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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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ATOMIC SAFETY AND LICENSING BOARD

SERVED FEB 06 1990

Before Administrative Judges
Peter B. Bloch, Chair
Dr. George C. Anderson
Elizabeth B. Johnson

In the Matter of

FLORIDA POWER & LIGHT
COMPANY
Turkey Point Plant
(Unit Nos. 3 and 4)

Facility Operating
Licenses Nos. DPR-31, DPR-41

Docket Nos. 50-250-OLA-5
50-251-OLA-5

Technical Specifications
Replacement

ASLEP No. 90-602-01-OLA-5

MEMORANDUM AND ORDER
(Prehearing Conference; Filing Schedule)

We welcome all the participants to this proceeding. It is our commitment to preside fairly and efficiently, and with concern for public safety, pursuant to the Constitution, the statutes, the regulations and applicable judicial and administrative decisions. We expect to listen attentively and to decide carefully.

We urge the participants to join us in this spirit of respect, both for one another and for the Board. The more cooperative the parties are with one another and the more carefully and attentively they prepare their filings, the easier it will be for us to fulfill our commitments and for the parties to develop a relationship that may permit them

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to avoid unnecessary procedural disputes and to settle all or part of their controversy voluntarily. We encourage voluntary settlement both because of the avoidance of the expense of litigation and because the terms of settlement often are more satisfactory than can be achieved through litigation. 10 C.F.R. § 2.759.

History of the Proceeding

This Atomic Safety and Licensing Board was established by Order of the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, on January 24, 1990, pursuant to a notice published by the Commission on December 5, 1989 in the Federal Register (54 F.R. 50295) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing." The proposed amendments would replace the current custom Technical Specifications licensed in the early 1970s with a set of Technical Specifications based on the Westinghouse Standard Technical Specifications.

On December 27, 1989, Thomas J. Saporito, Jr., filed a timely "Request for Hearing and Petition for Leave to Intervene" (Petition) on behalf of himself as an individual and of the Nuclear Energy Accountability Project (NEAP) ("Petitioners"). On January 10, 1990, Florida Power & Light

Company (Applicant¹) filed "Licensee's Answer in Opposition to Request for Hearing and Petition for Leave to Intervene" (Applicant Answer). On January 16, 1990, the Staff of the Nuclear Regulatory Commission opposed the petition in its "NRC Staff Response to Request for Hearing and Petition for Leave to Intervene of Nuclear Energy Accountability Project and Thomas J. Saporito, Jr." (Staff Answer).

Analysis

We have reviewed the documents, all of which bear the mark of thoughtful preparation. It is our impression that Applicant and the Staff have paid particularly careful attention to the law, with which they are more familiar than are Petitioners, who appear without legal counsel. We urge Petitioners to study the Applicant Answer and the Staff Answer and to cure whatever deficiencies exist by amending their petition.

In particular, we agree with Applicant and Staff that this proceeding does not address the continued operation of Turkey Point. These plants are licensed to operate and their operation will not be affected by the outcome of this proceeding.

¹Although Florida Power & Light Co. is the holder of operating licenses for the two units involved in this proceeding, its role in this proceeding is as an applicant for an amendment to its license.

The subject matter of this proceeding is the proposed amendments to the plants' technical specifications. In that light, although petitioners must comply with all the regulations referenced in the Notice of Hearing, we cite an important portion of that Notice:

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding.² [Emphasis added.]

We interpret this requirement, at this time³, as requiring petitioners to show that they are affected by the proposed amendment to the technical specifications.⁴ The principal question regarding the granting of the Application would appear to be its compliance with Commission regulations. For the purpose of showing that they are adversely affected, petitioners do not need to set forth a documented basis for their concern; but their concern should be stated

²Federal Register Notice, 54 Federal Register 50205 (December 8, 1989).

³We are reaching this conclusion tentatively as we have not been briefed on this point by Petitioners, who may file a brief together with their amended petition should they choose to do so.

⁴We recommend that petitioners become familiar with an excellent discussion of standing found in Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108 (1979). They should not, however, rely on that case's discussion of the admissibility of contentions, as the regulations on admitting contentions have been changed. (See footnote 7, below.)

with particularity and related to specific proposed changes in the technical specifications.⁵

Until petitioners state their concern with particularity,⁶ we do not have an opinion concerning whether a 50 mile zone of interest is an appropriate test for standing in this case. Florida Power & Light Co. (St. Lucie, Units 1 and 2), CLI-89-21, 30 NRC ____ (slip op. p. 6) (November 30, 1989). We suggest that petitioners address each argument made by Applicant and Staff, either by filing requested clarifications of their evidentiary position or through rebuttal legal argument or both.

Schedule

We shall require petitioners to serve their contentions⁷ and amended petition by express mail on Tuesday, Feb-

⁵On January 29, 1990, the Board requested copies of the Application for amendment dated June 5 and November 3, 1989. At this time, we have not seen the Application and have no opinion about the nature or existence of a risk resulting from the proposed amendment.

⁶We are not now deciding whether one or more of the concerns may already be stated with enough particularity. It is of course not necessary "to establish, as a precondition to intervention [with respect to the interest test], that [a petitioner's] concerns are well-founded in fact." Virginia Electric and Power Company (North Anna Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

⁷Note that the contentions requirements, as set forth in the Notice of Hearing, were the result of a recent amendment to the procedural rules. As the notice states, Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petition shall

ruary 20, 1990.⁸ A limited appearance session is anticipated at 7 pm to 10:00 pm on the evening of March 22, 1990, at the U.S. District Courthouse, Old Building, Central Courtroom, 300 NE 1st Ave., Miami, Florida.⁹ A Prehearing Conference is planned for 9:00 am on March 23, 1990, at the

provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

⁸Service may be executed by any overnight mail service or by fax. The Board's Washington fax number is: 301-492-7285. In lieu of overnight service, parties may serve documents first-class mail, postmarked four days earlier (February 16). Judge Anderson's temporary address, until March 14, 1990, is 450 Vista Chino, Apt. 2015, Palm Springs, CA 92262. Thereafter, it is 7719 Ridge Dr., NE, Seattle, WA 98115.

⁹Rescheduling may be necessary should the prehearing conference conflict with a trial tentatively scheduled for the same place but considered very likely to be delayed.

same location. (Motions for a change in these times may be filed promptly.)¹⁰

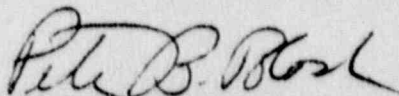
The filing deadline diverges from that contained in the regulations for operating license cases. This divergence is a long-established practice of licensing boards, which have found that the ordinary regulatory schedule results in unproductive "special" prehearing conferences because the Applicant's response is due within five days of the "Special" Prehearing Conference and the Staff response (permitting time for service) shortly after the "Special" Prehearing Conference. Since a purpose of the conference is to permit petitioners to rebut the arguments filed against them, this does not provide adequate time within which they (and the Board) may study the arguments and prepare for the Prehearing. See 10 CFR § 2.711(a); Houston Lighting and Power Company (Allens Creek) ALAB-564, 10 NRC 451 (1979); General Electric Co. (GETR Vallecitos), LBP-83-19, 17 NRC 573, 578 (1983).

Although there is no obligation to do so, we urge Applicant, Staff and Petitioners to cooperate with one another during Petitioners' analysis of the technical specifications. If a positive, responsive, informal atmosphere can be established at this early date, petitioners

¹⁰Applicant's response shall be served overnight or by fax or hand by March 5. Staff's response by March 9. (Service by ordinary mail must be postmarked four days before the deadline.)

will become more informed of the merits of their concerns and may focus their case on serious problems, if they exist. A fruitful discussion at this time may avoid unnecessary procedural disputes later in the case and may lead to a settlement of all or part of this case, either now or at some time in the future.

FOR THE ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch
Chair

Bethesda, Maryland

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

FLORIDA POWER AND LIGHT COMPANY

(Turkey Point Plant, Unit Nos. 3 & 4)

Docket No. (s) 50-250/251-OLA-5

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (Prehearing Conf...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
George C. Anderson
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

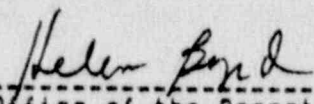
Administrative Judge
Elizabeth B. Johnson
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Patricia Jehle, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Steven F. Franz, Esquire
Newman & Holtzinger, P.C.
1615 L Street, NW
Washington, DC, 20036

Thomas J. Saporito, Jr.
Executive Director
Nuclear Energy Accountability Project
1202 Sioux Street
Jupiter, FL 33458

Dated at Rockville, Md. this
6 day of February 1990



Office of the Secretary of the Commission