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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'89 NOV 21 P4:22

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CLARIFICATION OF CONTENTIONS AND ANSWER  
TO LICENSEE'S RESPONSE IN OPPOSITION TO  
NEAP/SAPORITO PETITION FOR LEAVE TO INTERVENE

I. Introduction

The Licensee as represented by counsel (Harold F. Reis and associates) submitted on November 13, 1989 a document stating argument in opposition to a petition for leave to intervene filed by the Nuclear Energy Accountability Project and Thomas J. Saporito, Jr. (collectively referred to as "Petitioners") on October 22, 1989.

Petitioners would state for the record that Petitioners are not "legal eagles" (attorneys at law), and therefore Petitioners may not have been fully cognizant of the many rules and requirements involved in the complex filing process of the United States government germane to Atomic Safety Licensing Board hearings. We are merely common folk of this great country attempting to ensure public safety through intervention.

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Petitioners readily absorb the generous legal research efforts demonstrated by the Licensee's counsel and usually do not repeat an error twice. Petitioners can not avail themselves of the unlimited legal and financial resources which the Licensee possesses, and this is the very first Atomic Safety Licensing Board hearing for which Petitioners expect to be granted leave, therefore, Petitioners request that this Board exercise a broad latitude in consideration of Petitioners' request for leave to intervene in the instant proceeding.

Petitioners will attempt to wade through the maze of legal argument by the Licensee's "legal eagles" to the best of our abilities in the interest of public safety and the environment as a whole.

## II. Standing

Pursuant to 10 CFR 2.714 (a)(2) (1989), a petition to intervene must set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the specific aspects of the subject matter of the proceeding as to which a petitioner wishes to intervene.

Licensee states on (p.3) in part in their response that:

"...the Petition does not state where his principal place of employment is or specify the nature or the extent of work that Mr. Saporito conducts in and about Miami or how much time he spends in Miami....Petition fails to establish that Mr. Saporito has sufficient contacts in the area within 50 miles of Turkey Point, and he, therefore, does not meet the Commission's "zone of interest" requirement."

Petitioners would address here that Mr. Saporito is the

Executive Director for the Nuclear Energy Accountability Project (NEAP) and therefore, regularly commutes to the Miami area within 50 miles of the Turkey Point plant. As the Executive Director of NEAP, Mr. Saporito has the grave responsibility to constantly research the voluminous documents located at the Florida International University which is officially designated as the NRC Public Document room. The amount of research time varies from week to week but generally two or three trips per week are not uncommon.

Furthermore, Mr. Saporito represents NEAP's interests as a public speaker before many public interest groups within a 50 mile area of the Turkey Point plant. At these speaking engagements, Mr. Saporito informs the public about the purpose of NEAP and the very grave safety issues related to the unsafe operation of the Turkey Point nuclear plants. These important public speaking engagements meet the requirements of NEAP's articles of incorporation and are therefore necessary practices of NEAP, as represented by Mr. Saporito, in the proper conduct of business of the corporation.

Additionally, Mr. Saporito is a former employee of the Licensee and was discharged three days before Christmas on December 22, 1988 because Mr. Saporito contacted the NRC Region II office and reported nuclear safety concerns to Mr. Oscar DeMiranda related to operations at the Turkey Point plant. During Mr. Saporito's employment with the Licensee, he became a conduit for other Licensee employees at the Turkey Point plant to the NRC regarding nuclear safety concerns.

Mr. Saporito, currently Executive Director of NEAP, continues

to act as a conduit for Licensee's employees at Turkey Point as a direct result of the severe chilling effect established by the Licensee's illegal conduct in violation of 10 CFR 50.7 towards Mr. Saporito.

The Licensee's employees have conveyed a concern that the Licensee may have placed a phone tap on NEAP's phone which would jeopardize their confidentiality in relating their nuclear safety concerns to Mr. Saporito. Therefore, Mr. Saporito regularly commutes to the Miami and Homestead areas to personally meet with these confidential allegers in an effort to continuously apprise the NRC of new information germane to unsafe operations at Turkey Point. Mr. Oscar DeMiranda, SAC NRC Region II, can validate these communications by Mr. Saporito to the NRC. Mr. DeMiranda can be reached by phone at (404) 331-4193.

Finally, Mr. Saporito is the President and Chief Executive Officer of the Airflow Service Corporation, a legally incorporated company in the State of Florida whose general purpose is to provide airconditioning treatment and cleaning services from Palm Beach County to Miami, Florida. This work involves commuting to within 50 miles of the Turkey Point plant on a regular basis.

Accordingly, Petitioners have established that Mr. Saporito has sufficient contacts in the area within 50 miles of Turkey Point, and he, therefore meets the Commission's "zone of interest" requirement.

The Licensee's response document also states in part that:

"Nor does NEAP meet the requirements for intervening on behalf of its members...the Petition. suggests that these

individuals have authorized NEAP to represent them in this proceeding. The Petition merely states that those members "may be affected..." Consequently, the Petition fails to establish NEAP's standing as a representative of its "members"...

Petitioners address here that NEAP has initiated a "Permission to Represent" document and has mailed this document to each NEAP member listed in the Petition. These documents should be received by the Commission within a few days and will validate NEAP's authority to represent the interest of those members. Consequently, the Petition establishes NEAP's standing as a representative of its "members".

To the extent that NEAP is attempting to intervene on its own behalf as an "environmental organization," intervention should be granted because NEAP has demonstrated numerous frequent contacts within a 50 mile area of Turkey Point.

Accordingly, NEAP and Mr. Saporito have demonstrated standing to intervene on their own behalf and on the behalf of NEAP members in this proceeding. Therefore, Petitioners' request to intervene as a matter of right should be granted. Additionally, NEAP and Mr. Saporito have made a showing for discretionary intervention, therefore, a basis has been identified for intervention by NEAP and Mr. Saporito, and such intervention should be granted.

### III. Petitioners Meet the Requirements Governing a Late Filed Petition to Intervene

Petitioners have made the requisite showing that they should be permitted to intervene out of time. Pursuant to 10 CFR 2.714 (a)(1) (1989), the Licensing Board may exercise its discretion to grant a

late-filed petition if it finds that a favorable showing has been made upon a balancing of the five factors enumerated herein:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

A. Petitioners Have Shown Good Cause

As stated in the Petition, Mr. Saporito was an employee of the Licensee in November 1988 and was unable to file at that time because he was employed as an Instrument and Control Specialist at Turkey Point. Petitioners address here that Mr. Saporito was not cognizant of the severe radiation damage sustained by the Turkey Point reactors during his employment with the Licensee. Additionally, Mr. Saporito was not knowledgeable of the amendment request because he was not knowledgeable of the Federal Register method of notification nor what or where a Public Document room was.

Indeed, Mr. Saporito only became aware of the aforementioned elements after meeting with Ms. Joette Lorion, the Intervenor in this proceeding in 1989.

The Licensee asserts in part in their response document that:

"Nor could FPL have discharged or otherwise discriminated against Mr. Saporito if he had filed such a petition while he was an employee. It is prohibited from

doing so by Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851 (1982))."

Petitioners address here that the Licensee did in fact violate the provisions of Section 210 of the Energy Reorganization Act and 10 CFR 50.7 when they discharged Mr. Saporito on December 22, 1988, therefore Licensee's reliance on the law to prohibit discrimination or discharge for filing to intervene on the license amendment is not withstanding and is without merit. The resulting chilling effect at Turkey Point is evidenced by the Licensee's employee's continuous contact with NEAP to convey their nuclear safety concerns to the NRC regarding unsafe operations of the Turkey Point plant.

The Licensee states in part in their response document that:

"The reason proffered by Petitioners for NEAP not having filed on time is that it "was not incorporated under the laws of Florida in November 1988 and thus, could not have petitioned for leave to intervene." NRC case law is clear that newly-acquired organizational existence does not constitute good cause for delay in seeking intervention."

Petitioners address here that Mr. Saporito founded NEAP and therefore the aforementioned arguments concerning Mr. Saporito's late filing also justify NEAP's late filing. Therefore, Petitioners have met the late filing requirements of the NRC and should be granted intervention in this proceeding.

The Licensee appears to have misinterpreted Petitioners' intent concerning the copper content contention in the Petition. Petitioners address here that the copper contention is based on the belief that the Licensee relied on the wrong percentage of copper content germane to the amendment ART calculations which were

performed prior to the license amendment during the previous pressure/temperature license amendment. The Licensee could not have utilized NRC Reg. Guide 1.93 rev. 2 (1988) because it did not exist, therefore the Licensee had to have utilized NRC Reg. Guide 1.99 rev. 1 and may have calculated the ART using an incorrect copper content.

These calculations appear to have been relied upon for the initial fluence and ART data utilized in part with the NRC Reg. Guide 1.99 rev. 2, therefore the Licensee's calculations in the license amendment for the ART may be erroneous and nonconservative.

This contention differs from the Intervenors' Contention 3 which was withdrawn because that contention was based on the belief that the Licensee utilized a copper content with reliance of NRC Reg. Guide 1.99 rev. 2 in the ART calculation and not NRC Reg. Guide 1.99 rev. 1.

It is therefore clear that Petitioners have shown good cause for a late filed Petition and should be granted intervention.

**B. There Are No Other Means Available For  
Petitioners to Protect Their Interests**

The Licensee asserts in part in their response document that:

"...if they believe that in some respect the interests sought to be asserted in the instant Petition were not in fact addressed in the Director's Decision, they are not barred from filing another petition under 10 CFR 2.206."

Petitioners address here that the Licensee's "boot-strap" argument to file another 10 CFR 2.206 petition is without merit. Petitioners assert that the issues embraced within Petitioners' contentions merit the scrutiny of a public forum. Furthermore, once

a 10 CFR 2.206 petition is denied, the legal recourse of appeal does not provide proper authority to reverse the decision.

C. Petitioners Have Demonstrated That They Will Contribute to Developing a Sound Record

Petitioners are making all reasonable efforts to retain Dr. George Sih, a metals fracture expert, to testify at the hearing to provide professional opinion and testimony evidencing the severity and magnitude of the radiation damage to the Turkey Point reactor vessels. Additionally, Mr. Saporito's seven years of experience with the Licensee is relevant to the validity of the pressure/temperature limits central to this proceeding because his testimony will introduce new evidence into this proceeding identifying the willfull falsification and destruction of safety-related plant documents at Turkey Point.

This testimony therefore will evidence that the Licensee may not operate the Turkey Point plant in compliance with NRC regulations and requirements. Additionally, Mr. Saporito's position as an Instrument and Control Specialist at the Turkey Point plant along with the Licensee's training of Mr. Saporito, qualifies him knowledgeable of the effects of pressure/temperature changes to the behavior of the reactor vessels. Furthermore, Mr. Saporito will provide testimony evidencing numerous violations of procedures at Turkey Point some of which may directly involve safety systems germane to the reactor protection system.

Therefore, Petitioners have demonstrated that Petitioners' participation in this proceeding will contribute to the development

of a sound record, and this factor weighs heavily in favor of granting late intervention.

**D. Interests of Petitioners Are Not  
Represented by Existing Parties**

Petitioners' interests in this proceeding are not represented by the existing parties. Petitioners' Contention 1 dealing with copper content is not the same as Intervenor's Contention 3 which was withdrawn on September 8, 1989. As clearly described in Petitioners' basis for Contention 1, the Licensee, in their calculation of the ART in the current license amendment, utilized Reg. Guide 1.99 rev. 2 (1988) Section 2.1.

This method of calculation does not take into consideration any copper content of the reactor vessel's metal properties and merely provides for the use of a chemistry factor in the determination of the ART. The Licensee freely admits that no consideration for copper content was utilized in the ART calculations for the current license amendments. The Licensee, however, did identify a copper content of 0.25% as the weld metal property of the reactor vessels and therefore apparently relied on this information in their determination of the  $RT_{DPT}$  shift values during their calculations of the previous P/T license amendment.

These very same results identified by the Licensee as Unit 3 capsule T<sub>3</sub> of 155 degrees F, Unit 3 capsule V<sub>4</sub> of 180 degrees F, and Unit 4 capsule T<sub>4</sub> of 255 degrees F were in fact relied upon by the Licensee in the ART of the current license amendments thereby amplifying the degree of error throughout their calculations.

Petitioners' Contention 2 is not the same as Intervenor's admitted Contention 2. Intervenor's Contention 2 challenges the Licensee's use of Unit 3 surveillance capsule data in the determination of  $RT_{MDT}$  for Unit 4. Petitioners' basis for Contention 2 in the Petition clearly challenges the Licensee's compliance to the NRC regulations establishing the administration of the integrated surveillance program. The governing NRC regulations clearly provide for the use of surveillance data from a single reactor in the determination of the  $RT_{MDT}$  for both units. The Licensee violated these NRC requirements by utilizing data from both reactor surveillance capsules.

In summary, Petitioners are challenging the Licensee's noncompliance with NRC requirements and regulations in the administration of their integrated surveillance program and improper utilization of the surveillance data, therefore Petitioners' interests are not embraced within Intervenor's Contention 2 which challenges the Licensee's use of the integrated surveillance program in its entirety by allowing surveillance capsule data from Turkey Point Unit 3 to be representative of Units 3 and 4.

The Licensee states in part in their response document that:

"Petitioners' proposed Contentions 3 and 4 address upper shelf energy issues, which were also asserted by Intervenor. However, the Licensing Board has already ruled that issues addressing questions about upper shelf energy are outside the scope of this proceeding."

Petitioners address here that a careful reading of Intervenor's Contentions does not evidence a position for consideration of upper

shelf energy and instead asserts challenges related to the PTS rule in the NRC regulations. Additionally, a careful reading of the Licensing Board's ruling of June 8, 1989 does not state that questions about upper shelf energy are outside the scope of this proceeding.

Indeed, the ruling clearly states that:

"We find that this issue cannot be considered in this hearing. The jurisdiction of the Board is founded upon the October 19, 1988 Federal Register Notice of Opportunity to Request Hearing. 53 F.R. 40981, 40988, (1988). A careful reading of the notice reveals that the subject of the hearing includes only a modification of pressure and temperature (P/T) limits during normal operation, governed by 10 C.F.R. 50.60, and does not include a determination of fracture toughness requirements for Pressurized Thermal Shock which is an accident condition governed by 10 C.F.R. 50.61. This part of Petitioners' contention is therefore beyond the scope of this hearing and cannot be admitted."

The Licensing Board's ruling clearly evidences that upper shelf energy issues relevant to the modification of the (P/T) limits of the license amendments is governed by 10 C.F.R. 50.60 which embraces Petitioners' arguments contained in Petitioners' basis for Contention 3 and 4 pursuant to 10 C.F.R. 50 Appendix G Section IV.B. Therefore, Petitioners' Contentions 3 and 4 should be accepted by this Licensing Board and Petitioners should be granted intervention.

Finally, the Licensee states in part in their response document that:

"...Petitioners' proposed Contention 5 adopts the arguments contained in an October 18, 1989 letter from Dr. George Sih to Intervenors...Licensee does not believe Dr. Sih's letter is admissible as evidence because it is not accompanied by an affidavit, it constitutes an impermissible attack upon the Commission's regulations, and it does not raise a genuine issue of material fact."

Petitioners address here that Dr. Sih is an individual of admirable qualities as a professional scientist and an expert in the field of metal fracture analysis. The Board should feel confident in accepting the arguments of Dr. Sih in his October 18, 1989 letter to Interveners as being credible based solely on the signature of Dr. Sih. Finally, Dr. Sih's letter does not constitute an attack upon the Commission's regulations and instead addresses other factors which should be considered in the measurement of fracture toughness which further evidence a genuine issue of material fact.

E. Petitioners' Participation Will Not Unduly Delay This Proceeding

If Petitioners are permitted to intervene, it should not delay this proceeding because Petitioners are prepared to go forward with their arguments at this time. Additionally, even if the hearing was delayed due to extensive challenges by Licensee's counsel because Petitioners were granted intervention, the simple fact of the matter is that the license amendments have already been granted, therefore, the Licensee would not be aggrieved. Therefore, since admittance of Petitioners into this proceeding will not cause undue delay, the Board should grant Petitioners intervention.

IV. Admissibility of Petitioners' Proposed Contentions

Contention 1

The Licensee states in part in their response document that:

"...Thus, FPL did not use any value for copper and nickel content in calculating the chemistry factor and ART for the welds and current P/T limits for Turkey Point Units 3 and 4. In fact, the Petitioners have previously admitted that

the copper content of the Turkey Point reactor vessel welds was not used in calculating the P/T limits...Therefore, not only is this proposed contention lacking bases, it is contrary to previous statements made by Petitioners..."

Petitioners address here that no contradiction was made to previous statements made by Petitioners concerning the use of the copper content in the P/T calculations germane to this proceeding. Petitioners acknowledge that the Licensee did not consider a copper content in their determination of the ART pursuant to NRC Reg. Guide 1.99 rev. 2 (1988).

Petitioners, however, have clearly brought to the attention of the Board in, Petitioners' basis for this contention, that the Licensee appears to have calculated the ART in the previous license amendment with due consideration of the copper content of the reactor vessel weld materials and pursuant to NRC Reg. Guide 1.99 rev. 1.

The accuracy of these resulting calculations for data derived from surveillance capsules T<sub>3</sub>, V<sub>4</sub>, and T<sub>4</sub> which was utilized in the current license amendments would therefore be dependent on the correct copper content usage by the Licensee in the previous license amendment. Petitioners assert that the Licensee admits to a copper content of the reactor vessel weld material to be 0.26% which contradicts previous historical plant specific documents evidencing a much higher percentage of copper in the Turkey Point reactor vessel weld material.

Although no copper content was utilized in the current License Amendment ART calculations, the copper content appears to have been

relied upon in the previous License Amendment ART calculations and the results of those calculations were utilized in the ART calculations of the current License Amendments. Therefore, the Licensee's calculations of the ART in the current Licensing Amendments may be nonconservative based on faulty and incorrect data.

In summary, Petitioners have established a solid basis for this contention since the Licensee may have relied upon faulty and incorrect data germane to the calculation of the ART and therefore Contention 1 should be admitted into this proceeding.

Contention 2

The Licensee's states in part in their response document that:

"Petitioners' proposed Contention 2 and the bases for proposed Contention 2 assert that the Licensee has incorrectly administered its integrated surveillance program pursuant to 10 CFR Part 50 Appendix H. This issue has already been admitted into this proceeding as Intervenors' Contention 2."

Petitioners address here that the Licensee is incorrect in their assumption that Petitioners' Contention 2 is embraced within Intervenors' Contention 2. Intervenors' Contention 2 challenges the Licensee's use of the integrated surveillance program itself in the utilization of capsule data from Turkey Point Unit 3 to be representative of conditions of Units 3 and 4 and suggests that the Licensee should test surveillance capsules germane to each individual unit to evaluate the RTWD shift.

Petitioners' Contention 2 challenges the Licensee's administration of the integrated surveillance program in that the

Licensee incorrectly administered the program by testing surveillance capsules from both reactors in violation of NRC requirements and regulations which require administration of the program to consist of testing the surveillance capsules of only a single reactor in a similar set of two reactors. This NRC requirement and regulation was intended to provide for less radiation exposure to the Licensee's employees in the conduct of the integrated surveillance program.

Petitioners make no challenge to the Licensees' use of the integrated surveillance program within Contention 2, nor do Petitioners challenge the Licensees' use of Unit 3 surveillance capsule data to be representative of Unit 4 conditions in Petitioners Contention 2. Therefore, Petitioners' Contention 2 should be admitted into this proceeding because Petitioners' interests will not be addressed in Intervenor's Contention 2.

#### Contentions 3 and 4

The Licensee states in part in their response document that:

"Petitioners' proposed Contentions 3 and 4 and the bases for these proposed contentions address issues concerning whether the upper-shelf energy of specimens meets the requirements of 10 CFR Part 50 Appendix G.IV.B. These proposed contentions should be rejected because the Board has already ruled that issues related to upper-shelf energy are outside the scope of this proceeding."

A careful reading of the Licensing Board's ruling of June 8, 1989 does not state that questions about upper shelf energy are outside the scope of this proceeding.

Indeed, the ruling clearly states that:

"We find that this issue cannot be considered in this hearing. The jurisdiction of the Board is founded upon the October 19, 1988 Federal Register Notice of Opportunity to Request Hearing. 53 F.R. 40981, 40988, (1988). A careful reading of the notice reveals that the subject of the hearing includes only a modification of pressure and temperature (P/T) limits during normal operation, governed by 10 C.F.R. 50.60, and does not include a determination of fracture toughness requirements for Pressurized Thermal Shock which is an accident condition governed by 10 C.F.R. 50.61. This part of Petitioners' contention is therefore beyond the scope of this hearing and cannot be admitted."

The Licensing Board's ruling clearly evidences that upper shelf energy issues relevant to the modification of the (P/T) limits of the license amendments is governed by 10 C.F.R. 50.60 which embraces Petitioners' arguments contained in Petitioners' basis for Contention 3 and 4 pursuant to 10 C.F.R. 50 Appendix G Section IV.B. Therefore, Petitioners' Contentions 3 and 4 should be accepted by this Licensing Board and Petitioners should be granted intervention.

#### Contention 5

The Licensee states in part in their response document that:

"Petitioners' proposed Contention 5 and the bases for the proposed contention assert that data for Turkey Point Unit 3 is not complete because "factors such as strain rate and load-history dependent damage accumulation should be considered." Petitioners base this proposed contention on an October 18, 1989 letter from Dr. George Sih to Intervenors. As noted earlier, Intervenors have already submitted this letter to the Board in support of Intervenors' Contention 2. Therefore, any litigable issues in Dr. Sih's letter are already encompassed within the scope of Intervenors' existing Contention 2."

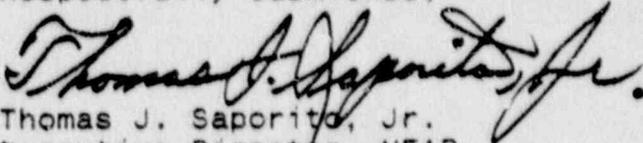
Petitioners address here that Intervenors' Contention 2 does not argue the merits of Petitioners' Contention 5. Indeed, Intervenors' Contention 2 challenges the Licensee's Intergrated Surveillance program and Petitioners' Contention 5 asserts that

while the pressure/temperature limits depend on the combined effects of material properties, operating temperature and neutron irradiation change in strain rate can significantly affect the fracture toughness and shift in RT<sub>NDT</sub>. This influence has not been taken into account in determining the pressure/temperature limits. Therefore, Petitioners' interests are not embraced within Intervenor's Contention 2 and Petitioners' Contention 5 should be admitted into this proceeding.

V. Conclusion

For all the aforementioned reasons, and in the interest of public safety and the environment as a whole, Petitioners should be granted leave to intervene in this proceeding. Petitioners have demonstrated their standing to intervene, Petitioners have substantially met the requirements for a late filed petition, and none of Petitioners' proposed contentions have been or are being asserted in this proceeding by the Intervenor. Therefore, late intervention should be granted by the Licensing Board.

Respectfully submitted,

  
Thomas J. Saporito, Jr.  
Executive Director, NEAP

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Dated this 16th day of November 1989 in Jupiter, Florida.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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(Turkey Point Units 3 and 4) ) 50-251 OLA-4  
 ) (Pressure/Temperature Limits)  
 )

CERTIFICATE OF SERVICE

I hereby certify that a copy of Petitioners' "Clarification of Contentions and Answer to Licensee's Response in Opposition to NEAP/Saporito Petition For Leave to Intervene" has been served on the following by deposit in the United States mail, first class, properly stamped and addressed on the date shown below.

Hon. B. Paul Cotter, Esq., Chairman  
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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Hon. Glenn O. Bright  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
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Hon. Jerry Harbour  
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Dated this 16th day of November, 1989 in Jupiter, Florida.



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