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July 31, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
FLORIDA POWER & LIGHT COMPANY )  
(Turkey Point Plant, Units 3 and 4) )

Docket Nos. 50-250 OLA-3  
50-251 OLA-3

DOCKETED

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DOCKETING & SERVICE  
BRANCH

NRC STAFF RESPONSE TO REQUEST FOR HEARING  
AND PETITION FOR LEAVE TO INTERVENE  
REGARDING AMENDMENTS TO ALLOW STORAGE  
OF FUEL WITH INCREASED ENRICHMENT

I. INTRODUCTION

Florida Power & Light Company (Licensee) is licensed to possess, use and operate Turkey Point Plant, Units 3 and 4, two pressurized water nuclear reactors located in Dade County, Florida. On June 20, 1984, pursuant to 10 CFR § 2.105(a)(4)(i), the NRC published in the Federal Register a notice of consideration of the issuance of amendments to the facility licenses and offered the opportunity for hearing on the amendments. 49 Fed. Reg. 25360. The amendments would: 1) allow storage of fuel with increased enrichment in the existing new fuel storage racks and spent fuel storage racks and 2) increase the  $K_{eff}$  (neutron multiplication factor) for the existing new fuel storage racks. The notice established July 20, 1984 as the deadline for filing a request for hearing and petition for leave to intervene.

Pursuant to that notice, the Center for Nuclear Responsibility (Center) and Joette Lorion (Petitioners) filed a joint request for

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hearing and petition for leave to intervene on July 12, 1984. In that document, the Center alleges that it is an environmental organization with its principal place of business in Miami, Florida, and that it has members who "live, use, work and vacation in . . . a geographic area within the immediate vicinity" of the plant and (1) could "suffer severe consequences" from a serious nuclear accident at Turkey Point and (2) would be adversely affected by the proposed action. Petition at 1-2. The Center also alleges it is an appropriate party to represent the interest of "persons similarly situated or whose interests might otherwise go unrepresented." Id. at 2.

The petition also states that Joette Lorion is an individual who lives, works and owns real property in and about the city of South Miami, Florida, approximately 15 miles from Turkey Point, "uses and enjoys a geographic area within the immediate vicinity of the plant" and whose interests, along with those of her family, could be significantly and adversely affected if a serious nuclear accident occurred at the plant. Petition at 2. The petition further alleges that she is an "appropriate party to represent the interests of others similarly situated whose interests might go unrepresented." Id. at 2. The petition also contains a list of "contentions" which Petitioners would raise. Petition at 3.

For the reasons set forth below, the Staff is of the view that Petitioners have established their standing and sufficiently identified at least one aspect of the proceeding as to which intervention would be proper.

## II. DISCUSSION

### A. Interest and Standing

Section 189a of the Atomic Energy Act, 42, U.S.C. § 2239(a) provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license or construction permit ... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Section 2.714(a) of the Commission's Rules of Practice also provides that "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene." Thus the pertinent inquiry under section 189a of the Act and 10 CFR § 2.714(a) of the regulations is whether Petitioners have alleged an interest which may be affected by the operating license amendment proceeding. The Commission has held that contemporaneous judicial concepts of standing are controlling in the determination of whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the NRC's Rules of Practice is present. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). There must be a showing that (1) the action being challenged could cause "injury-in-fact" to the person seeking to intervene and that (2) such injury is arguably within the "zone of interests" protected by the Atomic Energy Act or the National Environmental Policy Act.<sup>1/</sup> Id. See Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972). Thus a petitioner must "set forth with particularity" its interest in the

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<sup>1/</sup> 42 U.S.C. § 4321 et seq.

proceeding and how that interest may be affected by the outcome of the proceeding. 10 CFR § 2.714(a)(2).

1. Rules of General Applicability to Organizations and Individuals

An organization may establish standing based upon an injury to itself or through members of the organization who have interests which may be affected by the outcome of the proceeding. Edlow International Co., CLI-76-6, 3 NRC 563, 572-74 (1976); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976).<sup>2/</sup> When an organization claims standing based on the interests of its members, at least one of its members must have standing in his or her own right, the organization must identify (by name and address) specific individual members whose interests may be affected, and the organization must demonstrate that such members have authorized the organization to represent their interest in the proceeding. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973). Absent express authorization, groups may not represent other than their own members, and individuals may not assert the interest of other persons. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474-75 n.1 (1978); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977).

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<sup>2/</sup> A petitioner must particularize a specific injury that it or its members would or might sustain should it be denied relief. The test is whether a "cognizable interest of the petitioner might be adversely affected if the proceeding has one outcome or another." Marble Hill, CLI-80-10, 11 NRC 436, 439 (1980).

Generally, the close proximity of a petitioner's residence is presumed sufficient to satisfy the interest requirements of 10 CFR § 2.714. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153 (1982) (hereafter "AFRRI"); Allens Creek, 9 NRC at 393, citing, Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).<sup>3/</sup> Nevertheless, since there is no presumption that every individual who lives near the plant will consider himself potentially harmed by the outcome of a proceeding, it is important that the nature of the invasion of an individual's personal interest be identified. Allens Creek, 9 NRC at 383. Accordingly, it has been found that persons who live near the site have standing to intervene if they allege a potential for injury from operation of the facility. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), LBP-80-22, 12 NRC 191, 195-96 (1980), affirmed, ALAB-619, 12 NRC 558, 564-65 (1980).

## 2. Interest and Standing of Petitioners in This Proceeding

Turkey Point is located about 25 miles south of Miami, Florida. Final Environmental Statement related to operation of Turkey Point Plant, dated July 1972, at I-1. The petition alleges that Joette Lorion lives within 15 miles of the plant and has interests which would be affected should an accident occur at the plant. Thus, based on

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<sup>3/</sup> In the past, residential distances of up to 50 miles have been found to be not so great as to necessarily preclude a finding of standing in licensing proceedings. See e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 at n.4 (1977); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308 (1978) (40 miles); North Anna, ALAB-146, 6 AEC 631, 633-34 (1973) (residency within 30-40 miles sufficient to show interest in raising safety questions).

geographical proximity, Ms. Lorion has standing to intervene. AFRRI, supra at 153. Ms. Lorion does not, however, have standing to assert the interests of other persons. See Enrico Fermi, ALAB-470, supra; Watts Bar, supra.

As discussed above, the Center allegedly is an environmental organization whose members live, use, work, and vacation in the immediate vicinity of the facility. Petitioner at 1-2. The petition further alleges that the Center and its members are adversely affected by the proposed amendment. Id. at 2. While proximity to a large source of radiation can establish a petitioner's interest, AFRRI, supra at 153, the Center must sufficiently identify (by name and address) at least one member who resides near the plant, has standing and has authorized the Center to represent its interest. General assertions that a petitioner's members live and recreate near a facility are not sufficiently particularized to support a finding of standing. See Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 (1973).

The Center lists two members who reside less than 25 miles from the site. Petition at 2. Those members include Joette Lorion, the Center's director, who previously has established standing in her own right in another Turkey Point amendment proceeding. Prehearing Conference Order (OLA), May 16, 1984, at 31. Although there is no explicit indication that the other named member within the geographical proximity of the plant has authorized the filing of the petition, it is the Staff's view that by signing the petition as director of the Center, Joette Lorion has implicitly authorized the Center to represent her interests in this

proceeding.<sup>4/</sup> Thus the Center has adequately demonstrated standing through the interest of at least one member.<sup>5/</sup>

B. Specific Aspects of the Subject Matter of an Operating License Proceeding

In addition to satisfying the standing and interest requirements of 10 CFR § 2.714, a petitioner must "also set forth with particularity ... the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." 10 CFR § 2.714(a)(2).<sup>6/</sup>

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<sup>4/</sup> The Center's failure to adequately demonstrate that at least one member who lives near the plant authorized the filing of the petition, does not defeat the grant of intervenor status to the Center. Under 10 CFR § 2.714(a)(3), a petition for leave to intervene may be amended, without prior approval of the presiding officer, at any time up to fifteen days prior to a special prehearing conference held pursuant to 10 CFR § 2.751a or, if no special prehearing conference is held, fifteen days before the first prehearing conference. The Appeal Board has stated that petitions that suffer from inarticulate draftsmanship or procedural or pleading defects may be amended if they contain curable defects. North Anna, ALAB-146, 6 AEC 631, 633-34 (1973). See Wisconsin Public Service Corp. (Kewaunee Nuclear Plant), LBP-78-24, 8 NRC 78, 82 (1978). Since Section 2.714(a)(3) does not limit the reasons for amendment, and assuming the defect is curable, the petition could be amended to include a Center member affidavit which would satisfy the standing requirement. See e.g., Enrico Fermi, LBP-79-1, 9 NRC 73, 77 (1979).

<sup>5/</sup> While the Center has established derivative standing, it has not sufficiently demonstrated that it has standing to intervene as an organization based on an injury to the organization itself. The Center only states that it is an incorporated environmental organization with its principal place of business in Miami, but it does not describe how the organization itself would be injured by the proposed license amendment. The Center's alleged representation of the interests of "persons similarly situated" must also be rejected absent express authorization from such persons. See Enrico Fermi, ALAB-470, *supra*; Watts Bar, *supra* at 1421.

<sup>6/</sup> An "aspect" is generally considered to be broader than a "contention," but narrower than a general reference to the NRC's operating statutes. Consumers Power Co. (Midland Plants, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

Although Petitioners are not required to draft contentions until they submit a supplement to their petition, pursuant to 2.714(b), Petitioners list five "contentions" (A.1 through A.4 and B.1) which they would seek to litigate, but assert they would not be limited to these contentions. Petition at 2-4.<sup>7/</sup> Three of the so-called contentions

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7/ The "contentions" proffered by Petitioners state:

- A.1 The proposed increase of  $K_{eff}$  from 0.95 to 0.98 for the existing new fuel storage racks is a significant safety hazards consideration in that the new criterion does not meet the margin of safety that has been established by the NRC for criticality. The criterion used by the NRC since 1976 is that the neutron multiplication factor in the spent fuel pool is to be equal to, or less than, 0.95, including all uncertainties, under all conditions as contained in the American National Standard Institute (ANSI) 210-1976, (ANSI) N-18.2, and in the "NRC Position for Review and Acceptance of Spent Fuel Storage Handling Application," April 14, 1978.
- A.2 The proposed increase of  $K_{eff}$  from 0.95 to 0.98 does not meet 10 C.F.R. 50, Appendix K, Criterion 62, which states that "criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by the use of geometrically safe configurations." And, that an accidental criticality, caused by a change in fuel geometry due to storage of the more highly enriched uranium fuel rods could release substantial amounts of radioactivity to the environment in violation of 10 C.F.R. Parts 20, 50, 51, 100, and NEPA, and will pose a danger to the health and safety of the public and endanger the Biscayne Bay environment.
- A.3 Because the license amendment will not meet the above referenced criteria, the license amendment should not be allowed.
- A.4 The statement in FR Notice 25360, June 20, 1984, that the proposed license amendments "do not involve a significant hazards consideration" is incorrect, and there cannot be issuance of the amendments until a public hearing is held as mandated by the Atomic Energy Act of 1954.
- B.1 The National Environmental Policy Act of 1969 (NEPA), imposes the requirement of an Environmental Impact Statement for this Major Federal Action.



sufficiently identify aspects which are within the scope of the amendment proceeding and are sufficient to put the parties on notice as to the subject matter of actual contentions. Contentions A.1 and A.2 address the increase in the  $K_{eff}$  from 0.95 to 0.98 for the existing new fuel storage racks and raise a concern regarding conformance with acceptance criteria and the potential for accidental criticality resulting in the release of substantial amounts of radiation.<sup>8/</sup> Contention B.1 raises the need for preparation of an environmental impact statement concerning the proposed action.

By contrast, Contention A.3 states that the amendment should be not allowed and A.4 states that the amendments involve a significant hazards consideration and request that a hearing be held prior to their issuance. These general requests that the amendments either not be issued at all, or not be issued before a hearing is held, are not aspects within the subject matter of the proceeding and therefore are not within the Board's jurisdiction. Under Section 189a(2)(A) of the Atomic Energy Act, as amended, 42 U.S.C. § 2239(a)(2)(A), the Commission "may issue and make immediately effective any amendment to an operating license, upon a

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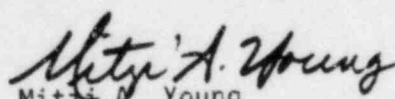
<sup>8/</sup> It may be difficult for Petitioners to offer specific and proper bases regarding the matter of acceptance criteria and criticality. Petitioners have relied on the 0.95  $K_{eff}$  limit for spent fuel pool to conclude that an increase to 0.98 for existing new fuel storage racks will not meet NRC criteria. Both SECY-83-337, "Study on Significant Hazards," dated August 15, 1983 and the attached Science Applications, Inc. (SAI) report, entitled Review and Evaluation of Spent Fuel Pool Expansion Potential Hazards Considerations (Report No. SAI-84-221-WA, Rev. 1, dated July 29, 1983), which Petitioners assert provide a basis for their contentions, discuss the acceptable  $K_{eff}$  for spent fuel pool storage only.

determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency of a request for hearing."<sup>9/</sup> Thus, if the Staff makes a final determination that the amendments do not involve a significant hazards consideration, the Board would have no jurisdiction to consider Petitioners' request for a prior hearing or to prevent the amendments from becoming immediately effective. Consequently, Contentions A.3 and A.4 do not set forth aspects of the subject matter of the proceeding over which the Board has jurisdiction.

### III. CONCLUSION

Based on the foregoing, it is the Staff's view that the Center and Joette Lorion have established standing, have identified at least one aspect properly within the scope of the proceeding, and should be admitted to the proceeding if they proffer at least one admissible contention in accordance with 10 CFR § 2.714(b).

Respectfully submitted,

  
Mitzie A. Young  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 31st day of July, 1984

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<sup>9/</sup> The Commission has delegated the authority to make the no significant hazards consideration determination to its Staff. As the Commission stated with respect to hearing requests, "any question about [the] staff's determination on the issue of significant versus no significant hazards consideration that may be raised in any hearing on the amendment, will not stay the effective date of the amendment." Notice and State Consultation, 48 Fed. Reg. 14873, 14876 (April 6, 1983).

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(a), the following information is provided:

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Admission	- U.S. Court of Appeals, D.C. Circuit U.S. District Court, District of Columbia District of Columbia Court of Appeals
Name of Party	- NRC Staff

Respectfully submitted,

*Mitzi A. Young*  
Mitzi A. Young  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 31st day of July, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE REGARDING AMENDMENTS TO ALLOW STORAGE OF FUEL WITH INCREASED ENRICHMENT" and "NOTICE OF APPEARANCE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 31st day of July, 1984:

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