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September 4, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

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

Docket Nos. 50-250 OLA
50-251 OLA

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NRC STAFF RESPONSE TO LICENSEE
MOTIONS FOR SUMMARY DISPOSITION
OF CONTENTIONS (b) AND (d)

I. INTRODUCTION

On October 7, 1983, the NRC published in the Federal Register a notice of consideration of the issuance of amendments to the facility licenses for the Turkey Point Plant and offered an opportunity for a hearing on the amendments. 48 Fed. Reg. 45862. The amendments concern operational limits associated with the vessel flux reduction program for the new optimized fuel assemblies (OFA) with wet annular burnable absorber rods (WABA). By Order of 16, 1984, the Licensing Board admitted the Center for Nuclear Responsibility, Inc. and Joette Lorion (Intervenors) and two of their proffered contentions.

On August 10, 1984, Florida Power & Light Company (Licensee) filed two motions for summary disposition of contentions raised by Intervenors. One motion concerned Contention (b) and the other Contention (d). Each motion is accompanied by a statement of material facts as to which it is asserted there is no genuine issue to be heard and both motions are

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supported by a single Memorandum of Law. For the reasons set forth below, the Staff supports both Licensee motions.

II. DISCUSSION

A. Legal Standards For Summary Disposition

The Commission's Rules of Practice provide that summary disposition of any matter involved in a licensing proceeding shall be granted if the moving papers, together with the other papers filed in the proceeding, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. 10 CFR 2.749(d). The use of summary disposition has been encouraged by the Commission and the Appeal Board to avoid unnecessary hearings on contentions for which an intervenor has failed to establish the existence of a genuine issue of material fact. E.g., Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALB-590, 11 NRC 542, 550-551 (1980); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, CLI-73-12, 6 AEC 241, 242 (1973), aff'd sub nom, BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974). A material fact is one that may affect the outcome of the litigation. Mutual Fund Investors Inc. v. Putnam Management Co., 553 F.2d 620, 624 (9th Cir. 1977).

When a motion for summary disposition is made and supported by affidavit, a party opposing the motion may not rest upon the mere allegations or denials of his answer but must set forth specific facts such as would be admissible in evidence that show the existence of a

genuine issue of material fact. 10 CFR 2.749(b). All material facts set forth in the statement of material facts required to be served by the moving party will be deemed to be admitted unless controverted by the statement of material facts required to be served by the opposing party. 10 CFR 2.749(a). Any answers supporting or opposing a motion for summary disposition must be served within twenty (20) days after service of motion. Id. If no answer properly showing the existence of a genuine issue of material fact is filed, the decision sought by the moving party, if properly supported, shall be rendered. 10 CFR 2.749(b).

B. The Staff's Affidavits Fully Support Licensee's Motions for Summary Disposition

1. Contention (b)

Whether the entirely new computer model used by the utility, for calculating reflood portions of accidents meets the Commission's ECCS Acceptance Criteria: specifically, whether a 2.2% reduction in re-flood rate is misleading because for a small decrease in re-flood rate, there results a large increase in fuel temperature. Re-flood rates are critical if below 1 or 2 inches per minute.

Contention (b) questions whether the BART A-1 computer code used to analyze loss of coolant accidents (LOCA) meets NRC emergency core cooling criteria in general and whether a reduction in the reflood rate will cause a large increase in fuel temperature. The Staff has read the Licensee's statement of material facts and agrees that those facts demonstrate that there are no genuine factual issues to be litigated as to this contention. See Affidavit of Summer B. Sun (attached). The Staff further believes that Licensee's statement of material facts is supported by the Staff's Safety Evaluation, dated December 23, 1983, which was prepared in connection with the issuance of the amendments and

the BART A-1 Code Safety Evaluation, dated December 21, 1983. Id. The Licensee has performed the required LOCA analyses using NRC approved evaluation models and has properly accounted for reduced reflood rates in the OFA regions of the core.^{*/} The results of these analyses demonstrate that the applicable criteria of 10 C.F.R. § 50.46 and 10 C.F.R. Part 50, Appendix K have been satisfied. Id. Accordingly, summary disposition of this contention should be granted.

2. Contention (d)

The proposed decrease in the departure in the nucleate boiling ratio (DNBR) would significantly and adversely affect the margin of safety for the operation of the reactors. The restriction of the DNBR safety limit is intended to prevent overheating of the fuel and possible cladding perforation, which would result in the release of fission products from the fuel. If the minimum allowable DNBR is reduced from 1.3 to 1.7 (sic: 1.17) as proposed, this would authorize operation of the fuel much closer to the upper boundary of the nucleate boiling regime. Thus, the safety margin will be significantly reduced. Operation above the boundary of the nucleate boiling regime could result in excessive cladding temperatures because of the departure from the nucleate boiling (DNB) and the resultant sharp reduction in heat transfer coefficient. Thus, the proposed amendment will both significantly reduce the safety margin and significantly increase the probability of serious consequences from an accident.

Contention (d) asserts that the reduction in the DNBR from 1.3 to 1.17 which is associated with the amendments will result in an increased potential for cladding perforation and the release of fission products and thus the margin of safety would be significantly reduced. The Staff

^{*/} Contention (b) also asserts that reflood rates are critical when below one or two inches per minute. The Staff agrees with Licensee that the reduction associated with the amendments is not in the reflood rate but rather in the reflood hot assembly steam flow velocity. This reduction results in a slight temperature increase of 10°F. Moreover, reflood rates of less than one or two inches per minute are not critical because there is no difference in the heat transfer mechanism for reflooding rates above or below one inch per second. See Affidavit of Summer B. Sun at 2-4.

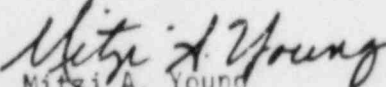
has read the Licensee's statement of material facts regarding Contention (d) and agrees that those facts demonstrate that there are no genuine factual issues to be litigated as to this contention. See Affidavit of Yi-Hsiung Hsii (attached). The Staff also believes that the Licensee's statement of material facts is supported by the Staff's Safety Evaluation dated December 23, 1983, which was prepared in connection with the operational limits associated with vessel flux reduction amendments. Id.

The Staff concludes that (1) the licensee has used appropriate NRC-approved correlations and computer programs in its analyses and (2) the DNB design basis of a 95% probability with 95% confidence that the hot rod does not undergo DNB has been met for both LOPAR and OHA fuel with the respective limits of 1.30 and 1.17. Id. Thus, there has been no significant reduction in a safety margin and all applicable regulatory requirements have been satisfied. Id. Accordingly, summary disposition of this contention should be granted.

III. CONCLUSION

Because there is no genuine issue as to any material fact as to the contentions and inasmuch as a decision in favor of Licensee is required as a matter of law, the Staff supports the Licensee's motions for summary disposition of Contentions (b) and (d).

Respectfully submitted,


Mitzi A. Young
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 4th day of September, 1984