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November 9, 2000
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)

Florida Power & Light Company)

(Turkey Point Units 3 and 4))

Docket Nos. 50-250-LR
50-251-LR

OFFICE OF THE SECRETARY
ADJUTANT GENERAL

**FPL'S OPPOSITION TO REQUEST FOR HEARING AND
PETITION FOR LEAVE TO INTERVENE OF MARK P. ONCAVAGE**

Florida Power & Light Company ("FPL") hereby opposes the Request for Hearing / Petition for Leave to Intervene filed by Mark P. Oncavage on October 24, 2000, concerning FPL's application to renew the operating licenses for Turkey Point Units 3 and 4. Mr. Oncavage has not demonstrated standing to intervene in this proceeding. Consistent with the NRC's Order of November 6, 2000 in this proceeding, FPL defers response to Mr. Oncavage's contentions until after an Atomic Safety and Licensing Board has been convened and establishes a schedule.

FPL submitted its application for renewal of the operating licenses for Turkey Point Units 3 and 4 on September 8, 2000, pursuant to 10 C.F.R. Part 54. The NRC published a notice of opportunity for hearing on October 12, 2000. 65 Fed. Reg. 60,693 (2000). Mr. Oncavage filed his Request for Hearing / Petition for Leave to Intervene on October 24, 2000, though that petition was not served on FPL as required by the October 12, 2000 Federal Register notice, and references the earlier notice of receipt, rather than the notice of opportunity for hearing.¹ Mr. Oncavage's petition also includes seven contentions, although such contentions are not yet due.

¹ Because the petition was not served, FPL is providing this response ten days after the date on which it obtained a copy of Mr. Oncavage's petition from the NRC's Office of the Secretary.

Template = SECY-037

SECY-02

A. Standing

In its NRC Statement of Policy on Conduct of Adjudicatory Proceedings, the Commission has emphasized the importance of the efficient conduct of proceedings, including making sure adjudicatory proceedings focus on real disputes. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 19 (1998). The NRC standing requirements should be interpreted and strictly enforced in this light, because the standing requirements are intended to ensure that only persons with a real, concrete stake in the outcome of a proceeding are permitted to participate. Where, as here, these standing requirements are not met, the petitions should be immediately dismissed, so that the burden and expense of the adjudicatory process is not needlessly incurred.

The Commission's requirements for a petition for leave to intervene are set forth in 10 C.F.R. § 2.714 and the Federal Register Notice of Opportunity for a Hearing. The petition must state:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

65 Fed. Reg. at 60,694; see also 10 C.F.R. § 2.714(a)(2).

To determine whether a petitioner's interest provides a sufficient basis for intervention, "the Commission has long looked for guidance to current judicial concepts of standing." Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998). Judicial concepts of standing require a petitioner to establish that:

(1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 N.R.C. 1, 6 (1996).

Mr. Oncavage makes no statements concerning the nature or extent of his interest, other than to state that he lives approximately 15 miles from Turkey Point. He makes no showing that this proceeding will have any effect on his unidentified interests, that he will suffer any harm from license renewal, or that there is any injury that could be traced to or redressed in this proceeding.

The mere statement that Mr. Oncavage lives within 15 miles of the plant should not be taken as a substitute for the requirement to demonstrate standing. While a proximity test has been used as a presumption in initial licensing proceedings, the Commission has not decided whether such a presumption should apply in license renewal proceedings. Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 333 n. 2 (1999). Under NRC jurisprudence, proximity alone does not establish standing, outside the nuclear power reactor construction permit or operating license context, absent "an obvious potential for offsite consequences." Yankee Atomic Energy Co. (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 247 (1996). FLP submits that in a license renewal proceeding where the NRC has generically determined that severe accident risk is small,² and where issues such as the adequacy of plant design, conduct of operations, and emergency planning are beyond the scope of the

² See Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437, at 9-13.

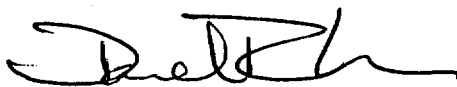
technical review defined by 10 C.F.R. Part 54, there is not any obvious potential for offsite consequences that should justify an automatic presumption of standing.

A presumption of standing in this type of proceeding is also inappropriate because it could result in the granting of standing to a person who is interested only in issues that are beyond the scope of the proceeding. While responses to Mr. Oncavage's contentions are not yet due, none of those contentions appears on initial review to be within the scope of this proceeding. If a person such as Mr. Oncavage expresses interest only in issues that are beyond the scope of the proceeding, there can be no injury that is redressable in the proceeding.

B. Conclusion

For the reasons stated above, the Request for Hearing / Petition for Leave to Intervene of Mark P. Oncavage should be denied.

Respectfully Submitted,



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Dated: November 9, 2000

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "FPL's Opposition to Request for Hearing and Petition for Leave to Intervene of Mark P. Oncavage," dated November 9, 2000, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by e-mail, this 9th day of November, 2000.

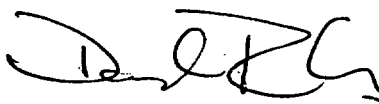
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