UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Marshall E. Miller, Chairman
Dr. Emmeth A. Luebke
Dr. Oscar H. Paris

SERVED AUG 13 1981

In the Matter of FLORIDA POWER AND LIGHT COMPANY (Turkey Point Nuclear Generating, Units 3 and 4)	Docket Nos. 50-250-SP 50-251-SP (Proposed Amendments to Facility Operating Licenses to Permit Steam Generator Repairs) August 12, 1981

MEMORANDUM AND ORDER

A Final Order was entered in this proceeding on June 19, 1981, permanently cancelling the previously scheduled evidentiary hearing on license amendments to permit steam generator repairs.[1/] The Director of Nuclear Reactor Regulation was authorized to issue the appropriate license amendments. By our previous Memorandum and Order entered May 28, summary disposition had been granted of all remaining contentions of the Intervenor.[2/] The authorized license amendments were issued by the Director on June 24, 1981, and the steam generator repairs were immediately commenced.

The Intervenor filed an application for a stay of the Final Order on June 27, 1981, pursuant to the provisions of 10 CFR §2.788. The four

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[1/] LBP-81-16, 13 NRC ___ (1981).

[2/] LBP-81-14, 13 NRC ___ (1981).

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factors to be considered in determining whether to grant or deny a request for a stay are as follows:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies (10 CFR §2.788(e)).

These rules governing the consideration of a stay are a codification of the judical principles applicable to motions for preliminary injunctions.[3/] No single factor among the four to be considered is necessarily dispositive. Rather, the "strength or weakness of the showing by the movant on a particular factor influences principally how strong his showing on the other factors must be in order to justify the sought relief."[4/]

1. Likelihood of Success on Appeal

It is the burden of the Intervenor to "make a strong showing that it is likely to prevail on the merits of its appeal. Mere establishment of

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[3/] Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841, 843-44 (D.C. Cir. 1977).

[4/] Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-338, 4 NRC 10, 14 (1976).

possible grounds for appeal does not meet this standard."[5/] In fact, it has been suggested that without a strong showing that the movant is likely to prevail on the merits of an appeal, there is no right to a stay "even if irreparable injury might otherwise result."[6/] And where the movant cannot establish that serious irreparable injury will result in the absence of a stay, the movant must make an "overwhelming" showing that he will succeed on the merits of the appeal.[7/]

In the instant case, the Intervenor does not attempt to show or argue that he is likely to prevail on the merits on his appeal. The first of the above four factors is not even addressed in the Application for Stay. There was abundant evidence in the record that under either normal or hurricane conditions, the onsite storage of solid low-level waste generated by the repairs would not pose a significant risk to public health and safety.

This evidence establishes that the steam generator lower assemblies (SGLAs) will be adequately protected from hurricanes or tornadoes while stored in the steam generator storage compound.[8/] An SGLA outside of the containment would be immovable by hurricane winds or wind-driven water,

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[5/] Toledo Edison Co. et al. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452, 454, aff'd. ALAB-385, 5 NRC 621, 631 (1977). See also Environmental Defense Fund v. Froehlke, 477 F.2d 1033 (8th Cir. 1973).

[6/] Virginian Ry. Co. v. United States, 272 U.S. 658, 672 (1926).

[7/] Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 NRC 630, 635 (1977); Florida Power and Light Company (St. Lucie Nuclear Plant, Unit No. 2), ALAB-404, 5 NRC 1185, 1189 (1977).

[8/] Memorandum and Order entered May 28, 1981, p. 36.

and a tornado-borne missile could not penetrate the steel walls of an SGLA.[9/] The solid wastes with relatively high concentrations of radioactivity will be kept inside the Turkey Point Radwaste Building, which is designed to withstand hurricanes, pending shipment offsite.[10/]

Based also upon facts set forth more fully in Paragraph 2, infra, we hold that the Intervenor has failed to make the required showing on the first factor governing a stay application.

2. Irreparable Injury

The issue of whether irreparable injury will result unless a movant is granted a stay is often a "crucial" factor in NRC deliberations.[11/] It is well established that a party is not ordinarily granted a stay of an administrative order without an appropriate showing of irreparable injury.[12/] This requires a showing that alleged threats of irreparable injury are not remote and speculative, but are actual and imminent.[13/] Thus, irreparable injury is not shown "against something merely feared as liable to incur at some indefinite time in the future."[14/]

9/ Id.

10/ Final Order, p. 3.

11/ Marble Hill, supra, 6 NRC at 632.

12/ Permian Basin Area Rate Cases, 390 U.S. 747, 773 (1968).

13/ State of New York v. NRC 550 F.2d 745, 755 (2nd Cir. 1977).

14/ Eastern Greyhound Line v. Fusco, 310 F.2d 632, 634 (6th Cir. 1962), quoting Connecticut v. Massachusetts, 282 U.S. 660, 674 (1931).

Intervenor's allegation of irreparable injury states as follows:

> If the waste, containing from 1470-3270 ci., is released to the marine environment during a hurricane there will be irreparable injury not only to the Intervenor, but also to the general public (Intervenor's Application for Stay, at 3).

Intervenor's estimate apparently is based on the affidavit of Douglas King, dated June 27, 1981. However, Mr. King fails to addr[illegible] the procedures for securing or tying down radioactive waste, attested to by Mr. Gould in the latter's affidavit dated June 12, 1981, which we f[illegible]nd adequate in our Final Order entered June 19, 1981.

Alan J. Gould, affiant for Licensee, attested that Mr. King had greatly overestimated the amounts of radioactive waste that would be generated during the repair of Unit 3 (Gould Affidavit at 2). Whereas King had estimated that 270 Ci of low-level solid radioactive waste would result from processing the primary coolant from a single unit, Gould estimated that only 40 Ci would be produced by the processing of primary coolant. Similarly, whereas King estimated that 400-1,000 Ci of solid radioactive waste would be produced from the decontamination of each Steam Generator Lower Assembly, Gould estimated that the radioactive waste that will thus be produced will amount to only 45 Ci. Mr. King also apparently assumed that there would be a "lack of adequate precautions in storing these wastes [which could] lead to an irreversible contaminating if a hurricane or tornado should breach the waste containers and scatter the contaminated material over the Turkey Point site and its surrounding waters" (King Affidavit, Conclusion). This ignores the record regarding the securing or tying down of barrels containing solid waste, described above.

In the Final Order we also found that an accidental release into the atmosphere of all of the radioactivity in the stored low-level waste from the repair of one unit, would result in a site boundary dose well within the limits set forth in 10 CFR Part 50, Appendix I. We found, further, that the accidental release of all of that radioactivity into the cooling canals would be within the limits set forth in 10 CFR Part 20, Appendix B, for releases to uncontrolled areas. Intervenor has adduced nothing to controvert the record on which our findings in the Final Order were based, and the second factor weighs against granting a stay.

3. Harm to Other Parties

The record clearly shows that the granting of a stay would seriously harm the Licensee, contrary to the third factor for consideration. It appears that Turkey Point Unit No. 3 recently experienced an unplanned repair outage, caused by the failure of the electrical generator. The Licensee then decided to reverse the order of steam generator repairs, and to make the electrical generator and steam generator repairs concurrently while Unit 3 is down.[15/] If the Licensee is required to interrupt the on-going steam generator repairs to Unit No. 3 by a stay order, substantial economic injury will result. The Affidavit of H. D. Mantz states that the costs of a 2 1/2 month delay would be approximately $63,000,000. A seven month delay would cost approximately $219,000,000. These costs are related to the cost of replacement power, escalation costs and the costs

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15/ Letter from Norman A. Coll to the Board, dated June 12, 1981.

of relocating 400-450 discharged personnel. Consequently, the third factor weighs against granting a stay.

4. The Public Interest

We agree with the Staff that the public interest will best be served by the completion of the Turkey Point steam generator repairs as soon as is reasonably possible. Such repairs will permit the plant to operate with a greater degree of safety and efficiency than is possible where periodic shutdowns for inspections are required. Such inspection shutdowns necessarily entail some occupational exposures and economic costs. The record further demonstrates that the steam generator repairs can be carried out safely under either normal or adverse weather conditions.

One final matter remains for consideration, involving the discovery of a void in the containment building while the Intervenor's application for a stay was under advisement. On July 28, 1981 the Board issued an Order directing Florida Power and Light (FPL, Licensee) and the NRC Staff to provide full information about the discovery of a void in the containment building during the Steam Generator Repair activity, which the Board had authorized. It was the Board's understanding that the containment building would not be breached during the repair.

In the July 28 Order, the Board asked the following questions:

1. How was the void in the contaiment wall discovered?
2. Did the discovery result from breaching of the containment wall, or in some other fashion?

3. If the wall was breached, why was the Licensing Board not informed?

4. Should the statements of Licensee in the SGRR be considered a commitment?

5. What has been the role of the NRC Staff in this matter?

FPL answered by filing the Affidavit of F. G. Flugger on August 5, 1981, and the Staff responded with the Affidavit of Marshall Grotenhuis on August 7, 1981.

From these filings, the Board has learned that the containment building has not been breached. The void was discovered when a portion of the equipment hatch sleeve was removed as described in §3.2.5 of the Steam Generator Repair Report (SGRR). The removed section of the sleeve had to be replaced with [illegible]er steel to assure load transfer from heavy equipment being moved through the hatch during the repair. The void was discovered in the wall beneath the hatch when the sleeve section was removed. No portion of the containment pressure boundary was modified or affected by removal of the sleeve. The Licensing Board was not informed about the void because the void was not caused by the Steam Generator repair activity, the containment wall was not breached, and the void will not affect the repairs. The Licensee did report the existence of the void to NRC's Office of Inspection and Enforcement (I&E) in appropriate fashion, and I&E is investigating the problem.

We therefore conclude that the performance of the Licensee in this matter was entirely consistent with the commitments it made in the SGRR and that the NRC Staff has been appropriately discharging its responsibility

with regard to the problem. The discovery and reporting of the void in the wall of the containment need not influence our determination with regard to the Intervenor's motion to stay our Final Order.

For the foregoing reasons, the Intervenor's application for a stay of the Final Order in this proceeding is denied.

It is so ORDERED.

THE ATOMIC SAFETY AND LCIENSING BOARD

Emmeth A. Luebke

Dr. Emmeth A. Luebke
ADMINISTRATIVE JUDGE

Oscar H. Paris

Dr. Oscar H. Paris
ADMINISTRATIVE JUDGE

Marshall E. Miller

Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 12th day of August, 1981.