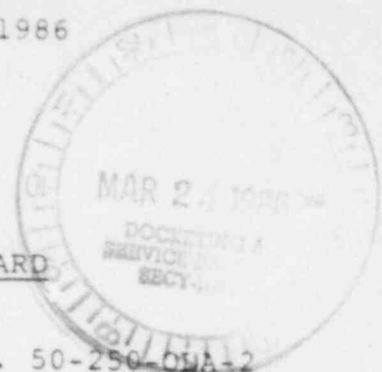


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
) Docket Nos. 50-250-OLA-2
) 50-251-OLA-2
FLORIDA POWER AND LIGHT COMPANY)
) (Spent Fuel Pool Expansion)
(Turkey Point Plant, Units 3 and 4))

INTERVENORS' RESPONSE TO LICENSEE'S MOTION FOR
SUMMARY DISPOSITION OF INTERVENORS' CONTENTION 6

I. LEGAL STANDARDS FOR SUMMARY DISPOSITION

Under both the Commission's and Federal Court Rules of Practice, "the burden of proof lies upon the movant for summary disposition, who must demonstrate the absence of any issue of material fact." Adickes v. Kress and Co., 398, U.S. 144, 157, Perry ALAB-443, supra, 6 NRC at 753. Again under both NRC and Federal Rules, "the record is to be reviewed in the light most favorable to the party opposing the motion." Dairyland Power Cooperative, 16 NRC 512, 519 (1982) citing: Poller v. Columbia Broadcasting System Inc., 368 U.S. 464, 473 (1962); Crest Auto Supplies Inc. v. Ero Manufacturing Co., 360 F. 2d, 896, 899 (7th Cir. 1966); United Mineworkers of America, Dist. 22 v. Ronoco, 314 F. 2d 186, 188 (10th Cir. 1963); Pennsylvania Power & Light Co. and Allegheny Electric Co-operative Inc. (Susquehanna Steam Electric Station, Units 1 and 2) LBP 81-8, 13 NRC 335, 337 (1981); Seabrook, LBP-74-36, supra, 6 NRC, supra, 7 AEC at 879.

" Because the proponent of a motion for summary disposition has the burden of demonstrating the absence of a genuine issue of

material fact, it does not necessarily follow that a motion supported by affidavits will automatically prevail over an opposition not supported by affidavits. The Board must scrutinize the motion to determine whether the movant's burden has been met." Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant, Units 1 and 2) LBP-84-7, ASLBP No. 82-468-01-OL, 19NRC 432 (1984).

Finally, for a contention to remain litigable, the Intervenor must present to the Board a sufficient factual basis "to require reasonable minds to inquire further." Pennsylvania Power and Light Company and Allegheny Electric Cooperative Inc., (Susquehanna Steam Electric Station Units 1 and 2) ALAB 613, 12 NRC 317, 340 (1980).

The issues of material fact raised in the Intervenor's Response to Florida Power & Light's Motion for Summary Disposition of the foregoing contention demonstrate that a sufficient material basis on the contention has been raised; and that the Licensee's motion for summary disposition of this contention must fail.

II. INTERVENORS' CONTENTION 6

The purpose of this response is to address Intervenor's Contention 6 which states:

CONTENTION 6: The Licensee and Staff have not adequately considered or analyzed materials deterioration or failure in materials integrity resulting from the increased generation and heat and radioactivity, as a result of increased capacity and long term storage in the spent fuel pool.

BASES FOR CONTENTION: The spent fuel facility at Turkey Point was originally designed to store a lesser amount of fuel for a short period of time. Some of the problems that have not been analyzed are:

- (a) deterioration of fuel cladding as a result of increased exposure and decay heat and radiation levels during extended periods of pool storage.
- (b) loss of materials integrity of storage rack and pool liner as a result of exposure to higher levels of radiation over longer periods.
- (c) deterioration of concrete pool structure as a result of exposure to increased heat over extended periods of time.

1. Contention 6 is concerned with the effect that long term storage of spent fuel will have on the spent fuel pool and its contents. On Page 6 of his affidavit, Turovin states that materials degradation in the spent fuel pool is a long term effect. Thus, Intervenors find it difficult to understand how witnesses for the Staff and Licensee can state that the spent fuel pool and its contents will not suffer deterioration when experience with spent fuel storage is immature.

2. The Kilp affidavit at 7 references a document by A.B. Johnson that states that fuel has been stored safely for more than 3 decades. Although Intervenors do not have this document, Intervenors do have an article by Mr. Johnson, Spent Fuel Storage Experience, Nuclear Technology, Vol. 43, mid April 1979. In this article Johnson states that the worlds oldest Zircaloy clad fuel in water storage is approaching 19 years, and the oldest stainless steel clad fuel about 12 years. Mr. Johnson states that experience with spent fuel has been favorable so far but it is critical to note for our purposes that the spent fuel that that has been stored safely to date had a burn-up that did not exceed 39000MWD/MTU. Turkey Point fuel is allowed to have a

burn-up of 55,000 MWd/MTU.

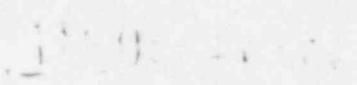
3. Neither the NRC or the Licensee have analyzed the effect that increased burn-up might have on long term storage and the structural integrity of the spent fuel pool. At Turkey Point we are dealing with a more highly enriched fuel with a much higher burn-up than has been previously experienced in long term storage. It is clear from the affidavits that increased heat can have an affect on steel and other metals. On page 4 of the Patton affidavit he states that the amount of heat given off by the spent fuel is a function of the time the fuel was operating in the reactor (burn-up) and the time after the cessation of operation or shutdown (decay time).

4. Intervenors contend that assertions that the spent fuel can be safely stored with no materials degradation for the 40 year life of the plant should not be based only on past experience with spent fuel pool but that studies should be performed to calculate the effect that storing spent fuel with increased burn-up and the resultant higher temperatures will have on the spent fuel pool and its contents.

5. In conclusion, Intervenors continue to insist that increased heat and radiation caused by the higher density design of the fuel racks and the extended storage of the spent fuel with a higher burn-up will cause a loss of material integrity to the spent fuel pool, and that Licensee has not met their burden of proof on this contention since their conclusion is based on data for spent fuel with a different history and burn-up than that at Turkey Point.

6. For all the above stated reasons, the Licensee's motion for summary disposition of contention 6 must fail.

Respectfully submitted,


Joette Lorion
Director, Center for
Nuclear Responsibility
7210 Red Rd. #208
Miami, Fl. 33143
(305) 661-2165

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