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PROPOSED RULE
(54 FR 39387)

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Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

Re: Proposed Rule: Procedures Applicable to
Proceedings for the Issuance of Licenses for the
Receipt of High-Level Radioactive Waste at a
Geologic Repository (54 Fed. Reg. 39,387)

Dear Mr. Chilk:

On September 26, 1989, the Nuclear Regulatory Commission (NRC) published in the Federal Register the above-referenced rulemaking notice. These responsive comments are submitted on behalf of the Florida Power & Light Company (FPL).

The Edison Electric Institute (EEI) and Utility Nuclear Waste and Transportation Program (UWaste) have offered comprehensive comments on the proposed rule. FPL supports those comments and adds the following.

First, as proposed, Section 2.1010 provides for a "Prelicense application presiding officer." FPL supports the EEI/UWaste comments on this section requesting that the regulation not be modified to provide for appointment of a prelicense presiding officer, and that the current provisions of Section 2.1010 -- which would limit a pre-license application phase tribunal to a three-member licensing board -- be maintained.

In addition, FPL notes that Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, provides for Commission consideration of "an application for a construction authorization for all or part of a repository" (emphasis added). FPL suggests that 10 CFR § 2.1010 be modified so as to make it clear that the jurisdiction of any tribunal designated to rule on matters pertinent to the Licensing Support System would not extend to consideration of substantive licensing issues, particularly those arising from an application for construction authorization for only part of a repository. Such a clarification could be provided by adding a new subsection 2.1010(f) to the current rule providing as follows:

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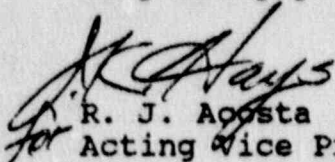
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- (f) unless otherwise provided in an appropriate notice or order, authority of the Pre-Application Licensing Board shall not extend to any substantive issue arising from the submittal of an application for a construction authorization for all or part of a repository.

Second, FPL wishes to emphasize the point raised in the EEI/UWaste comments concerning the importance of generic rulemaking on technical issues. Although such rulemaking does not fall within the scope of 10 CFR Part 2, it is vital to minimize the time required for repository licensing. The schedule presented in the proposed Appendix D to Part 2 provides 90 days for evidentiary hearings. It is unlikely that such a schedule can be met without maximum use of generic rulemaking for the early consideration of technical issues.

FPL appreciates the opportunity to comment on the Commission's proposed procedures for repository licensing. The NRC is to be complimented on its efforts to expand and improve its regulations so as to facilitate high-level waste repository licensing. FPL encourages the continuation and acceleration of these efforts.

Very truly yours,


R. J. Acosta

Acting Vice President - Nuclear Energy

RJA/JAD/gp

cc: Document Control Desk, USNRC