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DUPLICATE ORIGINAL

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February 8, 1991

'91 FEB 12 P12:47

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Administrative Judges:

Thomas S. Moore, Chairman  
Howard A. Wilber  
G. Paul Bollwerk, III

In the Matter of )

FLORIDA POWER & LIGHT )  
COMPANY )

(Turkey Point Nuclear Plant )  
Units 3 and 4 )

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

(Technical Specifications  
Replacement)

LICENSEE'S MOTION TO REJECT OR STRIKE  
PETITIONER'S REPLY TO MOTION TO DISMISS

On January 9, 1991, the Atomic Safety and Licensing Appeal Board issued an order directing Appellant, the Nuclear Energy Accountability Project ("NEAP"), to respond to Florida Power & Light Company's ("Licensee") motion of December 19, 1990, which the Board treated as a motion to dismiss the appeal because NEAP had "indicated in other litigation before the Licensing Board that it will be dissolved effective December 31, 1990." Represented by Thomas J. Saporito, Jr., its Executive Director, NEAP responded with its "Reply," which was dated January 28, 1991, and was styled "In the Matter of FLORIDA POWER & LIGHT CO. (The 'Big Turkey' Nuclear Plant Units 3 and 4)." Without further explanation or reference to the basic corporate documents or

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actions conferring authority upon, or denying authority to, the Executive Director, the Reply states:

Mr. Saporito, Executive Director of NEAP, acted outside his authority when he notified the NRC that NEAP would be dissolved by December 31, 1990. Mr. Saporito failed to notify NEAP board members of his decision. The Board of Directors of NEAP have not decided to dissolve NEAP and therefore NEAP remains intact as an environment organization. . . .

In light of the above, the ASLB's January 10, 1991 order is moot and requires no further justification by NEAP.

Due to the discourteous, insulting and disrespectful tone and substance of NEAP's Reply, the Licensee moves the Appeal Board to reject or strike the Reply. 1/

The rules of the Nuclear Regulatory Commission dictate that "[t]he signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority." 10 CFR § 2.708(c). Moreover, in an earlier phase of this proceeding, it was made abundantly clear that the Commission was relying on the assumption that "[a]s the representative of NEAP, Mr. Saporito had the full authority and responsibility to

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1/ We assume that the Board would not, in any event, simply accept and act upon the sketchy assertions made in the Reply without a further showing of the exact scope of and limitations upon the authority of the Executive Director when he made his subsequently repudiated representation based upon the relevant corporate documents, including its articles of incorporation and by-laws, and an inquiry into whether, in reality, NEAP is controlled by Mr. Saporito or is merely his alter ego.

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represent it, on both technical and procedural matters." LBP-90-24, 32 NRC 12, 15 (1990). For Mr. Saporito or Neap to advise the Appeal Board and the parties at this late date, without explanation or excuse, that they could not rely on his authority or representations and therefore that the Appeal Board's order of January 9, 1991 is, by his ipse dixit, "moot and requires no further justification . . ." is clearly insulting and disrespectful to the Board and the parties.

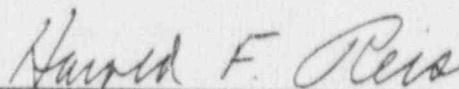
In addition, the manner in which NEAP has styled the Reply is both in violation of the rules because it is improperly titled (see 10 CFR § 2.708(a)) and further evidences the flippant and discourteous attitude which NEAP and its representative bring to the NRC adjudicatory process. The Reply also fails to meet the proof of service requirements of the rules. 10 CFR § 2.712(f). While that provision is not always strictly enforced, in this case, it is an additional manifestation of the lack of gravity with which NEAP regards its obligation to comply with the rules. In addition, a diligent search does not disclose receipt of the Reply by any of Licensee's counsel. A copy was supplied by NRC's Counsel.

Although licensing and appeal boards "extend special consideration to litigants appearing without benefit of counsel," such litigants are not "free of any obligation to familiarize themselves with [the NRC's] rules." Pennsylvania Power and Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2),

ALAB-563, 10 NRC 449, 450 n.1 (1979). See also Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 46-47 n.4 (1984). Under the NRC's rules of procedure, parties and their representatives are required "to conduct themselves with honor, dignity, and decorum as they should before a court of law." 10 CFR § 2.713(a). Consequently, even though NEAP is not represented by a lawyer, it is appropriate to reject or strike its submission which is "insulting and disrespectful in tone." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-474, 7 NRC 746, 748-49 (1978) (citing Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), 6 AEC 319 (1973)).

In any event, NEAP should be estopped from denying that Mr. Saporito had the authority that he has previously and consistently represented he had - and apparently continues to represent he has. Unless the Board and the parties can rely and act upon the submissions made to them in proceedings, the adjudicatory process will be transformed into a capricious game.

Respectfully submitted,



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Dated: February 8, 1991

Attorneys for  
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UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached "Motion to Reject or Strike Petitioner's Reply to Motion to Dismiss" in the above-captioned proceeding were served on the following by deposit in the United States Mail, first class postage paid, on the date shown below:

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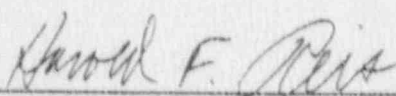
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Dated: February 8, 1991

\* Additional service by Messenger