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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

May 7, 2003 (8:39AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ATTENTION: Rulemakings and Adjudication Staff

SUBJECT: Florida Power & Light Company and FPL Energy Seabrook, LLC Comments
Proposed Rule: *Revision of Fee Schedules; Fee Recovery for FY 2003* (68 Fed. Reg. 16374, April 3, 2003)

Florida Power & Light Company (FPL), the licensee for the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, and FPL Energy Seabrook, LLC the licensee for Seabrook Station, hereby submit the following comments on the above-referenced notice of proposed rulemaking.

As explained in the comments on this rulemaking filed by the Nuclear Energy Institute (NEI), promulgation of a proposed NRC fee rule occasions the industry's annual close evaluation of NRC's expenditures. In particular, through this rulemaking, the industry seeks to determine whether the agency is (1) seeking funds from licensees only where warranted; (2) operating in a maximally efficient manner, e.g., allocating its resources based on appropriate priorities; and (3) clearly identifying and explaining its fees to allow the industry to provide comprehensive comments on the proposed rule.

FPL and FPL Energy Seabrook fully endorse the NEI comments developed for the topics presented under each category. In addition, FPL and FPL Energy Seabrook reiterate that licensees should only be charged for expenditures related to licensee activities.

For years power reactor licensees have expressed concerns regarding the payment of surcharges that comprised approximately ten per cent of the fee base for activities that are not directly attributable to this class of licensees. This practice was addressed by the FY 2001 Energy and Water Appropriations Act which amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. However, the FY 2003 NRC budget includes \$29.3 million for homeland security activities that the industry views as another category of a surcharge for activities that benefit society as a whole by protecting critical infrastructure and are not intended solely to benefit licensees. We believe that inclusion of homeland security activities in user fee charges effectively negates the relief provided to the industry in the FY 2001 Energy and Water Appropriations Act.

FPL and FPL Energy Seabrook strongly object to the inclusion of homeland security activities in the NRC fee structure. The President's FY 2003 budget requested that NRC's funding for homeland security activities continue to be excluded from the fees assessed to power reactor licensees, as it was in 2002. The costs to support homeland security activities should be funded through the general treasury—not user fees—as part of the protection of our nation's critical infrastructure. Nuclear power plant licensees alone have expended almost \$400 million dollars in additional security costs since the events of September 11, 2001. While FPL and FPL Energy Seabrook believe these expenditures were appropriate and significantly enhanced an already strong security posture at our facilities, we believe that the costs required to support homeland security should be paid from general funds.

The proposed fee rule does not provide a detailed breakdown of the NRC's allocation of homeland security costs. Nonetheless, we understand that a large fraction of the fee increase is for vulnerability assessments. FPL and FPL Energy Seabrook are concerned that significant costs are being incurred for vulnerability studies without due consideration of the likelihood of evaluated threats or the rigor of the methodology for conducting these assessments. Ignoring the likelihood of threats can easily result in the performance of "worst case" evaluations that do not assist public policymakers in deciding where to allocate the nation's resources in defending against potential terrorist attacks. We believe that funds should not be expended in this area without direction from the Department of Homeland Security on both the likelihood of threats that should be considered across the critical infrastructure, and until a common evaluation methodology is developed for evaluating vulnerabilities. This recommendation is consistent with *The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets* issued in February 2003 by the President. Expenses for conducting vulnerability studies, once the process is better defined, should be paid for from general funds.

We are also concerned that functions in the NRC's Office of Nuclear Security and Incident Response duplicate and overlap with those of other federal agencies in the threat assessment and evaluation area. We believe these functions should be transferred to the Department of Homeland Security to provide the continuity and integration intended by the creation of the Department of Homeland Security.

FPL and FPL Energy Seabrook respectfully request that the Commission carefully consider FPL's comments as well as NEI's comments on this subject.

We appreciate the opportunity to comment on the proposed rulemaking. Please contact us if there are questions concerning this letter.

Sincerely yours,



J. A. Stall
Senior Vice President, Nuclear
and Chief Nuclear Officer

cc: Stephen Floyd, Vice President, Regulatory Affairs, NEI
Michael Wilson, Vice President, Governmental Affairs – Federal, FPL
U.S. Senator Bob Graham, Florida
U.S. Senator Bill Nelson, Florida
U.S. Senator Judd Gregg, New Hampshire
U.S. Senator John Sununu, New Hampshire