



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

May 17, 2005

Mr. Kenneth Bowers

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SUBJECT: ALLEGATION REPORT NUMBERS RII-2005-A-0056

Dear Mr. Bowers:

This letter refers to your telephone conversation of April 18, 2005 with the NRC Inspector, Steve Sanchez concerning retaliatory and discriminatory actions taken against you at Florida Power and Light (FPL) Company's St. Lucie Nuclear Plant. You believe that you were terminated for reporting safety concerns to your supervisor associated with activities in the spent fuel pool building.

Enclosure 1 to this letter, documents your concerns as we understand them. We have initiated actions to develop and examine the facts and circumstances on the basis of understanding your concerns. If the description of your concerns is not accurate, please contact me so that I can assure that we correctly understand your concerns before we continue with our review. The first concern of Enclosure 1 relates to alleged discrimination. Concern number 2 of Enclosure 1 relates to technical issues. While you have indicated to us that you would like the NRC to investigate your concerns rather than the licensee because you are not confident FPL will do a good job, we determined that our referral of your technical issues to FPL is the best option. Thus, we intend to refer concern number 2 to FPL with your identity and position withheld. We will review and evaluate FPL's activities and response, and inform you of the final disposition. If you have any objection with this approach, you must contact our office within 14 days upon receipt of this letter so we can discuss this matter further.

The NRC staff has reviewed your discrimination concern (concern number 1 of Enclosure 1) and has determined that an evaluation of the matter is warranted. If you wish, the NRC Office of Investigations (OI) can investigate your concern. However, investigation of your discrimination concern would necessarily require disclosure of your identity. Therefore, if you desire investigation of this issue by NRC OI, please be aware that your name will be disclosed. Furthermore, OI's investigation of discrimination concerns usually takes between six and 12 months.

Alternatively, you may choose to participate in the NRC's Alternative Dispute Resolution (ADR) pilot program to evaluate the use of mediation in handling complaints of discrimination.

Mediation is a voluntary process where two parties (you and your employer) use an unbiased, neutral individual, or mediator, in an attempt to resolve and settle your complaint of discrimination with your employer. If such an agreement is reached, the NRC will close your discrimination complaint upon settlement and will not investigate your claim of discrimination. If a settlement is not reached with your employer, the NRC may initiate an investigation into your complaint of discrimination. As mentioned above, the NRC's ADR program is *voluntary*, and

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Enclosures: (See page 3)

Certified Mail No.

RETURN RECEIPT REQUESTED

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any participant may end the mediation at any time. Additional information on this pilot program is included in the attached brochure (Enclosure 1), "NRC's Early ADR Program" and more detailed information on the program can be found on our web site at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html> .

The NRC has asked Cornell University's Institute on Conflict Resolution (ICR) to aid you, if you choose, and your employer in resolving the dispute. You may contact ICR to discuss ADR in general, the NRC's pilot program, and any other information you are interested in related to resolving your complaint. **If you wish to participate in the ADR program, you must contact ICR directly.** ICR will assist you in the selection of a mediator who would meet with you and your employer in an attempt to settle your complaint. If you select a mediator through ICR, there will be no charge to you (or your employer) for the mediator's services. If you are interested in discussing the pilot program further, please contact ICR at 1-877-733-9415 (toll free). If you participate in the ADR program, please complete the program evaluation form (supplied by ICR) at the completion of your participation in the ADR program so that we can evaluate the effectiveness of the program. We request that you make a decision regarding your interest in attempting mediation within 10 days of the date of this letter. **Please note that while participation in the NRC's ADR program may result in negotiation of the issues which form the basis of your discrimination concern (which constitutes a claim under Section 211 of the Energy Reorganization Act (ERA) of 1974) with your employer, the Department of Labor's (DOL) timeliness requirements for filing a claim are in no way altered by the NRC's ADR Program.**

The NRC brochure, "Reporting Safety Concerns to the NRC," Enclosure 2 to this letter, contains information that you may find helpful in understanding our process for review of safety concerns. It also includes information on the allegation process, identity protection, and it also discusses a third option available to you for having your claim of discrimination reviewed by DOL. The DOL review is a public process. DOL is responsible for providing personal remedies such as reinstatement, back pay, etc. **The NRC cannot provide you with personal remedies. Such remedies may be granted only by DOL.** For DOL to accept a complaint, it must be in writing and it must be submitted to DOL within 180 days of the date of the discriminatory act or the date you received any notice of an adverse personnel action (e.g., layoff, suspension, negative performance review), whichever occurs first. Should you decide to have your discrimination claim reviewed by DOL, the office and contact for processing your complaint are provided below:

Regional Supervisory Investigator
U.S. Department of Labor - OSHA
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W., Room 6T50
Atlanta, GA 30303-3415
Hot Line number: (404) 562-2285
Phone number: (404) 562-2260
FAX number: (404) 562-2295

If you choose to file a complaint with DOL, please send a copy to us also.

Thank you for notifying us of your concern. We will await your decision on the NRC's ADR process. Should you have any questions or comments during the interim regarding this matter, please call me toll-free at 1-800-577-8510, extension 24426. Should you want to respond in writing, our mailing address is P.O. Box 845, Atlanta, GA 30301.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Ignatonis".

Al Ignatonis
Senior Allegation Coordinator

Enclosures:

1. Description of Concerns
1. NRC's Early ADR Program brochure
2. NRC's brochure, Reporting Safety Concerns to the NRC

ENCLOSURE 1

RII-2005-A-0056

FLORIDA POWER & LIGHT COMPANY (FPL)

ST. LUCIE NUCLEAR PLANT, UNITS 1 & 2

DESCRIPTION OF CONCERNS

1. The concerned individual (CI) believes that his termination from FPL's St. Lucie Nuclear Plant was due to raising safety concerns. Those concerns involved the CI identifying and reporting several issues to his supervisor concerning activities in the spent fuel pool building. This occurred during the last Unit 2 refueling outage around January 30, 2005.
2. The CI identified and reported the following issues: (a) the spent fuel pool level appeared below that of the heat exchanger nozzle (the CI believes this may be a Technical Specifications violation); (b) lack of emergency egress out of the spent fuel pool building during fuel movement given that the vital door was known to be frequently inoperable and required plant security assistance to unlock; (c) audible alarm going-off in spent fuel pool building (possibly due to low water level in the pool); and, (d) lack of emergency lighting in the spent fuel pool building. The above issues brought to management attention were not adequately resolved to the CI's satisfaction.

ENCLOSURE 2

ENCLOSURE 3