



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 16, 1989

Mr. Thomas J. Saporito, Jr.
1202 Sioux Street
Jupiter, Florida 33458

Dear Mr. Saporito:

This is in response to your Petition filed on July 5, 1989, with the Executive Director for Operations. In your Petition, you request that action be taken to cause the immediate cold shutdown of Crystal River Unit 3 until the facility can be operated in full compliance with 10 CFR Part 50, Appendix A, General Design Criterion 4 (GDC-4). As grounds for your request, you allege that Florida Power Corporation has installed modifications to safety-related equipment which do not appear to be embraced within the high energy line break (HELB) requirements accepted by the NRC. You state that there "is reasonable doubt that the granting of the exemption [to GDC-4] will [not] present undue risk to public health and safety" because: (1) the likelihood of a HELB which could affect redundant safety systems required to mitigate that break is not "reasonably low enough," (2) the contribution of seismic loads to the potential for HELBs was not appropriately considered, (3) reasonable doubt exists that existing manual capability to initiate safety functions may remain protected against a HELB, and (4) if a HELB were to occur, protection of the health and safety of the public could not be assured beyond a reasonable doubt because: (a) the probability of a HELB which could affect public health and safety cannot be completely discounted and (b) there is reasonable doubt that no loss of safety function would occur and that the facility could be safely shut down.

You also assert that it appears that the Commission has reached beyond its authority in granting the licensee an exemption since it may not be authorized by law "because it presents an undue risk to the public health and safety, and is not consistent with the common defense and security." Finally, you allege that the Commission erred in determining that special circumstances, as provided in 10 CFR §50.12(a)(2)(v), are present justifying the exemption because subsections (a)(2)(ii), (iii), and (iv) appear not to have been met by the licensee and, therefore, the NRC did not grant the exemption pursuant to the "full and complete consideration of 10 CFR 50.12 in its entirety."

Your Petition has been referred to me for a response. We have reviewed your Petition and find that you have presented no specific facts in support of your allegations, nor raised any new information which has not previously been considered during the staff's review of the licensee's application for exemption dated December 16, 1988. The exemption (54 FR 24775, June 9, 1989) was issued on June 5, 1989, and is enclosed for your information. The exemption states the following and presents appropriate supporting information:

- ° The likelihood of a HELB not previously analyzed and protected against in an area which could affect redundant safety systems is low.
- ° The contribution of seismic loads to the potential for HELBs in the stress analyses appears to be overstated because the facility is located in a seismically inactive area.

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- ° The original manual capability to initiate safety functions should, in general, remain protected against a HELB.
- ° Imposition of other criteria result in reduced likelihood that a HELB can cause loss of safety function. In the event of a HELB, decay heat could be removed.

In the exemption, the NRC staff concludes that:

- (1) The probability of a HELB which could affect public health and safety is low, and
- (2) In the event of a HELB, it is likely that no loss of safety function would occur and that the facility could be safely shut down.

In determining that special circumstances were present justifying the exemption, the Commission determined that the requirements of 10 CFR §50.12(a)(2)(v) (temporary relief and good faith efforts) were met.

As stated above, no specific facts nor new information have been provided in the Petition which would warrant reconsideration of the staff's conclusions in the exemption. Accordingly, it is not appropriate to consider the Petition pursuant to 10 CFR §2.206. That regulation requires that the Petition "set forth the facts that constitute the basis for the request." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), DD 85-11, 22 NRC 149, 154 (1985). Since you have not set forth the factual basis for your request with the requisite specificity, further action need not be taken on your request. Furthermore, each of the issues raised in the Petition was considered and addressed in granting the exemption, as described above. For this reason also, further action with regard to these issues is not warranted.

Nevertheless, two points warrant clarification with regard to certain statements made in your Petition. First, you allege that neither "the licensee nor the NRC staff can assure beyond a reasonable doubt that the health and safety of the public will be protected during the occurrence of a HELB." The standard asserted in your Petition of assurance "beyond a reasonable doubt" is erroneous. The statutory standard which governs the Commission's issuance of operating licenses for production and utilization facilities is found in Section 182 of the Atomic Energy Act. Specifically, the Commission must find that the operation of a facility must provide adequate protection to the health and safety of the public. This standard, with judicial sanction,^{1/} has been carried over into the regulations in 10 CFR §50.57(a)(3)(i), which requires

^{1/} Power Reactor Development Co. v. International Union, 367 U.S. 396, 407 (1961).

that there must be reasonable assurance that the activities authorized by the operating license can be conducted without endangering the health and safety of the public. This same standard of reasonable assurance applies to the issuance of exemptions to the regulations and was determined to have been met in this case. Second, with regard to your assertion that the Commission erred in granting the exemption because 10 CFR §50.12(a)(2)(ii), (iii), and (iv) appear not to have been met and, therefore, the NRC did not grant the exemption pursuant to the "full and complete consideration of 10 CFR 50.12 in its entirety," 10 CFR §50.12(a)(2) specifically provides that special circumstances are present whenever any one of the subparagraphs (i-vi) are met. In this instance, the requirements of subsection (v) were met, (i.e., temporary relief from the regulation and good faith efforts to comply with the regulation on the part of the licensee).

Based on the above, I have concluded that you have presented no facts or other new information which has not already been considered and addressed by the staff in the issuance of the referenced exemption. Therefore, there is no basis to take action to cause the cold shutdown of Crystal River Unit 3.

Sincerely,
Original signed by
James H. Sniezek

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Enclosure:
As stated

cc w/enclosure:
See next page
Florida Power Corporation

[GREEN TICKET 0004625] *SEE PREVIOUS CONCURRENCE

LA: PDII-2
*DMiller
08/03/89

PM: PDII-2
HSilver:bid
08/11/89

D: PDII-2
HBerkow
08/14/89

Tech Ed.
*RSanders
08/03/89

AD: DRP
*GLainas
08/07/89

OGC
08/14/89

ADP: NRR/
JPartlow
08/14/89

DD: NRR
JSniezek
08/16/89

DD: NRR
TMurley
08/16/89

B: DRP
SVarga
08/11/89

Concerned by Jack [unclear]

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Docket File (50-302)

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EDO #0004625

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TMurley/JSniezek

JPartlow

SVarga

GLainas

HBerkow

HSilver

MSinkule, RII

GPA/PA

DMossburg, PMAS (EDO #0004625)

PDII-2 Reading

JTaylor, EDO

CCater, SECY

MMalsch, OGC

LChandler

ASLAB

ASLBP

ACRS(10)

DMiller

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Mr. Thomas J. Saporito, Jr.

Crystal River Unit No. 3 Nuclear
Generating Plant

cc:

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