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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Dr. Robert M. Lazo, Chairman  
Dr. Richard F. Cole  
Dr. Emmeth A. Luebke

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USNRC

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

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

ASLBP No. 84-505-08 LA  
(Increased Fuel Enrichment)

September 24, 1985

MEMORANDUM AND ORDER

I

The Licensee, Florida Power & Light Company, is licensed to possess, use and operate Turkey Point Plant, Units 3 and 4, two pressurized water nuclear reactors located in Dade County, Florida. On June 20, 1984, pursuant to 10 C.F.R. § 2.105(a)(4)(i), the NRC published in the Federal Register a notice of consideration of the issuance of amendments to the facility licenses and offered the opportunity for hearing on the amendments. 49 Fed. Reg. 25350 and 25360. The amendments would revise the technical specifications of the Operating Licenses to delete the present enrichment restriction of 3.5 weight percent and allow storage of fuel with increased enrichment. Pursuant

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to that notice, the Center for Nuclear Responsibility, Inc. ("Center") and Joette Lorion (collectively referred to herein as "Petitioners") filed a timely request for hearing on July 12, 1984.

By Order of February 7, 1985 (unpublished), the Licensing Board in this proceeding scheduled a prehearing conference for March 28, 1985 and set February 25, 1985 as the deadline to file a supplement to the intervention petition. On March 7, 1985, Petitioners filed an amended petition to intervene, which included four contentions, and a motion to permit the late filing addressing the five factors for late intervention set forth in 10 C.F.R. § 2.714(a)(1). Amended Petition to Intervene (Amended Petition); Motion to File Not in Accordance With the Board But in Accordance With the Rule (Motion). The Amended Petition (a) supplements the original petition by offering additional information on the interest of the Center, (b) supplements the original petition to intervene by proffering proposed contentions for litigation and (c) requests that the license amendments be revoked.<sup>1</sup> Licensee and the NRC Staff ("Staff") filed responses to the Amended Petition on March 21, 1985.

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<sup>1</sup>Pursuant to 10 C.F.R. § 50.91(a)(4), the Staff made a final no significant hazards determination and issued the contested amendments on September 5, 1984.

## II

Interest of the Center for Nuclear Responsibility, Inc.

During the Prehearing Conference on March 28, 1985, Licensee and the Staff withdrew objections to the Petitioners' standing to intervene which they had raised in responses to the original petition for leave to intervene. Thereupon, the Licensing Board ruled that the Center and Ms. Lorion both had established standing to intervene. Tr. 6.

## III

Late-Filed Petition

As noted above, the Petitioners were directed by the Licensing Board to file a supplement to their July 12, 1984 intervention petition by February 25, 1985. After the deadline had passed, the Board, during a conference call with the parties on March 6, 1985, directed the Petitioners to file an Amended Petition by March 7, 1985 and provide justification for the late filing. Petitioners filed the Amended Petition on March 7, 1985 together with a motion requesting that the filing date be extended to March 7, 1985.

The matter of Petitioners' nontimely Amended Petition has been fully addressed in this Licensing Board's Memorandum and Order entered on September 16, 1985 in a closely related proceeding involving the same participants and need not be repeated here. See Florida Power & Light Company (Turkey Point Plant, Units 3 & 4), LBP-85-36, 22 NRC \_\_\_\_ (1985). In that proceeding (Docket Nos. 50-250-OLA-2 and 50-251-OLA-2) concerning license amendments to allow spent fuel pool expansion, the due date, actual filing date and Petitioners' arguments accompanying the Amended Petition are the same as those in the present proceeding. Therefore, the Board reaches the same conclusion here, namely that on balance, the factors to be considered under 10 C.F.R. § 2.714 weigh slightly in favor of permitting late intervention. Petitioners' motion to extend the time for filing the Amended Petition to March 7, 1985, is granted.

#### IV

#### Petitioners' Proposed Contentions

In their Amended Petition, Petitioners proffer four contentions numbered 1 through 4, for admission and litigation. In its March 21, 1985 response to the Amended Petition, Licensee argues that each of the proposed contentions raised by Petitioners is objectionable for lack of specificity or basis or is otherwise infirm and that consequently,

Petitioners' request to intervene should be denied. The Staff's response filed on the same day asserts that proposed Contentions 1 and 2 are inadmissible and should be rejected. However, in the view of the Staff, proposed Contentions 3 and 4 raise matters within the scope of the proceeding, are supported with adequate bases, and should be admitted for litigation.

In recognition of the fact that Petitioners cannot be required to have anticipated in the contentions themselves the possible arguments their opponents might raise as grounds for dismissing them, the Board at the prehearing conference on March 28, 1985 heard oral argument on the question of admissibility of the proposed contentions and provided Ms. Lorion, the proponent of the contentions, the opportunity to be heard in response to the objections which had been filed by Licensee and Staff. Tr. 11-55. Our ruling on each of the contentions set forth below has taken into consideration all of the pleadings which have been filed together with the arguments and comments received during the prehearing conference.

CONTENTION 1. The storage of fuel with increased uranium enrichment and the increase in  $k_{eff}$  (neutron multiplication factor) for the existing new fuel storage racks constitutes a significant hazards consideration and requires that a public hearing be held on the amendments before issuance of such amendments.

Petitioners' Contention 1 seeks to litigate the validity of the Staff's "no significant hazards consideration" determination and asserts that a public hearing must be held prior to the issuance of the increased fuel enrichment license amendments for the two Turkey Point Plant units. For the reasons fully set forth in Licensee's and Staff's March 21, 1985 responses, the Board finds that this contention is not admissible for litigation. It is not relevant to any issue properly before the Board and does not raise an issue as to which the Board may take effective action or provide an effective remedy.

CONTENTION 2. The proposed amendments are part of a broad agency program, pressure vessel flux reduction, and should become part of a single, program environmental impact statement on the pressure vessel flux program, as required by the National Environmental Policy Act of 1969. And, that the uranium enrichment amendments and vessel flux program are a major federal action that will effect the South Florida Environment.

Contention 2 alleges that the enrichment amendments are part of a broad agency program to achieve pressure vessel flux reduction which constitutes a major federal action requiring that a programmatic environmental impact statement (EIS) be prepared. However, as a basis for this contention, Petitioners assert that the increased enrichment was to compensate for loss in core reactivity caused by core design changes for vessel flux reduction which were authorized by other amendments. Thus, Petitioners appear to concede that the instant amendments are not to reduce flux, but are a means to achieve better

fuel efficiency. Consequently, these amendments cannot properly be considered as a part of Licensee's program to reduce reactor vessel flux. Moreover, Petitioners have not alleged that the license amendments will result in significant environmental impacts and do not provide any basis for the naked assertion that this action requires preparation of an EIS. Accordingly, we find that Contention 2 is wholly lacking in basis and must be rejected for failure to comply with the requirements of 10 C.F.R. § 2.714(b).

CONTENTION 3. That the uranium enrichment amendments increase the chances of a criticality accident occurring in the fresh fuel pool and establishes a clear reduction in the safety margin of the fresh and spent fuel pool.

In its response the Staff notes that Contention 3 is founded in part on the faulty premise that the  $k_{eff}$  for fresh fuel has been increased by the amendments, which is not the case. The  $k_{eff}$  for fresh fuel, which is normally stored in a dry configuration, remains unchanged by the amendments and has not been increased. According to the Staff, the amendments authorized an additional  $k_{eff}$  for fresh fuel stored in the abnormal, optimum moderation conditions (i.e., mist, fog, or foam) which were not covered by the previous technical specifications. Safety Evaluation, September 5, 1984, at 3, 6. Thus, the contention should be read as challenging the adequacy of this acceptance criteria by alleging that  $k_{eff}$  of 0.98 is not adequately safe for fresh fuel exposed to abnormal, optimum moderation conditions and 0.95 is not adequate for

fresh or spent fuel exposed to the abnormal condition of full flooding with unborated water. Petitioners' statement that these  $k_{eff}$  values are at the "limit and leave no margin for safety" provide a basis which satisfies the requirements of 10 C.F.R. § 2.714(b) if the contention is limited to a challenge of the adequacy of  $k_{eff}$  of 0.95 and 0.98 to provide sufficient margin of safety against criticality in accordance with General Design Criterion 62 (Prevention of Criticality in Fuel Storage and Handling) of 10 C.F.R. Part 50. Accordingly, Contention 3 is admitted for litigation.

CONTENTION 4. The increase in U-235 loading and increase in the possibility of an accident as a result of the increase in  $k_{eff}$ , will increase the amount of fission products, such as radioactive iodine and krypton 85, that are available to be released in normal or abnormal occurrences and will cause the licensee to exceed the limits of 10 C.F.R. Parts 20, 50, 51, 100, NEPA, and FWPA, and will pose a threat to the health and safety of the public, workers, and the Biscayne Bay environment.

Contention 4 alleges that the storage of fuel with increased enrichment will increase the possibility of an accident and result in increased fission products released under normal and abnormal conditions in excess of NRC regulations for onsite and offsite doses. However, Petitioners have provided no basis for their allegation that the increase in U-235 loading will increase the probability of an accident. Nor have they provided a basis for their allegation that increased enrichment will increase the amount of fission products available for release to the environment. As the Staff has noted, radiological

consequences are not dependent upon U-235 loading, but instead upon fuel burnup which is unaffected by the fuel enrichment amendments. SER, p.4. Moreover, neither 10 C.F.R. Part 51, NEPA or FWPCA contain limits for radioactive releases and thus reference to these for release limits is improper. In summary, we find that Petitioners have provided no basis for alleging that any releases as a result of the fuel enrichment amendments would exceed the limits on normal operation in Parts 20 and 50 or the limits on accidental releases in Part 100. Consequently, Contention 4 is rejected.

V

ORDER

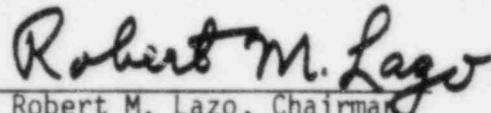
For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 24th day of September, 1985

ORDERED

1. That Contention 3 of Petitioners' Amended Petition dated March 7, 1985, is admitted as an issue in controversy in this proceeding; and

2. That Contentions 1, 2 and 4 of Petitioners' Amended Petition dated March 7, 1985, are rejected.

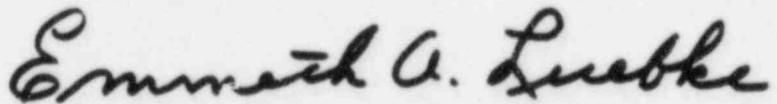
THE ATOMIC SAFETY AND LICENSING  
BOARD



Dr. Robert M. Lazo, Chairman  
ADMINISTRATIVE JUDGE



Dr. Richard F. Cole  
ADMINISTRATIVE JUDGE



Dr. Emmeth A. Luebke  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,  
this 24th day of September, 1985.