

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of )  
 ) Docket Nos. 50-250  
FLORIDA POWER & LIGHT COMPANY ) 50-251  
 )  
(Turkey Point Plant, Unit ) (Confirmatory Order)  
Nos. 3 & 4 )



FLORIDA POWER & LIGHT COMPANY'S RESPONSE  
TO JOEL JAFFER'S REQUEST FOR A HEARING

On July 17, 1981, an "Order Confirming Licensee Commitments on Post-TMI Related Issues" (Order) was published in the Federal Register.<sup>1/</sup> That Order recited commitments made by Florida Power and Light Company (FPL or Licensee) to comply with certain proposed requirements in NUREG-0737<sup>2/</sup> with respect to Turkey Point Units 3 and 4, confirmed those commitments by order, and directed FPL to comply within a specified period of time. The Order also permitted any person with an interest affected by the Order to request a hearing within twenty days of its publication.

FPL neither requested a hearing nor otherwise opposed the Order. Further, FPL did not receive service of any request for a hearing.

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1/ 46 Fed. Reg. 37,110 (July 17, 1981).

2/ "Clarification of TMI Action Plan Requirements," NUREG-0737 (November 1980).

On September 14, 1981, however, FPL was served with the "NRC Staff's Response to Joel Jaffer's Request for a Hearing" (Response). The Response stated that the NRC Staff had received, on August 25, 1981, an undated, three-sentence postcard from Joel Jaffer (Petitioner) requesting a hearing on the Order. The Response also stated that the NRC Staff had referred the Petitioner's request to the Commission for disposition. Finally, the Response contained a detailed legal analysis and argument in opposition to Petitioner's request for a hearing.

Licensee opposes the Petitioner's request for a hearing on the Order. The NRC Staff Response presents a thorough explanation and analysis of the relevant facts and legal issues pertinent to Petitioner's request and ably demonstrates that the request lacks merit and should be denied. FPL joins in and adopts the Staff Response. Petitioner's request for a hearing is obviously deficient. The law is firmly established that a person is entitled to a hearing on a confirmatory order as of right only if he demonstrates a cognizable interest which may be adversely affected by the order. See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439-42 (1980). See also 10 CFR § 2.714(a)(2). Not only has the Petitioner here failed to allege that he may be adversely affected by the Order, he has not identified any interest whatsoever that might be affected by the Turkey Point plant; through implementation of the

Order or otherwise.

Similarly, the Petitioner has not attempted to address any of the six factors which govern discretionary intervention, including his ability to contribute to the proceeding. See Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-17 (1976).<sup>3/</sup> Since the Petitioner has failed to make even a minimum effort to conform with the Commission's rules, denial of his request for a hearing is clearly appropriate.

Licensee, however, does wish to raise one important matter not addressed by the NRC Staff. The Commission has sometimes referred requests for hearings on confirmatory orders to licensing boards for disposition.<sup>4/</sup> While reluctant to burden the Commission, FPL respectfully submits that such a referral in the instant case is both unnecessary and unwarranted, and suggests that the Commission, itself, can and should quickly dispose of the matter.

Licensee is not unmindful of the sometimes extraordinary tolerance which the Commission has extended in the past to well-meaning, but unskilled, pro se petitioners. However, it is urged that -- in this case in particular -- the Commission should act itself to screen out the request and deny it directly,

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<sup>3/</sup> Furthermore, the Petitioner has neither alleged that his request was timely (which, as indicated in the Staff Response, it appears not to be), nor addressed any of the five factors governing untimely petitions to intervene. See 10 CFR § 2.714(a)(1).

<sup>4/</sup> See, e.g., Consumers Power Co. (Palisades Nuclear Power Facility), "Order" (May 29, 1981).

rather than refer it to a licensing board for further consideration. This conclusion stems from the fact that, not only is his request clearly and wholly without merit on its face, but that Mr. Jaffer seems to habitually pursue litigation.

In 1980 alone, Mr. Jaffer was a party to more than a dozen reported decisions in Florida courts in which his appeals or petitions were dismissed.<sup>5/</sup> It now appears that Mr. Jaffer intends to utilize the NRC as an outlet for his litigiousness. In addition to the instant request for hearing, the Petitioner is attempting to obtain the status of amicus curiae before the Appeal Board with respect to the steam generator repairs for Turkey Point, and has also filed an appeal in the United States Court of Appeals for the District of Columbia with respect to

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<sup>5/</sup> See Jaffer v. Brinker, 381 So.2d 767 (Fla. 1980); Jaffer v. Bruckner, 386 So.2d 1326 (3d Dist. Ct. App. Fla. 1980); Jaffer v. City of Miami, 385 So.2d 758 (Fla. 1980); Jaffer v. Dade County Canvassing Board, 389 So.2d 112 (3d Dist. Ct. App. Fla. 1980), dismissed 394 So.2d 1152 (Fla. 1980); Jaffer v. Department of Highway Safety and Motor Vehicles, 386 So.2d 329 (3d Dist. Ct. App. Fla. 1980), petition for review dismissed, 389 So.2d 1111 (Fla. 1980) and 392 So.2d 1375 (Fla. 1980); Jaffer v. Division of Driver License and Financial Responsibility, 392 So.2d 82 (3d Dist. Ct. App. Fla. 1980); Jaffer v. Firestone, 394 So.2d 1152 (Fla. 1980); Jaffer v. Miami Beach Redevelopment Agency, 392 So.2d 1305 (Fla. 1980); Jaffer v. Ongie, 381 So.2d 767 (Fla. 1980); Jaffer v. Spallone, 394 So.2d 1152 (Fla. 1980); Jaffer v. State, 392 So.2d 1388 (3d Dist. Ct. App. Fla. 1980); Jaffer v. State Department of Highway Safety, 396 So.2d 294 (3d Dist. Ct. App. Fla. 1980). See also cases cited in Florida Bar v. Jaffer, 390 So.2d 1185 (Fla. 1980). On November 20, 1980, the Supreme Court of Florida permanently enjoined Mr. Jaffer from engaging in the unauthorized practice of law. Florida Bar v. Jaffer, 390 So.2d 1185 (Fla. 1980).

the grant of license amendments for those repairs.<sup>6/</sup>

In light of this background, it is evident that referral of the Petitioner's request for a hearing to a licensing board would serve no purpose. The request is totally without merit with respect to the grant of a hearing as a matter of right, and Petitioner has not even suggested an ability to contribute to a proceeding. The Commission need not and should not empanel a licensing board in response to Petitioner's postcard. Referral would only result in the expenditure of substantial amounts of legal and technical time and resources on additional rounds of pleadings, possibly a prehearing conference, plus inevitable appeals. This expenditure, in turn, would compel the NRC Staff and the Licensee to divert efforts from important tasks, only to provide the required attention to the Petitioner's patently deficient request for a hearing. As the Commission has indicated in a similar context, public health and safety are best served by concentrating resources on inspections and related scientific and engineering work as opposed to the conduct of legal proceedings. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2),

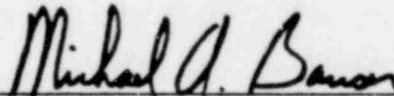
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<sup>6/</sup> See Response, Exhibit 3. It should be noted that the request for amicus curiae status was not properly filed with the Appeal Board. See "Memorandum" of Appeal Board (September 1, 1981). Furthermore, the NRC has opposed Mr. Jaffer's pursuit of an appeal in the D.C. Circuit on the ground that he never filed a petition to intervene in the steam generator repair proceeding before the licensing board. See "Respondent's Opposition to Petitioner's Motion to File Petition for Review In Forma Pauperis" (Sept. 2, 1981), Jaffer v. NRC, D.C. Cir. Dkt. No. 81-8035.

CLI-80-10, 11 NRC 438, 441 (1980).

Based on the foregoing, Licensee respectfully urges that the Commission, in the interest of efficient, effective regulation, rule directly and deny outright the Petitioner's request for a hearing, thus avoiding the additional and protracted burden -- on both the NRC Staff and Licensee -- of proceeding further to consideration by a licensing board.

Respectfully submitted,



Michael A. Bauser

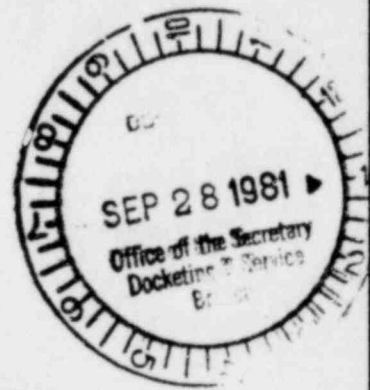
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Counsel for Licensee,  
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September 25, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Florida Power & Light Company's Response to Joel Jaffer's Request for a Hearing" in the above-captioned proceeding, dated September 25, 1981, have been served on the following by deposit in the United States mail, first class, postage prepaid, this 25th day of September 1981:

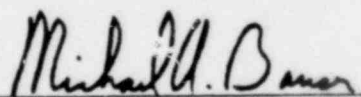
Joel Jaffer  
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