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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

John H. Frye, III, Chairman
Dr. Charles N. Kelber
Dr. David R. Schink

In the Matter of:)	
)	
FLORIDA POWER AND)	Docket Nos. 50-250-OLA-6
LIGHT COMPANY)	50-251-OLA-6
)	
(Turkey Point Nuclear)	(Emergency Power System Repair)
Plant Units 3 & 4))	
)	ASLBP No. 91-625-02-OLA-6
)	
)	December 26, 1990

REPLY TO ANSWERS TO PETITION AND AMENDED PETITION

On December 6, 1990, the Atomic Safety and Licensing Board Panel (ASLBP) issued a MEMORANDUM AND ORDER (Scheduling Reply to Answers to Petition) requiring a response from Thomas J. Saporito, Jr. (Petitioner) no later than January 4, 1991. Specifically, the December 6, 1990 MEMORANDUM AND ORDER requires a response to answers dated November 9 and 14, 1990 opposing the petition by both Florida Power and Light (Applicant) and the Staff. Also, the Board ordered a response to the Applicant's December 5, 1990 response to Petitioner's notices of change of address.

This filing by the Petitioner is in response to the Board's December 6, 1990 MEMORANDUM AND ORDER. Before responding to the

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issues in this matter, Petitioner must address one part of the Board's December 6, 1990 MEMORANDUM AND ORDER which states:

"In light of the fact that Petitioners have stated contentions, we find that good cause exists to bar the further filing of contentions absent a showing pursuant to 10 CFR 2.714 (a) (1) (i) - (v)."

Petitioner objects to this part of the Board's order and takes exception to it. The Code of Federal Regulations governing administrative proceedings, as in this proceeding, permit any interested person to request a hearing on any matter actionable by notice in the Federal Register. The regulations also permit the filing of contentions anytime thereafter until 15 days before a scheduled prehearing conference and without the consent of the Board.

Petitioner finds this part of the Board's order to be premature and outside the authority of the Board at this stage of the proceeding. Petitioner requests that the Board reconsider this part of its December 6, 1990 MEMORANDUM AND ORDER.

REPLY TO APPLICANT'S DECEMBER 5, 1990
RESPONSE TO PETITIONER'S NOTICES OF
CHANGE OF ADDRESS

On December 5, 1990, the Applicant filed (LICENSEE'S RESPONSE TO NOTICES OF CHANGE OF ADDRESS). In their December 5, 1990 filing the Applicant stated:

"...To the contrary, Licensee notes that additional uncertainties related to the issue of standing have been injected into the proceeding by

the Notices.

Perhaps most significantly, according to the first Notice, the address change to Miami "became effective July 1990." However, in sworn testimony presented in an unrelated Department of Labor proceeding on August 22, 1990, Mr. Saporito gave his then-present address and the location of Nuclear Energy Accountability Project headquarters as "1202 Sioux Street, Jupiter, Florida." ... At a minimum, this apparent inconsistency raises serious questions concerning the fact and timing of Petitioners' actual and various locations and addresses."

In their December 5, 1990 filing, the Applicant also attached certain pages of the Department of Labor (DOL) proceeding for the Board's consideration. The transcripts on page #243 evidence that Mr. Saporito's address, at that time, was 1202 Sioux Street, Jupiter, Florida. The transcripts on page #264 evidence that NEAP's headquarters, at that time, were located at 1202 Sioux Street, Jupiter, Florida. Petitioner's November 26, 1990 filing of (NOTICE OF ADDRESS CHANGE) states in part that:

"... 8135 S.W. 62nd Place, Miami, Florida
33143 ... this new mailing address which became
effective July 1990."

Applicant's mis-interpretation of this address change would have the Board believe that a concern exists regarding previous testimony in the DOL proceeding relating to Petitioners address and the current address of Petitioner. However, a more careful examination of the facts reveal that:

1. The mailing address of 8135 S.W. 62nd Place, Miami, Florida became effective July 1990 for the Nuclear Energy

Accountability Project (NEAP) and only in the capacity serving as an auxiliary office. The actual headquarters of NEAP remained at 1202 Sioux Street, Jupiter, Florida.

2. Mr. Saporito's mailing address remained at 1202 Sioux Street, Jupiter, Florida at that time and did not change until some time after July 1990 and well before the time that Petitioner filed a Request for Hearing and Leave to Intervene in this proceeding.

3. On December 8, 1990, NEAP filed a MOTION TO WITHDRAW from this proceeding. Therefore, Applicant's concerns regarding the standing of NEAP are moot - anticipating that the Board will grant Petitioner's motion.

4. NO additional uncertainties related to the issue of standing have been injected into the proceeding by the Notices of Address Change. Therefore, Applicant's December 5, 1990 filing should not be given any consideration by the Board in determining Petitioner's standing in this proceeding.

AMENDED PETITION

COMES NOW, Thomas J. Saporito, Jr., (Petitioner), and hereby amends his Petition as follows:

Contentions 1 and 2

Petitioner submitted Contentions 1 and 2 requesting an environmental impact statement and an environmental assessment because the Applicant's amendment request is a major federal action. Both the Applicant and Staff opposed these contentions.

Petitioner would apprise the Board that the Staff cannot simply decide not to perform an environmental impact statement or an environmental assessment on a major federal action. If the Nuclear Regulatory Commission (NRC) decides that an environmental impact statement or an environmental assessment are not required, then the NRC must grant an exemption allowing such. No such exemption has been granted to the Applicant by the NRC. See 10 C.F.R. 51.20

Additionally, pursuant to 10 C.F.R. 51.25,

"Before taking a proposed action subject to the provisions of this subpart, the appropriate NRC staff director will determine on the basis of the criteria and classifications of types of actions in 51.20, 51.21 and 51.22 of this subpart whether the proposed action is of the type listed in 51.22(c) as a categorical exclusion or whether an environmental impact statement or an environmental assessment should be prepared..."

Petitioner apprises the Board that the staff director has not taken any action pursuant to 10 C.F.R. 51.25 as required.

Petitioner points out the Board that the Staff must give CONSIDERATION OF ALTERNATIVES. See 29 NRC 539 (1989)

Under 10 C.F.R. 50.58(b)(6), licensing boards lack jurisdiction to review a "no significant hazards consideration" finding of the Staff, as well as the immediate effectiveness of a license amendment issued after all steps requisite to the issuance of such an amendment have been taken by the Staff. This jurisdictional bar, however, does not insulate from adjudicatory review Staff actions that must be (but have not

been) taken prior to issuance of an amendment. See 28 NRC 146 (1988).

The Staff must perform an environmental review of a license amendment prior to putting that amendment into effect. Depending upon the circumstances, the review may take the form of an Environmental Impact Statement, an Environmental Assessment, or a categorical exclusion. Nothing in the *Sholly* regulations abrogates those requirements. See 28 NRC 146 (1988)

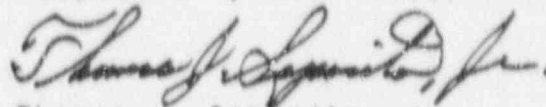
For all the foregoing reasons, Petitioner has satisfied the regulations pertaining to Contentions 1 and 2. Therefore, the Board should grant Petitioner a hearing on the record.

Contentions 3,4,5,6 and 7

Petitioner, at this time, cannot supplement Contentions 3,4,5,6 and 7 because the Applicant has not made relevant information such as electrical diagrams, schematics, blueprints, procedures and other information available for public review in the NRC Public Document Room at the Florida International Library.

Petitioner would therefore request that the Board extend the time requirements for the Petitioner's response and order the Applicant to make available to Petitioner any and all relevant information concerning the proposed amendment request to enable the Petitioner to comply with the Board's Memorandum and Order.

Respectfully submitted,



Thomas J. Saporito, Jr.
Petitioner, Pro se

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Copied To:

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