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November 16, 1989
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'89 NOV 16 P3:53

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}	Docket No. 50-250-OLA-4 50-251-OLA-4
FLORIDA POWER AND LIGHT COMPANY		
(Turkey Point Plant, Units 3 and 4)		

NRC STAFF'S RESPONSE TO PETITION
FOR LEAVE TO INTERVENE OF THOMAS J. SAPORITO, JR.
AND THE NUCLEAR ENERGY ACCOUNTABILITY PROJECT

I. INTRODUCTION

On October 27, 1989, the Staff of the Nuclear Regulatory Commission (Staff) was served by the Office of the Secretary of the Commission with a document entitled "Petition For Leave To Intervene" [hereinafter petition]. This document requests leave to intervene in the above-captioned proceeding on behalf of Mr. Thomas J. Saporito, Jr. and the Nuclear Energy Accountability Project (NEAP) [hereinafter Petitioners]. ^{1/} For the reasons set forth below, the Staff submits that this petition

1/ This document was not served by Petitioners either in accordance with the Federal Register notice which provided an opportunity to file petitions for leave to intervene with respect to this license amendment, or with the Commission's regulations. See, "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing," 53 Fed. Reg. 40981 (October 19, 1988). The Staff received this document from the Office of the Secretary of the Commission. Therefore, the Staff has computed its time for responding to this document from the date it was served by the Secretary.

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should be denied on the grounds that the Petitioners lack the requisite interest to intervene in this proceeding pursuant to 10 C.F.R. § 2.714 of the Commission's regulations and that, even if the Petitioners were found to have demonstrated the requisite interest, the petition is untimely. A balancing of the five factors governing late intervention weighs against the admission of Petitioners as intervenors in this proceeding.

II. BACKGROUND

On October 19, 1988, the Commission published a Notice of Consideration of Issuance of Amendment and a Proposed No Significant Hazards Determination in the Federal Register with respect to proposed amendments to the technical specifications for Turkey Point Units 3 and 4. 53 Fed. Reg. 40988 (October 19, 1988). The proposed amendments concerned revision of the technical specifications for both Turkey Point Units to reflect changes in the pressure/temperature limits for the reactor coolant system and the pressurizer. Id. A timely petition for leave to intervene in this matter was filed by the Center for Nuclear Responsibility and Ms. Joette Lorion.

In accordance with the Commission's regulations, since the proposed amendments did not involve a significant hazards consideration, the Staff was able to issue the amendments prior to any hearing. See, 10 C.F.R. § 50.91(a)(4). The Staff issued the amendments on January 10, 1989, and published a Notice of Issuance in the Federal Register. "Florida Power and Light Co.; Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration," 54 Fed. Reg. 2247 (January 19, 1989). A safety evaluation setting forth the Staff's basis for accepting the proposed changes as well as a final no

significant hazards consideration determination accompanied the amendments.

Ms. Lorion and the Center for Nuclear Responsibility submitted three proposed contentions on February 17, 1989. "Petitioners' Amended Request for Hearing and Petition for Leave to Intervene." A prehearing conference was held on March 21, 1989, to discuss the petitions of Ms. Lorion and the Center for Nuclear Responsibility and to hear arguments with respect to the adequacy of Petitioners' proposed contentions. Mr. Saporito attended that prehearing conference with Ms. Lorion. See, Tr. 5.

Neither the Staff nor the Licensee objected to Ms. Lorion's standing to intervene, or to the standing of the Center for Nuclear Responsibility. "NRC Staff's Response to Request for Hearing and Petition for Leave to Intervene of the Center for Nuclear Responsibility and Joette Lorion" (December 7, 1988); "Licensee's Response to Request for a Hearing and Petition for Leave to Intervene with Respect to License Amendments for Pressure/Temperature Limits" (December 2, 1988).

On June 8, 1989, the Atomic Safety and Licensing Board (Licensing Board) designated to preside over this proceeding found that both the Center for Nuclear Responsibility and Ms. Lorion had established the requisite interest to intervene in this proceeding, and that those Petitioners had set forth two contentions which satisfied the requirements of 10 C.F.R. § 2.714(b) of the Commission's regulations. Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4) LBP-89-15, 29 NRC 493 (1989). Discovery commenced, and once discovery was completed Licensee filed a motion for summary disposition to which the Staff and Intervenors have responded. "Response of NRC Staff in Support of Licensee's Motion for Summary Disposition" (October 19, 1989);

"Intervenors' Response to Licensee's Motion for Summary Disposition of Intervenors' Contentions" (October 19, 1989). Licensee has filed a reply to those responses, as permitted in the Licensing Board's order of October 3, 1989. The hearing, if there is to be one, is currently scheduled to commence on January 10, 1990.

On October 27, 1989, the Staff was served with the untimely petition which is the subject of this response. As discussed further below, the petition should be denied. ^{2/}

III. ARGUMENT

A. Legal Standards Governing Intervention

Any person seeking intervention in Commission proceedings must satisfy the requirements of 10 C.F.R. § 2.714 of the Commission's regulations. Any petition for leave to intervene must set forth with particularity the petitioner's interest in the proceeding, how that interest may be affected by the outcome of the proceeding, including the reasons why petitioner should be permitted to intervene, and the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 C.F.R. § 2.714(a)(2). The burden is on the petitioner to satisfy these requirements. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331

^{2/} It is unclear to the Staff from the petition whether Mr. Saporito is attempting to intervene on his own behalf as well as on behalf of NEAP, or solely on behalf of the organization. The Staff's response addresses both Mr. Saporito's individual interest, standing and timeliness, and that of NEAP.

(1983). The petition must also address the criteria of 10 C.F.R.

§ 2.714(d). These criteria are:

- (1) The nature of the petitioner's right under the 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.

In addition, the petitioner must set forth at least one valid contention. 10 C.F.R. § 2.714(b).

Since the petition in question here is a late-filed petition, the Petitioners must also address the factors of 10 C.F.R. § 2.714(a)(1)(i-v). For Petitioners to be successful in their attempt to intervene, a balancing of the factors of 10 C.F.R. § 2.714(a)(1) must be found by the Licensing Board to weigh in Petitioners' favor. These factors are: (i) Good cause, if any, for failure to file on time; (ii) the extent to which Petitioners interests can be represented elsewhere; (iii) the extent to which Petitioner's participation will contribute to the development of a sound record; (iv) the extent to which Petitioner's interests are represented by those of another party; and (v) whether Petitioner's participation will broaden the issues or delay the proceeding. 10 C.F.R. § 2.714(a)(1)(i-v). There is a large body of Commission case law which interprets all of the intervention requirements. The precedents which apply to the circumstances presented by the petition in question here are discussed below.

B. Interest and Standing

The Commission has held that in order to determine whether a petitioner has established a sufficient interest to intervene in Commission proceedings, judicial concepts of standing will be applied. Portland General Electric Company (Pebble Springs Nuclear Plant), CLI-76-27, 4 NRC 610, 613 (1976); CLI-83-25, supra, 18 NRC at 327, 332. Pursuant to these concepts one must show an injury in fact and that the injury is to an interest arguably within the zone of interest protected by the statute governing the proceeding. Id. In order for a petitioner's interest to be sufficient, it must arguably fall within the zone of interest protected by the Atomic Energy Act or the National Environmental Policy Act. Niagara Mohawk Power Corporation (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 215 (1983). A petitioner must have a real stake in the outcome of the proceeding. While the stake does not have to be a substantial one, it must be genuine and direct. Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 448 (1979). The directness of a petitioner's connection with a facility bears on the sufficiency of that petitioner's allegations of injury in fact. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976).

A petitioner's residence near a facility has often been held to be sufficient to grant that petitioner standing to intervene in Commission proceedings. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). The Commission has held that residence within as much as 50 miles of the plant is sufficient for a petitioner to gain standing. Cleveland Electric

Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 178-179 (1981). However, occasional visits to the area have been held to be insufficient to establish an interest which might be affected by the outcome of the proceeding. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336-338 (1979).

An organization may gain standing to intervene in Commission proceedings in one of two ways. The organization must show either that there is an injury in fact which affects the organization, or that there is an injury in fact to a member or members of the organization. Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-647 (1979). In order for the organization to gain standing through its members, the petitioning organization must provide the name and address of at least one member whose interest may be affected by the proceeding and who wishes to be represented by the organization. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978). In addition, where the organization is being represented by one of its members, the member must demonstrate the organization's authorization to represent it. Id. A petition is insufficient if the petitioning organization does not demonstrate that it is authorized to represent the members it lists as being affected. Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 444 (1979). See also, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-397 (1979). This authorization should be provided by an affidavit from the listed member or members. Finally, neither an organization nor an individual may

assert the interests of third parties. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977).

Neither Mr. Saporito nor NEAP has established the requisite interest to gain standing to intervene in this license amendment proceeding. Mr. Saporito alleges that he "works in and around Miami" but does not state specifically where he is employed. Petition at 3. He also alleges that he is the exclusive director of NEAP, whose place of business is in Jupiter, Florida, approximately 100 miles from Miami. He makes no attempt to demonstrate that his normal, everyday base of activities is located in the vicinity of the Turkey Point plant. He does not indicate how much of his time is actually spent in the Miami area. He does not allege that he resides near the plant. In fact, he resides in Jupiter, Florida. Based on the information provided in this Petition it would appear that Mr. Saporito is an occasional visitor to the Miami area. Occasional visits to the Miami area would not be sufficient to demonstrate that his health and safety would be affected by the amendment in question here. Therefore, he has failed to establish an interest which could be affected by the outcome of this licensing action.

NEAP attempts to gain standing through representation of its members. Petition at 1-3. The petition gives the names and addresses of eight members who, NEAP asserts, live and work within 50 miles of the Turkey Point facility. Petition at 1-3. No statements are provided by the Petitioner from these members setting forth their interest or authorizing NEAP to represent them in this proceeding.

Mr. Saporito does not claim that these members have authorized him to represent them on behalf of NEAP. Rather, he claims that he is the "appropriate" person to represent their interests, as well as the

interests of others in the same situation as the NEAP members. Petition at 3. The Commission's regulations and case law are clear that Mr. Saporito is not able to represent any other interests except his own and those of the organization he represents, if that organization has authorized him to do so. See, 10 C.F.R. § 2.713; ALAB-413, supra, 5 NRC at 1421. On its face, this petition does not provide enough information about the NEAP members to allow this Licensing Board to find that NEAP has standing in this proceeding through the interests of its members. Since neither Mr. Saporito nor NEAP has established an interest which might be affected by this licensing action, this petition should be denied for lack of Petitioners' standing to intervene in this proceeding.

C. Timeliness of the Petition

This petition is untimely. The time for filing petitions for leave to intervene expired almost a year before this petition was filed. Therefore, Petitioners are required to demonstrate that a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1)(i-v) weighs in favor of Petitioners' admission as parties to this proceeding. For the reasons set forth below this petition fails to show that a balancing of these factors weighs in Petitioners' favor.

1. Good cause, if any, for failure to file on time.

The first, and the most important, of the five factors governing late intervention is Petitioners' good cause, if any, for Petitioners' failure to file on time. If Petitioners fail to establish good cause for their late filing, then they must make a compelling showing with respect to the remaining four factors. Washington Public Power Supply System, et al.

(WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1173 (1983); Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725 (1982). The weight of the burden on Petitioners with respect to the other factors will also depend on the posture of the proceeding at the time of the late filing. ALAB-747, supra 16 NRC at 1173. If Petitioners cannot demonstrate good cause for their late filing of this petition, the burden on Petitioners should be a very heavy one, where, as here, the proceeding is well advanced.

Mr. Saporito alleges that he, presumably as an individual, could not have filed during the proper time for filing of petitions for leave to intervene because he was an employee of Florida Power and Light Co. at the Turkey Point facility at that time. Petition at 20. This argument is without merit. There is both statutory and regulatory protection for utility employees who wish to participate in NRC activities. See Energy Reorganization Act of 1974, § 210 (42 U.S.C. § 5851 (1982); 10 C.F.R. § 50.7. Therefore, while he might have felt awkward personally filing such a petition, there was no reason that he could not have done so. Therefore, this argument does not represent good cause for his failure to file on time. In addition, Mr. Saporito's employment was terminated shortly after November of 1988, yet he still did not attempt to file a petition for leave to intervene. He was present at the prehearing conference in March of 1989, and did not attempt to petition the Licensing Board at that time for leave to intervene. In his numerous filings before the Board, Mr. Saporito has never attempted to comply with the Commission's intervention regulations. See "Statement for Reconsideration," (April 6, 1989); "Amended Petition For A Limited Appearance Statement," (August 30, 1989); "Notice of Appearance," (August 30, 1989);

"Request for Contention Reconsideration," (September 7, 1989); "Relevant Information For Consideration," (October 14, 1989). This factor should weigh heavily against Mr. Saporito's admission as an individual intervenor in this proceeding.

Mr. Saporito alleges as good cause for NEAP's failure to file on time the fact that the organization was not incorporated under the laws of the State of Florida at the time the petitions were due, and that Petitioners were under the impression that one of their contentions, concerning the copper content used in the P/T limits calculations, would be litigated by another admitted intervenor. Petition at 20-22. These assertions also do not establish good cause for Petitioners' late filing of this petition.

The fact that NEAP was not incorporated under Florida law at the time the Petitions for Leave to Intervene were due does not constitute good cause for late filing. There is no requirement that an organization be incorporated under the laws of any state in order to gain standing to intervene in Commission proceedings. Licensing Boards do not inquire into the corporate status of the organizations which petition for intervention. Regardless of whether NEAP was incorporated or not, it should have filed its Petition for Leave to Intervene at the time such petitions were due.

In addition, the Appeal Board has previously held that lack of organizational existence, in itself, is not sufficient to permit late intervention. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122 (1979). As the Appeal Board stated:

If newly acquired standing (or organizational existence) were sufficient of itself to justify permitting belated intervention, the necessary consequence would be that parties to the proceeding would never be determined with certainty until the

final curtain fell. Assuredly, no adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap. [9 NRC at 124; (emphasis added).]

Petitioners' assertion that they relied on another intervenor to litigate a contention in which they were interested also does not constitute good cause for late intervention. The Commission has consistently held that a late petitioner's reliance on another entity to represent its interests does not give that petitioner good cause for late filing. Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 795-798 (1977); Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642 (1977). See also, Duquesne Light Company (Beaver Valley Power Station, Unit 2) ALAB-208, 7 AEC 959, 965-967 (1974). By not filing a timely petition to intervene on their own behalf, Petitioners assumed the risk that the admitted Intervenor's actions in the proceeding would not fulfill their expectations. See, ALAB-444 supra, 6 NRC at 795. Such a situation does not give them good cause for late intervention. See, River Bend, supra 6 NRC at 796.

In summary, none of the arguments Petitioners have put forth in support of their claim that they have good cause for filing this late petition have merit. Therefore, they have not established good cause. This factor weighs heavily against the admission of Petitioners as intervenors in this proceeding.

2. The extent to which Petitioners' interests can be represented elsewhere.

Petitioners allege that with respect to their proposed contention concerning copper content, the Staff would not address the issue in their decision on Petitioners 2.206 petition since the issue related to an ongoing hearing. Petitioners also allege that the admitted Intervenors have now withdrawn this contention from the hearing. Therefore, Petitioners argue, there is no other means by which Petitioners' interest could be represented. Petition at 21. The Staff agrees that this factor weighs in Petitioners' favor. ^{3/}

3. The extent to which Petitioners' participation will contribute to the development of a sound record.

In order to demonstrate an ability to contribute to the development of a sound record, a petitioner must show some special expertise on the subject petitioner wishes to raise. Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704 16 NRC 1725, 1730 (1982). In order to demonstrate an ability to contribute to the development of a sound record, Petitioners must set forth with as much particularity as possible the precise issues the Petitioner wishes to cover. Petitioners should identify their prospective witnesses and summarize their proposed testimony. Id. Sufficient detail with respect to that proposed testimony should be provided so that the Licensing Board

^{3/} Even though Petitioners could file another 2.206 petition concerning the copper content issue, the Appeal Board has held that the ability to file petitions pursuant to 10 C.F.R. § 2.206 might not be an adequate substitute for participation in an adjudicatory hearing. See, ALAB-747, supra, 18 NRC at 1175-1176.

could make a reasoned conclusion on the likely worth of the testimony with respect to one or more of the petitioner's proposed contentions.

Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1181 (1983). A general statement of a petitioner's ability or resources will not be sufficient. Grand Gulf, supra, 16 NRC at 1730.

In support of their argument that they can contribute to a sound record, Petitioners assert that Mr. Saporito could help the Licensing Board understand the issues involved in this license amendment proceeding because of his experience as an instrument technician. Petition at 22. Petitioners assert that Mr. Saporito's experience has given him a broad understanding of nuclear plant operations and technical issues. Id. Petitioners do not make any attempt to demonstrate how that experience gives Mr. Saporito as an individual or NEAP as an organization any particular expertise concerning metallurgical and fracture toughness issues surrounding changing pressure/temperature limits. An examination of the issues Petitioners attempt to raise in this petition demonstrates that they have nothing to add to the litigation of the issues already in the proceeding, and that they have no understanding of what has already taken place in the proceeding. Therefore, Petitioners have not demonstrated any ability to contribute to the development of a sound record in this proceeding.

Petitioners' first contention concerns the copper content used by the Licensee in the calculation of pressure/temperature limits. Petition at 4-6, 10-12. This contention was withdrawn by the admitted Intervenors. Letter from Intervenors to the Licensing Board dated September 8, 1989. Petitioners merely state that the Licensee should have used Regulatory

Guide 1.99 Rev. 1 instead of Regulatory Guide 1.99 Rev. 2 because it requires the use of the copper content in the vessel weld metals. Petition at 10-12. They also claim that the Licensee used .26 copper instead of a higher copper content. This information was already provided, at least in part, by the admitted Intervenor as a basis for their proposed Contention 3 which was subsequently admitted by the Licensing Board. ^{4/} Petitioners' discussion adds nothing to the original contention and does not demonstrate that they have any special expertise in this area. Petitioners do not assert that they intend to call any witnesses with respect to this issue.

Petitioners' second contention is nothing more than a repetition of the contention which is already admitted in this proceeding. Petition at 6-7, 12-15. Their basis for this contention is, in large part, a repetition of the reasoning used by the admitted Intervenor in arguing for the admission of Intervenor's Contention 2. The Petitioners have not demonstrated that they have any special expertise in the conduct of an integrated surveillance program, and how that program should be administered. They have not indicated that NEAP will present any witnesses on this subject, nor have they summarized their testimony if they intend to call such witnesses.

Petitioners' third contention concerns Licensee's compliance with 10 C.F.R. Part 50, Appendix G, Section IV.B of the Commission's

^{4/} Petitioners have previously asked the Licensing Board to reconsider its admission of this very same contention on the ground that copper content was not used in the calculation of the revised pressure/temperature limits. See, "Request for Contention Reconsideration" at 8 (September 7, 1989). Petitioners do not attempt to address the apparent reversal of this previous position.

regulations. Petition at 7, 15-16. Petitioners make no attempt to show how this particular section of Appendix G relates to the calculation of revised pressure/temperature limits. Appendix G, Section IV.B merely requires that vessels whose RT_{NDT} exceeds 200 degrees must be designed to permit annealing of the vessel. The regulation makes no mention of any need to justify continued operation or to perform a plant-specific analysis. The regulation does not relate to the calculation of revised pressure/temperature limits, which is the subject of this license amendment proceeding. Petitioners' attempt to raise this issue demonstrates their lack of understanding of the Commission's regulations. This lack of understanding certainly calls into question their ability to contribute to the development of a sound record in this proceeding.

Contention 4 concerns the issue of reactor vessel upper shelf energy. Petition at 8, 16-19. The Licensing Board has already excluded this issue from the proceeding. LBP-89-15, supra, 29 NRC at 499-500, 507. This is yet another example of Petitioners' inability to comprehend the issues which fall within the scope of the instant proceeding.

Petitioners' fifth contention states that load-history dependent damage accumulation and strain rate have not been taken into account in Licensee's calculations. Petition at 9, 19-20. As basis for this contention Petitioners cite information provided to the admitted Intervenor by Dr. George Sih which was submitted by the admitted Intervenor in response to Licensee's Motion for Summary Disposition. Letter to Joette Lorion from George Sih dated October 18, 1989. "Intervenor's Response to Licensee's Motion for Summary Disposition of Intervenor's Contentions," at Attachment A. Petitioners do not assert that they intend to call Dr. Sih as a witness, nor do they provide any

summary of his proposed testimony. Dr. Sih's information is already before the Licensing Board, and there is no indication on the face of this petition that Petitioners would be able to bring any special expertise to this issue.

Petitioners have not made any attempt to seriously address their ability to contribute to the development of a sound record in this proceeding. An examination of the issues they raise reveals that they have nothing in the way of special expertise to add to this proceeding. Therefore, this factor should weigh heavily against their admission as intervenors in this proceeding.

4. The extent to which Petitioners' interests are represented by those of another party.

Petitioners allege that their interests would not be represented by existing parties because the Intervenors are only litigating Contention 2. While it is true that Intervenors are only litigating one contention, this factor should, nevertheless, weigh against the Petitioners. For the most part, Petitioners' interests are indeed being represented by an existing party. The issues raised in Petitioners' Contentions 2 and 5, the only contentions beside the contention concerning copper content which might fall within the scope of this proceeding, are already being addressed by Intervenors. In fact, the bases for these contentions were taken from documents filed by the admitted Intervenors. With respect to the copper content contention, in light of Petitioners' previous position against the admission of this contention, it appears that their interests were in fact represented by Intervenors' withdrawal of the contention. Therefore, this

factor should weigh against Petitioners admission as a party to this proceeding.

5. Whether Petitioners' participation will broaden the issues or delay the proceeding.

Petitioners allege that their participation will not "unduly" broaden the issues in the proceeding and will not cause delay. Petition at 22. In fact, since Petitioners wish to litigate an issue which has been withdrawn, their participation would broaden the issues to be heard in this proceeding. There would be a delay in this proceeding, since while Petitioners are ready to defend their position, discovery has not been conducted against Petitioners, and they have not set forth who their witnesses would be. The need for discovery would delay a proceeding which is scheduled to go to hearing in less than sixty days. Petitioner is correct that the amendments have been issued. However, in judging whether delay would result from their participation, the Licensing Board should look to the status of the proceeding, not whether the proceeding must be completed prior to the taking of the licensing action. (See, ALAB-747, supra, 18 NRC at 1180; see also, Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 247-248 (1986).

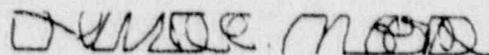
In summary, the Staff submits that Petitioners have not demonstrated good cause for this very late filing of their petition. In the absence of good cause, Petitioners have not made the necessary compelling showing with respect to the remaining four factors. They have not demonstrated an ability to contribute to the development of a sound record. Petitioners' interests are being represented by an existing party. Finally, their

participation would broaden the issues and delay this proceeding. On balance, these factors weigh heavily against Petitioners' admission as intervenors in this proceeding, even if they were found to have standing, which the Staff alleges they do not. Therefore, this late-filed petition should be denied both for lack of standing and for untimeliness.

IV. CONCLUSION

For the reasons set forth above, the Petition of Thomas J. Saporito, Jr. and the Nuclear Energy Accountability Project should be denied.

Respectfully Submitted



Janice E. Moore
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of November, 1989.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket Nos. 50-250 OLA-4
) 50-251 OLA-4
FLORIDA POWER AND LIGHT)
COMPANY)
)
(Turkey Point Plant, Units 3 and 4)) (P/T Limits)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE OF THOMAS J. SAPORITO, JR. AND THE NUCLEAR ENERGY ACCOUNTABILITY PROJECT" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 16th day of November, 1989:

B. Paul Cotter, Jr., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Atomic Safety and Licensing
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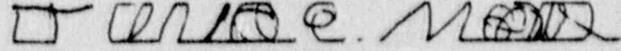
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