UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

November 9, 1990

LICENSEE'S ANSWER IN OPPOSITION TO REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

I. Introduction

Florida Power & Light Company ("FPL" or "Licensee") files this answer in opposition to a "Request for Hearing and Petition for Leave to Intervene" ("Petition") submitted by the Nuclear Energy Accountability Project ("NEAP") and Thomas J. Saporito, Jr. (collectively referred to as "Petitioners"), signed October 25, 1990, and relating to certain proposed amendments to the operating licenses for Turkey Point Nuclear Power Plants, Units 3 and 4, noticed at 55 Fed. Reg. 39,331 (Sept. 26, 1990). The proposed amendments would, as part of FPL's Emergency Power System ("EPS") Enhancement Project for Turkey Point, implement a number of design changes, described in greater detail in Part II, below.

Petitioners have failed to provide sufficient information to establish that they have standing to initiate and participate in the requested hearing. Moreover, their assertions in support of their claim to standing are ambiguous and appear to

contradict statements made in other proceedings. Further, Petitioners have not met the requirements of NRC regulations in framing their proffered Contentions. Consequently, they have neither established standing nor asserted an admissible Contention. The Petition should be denied. 1/

II. General Description of Requested Amendments

The requested amendments would accommodate the modification and improvement of electrical power systems being undertaken as part of the EPS Enhancement Project at Turkey Point, including the addition of two emergency diesel generators, two additional battery chargers, a battery bank, and associated support equipment and electrical distribution equipment such as motor control centers, load centers, and switchgear. The amendments would also modify the Technical Specifications ("TS"), primarily those concerning electric power supplies, so as to be applicable to the improved design. Where the Turkey Point design permits, the proposed TS are consistent with Standard Technical Specifications ("STS"), which are in general use in the industry. See 55 Fed. Reg. 39,331.

The EPS enhancement also provides, primarily through the addition of an intertie between the two Turkey Point Units, the means whereby FPL intends to satisfy the requirements of the Commission's Station Blackout ("SBO") rule, 10 CFR § 50.63, at

---

1/ A copy of the Petition, addressed to the Secretary of the Commission, was provided to FPL by the NRC Staff. Licensee has never been served by Petitioners.

Turkey Point. This feature will provide an alternate AC power feed to a blackout Unit from an operating emergency diesel generator ("EDG") on the non-blackout Unit. See Letter to J.H. Goldberg (FPL) from Gordon E. Edison, Sr. (NRC), dated June 15, 1990, and enclosed Safety Evaluation ("SBO Safety Evaluation").

By increasing the number of EDGs from two to four, the EPS enhancement, as implemented by the associated license amendments, will essentially double EPS capacity at Turkey Point. This increase, together with modifications to EPS distribution, makes more EDG capacity available for the operation of engineered safety features. As a result, overall plant safety is improved.

III. The Petitioners Have Not Demonstrated Standing

Under 10 CFR § 2.714, a person who desires to intervene in an NRC proceeding is required to identify an interest that would be affected by the proceeding. Specifically, 10 CFR § 2.714 (a)(2) states:

> The petition shall set forth with particularity the interest of the petitioners in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

10 CFR § 2.714 (d)(1) provides that the NRC will consider the following factors in ruling on a petition for leave to intervene or a request for hearing:

> (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

The Commission has held that, in determining whether a person has an interest which may be affected by a proceeding, "contemporaneous judicial concepts of standing should be used." Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). To have standing, a person must allege that he will be injured in fact as a result of the proceeding, and that his interests fall within the zone of interests protected by applicable statutes. Portland General Electric, supra, 4 NRC at 613; Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

In order to establish "injury in fact" for standing, a petitioner must have a "real stake" in the outcome of the proceeding. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, aff'd, ALAB-549, 9 NRC 644 (1979). Although residence within 50 miles of a plant has been held sufficient to establish standing to assert safety questions, residence more than 75 miles from a plant will not alone establish an interest sufficient for standing as a matter of right. Compare, Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977)

with, Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), ALAB-497, 8 NRC 312, 313 (1978).

Petitioners apparently base their claims of standing to intervene on the organizational standing of NEAP, and on the personal standing of Thomas J. Saporito, Jr. However, the Petition fails to meet the basic requirements described above with respect to either.

A. The Allegations Made in the Petition are Insufficient on Their Face to Support NEAP's Standing, Are Ambiguous, and Appear to Contradict Statements Made Concerning NEAP in Other Proceedings

In order to meet the requirements for standing, an "organization must show injury either to its organizational interests or to the interests of members who have authorized it to act for them." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982), (citing Warth v. Seldin, 422 U.S. 490, 511 (1976)); Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972). Petitioners apparently seek to establish NEAP's standing to intervene on the basis of alleged injury to NEAP's organizational interests, rather than to the interests of any NEAP members who have authorized NEAP to act for them. 2/

2/ When an organization undertakes to intervene on behalf of its members, it must demonstrate that a member has authorized the organization to represent him or her in the proceeding. Philadelphia Electric Co. 15 NRC at 1437; Houston Lighting & Power Co., 9 NRC at 444; Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978). The Petition does not state that NEAP is seeking to intervene as a

(continued...)

With respect to NEAP's standing to intervene as an organization, the Petition states as follows:

> 1. NEAP is a corporation with its principal place of business in Jupiter, Florida and its auxiliary place of business in Miami, Florida. NEAP is an environmental organization with specific and primary purposes to operate for the advancement of the environment and for other educational purposes, by the distribution of funds for such purposes, and particularly for research relative to the environment and the impacts of technology on the environment.
>
> 2. NEAP conducts a majority of its business at its auxiliary office in Miami, Florida and therefore is significantly and adversely affected and otherwise aggrieved by the aforementioned license actions. The interests of NEAP could be significantly and adversely affected if a serious nuclear accident occurred at the Turkey Point nuclear plant as a direct or indirect result of the aforementioned license actions.

Petition at 2.

NEAP cannot claim organizational standing on the basis of the location of its principal place of business in Jupiter. Mr. Saporito has elsewhere stated Jupiter to be about 83 miles from the Turkey Point nuclear plant. See page 8, infra. Nor is the statement that NEAP "conducts a majority of its business at its auxiliary office in Miami . . . ." sufficient. Although Miami is within 50 miles of the Turkey Point plant, the Petition does not disclose any information concerning the nature or scope

---

2/(...continued)
representative of any member and refers to no persons other than Mr. Saporito. In Subpart B, below, we show that he has not established personal standing. Therefore, even if NEAP is claiming representational standing, it cannot do so on behalf of Mr. Saporito.

of the business conducted in Miami; whether such business activity is steady, intermittent or casual; or, indeed, whether the "auxiliary office" is merely a convenience established in an effort to support a claim to activities within the geographical "zone of interest" for Turkey Point. 3/ It is, therefore, insufficient to establish standing.

Further, while it may be possible to square the statements that NEAP has both a "principal place of business" in Jupiter, Florida, and an "auxiliary place of business" in Miami, Florida, where NEAP "conducts a majority of its business," at a minimum, these statements require explanation. Without such explanation, the claim that NEAP presently possesses an "auxiliary place of business" in Miami is flatly contracted by Mr. Saporito's sworn deposition testimony in a recent Department of Labor ("DOL") proceeding. 4/ On page 16 of deposition, the following exchange is recorded:

> Q. Does NEAP have any other headquarters or place of business other than your home?
>
> A. No, I'll say no to that.

The contradictions are further evidenced by a pleading submitted last March by Petitioners in Florida Power & Light Co.

3/ In this connection, the Petition states, on page 10, that it was "[s]igned this 25th day of October 1990 in Miami Florida." However, the stationery on which the Petition was submitted has a Jupiter address, and the document fails to state where it was actually produced.

4/ Deposition of Thomas J. Saporito, Jr., in Thomas J. Saporito, Jr. v. Florida Power & Light Co., Case No. 90-ERA-0027 (May 9, 1990) ("DOL Deposition").

(Turkey Point Plant Unit Nos. 3 and 4), Docket Nos. 50-250-OLA-5 and 50-251-OLA-5 ("OLA-5"), which alleged:

> NEAP is a non-profit environmental organization with a primary purpose focused on providing for public safety and for the protection of the environment as a whole regarding Nuclear Power Generation. NEAP's principal place of business is in Jupiter, Florida which is approximately 83 miles from the Turkey Point nuclear plant. . . . 5/

The OLA-5 pleading further states that:

> NEAP fears that the operating license amendments sought by the Applicant to revise the Turkey Point technical specifications, will cause the plant to be operated unsafely because of relaxed safety margins resulting in a release of radiation into the environment which will adversely affect NEAP's real and personal property located at Jupiter, Florida by radioactive airborne fission products carried by the prevailing air currents which would contaminate NEAP's property.

OLA-5 Petition at 16 (emphasis added).

The OLA-5 proceeding involved the same petitioners and nuclear plant facilities as the instant petition. Both NEAP and Licensee extensively litigated the issue of whether or not NEAP had sufficient organizational interest in proximity to the Turkey Point nuclear plants to meet NRC requirements for standing to intervene in a license amendment proceeding. Yet, at no point in the OLA-5 proceeding did NEAP indicate that a "majority of its business" was located in the Miami area, or that NEAP possessed

---

5/ "Petitioners Amended Petition for Intervention and Brief in Support Thereof" (Mar. 5, 1990), at 15 (emphasis supplied) ("OLA-5 Petition").

an "auxiliary office" in Miami. 6/ This omission may be significant in light of the fact that this issue was directly relevant to claims in OLA-5 that NEAP possessed standing to intervene as an organization.

To be sure, it is possible that the facts have changed and were different prior to the submission of the instant Petition. However, given the circumstances, fair dealing clearly required Petitioners to come forward with an explanation of such changes, since both the Commission and FPL would have to expend significant resources on any hearing which might be initiated. Their failure to do so, we submit, justifies the inference that no adequate explanation exists, or that Petitioners' allegations are disingenuous.

Finally, if NEAP's attempt to intervene on its own behalf is based upon the claim that it is an "environmental organization," intervention should also be denied. The Supreme Court has rejected such grounds for standing, stating:

6/ NEAP was denied standing by the Licensing Board and has now appealed. See "Brief for Appellants Nuclear Energy Accountability Project (NEAP) and Thomas J. Saporito, On Dismissal of Petition to Intervene" (Sept. 5, 1990). The weight of available information places the location of much of NEAP's activities in Jupiter, Florida -- not Miami. For example, the Petition lists a post office box in Jupiter as NEAP's address. Petition at 10. A NEAP flier, a copy of which was attached to "Licensee's Answer in Opposition to Request for Hearing and Petition for Leave to Intervene" (Jan. 10, 1990), submitted in OLA-5, lists NEAP's address as 1202 Sioux Street, Jupiter, Florida. And Mr. Saporito has, himself, stated that NEAP is "located in Jupiter, Florida." See Affidavit of Thomas J. Saporito, Jr., at 1 (Feb. 28, 1990), which was attached to the OLA-5 Petition.

> [A] mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. . . . [I]f a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972). This holding is applied in NRC proceedings. See, e.g., Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 741-42 (1978); Portland General Electric, 4 NRC at 613-14; Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 421-23 (1976).

NEAP's petition to intervene on this very same basis was rejected in OLA-5 by the Licensing Board, which stated:

> Should we grant Mr. Saporito's motion to withdraw, the issue of standing either of the organization by itself or based on other members of NEAP would no longer be moot. Of these questions, lack of standing of the organization is straightforward. We are convinced that NEAP does not have standing as an organization since it is merely claiming a generalized grievance -- alleged danger from a

> nuclear power plant -- that is shared by the general public. 7/

Consequently, the Petition has not established NEAP's standing to intervene.

B. The Allegations Made in the Petition Are Insufficient on Their Face to Support Mr. Saporito's Standing, Are Ambiguous, and Appear to Contradict Statements Made Concerning Him in Other Proceedings

With respect to the personal standing of Mr. Saporito, the Petition states as follows:

> 3. Thomas J. Saporito, Jr. lives and works in and about the City of Miami, Florida as the Executive Director of NEAP and as a self-employed individual with the Airflow Service Corporation. The interests of Mr. Saporito could be significantly and adversely affected if a serious nuclear accident occurred at the Turkey Point nuclear plant as a direct or indirect result of the aforementioned license actions.

Petition at 2.

First, the meaning of this statement is unclear. While a recitation that a person "lives and works in and about" a particular locality would ordinarily be taken to mean that his principal activities are conducted in that locality, those words may mean different things to different people and, at a minimum, the meaning intended should not simply be assumed. This is especially true when legal rights turn upon that meaning. For example "works in and about" in designated capacities does not establish what that work consists of, whether that work is intermittent in nature, or whether some portion, perhaps most, of

---

7/ Memorandum and Order, slip Op. at 6 (Apr. 24, 1990) (emphasis in original).

the work is done "in and about" some other place. Nor does the term "lives" exclude the possibility that the person referred to also "lives" at one or more additional locations, or that most of his domestic activity is carried on elsewhere.

Second, despite the fact that Petitioners claim Mr. Saporito "lives" in Miami, the Petition fails to indicate Mr. Saporito's Miami home address. The only address listed on the Petition is that of NEAP in Jupiter. Petition at 1, 10. In contrast, information submitted by Petitioners in OLA-5 states that Mr. Saporito "resides at 1202 Sioux Street, Jupiter, Florida 33458 along with his wife and three children." 8/ Moreover, only six weeks ago, Petitioners filed an appeal brief in OLA-5 which also refers to Mr. Saporito's residence in Jupiter. 9/

Third, the Petition fails to indicate the nature, frequency or duration of any activities Mr. Saporito conducts "in and about Miami" on behalf of NEAP or the Airflow Service Corporation ("ASC"). With respect to NEAP, that point has already been addressed. The same type of questions are raised with respect to any claim to standing based on Mr. Saporito's employment with ASC. 10/ The location of ASC in Jupiter is

---

8/ See OLA-5 Petition at 9 (Mar. 5, 1990).

9/ See "Brief for Appellants Nuclear Energy Accountability Project (NEAP) and Thomas J. Saporito, On Dismissal of Petition to Intervene" at 12 (Sept. 5, 1990).

10/ In a recent NRC proceeding, Petitioners described Mr. Saporito as the President and Chief Executive Officer of ASC. See "Clarification of Contentions and Answer to Licensee's

(continued...)

confirmed by Mr. Saporito in his DOL deposition. In that deposition, the following exchange took place between FPL counsel and Mr. Saporito:

> Q. Are you affiliated with any other group or organization or employer?
>
> A. I have a private business.
>
> Q. And what is that?
>
> A. Air Flow Service Corporation.
>
> Q. And what is the address of that business?
>
> A. The same address as my residence. 11/

Counsel for FPL eventually established, at pages 6-10 of the deposition, that ASC had been formed by Mr. Saporito three years earlier under a different corporate name and that, in three years of existence, ASC had revenues estimated by Mr. Saporito as approximately $600-$700.

Taken in their entirety, the corporate location of ASC at Mr. Saporito's residence in Jupiter, the lack of specific information in the Petition as to just what Mr. Saporito's work with ASC consists of, and the level of revenues reported as being generated by ASC combine to suggest that the "employment" of Mr. Saporito by ASC does not constitute substantial activity "in and about" Miami.

10/(...continued)
Response in Opposition to NEAP/Saporito Petition for Leave to Intervene" at 4 (Nov. 16, 1989), submitted in Florida Power & Light Co. (Turkey Point Units 3 and 4), Docket Nos. 50-250-OLA-4 and 50-251-OLA-4 ("OLA-4").

11/ DOL Deposition at 4-5.

In sum, Mr. Saporito's claim that he "lives and works in and about Miami" is, even read in isolation, inadequate to establish sufficient contacts within the geographical "zone of interest" to confer standing upon him for the purposes of the instant Petition. This conclusion is strengthened when the claims in the Petition are contrasted with the statements made by Mr. Saporito in other proceedings.

IV. The Petitioners Have Not Submitted Even One Admissible Contention

A. Standards for an Admissible Contention

Under 10 CFR § 2.714 (b)(1), a petitioner is required to submit a list of Contentions prior to the prehearing conference on the petition to intervene. That section further provides that "[a] petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one Contention will not be permitted to participate as a party."

10 CFR § 2.714 (b)(2) sets forth the standards for an admissible Contention. The provision states:

> Each Contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each Contention:
>
> (i) A brief explanation of the bases of the Contention.

(ii) 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, together with 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.

(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file Contentions based on the applicant's environmental report. The petitioner can amend those Contentions or file new Contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

Additionally, 10 CFR § 2.714 (d)(2) states that a licensing board shall:

refuse to admit a Contention if:

(i) The Contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The Contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

These provisions in 10 CFR § 2.714 (b)(2) and § 2.714 (d)(2) were recently added to the Commission's rules of practice.

See 54 Fed. Reg. 33,168 (Aug. 11, 1989). As stated by the Commission, their purpose is to "raise the threshold for the admission of Contentions to require the proponent of the Contention to supply information showing the existence of a genuine dispute with the applicant on an issue of law or fact." Id.

In particular, the standards of the new rule are more stringent than previous Commission standards for an admissible Contention, which only required that "the bases for each Contention [be] set forth with reasonable specificity." See 10 CFR § 2.714 (b) (1989). Moveover, these new standards should be applied here within the context of the especially strict standards which govern operating license amendment proceedings where a hearing is not mandatory. In a proceeding where a hearing is not required, there is an "especially strong reason" why a "licensing board should take the utmost care to satisfy itself fully that there is at least one Contention advanced in the petition which, on its face, raises an issue clearly open to adjudication in the proceeding." Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976) quoting Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 no. 10 (1974)).

B. Petitioners' Proposed Contentions do not Satisfy the Standards for Admissible Contentions

Every Contention proposed by Petitioners fails to provide adequate substantiation, as required by 10 CFR §§ 2.714

(b)(i) and (ii). Further, a number of the Contentions suffer from additional infirmities, such as failing to address written analyses provided by FPL in its amendment application, as required by 10 CFR 2.714 (b)(2)(iii). As a result, Petitioners have failed to proffer even one proper Contention.

1. Proposed Contention 1

Proposed Contention 1 alleges that the license amendments sought by FPL are major Federal actions significantly affecting the quality of the human environment. As a result, Petitioners contend that the NRC must issue an Environmental Impact Statement ("EIS"). The only support offered for the Contention are allegations, contained in the "Basis for Contention," that: (1) "the [NRC] staff has not submitted a No Significant Hazards Evaluation for the Applicant's license amendment requests but has merely affirmed the Applicant's submittal of No Significant Hazards," and (2) the requested amendments "would provide for a significant relaxation of existing operational safety margins" which "could result in unsafe plant operation and a release of radioactive fission products into the environment."

In fact, however, the NRC Staff has prepared its own Proposed No Significant Hazards Consideration Determination. See 55 Fed. Reg. 39,331. While agreeing with Licensee's overall conclusion that the requested amendments involve no significant hazards consideration, the Staff's evaluation takes issue with

and supplements certain details of FPL's analysis. See, e.g., id. at 39,334.

More significantly, however, nowhere do Petitioners even attempt to explain how the alleged bases of the Contention are linked to the claim that the amendments involve a "major Federal action." Further, no sources of expert opinion or other support for Petitioner's position are offered. In the absence of bases and support, as required by 10 CFR §§ 2.714 (b)(2)(i) and (ii), the Contention should be rejected.

2. Proposed Contention 2

This Contention alleges the need for an environmental assessment ("EA"). After citing that section of NRC regulations which provides that, in "special circumstances," an EA may be prepared when a categorical exclusion applies (see 10 CFR § 51.22 (b)), Petitioners repeat, as bases for Contention 2, the two alleged bases discussed above in connection with Contention 1.

In fact, the EPS upgrade amendments do appear to qualify for a categorical exclusion from any need for the preparation of either an EIS or an EA. In particular, 10 CFR § 51.22 (c)(9) provides a categorical exclusion for:

> Issuance of an amendment to a permit or license for a reactor pursuant to Part 50 of this chapter which changes a requirement with respect to installation or use of a facility component located within the restricted area, as defined in Part 20 of this chapter, or which changes an inspection or a

> surveillance requirement, provided that (i) the amendment involves no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and (iii) there is no significant increase in individual or cumulative occupational radiation exposure.

Assuming that the NRC Staff issues a final determination that the amendments involve no significant hazards consideration, they would satisfy each of the criteria in 10 CFR § 51.22 (c)(9) for a categorical exclusion. If no such finding is made, presumably the NRC Staff will issue an EA.

Insofar as the bases offered in support of the Contention are concerned, nowhere do Petitioners even attempt to address the "special circumstances" referred to in § 51.22 (b) applicable to the preparation of an EA in the face of a categorical exclusion. Further, the Contention and its proffered bases are in error and otherwise inadequate for the reasons discussed above in connection with Contention 1. Accordingly, Contention 2 should be rejected.

3. Proposed Contention 3

This Contention states:

> The design of the Applicant's Emergency Power System provides for an intertie between the two Turkey Point nuclear units supplying an alternate AC power supply to a blackout unit through the use of an operating Emergency Diesel Generator (EDG) on the non-blackout unit.

> The Applicant failed to address the alternate AC intertie in their Technical Specifications. The failure of this intertie to operate properly when challenged could result in a serious nuclear accident releasing fission products into the environment because the Applicant cannot ensure the operability of the necessary Station Blackout equipment.

Thereafter, five documents are listed as "Basis For Contention 3."

Petitioners fail to mention, however, that, as indicated on page 2 of the FPL Emergency Power System Enhancement Project No Significant Hazards Evaluation (included as Attachment 1 to the July 2, 1990 Letter to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, from W.H. Bohlke (FPL) ("FPL NSH Evaluation")), appropriate testing and surveillance, to ensure operability of SBO equipment, are required within plant procedures. Further, nowhere do Petitioners offer any explanation, whatsoever, of how the five listed documents, presented as bases, pertain to their Contention that the AC intertie necessitates additional TS; nor is there a description of expert opinion or particularized documentary support. Since it thus fails to meet the requirements of 10 CFR §§ 2.714 (b)(2)(i) and (ii), Contention 3 should be rejected.

4. Proposed Contention 4

This Contention simply states:

> The Applicant's amendment request would relax existing plant safety margins at TS 3/4.8.1.1. AC SOURCES - OPERATING which currently require the testing of the redundant Emergency Diesel Generators after any

failure or any problem which renders the EDG inoperable.

As bases, Petitioners offer the following:

1. The current requirement to test the redundant EDG(s) after any failure or any problem which renders the EDG inoperable is to demonstrate that the redundant EDG(s) are, in fact, fully operational and free from any similar problem or any new problem which may have been created as a direct or indirect result of the repair to the failed EDG.

2. Therefore, it is not acceptable to provide an exemption to this testing when an EDG is taken out of service for preplanned preventive maintenance or testing. Since EDG(s) are essential safety equipment required to mitigate a serious nuclear accident, there is an increase in the probability of a previously analyzed accident.

As is clear on their face, however, the Contention and its alleged bases confuse the facts and contradict each other. Contrary to the Contention and Petitioners' first "basis," the proposed modification to TS does not reduce redundant EDG testing "after any failure or problem" with an EDG "which renders the EDG inoperable" (emphasis added), at all. In fact, the pertinent TS have nothing directly to do with failures or problems, but deal solely with pre-planned EDG maintenance or testing. See 55 Fed. Reg. 39,335. As explained in the NRC Staff Proposed No Significant Hazards Consideration Determination ("Staff Proposed NSHC Determination"):

> Consistent with the STS and current NRC guidance, testing of the redundant (i.e., remaining required EDGs) EDGs are to be performed after any failure or any problem which renders the EDG inoperable. The purpose of this testing is to demonstrate that the redundant EDGs have not been degraded by a similar problem. When an EDG is intentionally taken out of service, the above concern does not exist. Therefore, it is acceptable to

> provide an exemption to this testing when an EDG is taken out of service for pre-planned preventive maintenance or testing. Reducing the number of unnecessary EDG tests is in accordance with Generic Letter 84-15 and current NRC guidance. 12/

Id. (emphasis supplied).

Since the proposed Contention is without basis, and because Petitioners have failed to identify an expert opinion or any other support upon which they can rely, it should be rejected pursuant to 10 CFR §§ 2.714 (b)(2)(i) and (ii).

5. Proposed Contention 5

This Contention states as follows:

> As evidenced at page 27 of the Applicant's NSHE, TS 3/4.8.1.1 AC SOURCES - OPERATING provides for a deletion - verification of the cranking diesel generators OPERABILITY has been removed from ACTIONS "a" and "d". The requirement to repeat EDG OPERABILITY demonstrations on a 24-hour frequency, to verify compliance with LCO 3.8.2.1, and to implement a dual unit shutdown is deleted from ACTIONs, "b" and "d". The dual unit shutdown requirement in ACTION "c", which addresses the inoperability of a EDG due to the performance of Surveillance Requirement 4.8.1.1.2c, is deleted in its entirety. This deletion is a relaxation of an existing plant safety margin and therefore should not be permitted.

The following are then offered as "Basis for Contention 5:"

12/ Emergency diesel generator testing has been evaluated by the industry and NRC for over six years under Generic Letter 84-15. The results of this evaluation and subsequent NRC guidance indicate that excessive testing of emergency diesel generators can reduce the availability of this standby power source. Hence, testing requirements that were determined to be unnecessary were removed in the industry STS. This STS improvement is being requested for the Turkey Point diesel generators in the subject amendments.

1. The elimination of a dual unit shutdown, where appropriate, involves a reduction in the margin of safety of plant operation.

2. Operation of the facility in accordance with the proposed amendment would involve a significant reduction in a margin of safety. The cranking diesels will remain electrically connected with the plants safety systems and therefore this equipment should not be deleted from the TS.

Taken alone, Contention 5 is simply incomprehensible. When read together with the statements which are presented as bases, Petitioners appear to be taking the position that

(1) elimination of the need to have two cranking diesels as backups, and

(2) elimination of the need for shutdown of both Turkey Point Units on the loss of one EDG,

represent unacceptable "reduction[s] in the margin of safety." Such a position, however, is wholly without support. Accordingly, the Contention must be rejected on the basis of 10 CFR §§ 2.714 (b)(2)(i), (ii) and -- as discussed below -- 10 CFR §§ 2.714 (b)(2)(iii), as well.

As explained, in detail, in the NRC Staff Proposed NSHC Determination, the current Turkey Point design employs two safety-grade EDGs, with any two out of five non-safety cranking diesels available as backup. In the proposed design, the plant will have four safety-grade EDGs, with the non-safety cranking diesels available as further backup. The two additional safety EDGs will have a complete set of TS and, thus, replace the

cranking diesels with higher capability and more reliable equipment. See 55 Fed. Reg. 39,336.

The cranking diesels will be maintained and available as a secondary backup power source. A requirement for surveillance of the cranking diesels every 18 months is imposed on page 3/4 7-11 of the current TS, which will not be changed. However, it is no longer necessary for the TS to require a demonstration of the operability of the cranking diesels when a safety EDG and/or startup transformer is inoperable. The deletion of this requirement is more than compensated for by the two additional safety EDGs which are required to be operable as described in the proposed TS. See id.

With respect to dual unit shutdown, in the existing design, both EDGs are required for single unit or dual unit operation. This results in both units being impacted simultaneously by the loss of an EDG. Under the new, four EDG configuration, however, only three EDGs (two associated with the operating unit and one from the opposite unit) will be required for single unit operation. When both units are at power, all four EDGs must be operable. In this case, which is the only operating configuration where a dual unit shutdown would be of concern, a loss of one EDG would only impact the unit associated with the EDG -- assuming all other TS requirements for the out-of-service opposite unit were satisfied. Therefore, the deletion of dual unit shutdown requirements is appropriate in view of the planned EPS design modification. See FPL NSH Evaluation at 28.

Based on the foregoing, it is clear that the Contention 5 is without bases. In addition, Petitioners have failed to identify any expert opinion or other support upon which they can rely. Further, Petitioners have neither identified any errors or other deficiencies in NRC Staff or FPL analyses, nor have they offered any foundation for even a suggestion that there are such. Accordingly, Contention 5 should be rejected on the basis of 10 CFR §§ 2.714 (b)(2)(i), (ii) and (iii).

6. Proposed Contention 6

This Contention states:

> As evidenced in the Applicant's NSHE at page 37, a relaxation of an existing plant safety margin will be incorporated in the TS 3/4.8.1.1 AC SOURCES - OPERATIONS. Relaxations - Surveillance 4.8.1.1.2a.3 which required verification that a fuel transfer pump started and transferred fuel from the storage tank to the day tank in accordance with the frequency of Table 4.8-1 is revised and renumbered as 4.8.1.1.2b. This revised version requires a demonstration on a 92 day frequency with an automatic start.

The following "Basis for Contention 6" is offered:

> 1. The intent of this surveillance is to ensure that the fuel transfer system will function as designed by automatically transferring fuel from the storage tank to the day tank when a predetermined low level is reached in the day tank. The system is designed to automatically maintain an adequate fuel supply to the EDG during extended operation.
>
> The most important aspect of this surveillance is the frequency of testing to ensure proper operability of the automatic function of the design and to ensure a proper fuel supply in the day tank. Therefore, the frequency of testing should remain unchanged and the length of the EDG test run should be increased to permit the functional testing of the automatic design feature of the system.

Petitioners apparently object to the proposed decrease in fuel transfer pump test frequency to once every 92 days. According to their own "Basis," however, "The most important aspect of this surveillance is the frequency of testing to ensure proper operability of the automatic function of the design and to ensure a proper fuel supply in the day tank." Within this context, however, Petitioners fail to note that a primary purpose of the new requirement is, in fact, to address this precise matter.

As specifically described in the FPL NSH Evaluation,

> The intent of this surveillance is to ensure that the fuel transfer system will function as designed by automatically transferring fuel from the storage tank to the day tank when a predetermined low level is reached in the day tank. The system is designed to automatically maintain an adequate fuel supply to the EDG during an extended run. The existing surveillance did not require that the automatic aspect of this function be demonstrated and because of the frequency of this surveillance and the relatively short EDG run time associated with the surveillance, most of the required pump starts are manual. The revised surveillance better demonstrates the OPERABILITY of the design by requiring the test to demonstrate the pump's auto-start capability.

FPL NSH Evaluation at 37-38 (emphasis added). Accordingly, to the extent that Petitioners maintain that the new surveillance requirement is improper because it fails to test the automatic functions of the transfer pump, the Contention is without bases or other support and should be rejected under 10 CFR §§ 2.714 (b)(2)(i) and (ii). Further, as Petitioners have failed to identify any particular errors or other deficiencies in the FPL

Evaluation, the Contention fails to meet the requirements of 10 CFR § 2.714 (b)(2)(iii) and is, therefore, improper.

In addition, if the gravamen of the proposed Contention is that any relaxation of transfer pump surveillance frequency is improper, the Contention is deficient in that Petitioners have not demonstrated that they are entitled to any relief. The fact that certain requirements are relaxed or that certain margins are reduced does not mean that the revised requirements are necessarily unacceptable. Petitioners have not alleged, and have not provided any basis for an allegation, that the proposed relaxation in test frequency would violate any NRC regulation or requirement. Further, they have not otherwise provided any basis, whatever, for a claim that the relaxation would pose an undue risk to the public health and safety. Therefore, the Contention is inadmissible under 10 CFR § 2.714 (d)(2)(ii), which states that a licensing board shall refuse to admit a proposed contention in situations where, if proven, the proposed contention "would be of no consequence in the proceeding because it would not entitle petitioner to relief."

7. Proposed Contention 7

This Contention and its purported bases are presented as follows:

CONTENTION 7

As evidenced in the Applicant's NSHE at page 59, Surveillances 4.8.2.1c and e have been deleted. Surveillances 4.8.2.1c required rotating the pilot cell and checking water level every 31 days. Surveillance 4.8.2.1e required performance of a battery charger visual inspection quarterly. Also, the requirement to verify a battery charger equalizing charge is started, found in Notes 1 and 2 of Table 4.8-2, has been deleted. These deletions represent a significant reduction of the safety margin currently established in the TS and could result in the failure of the EDG when challenged.

BASIS FOR CONTENTION 7

1. The probability or consequences of a previously evaluated accident is significantly increased as a direct result of this TS deletion.

2. The Applicant failed to address any parameters or indicators by which the plant operators would be required to initiate an equalizing charge on the batteries.

3. The current requirement to rotate the pilot cell and check battery water level every 31 days is essential in ensuring that the batteries are maintained in a satisfactory state of readiness and that they will perform when challenged.

Much of the Contention appears to simply have been copied from the FPL NSH Evaluation or the NRC Staff's Proposed NSHC Determination. As with other Contentions, however, Petitioners have ignored the Licensee's and Staff's analyses of the proposed amendments.

Rotating the pilot cell, checking water level, visual inspection of the battery charger, and equalizing battery charging are all in the nature of maintenance activities, and do not verify either battery or charger operability. Thus, changes in these requirements have no effect on plant safety. See 55 Fed. Reg. 39,366; FPL NSH Evaluation, pp. 59-60.

Further, TS Surveillance 4.8.2.1a contains a requirement for verifying pilot cell electrolyte level weekly. As a result, redundant pilot cell requirements are verified every week, not just monthly. Battery condition, itself, is evaluated by the periodic checking of cell specific gravity. Battery chargers are utilized to perform an equalizing charge to conform with the operability requirements of the TS. See, e.g., 55 Fed. Reg. 39,236-37; FPL NSH Evaluation, pp. 59-60.

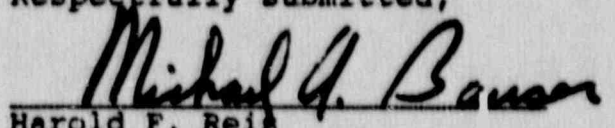
In view of the discussion and analyses contained in the FPL NSH Evaluation and NRC Staff Proposed NSHC Determination, it is clear that Petitioners have, in fact, provided no bases or support for Contention 7, whatsoever. Thus, Contention 7 should be rejected pursuant to 10 CFR §§ 2.714 (b)(2)(i) and (ii). Further, having failed to identify errors or deficiencies in the FPL and Staff analyses, the Contention is improper under 10 CFR § 2.714 (b)(2)(iii) and should not be accepted.

V. Conclusion

The Petition does not demonstrate Petitioners' standing to intervene as a matter of right and Petitioners have failed to

submit an admissible contention. Consequently, the Petition should be denied.

Respectfully submitted,



Harold F. Reis
Michael A. Bauser
James Vigil, Jr.

Newman & Holtzinger, P.C.
1615 L Street, N.W.
Washington, D.C. 20036
(202) 955-6600

Cc-Counsel:

Steven Carr, Esq.
Senior Attorney
Florida Power & Light Company
Post Office Box 14000
Juno Beach, Florida 33408

Dated this 9th day of November 1990.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	
FLORIDA POWER & LIGHT COMPANY	Docket Nos. 50-250 50-251
(Turkey point Plant, Units 3 and 4	

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that Michael A. Bauser enters an appearance as counsel for Florida Power & Light Company in the above-captioned proceeding.

Name:	Michael A. Bauser
Address:	Newman & Holtzinger, P.C. 1615 L Street, N.W. Suite 1000 Washington, D.C. 20036
Telephone:	(202) 955-6600
Admissions:	United States Court of Appeals for the District of Columbia Circuit
Name of Party:	Florida Power & Light Company Post Office Box 14000 Juno Beach, Florida 33408

Michael A. Bauser

Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Date: November 9, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'90 NOV 13 A10:45

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

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that Steven Carr enters an appearance as co-counsel for Florida Power & Light Company in the above-captioned proceeding.

Name: Steven Carr

Address: 700 Universe Boulevard
Room 3712
Juno Beach, Florida 33408

Telephone: (407) 694-3846

Admissions: United States District Court,
District of Kansas

United States District Court
Southern District of Florida

United States District Court
Middle District of Florida

United States Court of Appeals for
the Tenth Circuit of Florida

United States Court of Appeals for
the Eighth Circuit of Florida

Name of Party: Florida Power & Light Company
Post Office Box 14000
Juno Beach, Florida 33408

Steven Carr

700 Universe Boulevard
Room 3712
Juno Beach, Florida 33408

Date: November 7, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 50-251
(Turkey point Plant, Units 3 and 4	)	

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that Harold F. Reis enters an appearance as counsel for Florida Power & Light Company in the above-captioned proceeding.

Name:	Harold F. Reis
Address:	Newman & Holtzinger, P.C. 1615 L Street, N.W. Suite 1000 Washington, D.C. 20036
Telephone:	(202) 955-6600
Admissions:	United States Court of Appeals for the District of Columbia Circuit
Name of Party:	Florida Power & Light Company Post Office Box 14000 Juno Beach, Florida 33408

Harold F. Reis

Harold F. Reis

Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Date: November 9, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket Nos. 50-250 50-251
(Turkey point Plant, Units 3 and 4	)	

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that James Vigil, Jr. enters an appearance as counsel for Florida Power & Light Company in the above-captioned proceeding.

Name:	James Vigil, Jr.
Address:	Newman & Holtzinger, P.C. 1615 L Street, N.W. Suite 1000 Washington, D.C. 20036
Telephone:	(202) 955-6600
Admissions:	United States Court of Appeals for the District of Columbia Circuit
Name of Party:	Florida Power & Light Company Post Office Box 14000 Juno Beach, Florida 33408

James Vigil, Jr.

Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Date: November 9, 1990

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer in Opposition to Request for Hearing and Petition for Leave to Intervene" in the above captioned proceeding, together with four "Notice[s] of Appearance of Counsel," were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Washington, D.C. 20555

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Appeal Panel
Mail Stop EWW-529
Washington, D.C. 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Chief, Docketing and Service Section
(Original plus two copies)

Thomas J. Saporito, Jr.
Executive Director
Nuclear Energy Accountability Project
Post Office Box 129
Jupiter, Florida 33468-0129

Janice E. Moore, Esq.
Patricia A. Jehle, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Steven Carr, Esq.
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Room 3712
Juno Beach, Florida 33408

Dated this 9th day of November 1990

James Vigil, Jr.
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036