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). Similarly, the "... request that decommissioning be studied as an economic alternative" does not come within the zone of interest protected by the Atomic Energy Act, and does not afford Mr. Oncavage standing to intervene as a matter of right. See, Id. at 614.

Intervention in NRC domestic licensing proceedings as a matter of discretion requires a showing that if such participation is allowed it would be likely to produce a valuable contribution to the decision-making process. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976); accord, Pebble Springs, supra, CLI-76-27, 4 NRC at 612, 617; Nuclear Engineering Company (Sheffield Waste Disposal Site, ALAB-473, 7 NRC 737 (May 3, 1978).

The Appeal Board in Watts Bar specifically addressed the question whether discretionary intervention should be granted where the grant would trigger a hearing and held:

> "Certainly, before a hearing is triggered at the instance of one who has not alleged any cognizable personal interest in the operation of the facility, there should be cause to believe that some discernible public interest will be served by the hearing. If the petitioner is unequipped to offer anything of importance bearing upon plant operation, it is hard to see what public interest conceivably might be furthered by nonetheless commencing a hearing at his or her behest."

Tennessee Valley Authority, (Watts Bar, Units 1 and 2), ALAB-413, 4 NRC 1418, 1422 (1977). In this case there are particularly strong reasons why discretionary intervention should not be allowed at this late date, which would serve to commence a hearing, in the absence of some clear indication that Mr. Oncavage has a substantial contribution to make on a significant issue appropriate for consideration. The letters of February 9, 1979 and February 22, 1979 wholly fail to meet this test, and contain no indication that the requester is prepared to or would be able to contribute anything at all to the process. In fact, it would appear that Mr. Oncavage is totally unaware of the substantial review already conducted and almost completed by the NRC Staff.

IV. DELAY

Since 1977, FPL has been developing the capability to make the proposed repair. The date of initiation of the repair will depend upon FPL's analysis of the extent of degradation of the existing steam generators, maintenance schedules and unplanned repair outages, refueling schedules, the availability of alternate oil fired generation, and other factors.*/ However, in order to maintain system reliability and flexibility of operations, FPL considers it essential to be in a position to make the repairs at the earliest possible date. As a result of close coordination with the NRC staff and work with the supplier, it is now expected that completion of the NRC licensing review and of fabrication of the required

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*/ See Affidavit of H. D. Mantz, attached as an exhibit to this Response.

components will make it possible to begin the repairs, if required, in June 1979.

Initiating a hearing at this late date will disrupt this careful planning and effort and could deny Licensee the ability to commence repairs without delay. Any such delay would result in increased costs to Licensee and the potential for decreased system reliability.

CONCLUSION

Under these circumstances, where a petitioner fails to establish any compelling reasons why its untimely petition should be granted, especially when weighted against the delay that would probably result from a grant of intervention, and a fair reading of the petition which has been filed fails to suggest that petitioner has a valuable contribution to make to the decision making process, the petition should be denied. Washington Public Power Supply System (Nuclear Projects No. 3 and No. 5), 5 NRC 650, 655 (1977). Such a result is even more clearly compelled where, as here, the request fails to demonstrate standing to intervene.

Respectfully submitted,

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Dated: March 9, 1979