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# UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

DUCKE HIMLE & LEVICE BRANCH

50-251-0LA-4

A FOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

B. Paul Cotter, Jr., Chairman Glenn O. Bright Jerry Harbour

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In the Matter of

8744

FLORIDA POWER AND LIGHT COMPANY (Pressure-Temperature Limits)

Docket Nos. 50-250-OLA-4

(Turkey Point Plant, Units 3 and 4) ASLBP No. 89-584-01-0LA

June 8, 1989

#### MEMORANDUM AND ORDER (Ruling Upon Contentions)

Petitioners Center for Nuclear Responsibility and Joette Lorion challenge license amendments issued to Florida Power and Light Company for its Turkey Point Units 3 and 4 nuclear power plants. The license amendments change the technical specifications governing pressure/temperature limits for the operation of the units. The petition to intervene and request for hearing was timely filed and subsequently amended. Neither Licensee nor the Nuclear Regulatory Commission Staff (Staff) challenge Petitioners'

8906190009 890608 PDR ADOCK 05000250 G PDR standing to intervene. Consequently, the only issue before this Beers is whether Fetitioners have presented an admissible issue ("contention") to be litigated.

## I. TECHNICAL BACKGROUND

Turkey Point Units 3 and 4 are 760 Mw pressurized water reactors. The two Units began full power operation in 1972 and 1973 respectively, with pressure/temperature (P/T) limits specified for the next ten years of effective full power operation.<sup>1</sup>

P/T limits are specified because these two factors in combination with radiation affect the integrity of the material making up the vessel in which nuclear reactions take place. The reactor vessel must be designed to withstand these pressures and temperatures during operation as well as the changes in P/T when the reactor is started up, cooled down, or tested for leaks. <u>See</u> 10 C.F.R. Part 50, Appendix G.

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<sup>&</sup>lt;sup>1</sup> Because of outages, planned and unplanned, the two units had not achieved ten years of full power operation by the end of 1988. Tr. 71.

The NRC regulatory scheme setting out these requirements is found in Part 50 of Title 10 of the Code of Federal Regulations. Some 53 General Design Criteria for nuclear reactors are set out in Appendix A to Part 50. General Design Criterion 31 (GDC 31) sets out design criteria for fracture prevention of the reactor coolant pressure boundary, which includes the reactor vessel beltline materials. It requires that

> ... when stressed under operating, maintenance, testing, and postulated accident conditions (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized. The design shall reflect consideration of service temperatures and other conditions of the boundary material under operating, maintenance, testing, and postulated accident conditions and the uncertainties in determining (1) material properties, (2) the effects of irradiation on material properties, (3) residual, steady state and transient stresses, and (4) size of flaws.

Section 50.60 sets out acceptance criteria for fracture prevention measures for reactor vessel materials at the beltline during normal operation, and Appendices G, "Fracture Toughness Requirements", and H, "Reactor Vessel Material Surveillance Program Requirements", to Part 50 describe specific criteria that the Turkey Point reactor vessel materials must meet to satisfy the design criteria of GDC-31.

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The significance of these requirements is summed up in the Staff's Safety Evaluation of Licensee's requested P/T changes at page 6:

> The fracture toughness of the steel in a reactor pressure vessel wall is determined primarily by the following factors: (1) the particular material (composition and metallurgical history), (2) the accumulated irradiation level (neutron fluence) to which the material is exposed, and (3) the temperature of the material. In a reactor pressure vessel, significant loadings result from the internal pressure and thermal gradient through the vessel wall thickness during heatup and cool down. Since the fracture toughness of the vessel material decreases with decreasing temperature, P/T limits are required during normal reactor operation and tests to control operational stresses to the reactor vessel. Furthermore, because the fracture toughness of the vessel material decreases with increasing neutron irradiation (i.e., time duration of operation), a material surveillance program is required to monitor changes in the fracture toughness properties of the reactor vessel beltline material over the lifetime of the vessel. The P/T limits are periodically revised to take into account additional test data from the surveillance program on the changes in the fracture toughness properties due to irradiation.

The implementation of these requirements for Turkey Point is set out in the NRC Approved Technical Specifications governing the operation of the plant.

In 1988, the Licensee requested license amendments for both units revising the P/T limits and extending their applicability. Two license amendments (Number 134 to License Number DPR 31 for Unit 3 and Number 128 to License Number DPR-41 for Unit 4) were issued January 10, 1989 with the Staff Safety Evaluation and Final Determination of No Significant Hazards pursuant to 10 C.F.R. § 50.91(a)(4) (1988). The amendments incorporate revised P/T limit curves applicable up to 20 Effective Full Power Years (EFPY) of service life for each Turkey Point unit. <u>See</u> "Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. 134 to Facility Operating License No. DPR-31 and Amendment No 128 to Facility Operating License No. DPR-41," issued January 10, 1989, at p. 10.

The contentions sought to be admitted here charge that the revised P/T limits will jeopardize the safety margins required for the beltline (roughly the midpoint) of the reactor vessels at Turkey Point. Petitioners contend that the materials making up the beltline may become brittle and be subject to rapidly propagating fracture.

The effect of neutron radiation of reactor vessel materials ("neutron embrittlement") at Turkey Point is monitored through an integrated surveillance program approved by the Staff in 1985. Integrated surveillance

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programs for like reactors authorize the use of samples from either reactor in measuring neutron embrittlement. 10 C.F.R. Part 50, App. H, Sec. II.C. Capsules containing the same materials that make up the pressure vessel beltline were inserted in the vessel at the beltline at the time the reactors became operational. The most limiting, i.e. vulnerable, of these materials is the material making up the welds at the beltline.

The reference temperature for nil-ductility transition, "RT upt", is the reference temperature of certain materials such as ferritic metals at or below which the materials may fail in a brittle, instead of a ductile, manner if high stress conditions occur. RT upt is also referred to as the nil-ductility temperature. The nil-ductility temperature is affected by both the composition of the material and its neutron radiation history. The nil ductility temperature increases with: (1) higher initial copper (and certain other alloy) content of the material; and (2) neutron irradiation over time, i.e., neutron embrittlement. Typically the fracture toughness (or "strength") of the metal will increase with increasing temperature and decrease with decreasing temperature. In the region of the nilductility temperature the fracture toughness decreases very abruptly as the temperature decreases. To determine a

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change in  $RT_{NDT}$  due to neutron bombardment, specimens are irradiated in the capsules mounted in the reactor vessel to: (1) identify any change in the fracture toughness of those sample materials as a result of irradiation; and (2) predict future changes in  $RT_{NDT}$  (based on future neutron irradiation) for the reactor vessel materials that the samples represent. Tr. 12, 51-54, 72-76, 81-82; see also 10 C.F.R. Part 50, Appendices A (General Design Criteria 31 and 51), G, and H.

### II. DECISION

For a contention to be admissible, our regulations require that the bases for the contention must be stated with reasonable specificity. 10 C.F.R. § 2.714(b)(2) (1988). That requirement has been exhaustively interpreted in Commission case law, holding, <u>inter alia</u>, that the contention proffered must fall within the scope of the issues set out in the <u>Federal Register</u> notice of opportunity for hearing. <u>See</u>, <u>e.g.</u>, <u>Commonwealth Edison Co</u>., 12 NRC 419, 426 (ALAB-616, 1988); <u>Public Service Co. of Indiana</u>, 3 NRC 167, 170-171 (ALAB-316, 1976). Petitioners need only set forth the bases, i.e. the reasons, for each contention and need not detail the evidence in support thereof. <u>Mississippi Power & Light Co</u>., 6 AEC 423, 426 (ALAB-130, 1973). However, "reasonable specificity" means that the

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bases must be sufficiently detailed so that they: (1) demonstrate that the issue is admissible and requires further inquiry into the matter; and (2) put the parties on notice as to what they will have to oppose or defend. The admissibility of contentions must be decided on a case by case basis. <u>Philadelphia Electric Co.</u>, 8 AEC 20 (ALAB-216, 1974).

On the other hand, our rules do not permit admitting a contention that constitutes an attack on a Commission regulation absent special circumstances that would justify waiving the prohibition. 10 C.F.R. § 2.758 (1988). <u>See</u> <u>Carolina Power and Light Co.</u>, 23 NRC 525, 544-546 (ALAB-837, 1986); <u>Kansas Gas and Electric Co.</u>, 20 NRC 845 (ALAB-784, 1984); <u>Commonwealth Edison Co.</u>, 12 NRC 683 (LBP-80-30, 1980). Nor can a contention be considered which addresses an issue previously considered in an earlier proceeding. <u>Portland General Electric Co.</u>, 8 NRC 717, 745 (LBP-78-40, 1978), <u>aff'd</u>, 9 NRC 287 (ALAB-534, 1979).

# A. Contention 1

Contention 1 presents a question of law and reads as follows:

That the Nuclear Regulatory Commission Staff's Final Determination of No Significant Hazards

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Consideration issued on January 10, 1989 in support of license amendment nos. 134 and 128 issued to allow FPL to revise the pressure/temperature limits for Turkey Point nuclear units 3 and 4 respectively, is based on incomplete, faulty and non-conservative data, is in error, and should be reviewed by this Atomic Safety and Licensing Board in order to protect the public health and safety from a loss of pressure vessel integrity and subsequent meltdown.

Petitioners' Amended Request for Hearing and Petition for Leave to Intervene, pp. 5-6 ("Petition").

As bases for the contention, Petitioners state that the Staff's No Significant Hazards determination is erroneous because it is

> ... based on substantial uncertainties, incomplete data, and non-conservative assumptions in the prediction of adjusted reference temperature nilductility-transfer (RTNDT) for the reactor units.

Petition, p. 6. Petitioners conclude that the Staff's alleged error could result in vessel failure and a meltdown, thus warranting action by this Board to protect the public health and safety by reversing the Staff's determination.

Both Licensee and Staff oppose admission of Contention 1 on the ground that this Licensing Board lacks jurisdiction to consider the matter. We agree. Section 191 of the Atomic Energy Act, as amended, authorizes the Commission

> ... to establish one or more atomic safety and licensing boards ... to conduct such hearings <u>as</u> the Commission may direct and make such intermediate or final decisions as the Commission may authorize ....

42 U.S.C. § 2241 (1982) (Emphasis added). Thus, Licensing Boards derive their subject matter jurisdiction from the orders, rules, and regulations promulgated by the Commission. <u>See Duke Power Company</u>, 22 NRC 785, 790 (ALAB-825, 1985). In the instant case, the Staff's No Significant Hazards determination was made pursuant to 10 C.F.R. § 50.91(a)(4)(1988). That section was promulgated along with 10 C.F.R. § 50.58(b)(6) which provides that

> No petition or other request for review of or hearing on the staff's significant hazard's consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

The statement of considerations accompanying the issuance of sections 50.58 and 50.91 makes even more explicit the foregoing reservation of jurisdiction by the Commission. It provides that .... The Commission also explained in the interim final rules that while the substance of public comments on the no significant consideration finding could be litigated in a hearing, when one is held, neither the Commission nor its Licensing Boards or Presiding Officers would entertain hearing requests on the NRC staff's substantive findings with respect to these comments.

51 Fed. Reg. 7744, 7765 (1986). In short, the Commission has made the Staff's determination on hazards final and binding and reserved only a discretionary right of review in the Commission itself. There is no <u>right</u> to appeal the "no significant hazards determination", itself, to the Licensing Boards or any other body within the agency. <u>Pacific Gas</u> and Electric Co., 24 NRC 1, 4 (CLI-86-12, 1986), <u>rev'd in</u> part on other grounds, San Luis Obispo Mothers for Feace v. NRC, 799 F.2d 1268 (9th Cir. 1986).

Licensing Boards have twice before recognized this limitation on their jurisdiction in the context of spent fuel pool expansion proceedings. <u>Florida Power & Light Co.</u>, 27 NRC 452, 456-457 (LBP-88-10A, 1988); <u>Vermont Yankee</u> <u>Nuclear Power Corp.</u>, 25 NRC 838, 844 (LBF-87-17, 1987). However, in the <u>Florida Power & Light</u> case the Licensing Board noted at page 457 that

> That limitation on this Board's authority is distinguished from our authority, after a finding is made and the license issued, to consider and take corrective action on any threat to the public

health and safety disclosed at any subsequent hearing.

That principle applies in the instant case.

However, with respect to the Staff's no significant hazards determination itself, the law is otherwise clear. Contention 1 must be rejected as beyond the jurisdiction of this Board.

#### B. Contention 2

Contention 2 states:

That the revised temperature/pressure limits that have been set for Turkey Point Unit 4 are non-conservative and will cause that reactor unit to exceed the requirements of General Design Criterion 31 of Appendix A to 10 CFR Part 50, which requires that the reactor coolant pressure boundary be designed with a sufficient margin to insure that, when stressed under operating, maintenance, testing, and postulated accident conditions, (1) the boundary behaves in a nonbrittle manner and (2) the probability of a rapidly propagating fracture is minimized.

Petitioners contend that the new pressure/ temperature limits could cause the reactor vessel to exceed these requirements because the Licensee has based its calculation of the predicted RTNDT for Unit 4 partly on surveillance capsule V test results from Turkey Point Unit 3 rather than predicting the RTNDT for Unit 4 based on Unit 4 capsule V surveillance capsule data -- a practice which is not scientific, not valid, and could cause the Unit 4 reactor to behave in a brittle manner which would make the chances of a pressure vessel failure and resultant meltdown more likely.

Petitioners contend that predictions of RTNDT and pressure/temperature limits derived from the shift in nil-ductility transfer should be based only on plant-specific Unit 4 data, especially in light of the fact that the only tests ever performed on Unit 4 weld specimens demonstrated that the weld material in the Unit 4 vessel was 30% more brittle than that of Unit 3. Because Unit 4's weld material is more embrittled, Petitioners contend that the FPL Integrated Surveillance program does not meet the Requirements of 10 CFR Appendix G Parts V.A and V.B, and 10 CFR Appendix H, including Appendix H Parts IIC and IIIB. Finally, Petitioners contend that the surveillance capsule V for Unit 4 should be tested to establish the new pressure/temperature limits and should the testing indicate that the RTNDT for Unit 4 has passed the 300-degree Farenheit (sic) screening criterion set by the NRC, Unit 4 should be shut down until it is demonstrated that the Unit 4 reactor pressure vessel can maintain its integrity beyond this limit.

Petition, pp. 7-8.

As bases for this contention, Petitioners make two arguments. First, Petitioners argue that after seven years operation  $RT_{MDT}$  was to be calculated based upon the data obtained from the capsule material to be removed from each reactor. Petitioners cite a Southwest Research Institute report issued in 1979 for that proposition. However, Petitioners charge, FPL did not use data from Unit 4, but rather data from "the less severely affected reactor Unit 3 for predicting the  $RT_{MDT}$  and revising the heat-up and cooldown limits." Petition, p. 9. Petitioners buttress their argument by citing the conclusions of Dr. George Sih, Director of Fracture Mechanics at Lehigh University, in another lawsuit. Dr. Sih took the position that

> ... one is not justified to assume that data collected in Unit No. 3 could be applied to predict the behavior of Unit No. 4. Hence, conclusions drawn on RTNDT for Unit No. 4 based on the data of Unit No. 3 cannot be considered valid.

Id. Dr. Sih further concluded that "according to FPL's own test data, Unit 4 has already passed the 300-degree NRC screening criterion." Id.

Licensee objects to admission of the contention on two grounds. First, Licensee argues that the contention is founded upon an impermissible attack on a rule, namely the Commission's Integrated Surveillance Program set out in 10 C.F.R. Part 50, Appendix H which was approved for use at the Turkey Point units in 1985. Section II.C. of Appendix H authorizes integrated surveillance, i.e., the use of sample data from a set of reactors with similar design and operating features, as follows:

> C. An integrated surveillance program may be considered for a set of reactors that have similar design and operating features. The representative materials chosen for surveillance from each reactor in the set may be irradiated in one or more of the reactors, but there must be an adequate dosimetry program for each reactor. No reduction in the requirements for number of materials to be irradiated, specimen types, or number of specimens per reactor is permitted, but

the amount of testing may be reduced if the initial results agree with predictions. Integrated surveillance programs must be approved by the Director, Office of Nuclear Reactor Regulation, on a case-by-case basis. Criteria for approval include the following considerations:

1. The design and operating features of the reactors in the set must be sufficiently similar to permit accurate comparisons of the predicted amount of radiation damage as a function of total power output.

2. There must be adequate arrangement for data sharing between plants.

3. There must be a contingency plan to assure that the surveillance program for each reactor will not be jeopardized by operation at reduced power level or by an extended outage of another reactor from which data are expected.

4. There must be substantial advantages to be gained, such as reduced power outages or reduced personnel exposure to radiation, as a direct result of not requiring surveillance capsules in all reactors in the set.

Licensee points to the well-established prohibition in 10 C.F.R. § 2.758 (1988) and supporting case law.

Licensee's second objection assumes Petitioners are not attacking the integrated surveillance rule but rather its implementation at Turkey Point. Licensee argues that that challenge, too, is barred. The use of an integrated surveillance program at Turkey Point was authorized by license amendments issued in 1985 after notice and opportunity to request a hearing were published in the <u>Federal Register</u>. No hearing was requested at the time. Licensee notes that Petitioners have actively followed Turkey Point and that the amendment was served on Petitioner Lorion. Tr. 39-40. Accordingly, Licensee argues that Petitioners are barred from attacking the 1985 License amendments in this proceeding. Licensee Response, pp. 9-10. Licensee also notes that Dr. Sih's conclusions concerning integrated surveillance were previously rejected in a 1986 letter from NRC Executive Director of Operations Victor Stello to Senator Lawton Chiles. Id. at p. 8.

Staff concurs in Licensee's first objection to admission of the contention and adds two additional grounds for denying admissibility. First, Staff argues that the contention as it pertains to the integrated surveillance test program is beyond the jurisdiction of the Board because it was not encompassed in the scope of the Notice of Hearing for these licensing actions. 50 Fed. Reg. 40981-82, 40988 (1988). Second, Staff argues that to the extent the integrated surveillance program does not comply with certain sections of Appendices G and H, the contention must be rejected because it was the subject of the 1985 amendment which petitioners cannot challenge now. Tr. 55-57.

It is clear that Commission regulations and case law do not permit an attack upon the Commission's rules in a case

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such as this. Petitioners recognized that at oral argument by taking the alternative position that they were attacking the implementation of the rule and the use of this specific capsule at issue. Tr. 64. Were Contention 2 simply an attack upon the integrated surveillance test program itself or as specifically applied to the Turkey Point units by the 1985 license amendments, the Contention would have to be rejected. 10 C.F.R. § 2.758 (1988).

However, a third alternative exists, namely, that Licensee's conduct of the integrated surveillance test program at Turkey Point fails to meet the requirements of the program itself. One of those requirements is for a contingency plan to

... assure that the surveillance program for each reactor will not be jeopardized ... by an extended outage of another reactor from which data are expected.

10 C.F.R. Part 50, Appendix H, IIC.3 (1988). Were there some indicatio: that data derived from the materials in the Unit 3 capsule are significantly different from the data that could be derived from the Unit 4 capsule, we might well be required to inquire further. Petitioners' contention concerning the validity of the Capsule V data from Unit 3 is based on the assertion that the Unit 3 Capsule material has been irradiated for a significantly shorter period of time than capsule material in Unit 4. However, the Safety Evaluation establishes that materials in both units have been irradiated for essentially the same period of time. The report, quoted by Licensee's Counsel (Tr. 71), notes on p. 1 that

# It is estimated that TP 3 will reach 10 EFPY early in 1989, and TP4 will reach 10 EFPY in mid-1989.

We cannot say on this state of the record that this difference of less than five percent in the operating time between the two units is simply not significant and cannot form a basis for the contention. However, it appears clear to us that Petitioners have a heavy burden of proof. Accordingly, Contention 2 is admitted.

Finally, Petitioners argue that Capsule V in Unit 4 should be tested and if the results show that the screening temperature ("RT<sub>PTS</sub>") of 300°F, set forth in 10 C.F.R. § 50.61(b)(2), cannot be met, Unit 4 should be shut down until certain conditions are met. A Pressurized Thermal Shock (PTS) event is defined as "an event or transient ... causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel." 10 C.F.R. § 50.61(a)(2) (1988). The 300-degree screening criterion, i.e. the Reference Temperature for Pressurized

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Thermal Shock (" $RT_{PTS}$ "), applies to protection against Pressurized Thermal Shock, and is calculated according to one of the two equations provided in 10 C.F.R. §50.61, whichever provides the lower  $RT_{PTS}$  for the particular material. The equations contain a term, "M", which "means the margin to be added to cover uncertainties in the values of initial  $RT_{NDT}$ , copper and nickel content, fluence and the calculational procedures." 50.61(b)(2).

We find that this issue cannot be considered in this hearing. The jurisdiction of the Board is founded upon the October 19, 1988 <u>Federal Register</u> Notice of Opportunity to Request Hearing. 53 F.R. 40981, 40988, (1988). A careful reading of the notice reveals that the subject of the hearing includes only a modification of pressure and temperature (P/T) limits during normal operation, governed by 10 C.F.R. 50.60, and does not include a determination of fracture toughness requirements for Pressurized Thermal Shock which is an accident condition governed by 10 C.F.R. 50.61. This part of Petitioners' contention is therefore beyond the scope of this hearing and cannot be admitted.

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## C. Contention 3

Contention 3 is based on the same allegation of nonconservative P/T limits as they affect weld material at the beltline of the reactor vessel. Contention 3 states

> That the revised pressure/temperature limits that have been set for Units 3 and 4 are nonconservative and will not meet the requirements of General Design Criterion 31 of Appendix A to 10 CFR Part 50 which requires that the reactor coolant pressure boundary be designed with sufficient margin to ensure that, when stressed under operating, maintenance, testing, and postulated accident conditions, (1) the boundary behaves in a non-brittle manner and (2) the probability of a rapidly propagating fracture is minimized. Petitioners contend that the sufficient safety margin required by GDC 31 does not exist because the P/T limits for units 3 and 4 were not based on the most limiting value of RTNDT as required by 10 CFR Part 50 Appendix G and H, for reactor vessel welds because the percentage of copper that was used in the RTNDT calculation is non-conservative in that it is lower than the percentage of copper that was used in previous surveillance test reports and lower than the percentage of copper guoted in many of the earlier FPL documents. Petitioners contend that the use of this non-conservative estimate of copper content means that the adjusted RTNDT is unrealistically low and that the current revised P/T limits are not restrictive enough to insure that an adequate margin of safety against brittle fracture of the reactor vessel exists. This increases the possibility that the reactor vesses (sic) for Unit 4 will behave in a brittle manner resulting in a fracture of the vessel and subsequent meltdown of the reactor core.

> Petitioners further contend that if a more conservative and accurate estimate of copper content was used to calculate the RINDT, the P/T limits would be more restrictive and that in fact, there is a possibility that it could be discovered

that the NRC Screening criterion of 300-degree (sic) Farenheit (sic) has been reached and the Turkey Point Units 3 and 4 would have to be shut down because they do not meet the fracture toughness requirement of 10 CFR Part 50 Appendix G.

Petition, pp. 10-11.

Petitioners assert that, because the Licensee's calculations of RT<sub>WDT</sub> assumed a copper content (0.26%) which is too low for the weld metal in the beltline materials, the resulting P/T limits at issue will not provide an adequate margin of safety against brittle fracture of the reactor vessel, as required by GDC 31 of Appendix A, 10 C.F.R. Part 50. Petition, p. 10.

Petitioners assert further that

... there is a possibility that it could be discovered that the NRC screening criterion of 300-degree Fahrenheit<sup>2</sup> has been reached and the Turkey Point Units 3 and 4 would have to be shut down because they do not meet the fracture toughness requirement of 10 C.F.R. Part 50 Appendix G.

Amended Petition, at 11.

<sup>2</sup> See discussion at pp. 18-19, supra.

As bases, Petitioners assert that many earlier documents on Turkey Point assumed a copper content of 0.30 percent or above, and that a lowering of the copper content a few hundredths of a percent can lower the  $RT_{MDT}$  by 10 to 15 degrees per hundredth of copper content. Tr. 75-76. Petitioners also assert that the

> ... Charpy Notch capsule V weld metal specimens which were removed from Unit 3 indicate that the measured Charpy upper-shelf energy for the limiting beltline weld material already does not meet the fracture toughness requirements of 10 C.F.R. Appendix G, Section V.C.

Petition, at 11-12.

Licensee objects to the admission of Contention 3 in its entirety on the grounds that it does not meet requirements for admissibility. First, Licensee argues that the value of 0.26% for copper content of the weld material was approved in a Safety Evaluation issued by the NRC Staff on April 26, 1984 and that a contention in a license amendment proceeding may not challenge previous decisions made by the NRC, citing <u>Florida Power and Light Co.</u>, 27 NRC 452, 466. In a footnote, Licensee recognizes that the cases leading to that decision dealt with issues that were subject to review as part of a license proceeding, but argues that

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the reasoning in the cases applies equally whether the issues were previously subject to a license proceeding, or subject to NRC review outside of a license hearing. Licensee urges that a review under the provisions of 10 C.F.R. § 2.206 would appear to be the appropriate method of re-examining the continuing validity of either type of earlier NRC action. Licensee Response, at 11-12. We do not find that "bootstrap" logic persuasive.

Second, Licensee objects to this contention insofar as it may address issues relating to whether or not the Turkey Point units satisfy the 300°F pressurized thermal shock (PTS) screening criterion in 10 C.F.R. § 50.61. Licensee argues that such a determination would be beyond the Board's jurisdiction because it is outside the scope of the notice of hearing for this proceeding. 53 Fed. Reg. 40,981, 40,988 (1988). Because NRC has already determined that Turkey Point Units 3 and 4 satisfy the screening criterion in the March 11, 1987 Safety Evaluation, nothing in the P/T limits amendments before this board concerns Turkey Point's compliance with the 300°F screening criterion. Licensee Response, at 12-13. Similarly, Licensee argues that Petitioners' challenge to the Charpy upper-shelf energy for the reactor specimens has no relevance to the present P/T

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amendments at issue, and that Petitioners have shown no nexus. Tr. 79.

Staff also objects to those portions of Petitioners' contentions addressing the 300°F PT3 screening criterion, and whether the upper-shelf energy of specimens meets the requirements of 10 C.F.R. Part 50, Appendix G, on the grounds that they are outside the scope of this license amendment. We agree.

Staff, however, does not object to admission of the issue of whether the correct percentage of copper was used in predicting the  $RT_{NDT}$  of the materials from which the revised P/T limits were derived. Staff Response, at 10-12. Staff's position in this regard is based on the fact that its previous Safety Evaluation that approved the copper content of the weld materials was not a noticed proceeding and not part of a licensing action. Hence, Staff concludes, the issue is not barred from this P/T limits proceeding. Tr. 83.

We agree with the Staff that the issue of whether the correct copper content was used in predicting the  $RT_{MDT}$  of the weld materials may not be excluded as an issue in this proceeding. The 1984 Staff approval was not subject to

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notice of opportunity for hearing. No party was available or could have challenged a change handled essentially as an administrative matter and thus Petitioners are not estopped from raising the issue in this license amendment proceeding. <u>See Commonwealth Edison Co.</u>, 21 NRC 609, 621-624 (LBP-85-11, 1985), <u>rev'd and remanded on other grounds</u>, 23 NRC 241 (CLI-86-8, 1986).

Because a finding under 10 C.F.R. § 2.206 is not subject to review as a matter of right, that approach cannot be argued to be acceptable as an alternative to hearing an otherwise admissible contention. Therefore, we admit Contention 3, as limited to whether the correct percentage of copper content was used in predicting the RT<sub>NDT</sub> of the critical beltline materials for setting P/T limits.

#### ORDER

For all the foregoing reasons and based on the entire record in this matter, it is, this 8th day of June, 1989

#### ORDERED

 That Petitioners' Contention 1 is not admissible for litigation in this proceeding;

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 That Petitioners' Contentions 2 and 3 are admitted but limited to the issues detailed in the foregoing opinion; and

3. That the parties shall complete and file motions for summary disposition, if any, and written testimony in accordance with the parties agreed-upon schedule set out in the March 13, 1989 letter from counsel for Licensee so that hearing will commence on December 12, 1989 at a place and time to be established.

ATOMIC SAFETY AND LICENSING BOARD

Glenn O. Bright

ADMINISTRATIVE JUDGE

arbour

Jerry Harbour ADMINISTRATIVE JUDGE

cotter, Chairman Jr.,

ADMINISTRATIVE UUDGE

Bethesda, Maryland June 8, 1989.

## UNITED STATES OF AMERICA NUCLEAR REBULATORY COMMISSION

In the Matter of

. . . .

FLORIDA POWER AND LIGHT COMPANY

(Turkey Point Plant, Unit Nos. 3 & 4)

Docket No. (s) 50-250/251-DLA-4

# CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&D (RULING UPON CONT...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Administrative Judge B. Paul Cotter, Jr., Chairman Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, DC 20555

Administrative Judge Jerry Harbour Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, DC 20555 Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, DC 20555

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Dated at Rockville, Md. this 12 day of June 1989

Office Oof the Secretary of the Commission