

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-250-OLA-2
50-251-OLA-2

FLORIDA POWER & LIGHT COMPANY

(Turkey Point Nuclear Generating
Plant, Units 3 and 4)

LOCATION: CORAL GABLES, FLORIDA

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

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In the Matter of: :
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FLORIDA POWER & LIGHT COMPANY : Docket No. 50-250-OLA-2
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50-251-OLA-2
(Turkey Point Nuclear Generating :
Plant, Units 3 and 4) :
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Moot Courtroom No. 216
University of Miami,
School of Law
Coral Gables, Florida 33124
Wednesday, March 27, 1985

The prehearing conference in the above-entitled matter
convened at 9:30 a.m.

BEFORE:

DR. ROBERT M. LAZO, ESQ., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

DR. EMMETH A. LEUBKE, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C.

DR. RICHARD F. COLE, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C.

1 APPEARANCES:

2

On behalf of Florida Power & Light Company:

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On behalf of the Center for Nuclear Responsibility,
and pro se:

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JOETTE LORION
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On behalf of the Nuclear Regulatory Commission
Staff:

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MITZI A. YOUNG, ESQ.
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

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16

17 ALSO PRESENT:

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DANIEL G. McDONALD
Plant Project Manager

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P R O C E E D I N G S

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2 JUDGE LAZO: Good morning. This is an
3 administrative proceeding before an Atomic Safety and
4 Licensing Board of the United States Nuclear Regulatory
5 Commission in the matter of Florida Power & Light Company,
6 Turkey Point Plant, Unit Nos. 3 and 4, hereinafter
7 referred to as Licensee.

8 The proceeding is identified as Nuclear
9 Regulatory Commission Docket No. 50-250-OLA-2 and
10 50-251-OLA-2.

11 We have identified the docket number as
12 operating license amendment number 2 to distinguish it
13 from the proceeding which we heard yesterday relating to
14 vessel flux reduction. This proceeding relates to the
15 spent fuel pool expansion application filed by Licensee,
16 and we will be starting a new transcript pagination so
17 that the two proceedings will be kept separate.

18 The Licensee, Florida Power & Light Company, is
19 authorized to possess, use and operate Turkey Point Plant
20 Units 3 and 4, two pressurized water nuclear reactors
21 located in Dade County, Florida pursuant to provisions of
22 facility operating licenses Nos. DPR-31 and DPR-41, issued
23 July 19, 1972 and April 10, 1973, respectively.

24 This Board was established pursuant to a notice
25 published by the Commission on June 7, 1984 in the Federal

1 Register which was entitled Consideration of Issuance of
2 Amendments to Facility Operating Licenses and Proposed No
3 Significant Hazards Consideration Determination and
4 Opportunity for Hearing.

5 That notice stated that the spent fuel pool
6 storage capacity expansion noticed -- the notice stated
7 that the amendments would permit the spent fuel pool
8 storage capacity expansion from 621 to 1404 spaces for
9 each spent fuel pool.

10 The proposed expansion was "to be achieved by
11 reracking each spent fuel pool with two discrete regions,
12 within each pool."

13 In response to that Notice of Opportunity for
14 Hearing, a timely petition was filed by the Center for
15 Nuclear Responsibility, Inc. and Joette Lorion.

16 On February 7, 1985, this Licensing Board
17 scheduled a prehearing conference here today and ordered
18 the Petitioners to file a supplemental petition which
19 would include a list of contentions which were being
20 asserted for litigation in this proceeding.

21 I think we should just note that the order
22 scheduling the prehearing conference indicated that the
23 purposes of this prehearing conference would be to permit
24 identification of the key issues in the proceeding, to
25 take any necessary steps for further identification of the

1 issues, to consider the intervention petition filed by the
2 Center for Nuclear Responsibility and Joette Lorion, and
3 to allow the Licensing Board to make such preliminary or
4 final determinations as to the parties to the proceeding
5 as may be appropriate and, of course, to establish a
6 schedule for further proceedings.

7 May we have the appearances of counsel entered,
8 please?

9 For the Licensee?

10 MR. FRANTZ: My name is Steven Frantz. I am
11 with the firm of Newman & Holtzinger in Washington, D.C.
12 I represent Florida Power & Light Company.

13 With me at the table is cocounsel, Norman Coll,
14 with the firm of Steel, Hector & Davis in Miami, Florida.
15 Also with me in the audience is cocounsel Harold Reis from
16 the firm of Newman & Holtzinger.

17 JUDGE LAZO: Thank you.

18 And for the Nuclear Regulatory Commission Staff?

19 MS. YOUNG: Good morning. My name is Mitzi
20 Young. I am here representing the Nuclear Regulatory
21 Commission Staff. Also seated at counsel table but not
22 entering an appearance in this proceeding is the plant's
23 project manager, Mr. Daniel McDonald.

24 MS. LORION: My name is Joette Lorion. I am
25 representing myself and the Center for Nuclear

1 Responsibility in this proceeding.

2 JUDGE LAZO: Thank you, Ms. Lorion.

3 One of the things we wanted to do this morning
4 is to review the supplemental petition which was filed by
5 the petitioners in this proceeding and to provide the
6 petitioners with an opportunity to respond to the two
7 responses which have been filed by the Licensee and by the
8 NRC Staff in response to that supplemental petition.

9 On March 6, 1985, we had a conference call with
10 the parties regarding the scheduling for the filing of the
11 supplemental petition. The Licensing Board indicated that
12 it was our understanding, after speaking with Ms. Lorion,
13 that the supplemental petition would not be filed on time
14 or at least on the time indicated in our order scheduling
15 the prehearing conference, and that it would be filed late.

16 We indicated to the petitioner that they would
17 be asked to, required to provide a statement as to that
18 late filing. That has been done. On March 21, 1985, both
19 the Licensee and the NRC Staff filed responses to the
20 amended petition to intervene. It would be our suggestion
21 that we permit the petitioners to respond to those
22 responses so that we can make a determination as quickly
23 as possible as to which of the Petitioners' proposed
24 contentions will be accepted for litigation in this
25 proceeding.

1 Before proceeding with that, let us ask, do any
2 of the parties wish to make an opening statement or
3 present any motions or is there anything else we should
4 start with as a preliminary matter?

5 MR. FRANTZ: I have nothing.

6 MS. LORION: I would like to.

7 JUDGE LAZO: Ms. Lorion? Let me ask Ms. Young.

8 MS. YOUNG: The Staff has a quick preliminary
9 matter. I would like to note on the record that yesterday
10 we distributed to the Board and the parties a copy of a
11 Staff Board notification, dated March 25, 1985. As
12 indicated in that notification, Staff is addressing the
13 region's concerns and will keep the Board and parties
14 informed.

15 JUDGE LEUBKE: I would like to ask, is this
16 considered by the Staff as a regulatory matter pending
17 progress? Is that what you mean by keeping informed?

18 MS. YOUNG: I think under the standards of
19 McGuire, any information that is relevant or material to a
20 proceeding has the potential to become an issue. Right
21 now it is incomplete.

22 The Staff will be preparing a response.

23 JUDGE LEUBKE: That is the point I wanted to
24 make.

25 MS. YOUNG: Yes.

1 JUDGE LAZO: Ms. Lorion?

2 MS. LORION: I first of all wanted to state my
3 objections to the fact that this hearing is being held
4 after the license amendments were issued, because
5 historically the Nuclear Regulatory Commission has always
6 considered this a no significant hazards consideration
7 expansion of the spent fuel pool.

8 And since I did file a timely petition and since
9 there are safety issues that are outstanding, and I would
10 like to just quote the letter that Mitzi Young just talked
11 about showing that there are certain inaccuracies in the
12 SER and in the environmental impact assessment, and
13 feeling that if there had been a hearing beforehand, that
14 perhaps these would have come out and not after the fact.

15 So I just wanted to state my objections to the
16 fact I didn't have a hearing before the amendments were
17 issued and the safety significance of that.

18 JUDGE LAZO: Before going on and in response to
19 what you have just said, I think you should note for the
20 record that the Staff did, in fact, issue the proposed or
21 the requested amendments, amendment No. 111 to facility
22 operating license DPR-31, that is unit 3, issued on
23 November 21, 1984. And on the same day the Staff issued
24 amendment No. 105 to facility operating license DPR-41,
25 which is unit 4.

1 Those amendments allow the expansion from 621 to
2 1404 spaces for each of the spent fuel pools.

3 Ms. Lorion, I am sorry. Did you have more to
4 say?

5 MS. LORION: I think the only other point I
6 would make is that, and the Center feels, an environmental
7 impact statement was required by this action and that
8 certain things in this Bemis letter that I now have in my
9 possession shows that clean-up systems and different
10 systems that have to work may not work and there could be
11 increased radiation added to the environment and increased
12 radiation to the workers. That concerns me.

13 JUDGE LAZO: Both of these points you have made
14 in your supplemental petition.

15 MS. LORION: Yes.

16 JUDGE LAZO: So they will be matters which we
17 will consider in coming to a determination regarding what
18 issues, if any, will be admitted for litigation in this
19 proceeding.

20 Are you going to be represented by counsel?

21 MS. LORION: I may down the line. Today I will
22 not be.

23 JUDGE LAZO: Of course, you are permitted to
24 represent yourself. If at all possible, we would
25 encourage you to have counsel. But if that is not

1 possible, we certainly have no objection to you
2 representing yourself and representing the Center. So you
3 may proceed.

4 MS. LORION: I think you have already stated
5 that on June 7 there was a Federal Register notice that
6 noticed that there would be expansion of the spent fuel
7 pool at the Turkey Point plant.

8 On July 9, 1984, myself and the Center for
9 Nuclear Responsibility filed a joint request for a hearing
10 and petition for leave to intervene in this proceeding.
11 Then on November 23, without giving us a hearing
12 beforehand, the Staff made a no significant hazards
13 determination and issued the amendments.

14 I notice that neither party is arguing that I
15 have or that I am able to intervene in the proceeding.
16 Florida Power & Light seems to have trouble with the
17 Center being able to intervene in the proceeding.

18 However, I would like to -- I would like you to
19 take judicial notice of the fact that in the proceeding we
20 had yesterday, the Center was involved and does have
21 interest since we have parties within 15 miles of Turkey
22 Point or people living within 15 miles.

23 We also maintain a resource library which I feel
24 could be damaged in the case of an accident. So I think
25 we have standing in this proceeding.

1 As far as I understood the NRC's response, they
2 agreed also that we had standing in this proceeding. So I
3 just wanted to answer Florida Power & Light's accusations
4 that the Center doesn't have standing and to say the
5 people that I noted in my petition would have given me an
6 affidavit if I had asked for one and if it so be needed, I
7 would get one from them that they are being represented.

8 JUDGE LAZO: Perhaps before going on, we might
9 just address that issue of standing.

10 As you have indicated, there have been no
11 objections interposed as to your personal standing as a
12 representative of the Center for Nuclear Responsibility.

13 I have been saying incorporated --

14 MS. LORION: It is incorporated.

15 JUDGE LAZO: I guess your recent letterhead
16 doesn't indicate that. But as far as your representation
17 of the Center as a member and an officer, it is a fact
18 that the Licensee has opposed that.

19 Perhaps we might ask Mr. Frantz if he wishes to
20 add anything at this time on the question of standing.

21 MR. FRANTZ: For the most part we stand on the
22 record that we have already submitted to the Board. I
23 would like to point out that we objected to the standing
24 of the Center back in July. At that time we noted that
25 proper documentation, such as affidavits, must be

1 submitted from members to authorize the Center to
2 represent their interests.

3 Ms. Lorion has had more than a half year to
4 provide the affidavit and has not done so. Therefore, we
5 still maintain the Center does not have standing in this
6 proceeding.

7 JUDGE LAZO: There is no argument that Ms.
8 Lorion is, in fact, a member of the incorporated --

9 MR. FRANTZ: That is correct. But to the extent
10 that the Center attempts to base its standing upon
11 Ms. Lorion's standing, we would find that to be almost
12 redundant and pointless. They are essentially the same
13 party. We don't see any reason why there should be two
14 different parties representing the same person in this
15 proceeding.

16 JUDGE LAZO: Ms. Lorion has indicated that the
17 Center has been admitted as a party in the other
18 proceeding. I think, though, that we would prefer to
19 treat these proceedings as separate and distinct. There
20 may come a time down the road when it would be difficult
21 to commingle the pleadings and, therefore, just to keep
22 the record tidy and neat, we will have to establish the
23 standing of the Center in this proceeding as a separate
24 matter to your Center standing in the proceeding No. 1,
25 the vessel flux reduction.

1 MS. LORION: I listed two members. There is one
2 here now. Could he make an oral confirmation that he
3 allowed me to use his name? I am not a lawyer. It seems
4 like a simple solution to the problem.

5 JUDGE LAZO: It seems like a good common sense
6 solution, doesn't it? Would you want to identify your
7 member?

8 MS. LORION: His name is Howard Pew Sheronas,
9 P-e-w, S-h-e-r-o-n-a-s. He is listed on page 3 of our
10 petition.

11 JUDGE LAZO: And Mr. Sheronas is a member of the
12 Center for Nuclear Responsibility, Inc. and has authorized
13 you to represent him in this proceeding; is that correct?

14 MR. SHERONAS: Yes.

15 MR. FRANTZ: We will withdraw our objection to
16 the Center on the basis of that representation.

17 JUDGE LAZO: Of course, we will confirm all this
18 in a post-prehearing conference order. But it is our
19 ruling that the Center may be admitted as a party in the
20 event that we can find one or more contentions. But at
21 least as far as standing is concerned, the Center as well
22 as Ms. Lorion individually would have established standing.

23 Ms. Lorion, Licensee and Staff both have
24 responded in rather lengthy pleadings to your supplemental
25 petition and I assume you have had an opportunity to read

1 those?

2 MS. LORION: Yes.

3 JUDGE LAZO: I think we should address them
4 seriatim, and I don't care whether you start with the
5 Licensee or the Staff. You have proposed ten contentions
6 in this spent fuel pool expansion case. The Licensee has
7 opposed all of them.

8 MR. FRANTZ: If I may, it might be more
9 appropriate to address the lateness issue first before we
10 get into the individual contentions.

11 JUDGE LAZO: All right.

12 Ms. Lorion, on March 7, you filed a document
13 which included the amended petition to intervene and a
14 motion to file not in accordance with the Board but in
15 accordance with the rule.

16 Is there anything you would care to add to your
17 written statement?

18 MS. LORION: I read the responses. It is just
19 my understanding that the NRC Staff had problems with a
20 few of my late good cause requirements, but it was my
21 understanding that the NRC didn't oppose the late
22 intervention. I could be wrong.

23 Florida Power & Light Company I guess opposes
24 the late intervention, and I can only go on what is
25 written in here because it is what happened. And if you

1 want me to reiterate it, I will.

2 JUDGE LAZO: No, we have read it. I don't think
3 it is necessary to take the time; unless you have anything
4 in addition, let's not take the time to go through it. I
5 will ask the counsel for the Licensee to address the issue,
6 please.

7 MR. FRANTZ: Untimely petitions to intervene are
8 judged under the five factors of 10 CFR section 2.714(a).
9 In the Licensee's opinion two of those factors predominate
10 and should weigh against admission of these late
11 contentions.

12 First of all, I would like to deal with the
13 ability of Joette Lorion and the Center to contribute to
14 this proceeding. Ms. Lorion has not identified any
15 experts which she intends to proffer to the Board, nor has
16 she demonstrated any other ability to contribute to this
17 proceeding.

18 In particular, I think if we look at her
19 contentions, they appear to misunderstand the regulations
20 at points, to misunderstand the Staff's regulatory
21 guidance and to misunderstand the FP&L safety analysis.

22 I think given this misunderstanding, it is
23 highly likely that the Center's participation and
24 Ms. Lorion's participation are not likely to contribute to
25 a sound record in this proceeding.

1 Second of all, we feel that there is no good
2 cause for the late filing. The Board's order of February
3 was quite explicit in setting a deadline. Ms. Lorion has
4 identified three somewhat contradictory reasons for
5 failure to satisfy that requirement in the Board's order.
6 We feel that none of these constitute good cause.

7 Therefore, we would ask that the untimely filing
8 be denied.

9 MS. LORION: Could I answer that?

10 JUDGE LAZO: Yes.

11 MS. LORION: When it comes time to prove my
12 contentions, I will not do that on my own behalf. I do
13 have people that I have talked to. One is a
14 Gordon Thompson of the Union of Concerned Scientists, and
15 also Gordon Edwards who is in my other proceeding,
16 Dr. Gordon Edwards from Canada.

17 So I don't plan to prove these contentions
18 myself.

19 However, I feel that I should be allowed to
20 state the contentions as I see them. Also, I am a researcher
21 and feel I have a little bit to add in terms of being able
22 to find things that look like they might not be right or
23 might be out of sync. I think that that is an important
24 thing when you are a person living in this community.

25 JUDGE LAZO: Who was the first proposed witness?

1 MS. LORION: Gordon Thompson. It wasn't my
2 understanding that I have to have witnesses -- I didn't
3 understand that I already had to have witnesses proving
4 these contentions.

5 JUDGE LAZO: Do you have anything further on
6 this, Mr. Frantz?

7 MR. FRANTZ: Just that we have no idea what the
8 qualifications of Gordon Thompson are. From what we know
9 of Gordon Edwards, he appears to be a professor of
10 mathematics. I am not sure that he has any expertise to
11 respond to any of the contentions in this proceeding.

12 With respect to Ms. Lorion, I don't believe that
13 being a researcher qualifies her as an expert. Therefore,
14 she does not have the qualifications, we don't believe, to
15 proffer testimony.

16 MS. LORION: I would just like to respond again
17 that a mathematician could very well look at criticality
18 and .95 and .98 in criticality, and things like that. I
19 think Gordon Edwards would be appropriate. I also know
20 that there are cases in which the Board has taken
21 testimony from lay witnesses for whatever they had to
22 offer.

23 JUDGE LAZO: Mr. Frantz, it is your position
24 that two of the five factors weigh against these
25 petitioners?

1 MR. FRANTZ: Yes, they sufficiently outweigh the
2 other three factors involved.

3 JUDGE LAZO: Ms. Young, would the NRC Staff care
4 to address this issue?

5 MS. YOUNG: I can just basically summarize what
6 we stated in our pleading. We believe that the first and
7 third factors weigh slightly against the petitioners and
8 that the second and fourth weigh in their favor, but
9 consider the delay to the proceeding has not been a
10 significant factor in this case. Thus far the prehearing
11 conference was not delayed.

12 We think on balance the five factors favor
13 intervention.

14 JUDGE LAZO: Which factors did you say? The
15 first --

16 MS. YOUNG: The first and third weigh slightly
17 against.

18 JUDGE LAZO: First and third weigh slightly
19 against.

20 Let's go on and address the proposed contentions.

21 It would be helpful, Ms. Lorion, to the Board in
22 consideration of these pleadings if you would address
23 yourself, please, to each of the ten contentions which you
24 have proposed and the comments that Licensee and Staff
25 have provided in their responses of March 21.

1 I guess in order to simplify things, perhaps we
2 should just go through the Licensee's comments first on
3 all ten contentions and then go to the Staff's response.

4 MS. YOUNG: May I suggest we go contention by
5 contention? I think it might be a little easier to follow
6 in the transcript.

7 MS. LORION: Could the Staff and Licensee
8 perhaps make their own remarks on the contention?

9 JUDGE LAZO: We could begin with that. Again,
10 we have read their comments. We have those before us. We
11 are interested in providing you an opportunity to comment
12 on any objections which have been interposed.

13 MS. LORION: Well, my first contention has to do
14 with the storage of the fuel and reracking and that it
15 constitutes a significant hazards consideration and
16 requires that a public hearing be held on the amendments
17 before issuance of the amendments.

18 I just went on to say that it increases both the
19 possibility and consequences of an accident and that
20 historically the NRC has considered it a no significant
21 hazards consideration until 1983, I believe.

22 Florida Power & Light and the NRC Staff, I
23 believe, both say that this isn't a litigable issue before
24 the Board, first of all, and that the NRC Staff made the
25 right decision. So I think if they have any other

1 comments than that, maybe they could say them. That was
2 my understanding of it.

3 JUDGE LAZO: Very well.

4 Mr. Frantz, do you have anything to add to your
5 comments?

6 MR. FRANTZ: No. I would like to emphasize that
7 this matter has been fully briefed in our response to both
8 the petition and the amended petition. I would like to
9 point out that the Board in the flux reduction proceeding
10 has already ruled that a similar contention is moot and
11 does not present any litigable issue. We feel the same
12 position is appropriate here.

13 I also might add that Ms. Lorion has stated that
14 in the past the Commission has held that the expansion of
15 the spent fuel pool is a significant hazards consideration.

16 As the Staff has pointed out in their response,
17 that is not the case. Prior to the enactment of the
18 Sholly Amendment, the Commission held as a matter of
19 discretion that it would afford a prior hearing in cases
20 involving a spent fuel pool expansion. So it has not
21 found in the past that these involve a significant hazards
22 consideration.

23 MS. LORION: I would just like to state that I
24 had some statements from Congress in the record and one of
25 the commissioners that it was considered a significant

1 hazard. And I don't know, perhaps I misread the thing,
2 but I don't know of any cases where a person asked for a
3 hearing before the fact, before the Sholly Amendment, and
4 didn't get one before the fact.

5 It may be true that they, in places where people
6 didn't ask for hearings, that they didn't grant them by
7 their own discretion. But I think if people asked for a
8 hearing, they got it. I could be wrong. If somebody
9 would like to correct me, that is fine.

10 JUDGE COLE: On page 4 of your submittal, the
11 one dealing with contention 1, in item C at the bottom of
12 the page, it reads, "Congress clearly intended the spent
13 fuel pool expansion to be considered a no significant
14 hazards consideration." That doesn't seem to coincide
15 with what follows after that.

16 Is there a word inserted there that you didn't
17 mean to insert?

18 MS. LORION: Just a minute. I have to -- yes.
19 "No" should not be in there.

20 JUDGE COLE: Take the "no" out.

21 MS. LORION: These were quickly done.

22 I just wanted to add to that that I don't think
23 the NRC Staff is following Congress's intent on the Sholly
24 rule. I don't think that Congress foresaw that the NRC
25 would be passing license amendments for spent fuel pool

1 expansion but rather thought they meant that the NRC
2 should be making routine license amendments by their own
3 discretion.

4 MR. FRANTZ: If I may respond to that. The
5 Commission has clearly indicated in the statement of
6 consideration for the Sholly Amendment rules that the
7 Staff make this determination on a case-by-case basis with
8 respect to spent fuel pool expansions.

9 Therefore, the legislative history that
10 Ms. Lorion cites does not stand for the proposition which
11 she attempts to make it stand for.

12 MS. YOUNG: Mr. Chairman, the Staff would join
13 in Mr. Frantz's comments and note that in the statements
14 of consideration, Sholly Amendments, as quoted on page 10
15 of the Staff's pleading, that the Commission stated that
16 it is not prepared to say that reracking of spent fuel
17 storage pool will necessarily involve a significant
18 hazards consideration.

19 Also in that notice they determined that the
20 matter needed further study.

21 I would also like to note for the record that in
22 at least one recent spent fuel pool expansion proceeding,
23 the Trojan proceeding, the hearing was held after the
24 issuance of the amendment.

25 MS. LORION: I said before 1983, anybody who

1 asked for a hearing got it before that fact.

2 MS. YOUNG: I could address that comment to the
3 extent that that was the situation, that the Staff offered
4 a prior opportunity for hearing. So the Intervenors in
5 those proceedings were responding to a notice of prior
6 opportunity for hearing.

7 Since the passage of the Sholly Amendments, we
8 have the issuance of the amendment and a post opportunity
9 for hearing.

10 MS. LORION: I am contesting that process. I
11 think it is wrong, dreadfully wrong.

12 MS. YOUNG: I believe Ms. Lorion is challenging
13 the Sholly rules right now in the federal court.

14 MS. LORION: Yes, we are. Martin Hodder is my
15 attorney in a case in the U.S. Court of Appeals.

16 JUDGE COLE: Ms. Lorion, there have been a large
17 number of proceedings on spent fuel pool expansions. Is
18 there anything about the spent fuel pool expansion at
19 Turkey Point that makes it different that would warrant
20 some additional special consideration than in any other
21 typical spent fuel pool installation?

22 MS. LORION: I don't know that I would say that
23 there are things that are different, but I believe in a
24 citizen's right to get involved in expansion of the spent
25 fuel pool. If in some states people don't care enough to

1 ask for a hearing or get involved, well, then fine, they
2 can go by whatever the Commission does.

3 But in places where people do care and want to
4 look into the matter, I think that the hearing should be
5 held before the fact. I don't see how much the NRC's
6 technology has improved after 1983 as opposed to before
7 1983 to be able to flatly state that this is a no
8 significant hazards consideration, especially when you
9 consider the letter, the Bemis letter which points out
10 certain problems at Turkey Point with the clean-up system
11 and things that will be used during the reracking.

12 And there may be one thing that is very
13 different. That is the enrichment of the uranium fuel
14 which we will talk about tomorrow and the chances of a
15 criticality accident. So I think the only difference
16 would be the enrichment and it might be a very important
17 difference.

18 JUDGE COLE: All right. Thank you.

19 JUDGE LAZO: Anything more on contention 1?

20 MS. YOUNG: May I ask Ms. Lorion, I note that
21 the Commission stated in its statements of consideration
22 that they did not expect that reracks accomplished by
23 proven technology would involve significant hazards
24 consideration.

25 Does she have any reason to believe in this

1 situation that the rerack is not being accomplished by
2 proven technology?

3 JUDGE LAZO: You are really addressing that
4 question to us, but we will address it to Ms. Lorion.

5 MS. LORION: I have one letter here which I
6 can't presently find which said that there might be a
7 little problem with the racks and the lift-off, and then I
8 would like again to come to the increased enrichment and
9 the problems that poses.

10 I think Turkey Point -- I will change my
11 statement and say yes, I think Turkey Point is different.

12 MR. FRANTZ: If I may just add one further thing.
13 It is obvious that Ms. Lorion is questioning the
14 Commission rules and the Sholly Amendment. If the
15 Commission were to provide a prior hearing at the request
16 of any person, it would obviously emasculate the entire
17 purpose behind the Sholly Amendment rule.

18 The Commission has decided to delegate this
19 responsibility to the Staff. The Staff has made its
20 determination in this case, and the Board essentially has
21 no part to play in this determination.

22 JUDGE LAZO: Well, I think that is a good point.
23 It should be recognized that our jurisdiction is limited.
24 We can't change the Commission's rules, regulations,
25 although we certainly can determine whether or not they

1 have been complied with.

2 Ms. Lorion, in contention 2 you state that the
3 proposed -- I shouldn't say proposed -- that the amendment
4 increasing the capacity of the spent fuel pool is a major
5 federal action and requires an environmental impact
6 statement to be prepared. That, again, is a rather
7 classical contention and has been opposed by both of the
8 other parties.

9 Mr. Frantz, does Licensee have anything to add
10 to their written response?

11 MR. FRANTZ: I would just like to emphasize one
12 point. I think the contention misquotes the relevant law.
13 Under NEPA, an environmental impact statement is only
14 necessary if there is a major federal action which
15 significantly affects the quality of the human environment.

16 There is no basis in this contention for any
17 allegation that the spent fuel pool expansion will
18 significantly affect the quality of the human environment.

19 Consequently, this contention should be rejected
20 for lack of a basis.

21 MS. LORION: May I answer that? I think that
22 expansion of the spent fuel pool could definitely impact
23 the South Florida environment, both in terms of
24 radioactive materials -- I would like to refer again to
25 the Bemis letter of March. His letter, dated -- I can't

1 read the date. It is a letter to the Board of March 25 in
2 which Mr. Bemis, on page 2, talks about two things in the
3 environmental impact assessment that was done by the NRC
4 Staff. And I went back to the pages on that assessment
5 and saw that the environmental impact assessment is that
6 FP&L would meet ALARA because they have a clean-up system
7 that would get rid of a lot of the radiation.

8 However Mr. Bemis states that with spent fuel
9 pool water level lowered eight feet during rerack, which
10 FP&L plans to do, the clean-up system won't even work.
11 And then he makes a second point that the environmental
12 assessment assumes that a spent fuel pool leakage
13 detection and collection system collects leakage and
14 returns it to the waste system cutting down on the
15 radiation.

16 However, we see that neither the unit 3 nor the
17 unit 4 leakage detection and collection systems are
18 currently operational.

19 As somebody concerned with the environment and
20 radiation getting into that environment, I find it is most
21 objectionable and this is why an environmental impact
22 statement is so important, because the public has a right
23 to comment and to look at these things.

24 I saw an environmental impact statement on the
25 pink flowers they put on Biscayne Bay that was about 20

1 times larger than the Staff's environmental impact
2 assessment.

3 I believe also that when you look at long-term
4 storage of nuclear waste and the chance that we might have
5 that waste at Turkey Point for a long period of time, if
6 there is no solution to the waste problem, that that is a
7 thing you have to look at. And it just concerns me that
8 they may not meet the requirements of 10 CFR part 20 or
9 part 100.

10 MR. FRANTZ: If I may respond to that. First of
11 all, to the extent that Ms. Lorion is attempting to
12 litigate what she calls a permanent waste disposal
13 facility at Turkey Point, that issue is beyond the scope
14 of this proceeding.

15 The Commission in the waste confidence rule-making
16 proceeding has clearly held that storage beyond the license
17 lifetime of the plant is not cognizable in amendment
18 proceedings and, therefore, the Board has no jurisdiction
19 to hear this argument.

20 Second of all, I would like to point out that
21 Ms. Lorion twice now has referred back to the Bemis letter
22 which is the subject of the Board's notification from the
23 Staff. These allegations in the Bemis letter have not
24 been used as a basis for any of the contentions.

25 MS. LORION: I just got it.

1 MR. FRANTZ: If Ms. Lorion is now attempting to
2 amend her contentions to reference the Bemis letter, I
3 suggest that she file a petition to amend her contentions
4 and that amended petition comply with the lateness
5 requirements of 2.714(a).

6 MS. LORION: I think it could also just comply
7 with new information requirements. I believe that I have
8 new information here today that I want to draw into to
9 show that there are issues of material fact. And I don't
10 see -- you can tell me if I can do this or not -- but I
11 think it is important to show to you that there are issues.
12 And in order to do that, I should be allowed to quote this
13 information that I was handed yesterday. I was unaware of
14 it until yesterday.

15 JUDGE LAZO: Well, Ms. Lorion, Mr. Frantz may be
16 quite correct in stating that if you do indeed wish to
17 amend any of your contentions, that you should file an
18 amended petition. But I am not at all sure that is what
19 you have in mind.

20 The Bemis memorandum -- I don't want to put
21 words in your mouth -- it seems to me from what you have
22 said so far that the Bemis memorandum really relates to
23 the basis for contentions which you have already filed.

24 MS. LORION: That is what I am saying. I think
25 I could nicely fit that into the contentions I already

1 have.

2 JUDGE LAZO: I understand.

3 Ms. Young has already indicated that the Staff
4 will be responding to the Bemis memorandum and will have
5 more information on that in due course.

6 But again, if you do wish to file a new
7 contention or amended contentions, you certainly have the
8 right to do that. You would have to provide reasons for
9 the filing, the late filing or the excuses for filing at
10 this date which might include the fact that that new
11 information has developed.

12 MS. LORION: Thank you, sir.

13 MS. YOUNG: I would also like to note for the
14 record, even though the date is obscured on enclosure 1 of
15 the Board notification, that date is March 15, 1985.

16 JUDGE LAZO: That is the Bemis memorandum to
17 Mr. Thompson, March 15. Thank you.

18 Are we ready to discuss contention No. 3? The
19 contention reads that "the calculation of radiological
20 consequences resulting from a cask drop accident are not
21 conservative and the radiation releases in such an
22 accident will not be ALARA and will not meet with the 10
23 CFR part 100 criteria."

24 MS. LORION: It is my understanding that the
25 Staff has no opposition to this contention except for the

1 reference to ALARA which may be, as I am reading their
2 thing, misused. And that what I wanted to say was 10 CFR
3 parts 20 and 50.

4 FP&L has many objections to it.

5 I basically would just rely on the basis for my
6 contention which I found in the SER for the spent fuel
7 pool expansion which told me that Florida Power & Light
8 used a 1 radial peaking factor rather than a 1.65 factor.
9 And so I just was challenging why they didn't use the more
10 conservative figure and wondering if they would stay
11 within the requirements.

12 MR. FRANTZ: If Ms. Lorion would check and the
13 Board would check, section 5.3.1.2.2 of FP&L's safety
14 evaluation report for the spent fuel pool expansion, she
15 will note and the Board will note that FP&L did in fact
16 use the 1.65 peaking factor in compliance with the reg
17 guide 1.25. Therefore, her contention has no basis.

18 I might also add that FP&L did a second analysis
19 of the cask drop accident, not using those same peaking
20 factors and not using the assumptions in reg guide 1.25.

21 So in effect it used two analyses, one complying
22 with reg guide 1.32; one which used different assumptions.

23 MS. LORION: Which one is being used as a basis
24 for this?

25 MR. FRANTZ: Both analyses showed that we

1 complied with the limits of 10 CFR part 100. Therefore,
2 we find no basis at all for this contention.

3 Also I might add to the extent the Staff
4 suggests that part 20 and part 50 are appropriate
5 references for this contention, we believe the Staff is
6 incorrect. Part 20 and part 50 apply to normal operation
7 conditions and not to accident conditions such as the
8 spent fuel or the fuel cask drop accident.

9 Therefore, we feel that the appropriate standard
10 to measure this accident is the part 100 standards and the
11 Staff's own regulatory guidance in standard review plan
12 15.7.5 recognizes that fact.

13 MS. LORION: That is the figure I have in my
14 contention.

15 MR. FRANTZ: That is right. I think the Staff
16 has mischaracterized your contention as alleging a
17 violation of part 20 and part 50. I think Ms. Lorion is
18 correct. Part 100 is the appropriate standard here.

19 MS. YOUNG: Let me address that briefly by
20 suggesting that Ms. Lorion could raise the contention
21 alleging that parts 20 and 50 could be exceeded. Staff
22 was not trying to suggest that that applied only to
23 accident releases. Mrs. Lorion can establish that certain
24 regulatory limits could be exceeded.

25 Her reference to part 100 is correct. But it

1 may be also in responding to her contention that it would
2 also -- Staff could also show that neither are the limits
3 of part 20 or 50 exceeded.

4 MS. LORION: I wanted to get back to section
5 5.3.1.2.2 because what I see is that you used a 1.0
6 peaking factor. And you gave a reason why you didn't use
7 the 1.65. While this value may be appropriate for the
8 analysis of a postulated accident involving a single
9 assembly, it is grossly overconservative when applied to
10 an analysis of the pool core.

11 My understanding here is that you didn't use it
12 because you thought it was overconservative. I don't see
13 the figure you are talking about where you used 1.65.

14 MR. FRANTZ: I don't want to leave the Board
15 with a misimpression. Again, I will refer back to the SER,
16 page 5-7 and 5-8 in particular. Those pages reference two
17 cases, a case 1 and a case 2.

18 In the case 1, the radial peaking factor of 1.65
19 was used. And using that assumption, we came out with a
20 dose well within the limits of part 100.

21 MS. LORION: Where does it say this in here?

22 MR. FRANTZ: I don't like to get in discussion
23 directly back and forth between counsel. I think I will
24 address my comments to the Board.

25 We clearly state in these pages, I think that if

1 the Board looks at these pages and also looks at our
2 response to the amended petition where we quote these
3 pages, it will see that we performed two different
4 analyses.

5 One analysis used the assumptions of reg guide
6 1.25 with a radial peaking factor of 1.65 and that that
7 analysis was well within the limits, radiological doses
8 well within the limits of part 100.

9 MS. LORION: You used a different number for two
10 different cases though, two separate categories. You are
11 not talking about using that number for case 2. I am
12 sorry I am talking to you, but I just --

13 JUDGE LAZO: How do you respond to that?

14 MR. FRANTZ: It is correct. We performed two
15 different analyses. Both analyses comply with part 100.
16 The one analysis we used the reg guide 1.25 assumptions.
17 We performed a different analysis using different
18 assumptions and came again within that part 100 limit.

19 We could have rested solely upon one analysis,
20 our case 1 analysis. We attempted to be conservative and
21 show by two different means that we met the part 100
22 limits. And Ms. Lorion is essentially attempting to
23 penalize us for going beyond what the reg guides require.

24 MS. LORION: My understanding is you didn't,
25 that you used the less conservative figure because it

1 helped you to stay within those requirements, and that you
2 could have used the more conservative figure for both
3 cases.

4 MS. YOUNG: I am troubled by this discussion.
5 It seems that we are getting into the perilous territory
6 of reaching the merits of the contention. We have also
7 had a lot of unsworn statements by counsel as to what was
8 done with respect to the analysis supporting the
9 amendments.

10 I note under NRC case law, the Board need not
11 reach the merits and maybe these issues are more
12 appropriately addressed on summary disposition.

13 MR. FRANTZ: If I may respond --

14 JUDGE LAZO: That is a point well taken. It is
15 certainly correct that in judging the admissibility of the
16 contentions, we do not want to consider the merits of the
17 contention, simply whether or not they have been stated in
18 a manner which satisfies the requirements for adjudication.

19 We will try to avoid getting into the details of
20 the substantive issues.

21 Mr. Frantz?

22 MR. FRANTZ: I concur that the Board should not
23 judge the merits of the contention. I suggest that we
24 aren't asking the Board to judge the merits, just to look
25 at what the analysis was on its face in our SER. I think

1 that would clearly resolve the contention and show that
2 the contention has no basis in fact.

3 JUDGE LAZO: Then your present position is that
4 the Licensee opposes contention No. 3 and that the Staff
5 does not oppose the admission of the contention, provided --
6 how did you phrase it -- that the petitioners are limited
7 in their basis for the contention?

8 MS. YOUNG: That is correct.

9 JUDGE LAZO: You stand by that?

10 MS. YOUNG: Yes.

11 JUDGE LAZO: Ms. Lorion, anything further on
12 contention 3?

13 MS. LORION: No, sir.

14 JUDGE LAZO: Let's go on to contention, proposed
15 contention No. 4. This relates specifically to personal
16 exposure limits which may be exceeded by allowing the pool
17 to boil without make-up water from only seismic category 1
18 sources.

19 MS. LORION: I think my main argument here is
20 that they used a Limerick study to prove that everything
21 would be okay at Turkey Point. I don't believe that the
22 situation at Turkey Point is the same as Limerick because
23 they have increased -- they have been having increased
24 iodine in their fuel, iodine releases caused by fuel
25 failure.

1 In fact, I don't know if I am supposed to do
2 this because I am not supposed to prove the contention but
3 I wanted to show you the contention has a basis.

4 In a request for information by the NRC on
5 August 22, there is an attachment to that which shows the
6 isotopic concentration in the spent fuel pool, and it just
7 shows that the iodine concentrations have gone up
8 dramatically from 1983. You will see 2.2 times 10 to the
9 minus 4, and then you will see the last week of 1979,
10 which is the last figure they have, it goes up 9.2 times
11 10 to the minus 14. And so also krypton 85 is increasing,
12 I noticed in their radiological tables.

13 So I don't think it is fair to use a Limerick
14 study, which may not have such high concentrations of
15 these radioactive isotopes, and attach it to the Turkey
16 Point plant.

17 I just challenge that process.

18 MR. FRANTZ: Again, I think Ms. Lorion has
19 misunderstood what we have filed with the Staff. It is
20 clear, I think, from reading our submission to the Staff
21 that we have not used Limerick figures. What we have done
22 is used a Limerick methodology with Turkey Point
23 assumptions.

24 And we also in that case have used some generic
25 assumptions from various reg guides and also assumptions

1 which are generically applicable to many plants.

2 Ms. Lorion obviously does not understand that we
3 have used Turkey Point assumptions here and, in any case,
4 she has provided no basis at all for arguing that the
5 results of our analysis are in any way deficient or
6 defective.

7 Therefore, we would submit that this contention
8 has no basis and should be rejected.

9 MS. LORION: It is my understanding that Staff
10 has --

11 JUDGE LAZO: One moment, please.

12 JUDGE COLE: Ms. Lorion, I am somewhat confused
13 by the numbers that you used. Could you tell us what
14 numbers you used or what the source of the numbers is and
15 what they pertain to?

16 MS. LORION: It is the Turkey Point Nuclear
17 Plant, Unit No. 3, spent fuel pool water radioactive
18 concentration sample data. It is a table attached to a
19 request for -- in answer to a request for additional
20 information from the NRC. It is an August 22, 1984 letter
21 with attachment to Mr. Varga of NRC from J.W. Williams, Jr.,
22 Vice-president Nuclear Energy, Florida Power & Light
23 Company.

24 JUDGE COLE: My questions have to do more with
25 the specific numbers that you used. My understanding of

1 what the numbers meant, the second number that you used
2 was a much lower concentration than the first. I think
3 that was opposite to the point that you wanted to make.

4 MS. LORION: Right.

5 JUDGE COLE: Could you explain that?

6 MS. LORION: I looked at the wrong table, to be
7 honest with you. I meant to look at iodine 131. In 1979
8 it was 3.7 times 10 to the minus 13. In the SER I think
9 were the original figures I was looking at.

10 The background of this is that we are concerned
11 with the increase of radioactive iodine at the Turkey
12 Point Plant. And in 1983, FP&L was granted an amendment
13 to be allowed to increase the amount of radioactive iodine
14 in the reactor by 400 percent radioactive iodine 131. Our
15 concern was in the spent fuel.

16 JUDGE COLE: I don't think you have to proceed
17 any further. I just wanted to clarify the numbers you
18 used.

19 MS. LORION: I was wondering myself. I would
20 also just refer to table 55 of the SER. It gives the
21 iodine 131 concentrations.

22 JUDGE LAZO: Anything more on contention 4?

23 Ms. Lorion, on page 7 of your amended pleading,
24 amended petition, you set forth contention No. 5 and that
25 paragraph ends, "Thus, the amendments should be revoked."

1 Then under that you have parens, small A. I am
2 not sure, is that meant to be a portion of contention No.
3 5 or is that a part of the basis for the contention?

4 MS. LORION: That is part of the basis for the
5 contention or it is really just taken in sum, I think.

6 MS. YOUNG: The Staff took it as a basis.

7 MS. LORION: I probably just meant to type in
8 "basis" and left it out.

9 JUDGE LAZO: I think it was clear, but I wanted
10 to be certain.

11 Judge Cole wants to go back to contention 4 for
12 a moment.

13 JUDGE COLE: I didn't know we were going to get
14 to 5 so quickly. I had a question of the Staff on page 14
15 of the Staff response to the amended petition to intervene.

16 In the first full paragraph on that page, the
17 third line of that paragraph, the statement "although
18 factually erroneous" appears.

19 To what does that refer?

20 MS. YOUNG: It was my understanding that the
21 Licensee did not extrapolate from the study for the
22 Limerick plant. They used the same methodology but did
23 not extrapolate. So that was only to suggest that perhaps
24 on summary disposition, this contention would be disposed
25 of.

1 JUDGE COLE: You agree with the Licensee's
2 representative's characterization?

3 MS. YOUNG: Yes.

4 JUDGE COLE: Thank you. As to how they used the
5 Limerick study?

6 MS. YOUNG: That is correct.

7 JUDGE COLE: Or Limerick information.

8 JUDGE LAZO: Mr. Frantz, as to proposed
9 contention 5, Licensee's position relates to the Board's
10 jurisdiction. Is that correct?

11 MR. FRANTZ: That is correct. In our opinion,
12 the contention is stating that rack lift-off in the
13 absence of administrative controls constitutes an unreviewed
14 safety question. Implying, therefore, that neither the
15 Staff should give some consideration to this or that the
16 amendment should be denied on that ground.

17 It is clear from the various filings referenced
18 in our response to the admitted petition that the
19 amendments that were issued are predicated upon the
20 existence of administrative controls. These
21 administrative controls preclude lift-off. If Ms. Lorion
22 is tempting to investigate the elimination of these
23 controls or lift-off from the absence of these controls,
24 she is looking at something that is not encompassed within
25 the amendment. It is something that is beyond the

1 amendment.

2 Since the Board only has jurisdiction to review
3 what was in the scope of the amendment, this issue raised
4 by Ms. Lorion is outside the scope of the amendment.
5 Therefore, it is outside the scope of the Board's
6 jurisdiction.

7 JUDGE LAZO: Does the amendment involve a change
8 in the administrative control?

9 MR. FRANTZ: I don't know whether the
10 administrative controls were changed or not. The analyses
11 that were done in support of the amendment assumed the
12 existence of certain administrative controls in place to
13 preclude the loading of the outer racks of the rows which
14 overhang these support pads.

15 MS. LORION: I would like to point out that that
16 was done before the amendments were issued and that this
17 letter is after the amendments are issued that they found
18 this potential problem.

19 JUDGE LAZO: When you refer to "this letter" --

20 MS. LORION: It is the -- I am referring to
21 something that was sent to me by the Board on February 26,
22 1985, letter to Mr. Williams, Florida Power & Light
23 Company, from Dan McDonald, in which he references a
24 February 1, 1985 letter from Mr. Williams in which he
25 indicates that "Westinghouse informed you, subsequent to

1 the September 28, 1984 letter, that the administrative
2 controls on fuel loading are required for racks whose
3 outer rows overhang the support pads." That goes on.

4 This all took place after the amendments were
5 issued.

6 JUDGE LAZO: You may have misspoke. I don't
7 believe the Board sent you any such letter.

8 MS. LORION: Excuse me.

9 MS. YOUNG: The letter was distributed by Staff
10 counsel.

11 MS. LORION: To the Board, I meant.

12 MS. YOUNG: Letter dated February 28, 1985 to
13 the Board and parties.

14 MR. FRANTZ: Perhaps if I can explain the
15 chronology --

16 JUDGE LAZO: That would be helpful.

17 MR. FRANTZ: In September, before the amendments
18 were issued, FP&L submitted an analysis to the Staff.
19 That analysis demonstrated that lift-off would not occur.
20 That analysis was predicated upon the existence of
21 administrative controls which would preclude the loading
22 of the outer racks of the rows -- the outer rows of the
23 racks.

24 In February, I believe it was February 1, FP&L
25 submitted a letter to the Staff which showed that even if

1 FP&L were to remove these administrative controls and were
2 to load the outer rows of the racks without the
3 administrative controls, that lift-off would be acceptable.

4 Therefore, FP&L requested the Staff to approve
5 loading of the outer rows without these administrative
6 controls.

7 The Staff, in its letter of February 26,
8 responded by stating that the amendments are predicated
9 upon the existence of these administrative controls; that
10 if FP&L desires to change those administrative controls or
11 to remove those administrative controls, it must use the
12 procedures of 50.59 of the Commission's regulations.

13 Essentially those procedures allow a utility to
14 change its procedures if the change does not constitute an
15 unreviewed safety question or if no tech spec changes are
16 needed or license changes are needed.

17 I think the exchange here clearly indicates that
18 the amendments are based upon the administrative controls,
19 that if FP&L desires to remove those administrative
20 controls, it has to go through 50.59 procedures.

21 Therefore, this removal of the controls is
22 clearly outside the scope of the amendment. Therefore, it
23 is outside the scope of the Board's jurisdiction.

24 MS. LORION: The lift-off is right exactly in
25 this proceeding. That is one of the things that is

1 important in keeping the spent fuel intact. I don't see
2 how that could be outside of this proceeding.

3 MR. FRANTZ: To the extent that Ms. Lorion is
4 alleging that we have not considered lift-off with the
5 administrative controls in place, that allegation is
6 without basis. We submitted such an analysis in our
7 September letter to the Staff.

8 The Staff reviewed that analysis and agreed with
9 the results. Therefore, we have analyzed lift-off with
10 the administrative controls in place.

11 MS. LORION: Was it in another letter that they
12 agreed to the -- are you saying they agreed in the
13 February 26 letter?

14 MR. FRANTZ: I hate to have a discussion between
15 counsel, but I can give the Board specific cites.

16 Our original analysis was presented in a letter
17 dated September 28, 1984 from J.W. Williams, Jr., of FP&L
18 to Steven A. Varga of the NRC. And in particular that
19 analysis was contained in the answer to question 4.1.

20 The Staff reviewed that analysis and agreed with
21 the results and that appears in the Staff's safety
22 analysis on pages 9 and 10.

23 I might add that that safety analysis references
24 a technical evaluation report, I believe, prepared by
25 Franklin Institute. This contains a more extensive

1 discussion of lift-off.

2 MS. LORION: Would you give me the date of that
3 again, the first letter you referenced?

4 MR. FRANTZ: September 28, 1984. That letter is
5 cited in footnote 14 of our response to the amended
6 petition.

7 MS. LORION: This letter of February 26 says
8 that there could be an unreviewed -- or alleges there
9 could be an unreviewed safety question involved. The '84
10 letter comes before that. It seems to me that there is
11 still an issue here that is outstanding that hasn't been
12 resolved and that is a safety issue.

13 MR. FRANTZ: The Commission has set procedures
14 for dealing with these types of concerns. The Licensee is
15 always allowed to make changes in its approved procedures
16 if it performs a 50.59 analysis. The 50.59 analysis is
17 reviewed by the Staff. The Board has no part to play in
18 that type of review.

19 JUDGE LAZO: Ms. Young, the Staff seems to feel
20 that this might be an issue suitable for litigation.

21 MS. YOUNG: The Staff would not characterize the
22 contention as really raising whether it constitutes an
23 unreviewed safety question. Mr. Frantz is correct: that
24 decision normally rests with the utility.

25 But the Staff read the contention as raising a

1 concern about the safety of the current rerack, the
2 performance of that rerack. Some of Mr. Frantz's
3 statements characterizing how this came about are not
4 congruent with my understanding of how it occurs.

5 Let me say this: The NRC safety evaluation
6 assumed that no lift-off would occur. There is no
7 indication in that safety evaluation that there would be
8 administrative controls. There is no conditions on the
9 amendment as issued that certain administrative controls
10 have to be in place.

11 JUDGE LAZO: When you refer to a lift-off, this
12 is movement out of the racks. We are referring to what, a --

13 MS. YOUNG: In the event of a seismic occurrence,
14 there is potential for the racks to lift off a small
15 amount. That is my understanding.

16 Westinghouse informed the Licensee of this after
17 they had initially submitted their information to the NRC.

18 JUDGE COLE: I don't know what lift-off means.
19 What is your understanding of what it means?

20 MS. YOUNG: It could also be called "uplift,"
21 movement upward of the racks.

22 JUDGE LAZO: Holding the fuel assembly?

23 MS. YOUNG: Right. That is my understanding.

24 JUDGE LEUBKE: Are we talking about the outside
25 racks?

1 MS. YOUNG: We are talking about the overhanging
2 rows being affected. If the overhanging rows are only
3 loaded and the remainder of the racks are empty, then
4 there is a potential that if there is a seismic event, the
5 racks will lift off their pads.

6 JUDGE COLE: What are the consequences of that?

7 MS. YOUNG: I believe the utility has done an
8 analysis showing that there are no significant safety
9 consequences. So, again, this is a discussion that gets
10 more and more to the merits. The Staff would prefer that
11 it be held over to summary disposition.

12 JUDGE LEUBKE: A point of clarification here.
13 The overhanging racks are new with respect to the central
14 racks which are old and have been there for years?

15 MS. YOUNG: I am not sure that is quite correct.
16 May I ask the project manager to give his explanation?

17 JUDGE LAZO: Could you help us?

18 MR. MC DONALD: In the rerack, there were
19 existing pads in place in the spent fuel pool itself.

20 JUDGE LAZO: Have these pools been reracked once?

21 MR. MC DONALD: Yes. But in reracking with the
22 new racks to match the rack modules -- I forget the total
23 number of modules in the pool. They are rectangular
24 modules that hold a certain number of elements.

25 In order to meet the existing supports, they had

1 to move these supports on one side of the rack one row in
2 so that you could, in fact, load fuel in that one overhanging
3 row. If you did that with putting no more fuel in the
4 rest of the rack, given a seismic event, the rack could
5 move from the base of the pool approximately two tenths of
6 an inch, a very slight movement upward. Not the fuel, the
7 whole rack itself.

8 The rack would not hit any other racks, a very
9 slight movement from about two tenths of an inch. Our
10 concern is failure of fuel and/or the rack modules
11 themselves that could lead to damage to the fuel.

12 But when we were notified of this, they had
13 indicated prior to loading any fuel in the new racks, the
14 administrative controls were, in fact, in place, which
15 made our initial safety evaluation still valid.

16 JUDGE COLE: The administrative control --

17 MR. MC DONALD: They would not allow loading
18 fuel in that single row that overhangs in some of the
19 modules.

20 MS. YOUNG: The Staff reads Ms. Lorion's
21 contention as raising an issue of whether there is a
22 deficiency in the current rerack design and whether there
23 should be a restriction on loading.

24 JUDGE LAZO: Therefore, you support the
25 submission?

1 MS. YOUNG: Right. Her concern is whether the
2 rerack is safe.

3 JUDGE LAZO: Does Ms. Lorion agree with that?

4 MS. LORION: That is exactly my concern.
5 Listening to Mr. McDonald, I wonder what would happen if
6 they would shut down the reactor and had to take all the
7 fuel out in an emergency. I am sure administrative
8 controls wouldn't have much bearing in that situation.

9 JUDGE LAZO: Let's move on. Proposed contention
10 6 --

11 MS. YOUNG: Did we intentionally exclude a
12 discussion of the effect of hurricanes and tornadoes?

13 JUDGE COLE: Unless you did --

14 MS. YOUNG: Did Ms. Lorion want to respond to
15 that?

16 JUDGE LAZO: I am sorry. Tornadoes and
17 hurricanes. We were talking about seismic events. Are we
18 still talking about proposed contention 5?

19 MS. LORION: I think I was lumping them all
20 together as perhaps having that same effect or having the
21 potential of having that kind of an effect.

22 JUDGE LAZO: Ms. Young, do you have something to
23 add regarding the statement in the basis for the
24 contention?

25 MS. YOUNG: I would just reiterate what we

1 stated in our pleading, that the petitioners haven't
2 established that hurricane and tornado winds are going to
3 have any effect on the rerack and haven't set forth a
4 basis which would demonstrate that.

5 MR. FRANTZ: We would also concur in that
6 objection. This is also raised in contention 9 which I
7 believe we will deal with later on today.

8 JUDGE LAZO: Okay.

9 Ms. Lorion, contention 6, perhaps we might just
10 explain what exactly are you driving at in contention 6.

11 MS. LORION What I think I am driving at is
12 that the spent fuel facility at Turkey Point was
13 originally designed to store a little over 200 rods -- I
14 can't remember the exact number -- but that then, when
15 there was no solution to the nuclear waste problem, they
16 increased that to 600 and some rods. And now they are
17 asking to increase that to over 1400 fuel rods.

18 My concern is that if they didn't find or don't
19 find a solution to the nuclear waste problem, that there
20 are things that could happen to this pool.

21 I think I based it on a couple of journal
22 articles that I read in which scientists were stating that
23 these pools were not made to last for long periods of time
24 because they are temporary storage pools and that thus
25 deterioration of different things could happen, not only

1 to the fuel itself but also to the materials that the pool
2 is constructed of.

3 So my concern was that storing this much fuel
4 for who knows how long might have some effect because they
5 are chemically and thermally active on the structure
6 itself.

7 That was not analyzed as far as I could see.

8 JUDGE LAZO: You refer to materials
9 deterioration or failure of material integrity?

10 MS. LORION: I am talking about the liner and
11 the concrete and all of the things that the pool is
12 composed of.

13 (Board confers.)

14 MS. LORION: For instance, I point again to the
15 Bemis letter on page 2 where he talks about the leakage
16 detection system and he says both are severely degraded.

17 My concern is that other things, because of the
18 length of time this spent fuel pool will be housing this
19 fuel, will also become degraded. That is basically it.

20 MS. YOUNG: May I ask the Board for a
21 clarification on what Petitioners mean by long-term
22 storage? What period of time did they have in mind?

23 MS. LORION: I believe that the present
24 amendment is near the year 2000. Well, to me that would
25 be long enough. I mean, it was first licensed in the

1 early '70s. So rather than a 10-year period, which most
2 utilities looked at, you are looking at a 30-year period
3 of storage which could increase damage to the structure.

4 I guess I could also fit that together with an
5 environmental impact statement, if one had been done.

6 JUDGE LAZO: So the long-term storage you are
7 referring to in your contention, Ms. Lorion, is for the
8 life of the plant?

9 MS. LORION: Right, for the license amendments
10 that were issued. I would love to go beyond that. I know
11 you can't look at that. I would just say until the -- for
12 the recent amendments, I believe it is 1991.

13 MS. YOUNG: Approximately the year 2000.

14 JUDGE COLE: I believe in the Staff response on
15 page 16 it indicates for unit 4 it is the year 2005 and
16 the year 2006 for unit 3. So that is what you mean by
17 long-term?

18 MS. LORION: Right, exactly.

19 JUDGE LAZO: Now, we know what long-term means.
20 Maybe this might be an appropriate time to take a short-term
21 mid-morning recess.

22 MR. FRANTZ: Are we intending to go back to
23 contention 6 and the Licensee's objections --

24 JUDGE LAZO: Let's complete contention 6. Did
25 you have something to add?

1 MR. FRANTZ: I would like to point out to the
2 Board that both the Licensee and the NRC Staff have
3 considered the effects of increased heat loading and
4 chemical interaction for the life of the plant. These
5 analyses appear in the SER in sections 2.2 and section 2.7;
6 in the FP&L safety analysis report, sections 3.2.2,
7 section 4.7; in a letter from FP&L, dated October 5, 1984,
8 in response to the Staff question No. 8.

9 The Petitioners have not identified any defect
10 in that analysis. Therefore, we feel this contention has
11 no basis.

12 JUDGE LAZO: So it is not really lack of
13 specificity as lack of basis that you are objecting to?

14 MR. FRANTZ: That is correct. Both the Staff
15 and FP&L have analyzed this, and we have found no problems
16 with the thermal and the chemical effects of long-term
17 storage. And there has been no basis to the contrary
18 provided by the Intervenors.

19 JUDGE LAZO: Well, we will have to take that
20 into consideration. As far as whether you have analyzed
21 it or not, again, that goes to the merits of the
22 contention, although we do have to consider basis for the
23 contention in ruling on its admissibility.

24 Have we finished with contention 6?

25 MS. YOUNG: Yes.

1 I might note for everyone's edification, the
2 Staff did not prepare a safety evaluation report for these
3 amendments. They just prepared a safety evaluation.

4 Normally a safety evaluation report has NUREG
5 numbers.

6 JUDGE LAZO: Would you go over that again?

7 MS. YOUNG: NUREG numbers are on safety
8 evaluation reports. This is a slight -- this was a safety
9 evaluation supporting these amendments. Everyone here has
10 been throwing around the term "SER."

11 JUDGE LAZO: Is the SE available?

12 MS. YOUNG: That has been distributed to the
13 Board and parties in this case. And copies are in the
14 Public Document Room.

15 In terms of NRC terminology, it is only a safety
16 evaluation.

17 JUDGE COLE: I really have made no distinction
18 between the safety evaluation and another safety
19 evaluation that happened to have a NUREG number.

20 Is there any magical difference other than one
21 is published in a book?

22 MS. YOUNG: No, not in terms of its effect. But
23 in terms of referencing the document, it is not a safety
24 evaluation report.

25 JUDGE COLE: Okay. A minor point.

1 JUDGE LAZO: All right.

2 Let's recess for 15 minutes, please.

3 (Recess.)

4 JUDGE LAZO: Would the prehearing conference
5 please come to order.

6 MR. FRANTZ: Before we begin with the next
7 contention, I know there has been some concern expressed
8 about our objections and the possibility that they are
9 going to the merits of the contention rather than
10 specificity and basis.

11 I would just like to clarify our position on
12 this. There are many contentions here which allege that
13 either FP&L or the Staff has not considered something in
14 their documents. It is our opinion that when, in fact,
15 those documents have considered these facts and that a
16 simple facial reading of those documents can establish
17 that fact, that those types of contentions are
18 objectionable as being without basis and that it is not a
19 review of the merits to refer back to those documents to
20 see whether or not they have, in fact, considered the
21 issue in question.

22 In particular, I think contention 3, which deals
23 with the cask drop accident, and contention 4 dealing with
24 the spent fuel pool boiling event are of this type, where
25 the Petitioners are alleging that our documents haven't

1 considered something or have considered something
2 differently than what we actually have considered.

3 In those types of cases, if we can just refer
4 back to the basis underlying documents and see whether or
5 not the allegation is true as a matter of just facial
6 records without going to the merits, we believe that these
7 contentions can be disposed of that way and that there is
8 no reason then to go on with those contentions and to have
9 a hearing on those objections.

10 MS. LORION: I would like to bring something up.
11 I don't have the safety evaluation report issued by the
12 NRC on this. Even though I am on the service list, I
13 never got it. I went to the library; it wasn't there.

14 The other thing is that the FP&L SER that he
15 quoted those pages is incomplete at the library. I copied
16 every page of the SER. The pages he quoted are not in
17 there. I now see from seeing -- Mr. McDonald kindly lent
18 me his SER -- that they did consider materials function.

19 However, they were going on past experience of
20 spent fuel pools, and I don't think there is any spent
21 fuel pool at an operating reactor that has been in
22 existence for 30 or 40 years.

23 So I don't think -- I would then, because I
24 didn't have the documentation, want to somehow amend that
25 contention and keep it, saying that they didn't consider

1 the long-term storage. They didn't. They considered past
2 experience at operating reactors and then went on to say,
3 well, based on this, we shouldn't have any trouble.

4 I don't know -- I also didn't get the
5 environmental impact assessment and had to copy that at
6 the library, even though I am on the service list.

7 I am not saying it is something that somebody is
8 trying to do. I am just saying I am not getting the
9 documents. I went to the library to copy them. They were
10 incomplete or they weren't there. I didn't have that
11 information when I prepared this contention.

12 I would like to keep this contention. I think
13 it is important. I don't think that their review of it is
14 adequate.

15 JUDGE LAZO: You are now speaking of contention
16 No. 3?

17 MS. LORION: 6, which was the last contention
18 that he quoted certain pages in the SER on.

19 JUDGE LAZO: Do you people ever speak to each
20 other except here when you are talking to us?

21 MS. LORION: Not very much. I speak to Mitzi.

22 JUDGE LAZO: It does seem to us that we are
23 hearing that there are misunderstandings, perhaps, that
24 could have been resolved if there had been some effort to
25 get together and attempt to resolve them.

1 As far as missing documents in the -- where is
2 the local public document room? Is that Miami --

3 MS. LORION: Florida International University.

4 JUDGE LAZO: That is where the -- that is the
5 local public document room?

6 MS. LORION: To give you a for instance, a
7 certain belt line study that was done on reactor welds was
8 done in 1983 and issued and got in the library at 1985. I
9 was just now able to copy it. This is the kind of problem
10 that I am running into.

11 Now that I see that my contention is a bit
12 inadequate because I didn't have the documentation, that
13 concerns me. Because I think structural integrity for 30
14 to 50 years is a very important thing. It is not the 10
15 years that the reactor cites had counted on. So I don't
16 think it has been studied in depth.

17 That is why, if you are going to look at his
18 point as a basis for not accepting my contention, I just
19 wanted to state that as a basis why it should be accepted.

20 JUDGE LAZO: Again, let me state that I think
21 from what we are hearing here this morning, that it might
22 well be beneficial for you and Mr. Frantz and Ms. Young to
23 get together. Perhaps we could come up with some form of
24 stipulated contentions, if you all really made an effort
25 at it.

1 Let's try to -- let's proceed in trying to go
2 through the rest of the contentions.

3 Ms. Lorion, I am looking at your proposed
4 contention 7. We may have another double negative
5 situation there. It is not clear. The contention reads
6 that there will be no assurance that the health and safety,
7 et cetera, and will not meet -- I guess the "not" should
8 come out?

9 MS. LORION: Yes.

10 JUDGE LAZO: "Will not meet the ALARA
11 requirements." It should just say, "no assurance that
12 they will meet"?

13 MS. LORION: Right. In defense of that
14 contention --

15 JUDGE LAZO: I am sorry to interrupt. In the
16 same contention, between 80 and 130 person rem rather than
17 rem per person?

18 MS. LORION: Right.

19 JUDGE COLE: And also in the next line it is
20 person-rem rather than person/rem?

21 MS. LORION: This was an all nighter.

22 JUDGE LAZO: Did you want to address this?

23 MS. LORION: Yes.

24 I believe Florida Power & Light has stated why
25 they would be ALARA and in their SER have pointed to the

1 clean-up system decreasing the amount of radiation and
2 that is why they would be able to lower their person rem.

3 However, I will again call attention to the
4 Bemis letter on page 2 where he says that when they lower
5 the water eight feet during rerack, the clean-up system is
6 not going to work. And they used the clean-up system as a
7 basis for lowering their person rem. So I think there is
8 a potential problem there. I think that shows that there
9 is an issue of material fact on that one.

10 MR. FRANTZ: Again, to the extent that the
11 Petitioner is referring to the Bemis letter, we feel that
12 they are trying to amend their contentions here. If they
13 wish to do that, they should submit a written amended
14 petition to intervene and satisfy the late requirements of
15 2.714(a).

16 Referring to the contention and the basis as
17 written in her amended petition, we feel that the
18 contention lacks basis. First of all, it should be noted
19 that FP&L has extensively discussed its radiation
20 protection practices and its ALARA practices. And this
21 includes our safety analysis at section 5.2.4.1 and in
22 particular a letter to the NRC Staff dated August 22, 1984
23 in response to Staff question 470.04.

24 Additionally, the Staff has reviewed these
25 practices and found them to be acceptable. Its safety

1 evaluation section 2.6, I believe it is, Petitioners have
2 not identified any of our practices which they feel are
3 not ALARA, nor have they alleged that we should be
4 engaging in any additional practices to maintain doses
5 ALARA or releases ALARA.

6 I might add that the contention appears to be
7 based upon the assumption that we have estimated an 80 to
8 130 person rem exposure for the expansion.

9 FP&L revised that number and the new number is
10 now 59 person rems. That is very similar to the 40 to 50
11 person rems in the contention. We feel, therefore, there
12 really isn't any bone of contention now between the
13 Petitioners and themselves since our estimates are so
14 close.

15 JUDGE LAZO: You say you have revised that
16 number from 80 to 130 down to 59. Where does that appear?

17 MR. FRANTZ: The revision occurs in the August
18 22 letter and in particular it would be on pages 3-3
19 through 4 and pages 18 through 20 and table 3.

20 MS. LORION: I would like, if I could answer him,
21 to point to page 3 in which they have this same August 22
22 letter where they state that prior to and during rerack,
23 operation of the spent fuel pool clean-up system will be
24 directed to reduce the radionuclide concentrations.

25 On page 18 they also talk about the clean-up

1 system being used to lower the radiation dose to workers,
2 yet in the Bemis letter we see that the clean-up system
3 will not be functional during rerack if they lower the
4 water eight feet.

5 So I just want to point to that. I think that
6 is important.

7 JUDGE LAZO: Ms. Young, does the Staff oppose
8 the admission of contention No. 7?

9 MS. YOUNG: Yes. But limited to the sole basis
10 offered which is basically that the estimates of the
11 Licensee exceed estimates by other -- I am sorry, actual
12 experience during reracks at other plants. That is the
13 sole basis she has presented in her contention.

14 JUDGE LAZO: Can we move on to proposed
15 contention 8?

16 Mr. Frantz, what does the Licensee have to say
17 about contention 8?

18 MR. FRANTZ: I think we explain our objection
19 fairly well in our pleading. Let me just reiterate
20 certain points.

21 The contention pertains to a loss of cooling
22 accident in the spent fuel pool and, in particular, the
23 basis for the contention alleges that our actual
24 temperatures will be above 140 during a normal reload and
25 could reach 180 degrees during an abnormal reload.

1 The Petitioners refer to an unnamed and
2 unidentified Staff document which allegedly states that
3 the temperature of the spent fuel pool should be kept at
4 122 degrees Fahrenheit. We are not aware of any such
5 Staff documents. The Petitioners have not identified
6 these documents.

7 Moreover, the standard review plan for the Staff
8 is standard review plan 9.1.3 that identifies the standard
9 Staff acceptance basis for the spent fuel pool, and those
10 are 140 degrees during a normal offloading and below
11 boiling during an abnormal offloading.

12 As the Staff points out in their SER, we comply
13 with the Staff's guidance. So to the extent that the
14 Petitioner is alleging that we aren't complying with the
15 Staff guidelines, that allegation simply has no basis in
16 fact.

17 Additionally, the contention or the basis for
18 the contention states that we are reducing the time for a
19 boiling accident from 15 hours loss of cooling accident,
20 from 15 hours to 14 hours in the event of a loss of
21 cooling.

22 JUDGE COLE: 15 hours to 4 hours.

23 MR. FRANTZ: I am sorry. That is correct.

24 However, we have pointed out, and the Staff has
25 reviewed this, that we could supply make-up water within

1 one hour to the pool. And, therefore, her contention that
2 four hours is not sufficient to allow for make-up is
3 simply without basis. She cites nothing that would
4 indicate that our one hour estimate is incorrect.

5 Finally, in contention -- or basis B in
6 contention 8, Petitioners refer to a water-zirconium
7 interaction in the spent fuel pool. This possible
8 interaction has no basis at all that is provided here.

9 We are not aware of any basis for this kind of
10 interaction at the temperatures expected during the
11 storage of spent fuel in the spent fuel pool.

12 This contention of the zirconium water
13 interaction appears to be predicated upon her previous
14 allegations that we are going to be losing cooling. As we
15 have shown, that itself will not occur.

16 So in conclusion, we believe this entire
17 contention lacks any basis. It is based upon a
18 misunderstanding of the Staff's own regulatory positions
19 and of FP&L's response to those positions.

20 JUDGE LAZO: Ms. Young, the Staff believes that
21 a sufficient basis has been provided for a proposed
22 contention 8?

23 MS. YOUNG: That is correct. This, as well as
24 many of Petitioners' other contentions, marginally
25 provides basis to support the contention.

1 JUDGE LAZO: When you propose that the
2 contention be limited to the basis offered, are you
3 suggesting that the proposed contention should be
4 rewritten or simply litigated within the scope of the
5 proviso?

6 MS. YOUNG: It could either be reworded -- of
7 course, the Board is under no obligation to reword
8 contentions, but the scope of the contention should be
9 limited to the basis asserted, I guess subject to any
10 revision in that basis by Petitioners' later submittal.

11 JUDGE LAZO: Of course, that is one of the
12 things that should be done in refining the issues so that
13 contentions that are admitted for hearing are restricted
14 in the sense that everyone understands them and they are
15 clear. And any of the parties know what kind of evidence
16 they have to prepare to support them or to rebut them.

17 As you say, the Licensing Board could reword the
18 contentions, presuming that they could do it in a fashion
19 that none of the parties would object to. But again, it
20 is certainly more preferable to have the parties
21 themselves agree on the wording of any contentions.

22 Is there anything more on contention 8?

23 MS. LORION: Just that I don't even see why it
24 has to be reworded, pardon me. But they are increasing
25 the heat. They are decreasing the reaction time. I, for

1 one, don't agree that they can get water in there in an
2 hour. I would have somebody testify that they couldn't do
3 that. I don't think I have to prove that today.

4 But I think the fact that the heat is going up,
5 the reaction time is going down, and the pool could melt
6 down, there could be a zirconium fire which is based on
7 the Sandia lab's report. I think there is a safety hazard
8 there. I didn't understand that I had to prove that today.

9 JUDGE LAZO: Of course you don't.

10 MR. FRANTZ: Ms. Lorion seems to be bringing in
11 information which is not within her written contentions
12 and the basis that she refers to, the Sandia documents --
13 I have no idea what documents she is referring to.

14 Again, if she wishes to amend the contentions,
15 there is a set procedure in the Commission's regulations
16 for doing that. I suggest that she follow those
17 procedures.

18 JUDGE LAZO: All right.

19 Let's go on to contention No. 9.

20 Licensee has not analyzed the effect of a
21 hurricane or tornado -- the effect that a hurricane or
22 tornado could have on the spent fuel storage facility or
23 its contents, and that the SER neglects certain accidents
24 that could be caused by such natural disasters.

25 Counsel for Licensee?

1 MR. FRANTZ: The spent fuel pool expansion will
2 have no effect at all upon the spent fuel storage building.
3 The ability of that building to withstand hurricanes and
4 tornadoes was analyzed when the construction permit and
5 operating license were issued for the plant.

6 As a result of those CP&OL proceedings, it was
7 determined that the building would withstand hurricanes
8 and tornadoes. This contention attempts to reopen those
9 proceedings.

10 The Board simply has no jurisdiction to go back
11 and relitigate matters that were decided in a previous
12 litigation.

13 Therefore, we oppose this issue on the grounds
14 that it goes beyond the Board's jurisdiction.

15 JUDGE LAZO: What does the Staff have to say
16 about proposed contention 9?

17 MS. YOUNG: The Staff opposes the admission of
18 this contention because it lacks a basis. The contention
19 alleges that the effect of hurricane and tornadoes on the
20 storage facility had not been analyzed.

21 Mr. Frantz is correct. That was analyzed at the
22 operating license stage and Petitioners in their basis
23 provide no nexus for evaluating the effects of hurricanes
24 and tornadoes in the scope of this amendment proceeding.

25 MS. LORION: I would just like to say that the

1 original SER was completed in the early '70s. Since the
2 early '70s, there is new information at the National
3 Hurricane Center that storm tide could be much higher than
4 they thought it was even five years ago.

5 So I think that just as in the NRC, new
6 scientific information is important in the realm of
7 hurricanes and the effects they could have on buildings,
8 that that is also important.

9 I think because of the higher radioactive
10 inventory they will have in the spent fuel pool that it
11 would be wise for them to look into the higher storm
12 surges and storm tides.

13 JUDGE LAZO: I am not sure that anything that
14 you have said just now, Ms. Lorion, shows any nexus
15 between the reracking of the pool to increase its capacity
16 and the fact that there may be new information relating to
17 hurricanes or tornadoes.

18 That fact does, indeed, relate to the original
19 operating license, does it not, rather than the reracking
20 of the pool?

21 Are you suggesting that the reracking of the
22 pool to increase the capacity of fuel assemblies would
23 somehow make the building more susceptible to damage in a
24 tornado or hurricane situation?

25 MS. LORION: No.

1 What I am suggesting is that the radioactive
2 inventory within that building is going to be much greater.
3 Thus, I think that it is worth going back and checking to
4 see if that building would withstand a hurricane surge,
5 because the results of an accident would be increased.

6 JUDGE LAZO: Well, I haven't really thought
7 about this yet. It sounds more like a situation which
8 might go to the director of NRC on a petition. But let us
9 have an opportunity to think about it a bit before we make
10 a determination.

11 Do any of you have anything more on proposed
12 contention 9?

13 MS. YOUNG: Nothing from the Staff.

14 JUDGE LAZO: Very well. Contention 10.

15 Mr. Frantz, Licensee objects?

16 MR. FRANTZ: Yes.

17 We find this contention to be extremely vague
18 and unspecific. For example, the Petitioner has alleged
19 that the amendment will not comply with the requirements
20 of ANSI N16 1975. That is a very large document. We
21 don't know what specific sections she is alleging we are
22 not complying with. We don't know why we are not
23 complying with those sections allegedly. We don't even
24 know why that standard is even applicable in this
25 proceeding.

1 I think for that reason alone, the contention is
2 insufficiently particularized and should be rejected.

3 Additionally, Petitioners appear to be claiming
4 that we are going to be increasing the probability of
5 criticality accident. But our design basis limitation for
6 the K effective is .95. That limitation has not been
7 altered at all by this amendment.

8 Consequently, we are not moving closer to a
9 criticality accident, and Ms. Lorion has provided no basis
10 for alleging that we are.

11 MS. YOUNG: Did I hear you say .95?

12 MR. FRANTZ: Yes.

13 MS. LORION: I would like to add that I think
14 what I am trying to point out here is that Turkey Point is
15 a unique situation because of using the more highly
16 enriched uranium 235 in storage and that if something were
17 to occur which would cause the rods to be too close
18 together and even if the storage turns out to be too close
19 together, that that would increase the possibility of a
20 criticality accident, that using that uranium 235, the
21 enriched uranium 235, increases that chance.

22 MR. FRANTZ: Judge Lazo, to the extent she is
23 talking about increases in enrichment, that is a different
24 proceeding than this proceeding. That issue is outside
25 the scope of the spent fuel pool expansion itself.

1 JUDGE LAZO: Well, she can't close her eyes to
2 the fact that the Licensee does intend to use enriched
3 fuel.

4 MR. FRANTZ: That is correct. But that is in
5 OLA-3. That type of contention may or -- it would
6 probably be more appropriately based in that proceeding,
7 not in this proceeding, because we do consider, with
8 respect to that amendment, what impacts the increased
9 enrichment will have upon the criticality in the spent
10 fuel pool from the increased fuel enrichment.

11 JUDGE LAZO: That is helpful. Thank you.

12 MS. LORION: But those rods will be stored in
13 the spent fuel pool, so I think that this belongs in this
14 one. I would want to stress the fuel failure, again, that
15 Turkey Point is experiencing. We had to receive an
16 amendment for 1983, and that is a grave concern.

17 JUDGE LAZO: Ms. Young? Staff has no objection
18 to the admission of proposed contention 10?

19 MS. YOUNG: That is correct.

20 JUDGE LAZO: Then you say, provided that the
21 references to failed fuel causing criticality is deleted.
22 Could you elaborate on that?

23 MS. YOUNG: As presently stated, I am not sure
24 that the basis provides a nexus between failed fuel and
25 criticality or how failed fuel can cause criticality.

1 Failed fuel involves the release of fission
2 products. I am not certain that fission products has any
3 relationship to criticality.

4 JUDGE LAZO: Ms. Lorion, do you have anything to
5 add regarding proposed contention 10?

6 MS. LORION: No. I have nothing to add.

7 JUDGE LAZO: Do any of the other parties have
8 anything in addition regarding proposed contentions 1
9 through 10?

10 (No response.)

11 JUDGE LAZO: Well, then it would be our
12 suggestion that we have an opportunity to review what has
13 been heard in oral argument here this morning and arrive
14 at a determination regarding the admissibility of the
15 proposed contentions.

16 We will issue a memorandum and order ruling on
17 the contentions. I don't know if it is appropriate at
18 this time to discuss further scheduling, but as indicated
19 earlier, we do feel that there might be some advantage in
20 the counsel for the parties getting together with
21 Ms. Lorion.

22 There have been a number of documents referred
23 to that are fairly recent. It may be possible to refine
24 some of the proposed contentions, eliminate some of them,
25 if the parties will make an effort to meet and to perhaps

1 reach a stipulation agreement.

2 There is one other -- maybe that could be done
3 this afternoon.

4 MR. FRANTZ: We have no problem trying to
5 clarify some issues with the Petitioners. However, to the
6 extent that that would entail rewriting the contentions to
7 make them admissible, when they are now inadmissible, I
8 feel that would be beyond my obligation to represent my
9 client to the best of my interest.

10 JUDGE LAZO: Of course, we are not suggesting
11 that. You each have your own clients to look to.

12 Ms. Lorion has her responsibilities which are
13 separate and distinct.

14 I did want to indicate a little bit of
15 unhappiness to feel that there has been little
16 communication between you folks. I think it would help us
17 all if you were able to at least talk about the situation
18 a bit rather than trying to resolve it all in front of us
19 or later at a hearing.

20 One thing I did want to mention was that this
21 proceeding is one of those ones that involves section 134
22 of the Nuclear Waste Policy Act of 1982. That applies to
23 this proceeding. Any Petitioner or party may request that
24 the Commission employ the hybrid hearing procedures.

25 Ms. Lorion, are you familiar with that fact?

1 MS. LORION: I am not.

2 JUDGE LAZO: The -- well, again, I might ask you
3 to meet with Staff counsel or Licensee counsel or both and
4 if you would look at the Notice of Opportunity for Hearing
5 in this proceeding, that original Notice of Hearing which
6 I think was June 7, 1984, it does, in the latter part of
7 the Federal Register Notice, set forth the provisions of
8 the hybrid hearing provision which, in essence, provide
9 for oral argument after discovery on issues or proposed
10 issues which may be suitable for litigation and a ruling
11 by the Licensing Board as to which issues and which issues
12 alone will be tried.

13 It is a new procedure. As a matter of fact, the
14 Commission at this time does not have new regulations in
15 place to conduct a hybrid hearing. But I think we could
16 devise suitable procedures, if such a hearing is requested
17 by any party.

18 I do want to refer you to that provision so that
19 you will be aware of it and can decide whether or not you
20 want to request an oral hybrid hearing.

21 In some ways it is less formal than a formal
22 adjudication as would normally occur. It is only provided
23 in the case of spent fuel pool procedures.

24 Is there anything I should add regarding the
25 section 134 provisions?

1 MR. FRANTZ: I would just state for the record
2 that the Licensee would not favor using those procedures,
3 and we would prefer to use the existing procedures in 10
4 CFR part 2.

5 MS. YOUNG: The Staff is also not requesting the
6 use of the hybrid hearing procedures.

7 I may also indicate for the record that the
8 Notice of Opportunity for Hearing referring to those
9 procedures is at Federal Register 4 -- 49 Federal Register
10 23715, and the exact page is 23718 in which those
11 procedures are noted, dated June 7, 1984.

12 If I could be allowed a small departure for the
13 moment, the amendments in this proceeding and the safety
14 evaluation and the environmental assessment were
15 distributed back in November.

16 MS. LORION: I never got them.

17 MS. YOUNG: My letter to the Board indicated
18 that copies were mailed to the parties. If Ms. Lorion did
19 not receive such copies, I think she should have contacted
20 the Staff. When something is placed in the mail, we can
21 only presume delivery unless someone contacts us to let us
22 know they have not received it.

23 We would have been happy to provide her with any
24 documents before today. We would not have waited for a
25 prehearing conference to let her see documents on which

1 her contentions relate.

2 JUDGE LAZO: We received that environmental
3 assessment. I think that cover letter was November 14.

4 Did you also refer to a safety evaluation?

5 MS. YOUNG: Yes. That was November 23, 1984.

6 MS. LORION: I would like to say both Mitzi and
7 Dan McDonald said that they had sent me the safety
8 evaluation report. So I should have gotten two. I got
9 none. Not the safety evaluation report nor the
10 environmental impact assessment.

11 I went to the library and copied it. But I
12 don't know why -- another thing I just would point out for
13 the record is that when I do get things, I get a cover
14 letter and I don't get a document. I have to run to the
15 library and copy it, even if it is a five-page document.

16 It is really a hardship for me to have to do
17 that.

18 MS. YOUNG: Excuse me. There is really no need
19 for Ms. Lorion to go through the expense of copying
20 documents which the Staff has mailed to her. We would be
21 happy to mail them again.

22 JUDGE LAZO: Perhaps after lunch or whenever
23 possible, why don't you meet with Ms. Lorion and see what
24 documents she is missing and requires and, if you would,
25 please, attempt to provide those. I think it would be

1 helpful.

2 MS. YOUNG: Certainly.

3 JUDGE LAZO: Now, are there any other matters
4 that we can attend to regarding this proceeding on the
5 spent fuel pool?

6 We had scheduled the enriched fuel case for
7 tomorrow. I suppose we better adhere to that schedule. I
8 don't know if any members of the public who are -- who
9 might be interested in the enriched fuel proceeding and
10 not the spent fuel pool case are planning to attend
11 tomorrow.

12 MR. FRANTZ: The Licensee would have no
13 objection if the Board wished to proceed this afternoon on
14 the third amendment proceeding.

15 MS. YOUNG: Staff is also prepared to proceed.

16 MS. LORION: I am not prepared to proceed. I
17 just read the documents for today and will prepare myself
18 tonight for tomorrow. I would feel that I was
19 disadvantaged if I was to proceed today.

20 JUDGE LAZO: Well, the March 5 order designating
21 this courtroom did state that the No. 2 proceeding would
22 be heard today and that the No. 3 proceeding would be
23 heard tomorrow. I guess we better adhere to that schedule,
24 particularly in view of your request, Ms. Lorion.

25 In which case, we would adjourn this proceeding

1 now, unless there are any other matters we can handle
2 today?

3 MS. YOUNG: When you suggested the parties meet
4 on the contentions, did you want us to set a time in terms
5 of replying, or did you want us to try to accomplish that
6 today and report to you tomorrow? Or what would you
7 suggest?

8 JUDGE LAZO: We are reluctant to direct you to
9 spend the afternoon in session. I don't want to do that.

10 But please let me encourage a little more than
11 what I have seen in terms of cooperation. You each have
12 your respective interests, but it just isn't right that
13 one party is saying, well, I never got that document and
14 you don't know about it.

15 I think it will assist all of you, and it will
16 certainly assist us, if we get to a hearing stage where
17 the parties have met together and talked about what it is
18 they want to attempt to prove, refining the issues.

19 Some of those proposed contentions are going to
20 be very difficult to litigate if they are admitted and we
21 go forward to a hearing. They are broad and they are
22 nonspecific.

23 It makes it difficult for the other parties to
24 decide what kind of testimony to prepare to defend them or
25 to refute them. Every effort that can be made to refine

1 and distill those contentions will make it so much easier,
2 if we go to hearing on any of them.

3 It will shorten the time and certainly expedite
4 the proceeding. I encourage you to do that.

5 MS. YOUNG: Certainly, discovery is
6 traditionally used to refine contentions. That, I assume,
7 would commence once the Board issues an order.

8 JUDGE LAZO: That would be really the principal
9 role of discovery.

10 MS. YOUNG: I envision at that time the parties
11 would be in much more communication than they have been
12 thus far concerning the contentions.

13 JUDGE LAZO: You are correct.

14 (Board confers.)

15 JUDGE LAZO: Then again, if there are no other
16 matters and, hearing no response, we will adjourn this
17 session.

18 We thank you all for coming and your cooperation.

19 (Whereupon, at 12:05 p.m., the hearing was
20 adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: FLORIDA POWER & LIGHT COMPANY
(Turkey Point Nuclear Generating Plant, Units 3 and 4)

DOCKET NO.: 50-250-OLA-2; 50-251-OLA-2

PLACE: CORAL GABLES, FLORIDA

DATE: WEDNESDAY, MARCH 27, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) Rebecca E. Eyster/sq
(TYPED)

REBECCA E. EYSTER

Official Reporter

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