

# **Official Transcript of Proceedings**

(corrected as noted)

## **NUCLEAR REGULATORY COMMISSION**

Title: 10 CFR 2.206 Petition Review Board  
RE [FPL, St. Lucie] Nuclear Plant

Docket Number: (n/a)

Location: (teleconference)

Date: Tuesday, December 11, 2012

Work Order No.: NRC-2070

Pages 1-49

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

+ + + + +

PETITION FOR [ST. LUCIE] NUCLEAR PLANT

+ + + + +

TUESDAY

DECEMBER 11, 2012

+ + + + +

The conference call was held at 12:30 p.m.,  
Ho Nieh, Chairman of the Petition Review Board,  
presiding.

PETITIONER: THOMAS SAPORITO

PETITION REVIEW BOARD MEMBERS:

HO NIEH, Petition Review Board Chairman

TRACE ORF, Petition Manager

NRC STAFF:

TANYA MENSAH

DAN RICH

OSCAR DeMIRANDA

JESSIE QUICHOCHO

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1  
2 NRC STAFF (Continued):

3 MOLLY BARKMAN MARSH

4 PAT JEFFERSON

5 ROBERT RZEPKA

6 LISA JARRIEL

7 DAVE VITO

8  
9 ON BEHALF OF FP&L:

10 WILLIAM BLAIR, ESQ.

11  
12 ON BEHALF OF MARK HICKS:

13 MARK HICKS

14 PETER TICKTIN, ESQ.

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P-R-O-C-E-E-D-I-N-G-S

(12:30 p.m.)

MR. ORF: Okay, we will go ahead and begin.

My name is Trace Orf and I would like to thank everyone for attending this meeting. We are here today to allow the Petitioner, Mr. Thomas Saporito, Senior Consultant for Saprohani Associates to address the NRC Petition Review Board, also referred to as the PRB, regarding the 2.206 Petition dated October 1, 2012.

The Petitioner requests that the NRC take enforcement-related action against the licensees Florida Power and Light Company or FP&L and NextEra Energy as the result of information provided on a CBS television broadcast that described a lawsuit filed by Mr. Mark Hicks alleging whistleblower discrimination by FP&L.

I am the Petition Manager of this Petition and Mr. Ho Nieh is the PRB Chairman.

As part of the PRB's review of the Petition, the Petitioner was offered an initial opportunity to address the PRB to provide any relevant additional explanation and support for the Petition.

At the request of Mr. Thomas Saporito, he

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1 requested this opportunity to provide supplemental  
2 information to the Board for the Petition before the PRB  
3 meets internally to make the initial recommendation to  
4 accept or reject the petition for review.

5 This meeting is scheduled for one and a half  
6 hours from 12:30 p.m. to 2:00 p.m. Eastern Standard Time.  
7 It is being recorded by the NRC Operations Center and will  
8 be transcribed by a court reporter. The transcript will  
9 become a supplement to the Petition. Prior to placing  
10 the transcript in ADAMS, the PRB will review it to ensure  
11 that it does not contain any allegations of [sensitive]  
12 information.

13 I would like to open this meeting with  
14 introductions of the NRC meeting participants. I ask  
15 that all participants clearly state for the record your  
16 name, position, and your organization. Would those here  
17 in the room please speak up so that those on the phone  
18 can hear clearly and so that the court reporter can  
19 accurately record your name? We will start with myself  
20 and the other NRC participants here in the room.

21 My name is Trace Orf. I am a project  
22 manager in NRR and I am also the Petition Manager.

23 MR. QUICHOCHO: My name is Jessie  
24 Quichocho. I am the Branch Chief for [Plant] Licensing  
25 Branch in NRR.

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1 MS. MENSAH: My name is Tanya Mensah. I am  
2 the 2.206 coordinator in the Division of Policy and  
3 Rulemaking, NRR.

4 CHAIRMAN NIEH: Hi, I'm Ho Nieh. I am the  
5 Director of the Division of Inspection and Regional  
6 Support in the Office of Nuclear Reactor Regulation, NRR.

7 MS. MARSH: I am Molly Marsh. I am an  
8 attorney in the Office of General Counsel.

9 MR. ORF: That completes the introductions  
10 of the NRC Staff in the room. For those NRC participants  
11 on the line, could you introduce yourselves?

12 MR. JEFFERSON: Pat Jefferson with the  
13 Office of Investigations.

14 MR. RICH: This is Dan Rich in NRC Region  
15 II, Division of Reactor Projects Branch 3.

16 MR. DE MIRANDA: Oscar DeMiranda, Region  
17 II, Senior Allegation Coordinator.

18 MR. RZEPKA: Rob Rzepka, Special Agent In  
19 Charge, Region II, Office of Investigations.

20 MR. ORF: Are there any participants from  
21 the licensee on the line?

22 MR. BLAIR: William Blair, Senior  
23 Attorney, Florida Power and Light company.

24 MR. ORF: Mr. Saporito, would you please  
25 introduce yourself for the record?

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1 MR. SAPORITO: Yes, my name is Thomas  
2 Saporito. I am the senior consultant for Saproani  
3 Associates located in Jupiter, Florida.

4 MR. ORF: Okay, if there is anyone else on  
5 the line that I missed, would you please now state your  
6 name and organization?

7 MR. TICKTIN: Peter Ticktin, the Ticktin  
8 Law Group.

9 MR. HICKS: And Mr. Mark Hicks, former FP&L  
10 employee.

11 MR. ORF: I'm sorry, Peter, could you  
12 repeat your name?

13 MR. TICKTIN: Yes, Peter Ticktin,  
14 T-I-C-K-T-I-N of the Ticktin Law Group. I represent Mr.  
15 Hicks.

16 MR. ORF: Thank you. I'm sorry. Please  
17 remember to mute your phones to minimize any background  
18 noise or distractions. If you do not have a mute button,  
19 this can be done by pressing the keys \*6. To un-mute,  
20 press the \*6 keys again.

21 Please note that the Operation Center will  
22 have muted the phones of people who are not addressing  
23 the PRB. Those lines will be un-muted during the public  
24 comment portion of this meeting.

25 I would also like to emphasize that we need

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1 to each speak clearly and loudly to make sure that the  
2 Court Reporter can accurately transcribe. If you do  
3 have something you would like to say, please first state  
4 your name for the record.

5 Let's see. We have just been joined by a  
6 couple more members of the NRC. If you could introduce  
7 yourself.

8 MS. JARRIEL: Lisa Jarriel, Office of  
9 Enforcement.

10 MR. VITO: Dave Vito, Office of  
11 Enforcement.

12 MR. ORF: Okay, at this time I will turn it  
13 over to the PRB Chairman, Mr. Ho Nieh.

14 CHAIRMAN NIEH: Okay, thank you Trace.  
15 Good afternoon everybody. Thank you for joining this  
16 meeting of the Petition Review Board.

17 Before we begin, I just wanted to share some  
18 background about the NRC's process for handling 2.206  
19 Petitions under Title 10 of the Code of Federal  
20 Regulations. This is a primary mechanism for the NRC to  
21 deal with any requests from a member of the public for  
22 an enforcement-related action related to the NRC's  
23 license activities. And this process permits anybody  
24 from the public to petition the NRC for such action.

25 Depending on the NRC's evaluation of the

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1 Petition, the NRC could choose to modify, suspend, or  
2 revoke an NRC license or take any other appropriate  
3 enforcement action to resolve the issue. The NRC's  
4 guidance for dispositioning these types of petitions are  
5 contained in Management Directive 8.11, which is a  
6 publicly available document.

7 The purpose of today's meeting is to provide  
8 the Petitioner, Mr. Thomas Saporito, the Senior  
9 Consultant for Saprohani Associates, an opportunity to  
10 provide any additional information to the Petition  
11 Review Board before we consider and make a recommendation  
12 on how to disposition the Petition.

13 The meeting today is not a hearing, nor is  
14 it an opportunity for the Petitioner to question or  
15 examine the Petition Review Board on the merits of the  
16 issue contained in the Petition. The Petition Review  
17 Board will not be making any decisions regarding the  
18 merits of this petition during this meeting. Following  
19 the meeting, however, the Petition Review Board will  
20 conduct its internal deliberations and the outcome of our  
21 deliberations will be discussed with the Petitioner.

22 The Petition Review Board typically  
23 consists of a Chairman and I am serving in that role. It  
24 is usually a senior manager at the NRC. We also have a  
25 Petition Manager as Mr. Trace Orf already noted, and the

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1 members of the Petition Review Board are determined by  
2 the NRC staff, based on the content in the Petitioner's  
3 request.

4 So at this time, I would like to introduce  
5 the other members of the Petition Review Board besides  
6 myself and Trace Orf. We also have technical staff  
7 supporting the PRB, who include Ms. Tanya Mensah from the  
8 Office of Nuclear Reactor Regulation, Mr. Dan Rich from  
9 NRC, Region II, Mr. Oscar DeMiranda also from NRC Region  
10 II. And we are obtaining advice today from the Office  
11 of General Counsel who is represented by Ms. Molly  
12 Barkman Marsh, the NRC's Office of Investigations  
13 represented by Pat Jefferson. And Mr. Pat Jefferson and  
14 Mr. Robert Rzepka from Region II, and also the Office of  
15 Enforcement as we heard, Lisa Jarriel and Dave Vito  
16 joined us just shortly before.

17 As described in our process in Management  
18 Directive 8.11, the NRC staff may ask clarifying  
19 questions in order to better understand the Petitioner's  
20 requests, in order for us to help reach a reasoned  
21 decision on whether to accept or reject the Petitioner's  
22 request for NRC action.

23 Also in our process, the licensee, any  
24 affected licensees in the Petition have been invited to  
25 participate in the call today. And I did hear someone

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1 from Florida FPL was on the bridge with us. While the  
2 licensees may also ask questions to clarify the issues  
3 raised by the Petitioner, I do want to stress that the  
4 licensees are not part of the NRC's independent Petition  
5 Review Board decision-making process.

6 At this time I will briefly summarize the  
7 Petition Review Board's current understanding of the  
8 scope of the Petition and how they relate to the NRC  
9 activities to date with respect to that Petition.

10 On October 1, 2012 Mr. Saporito, otherwise  
11 referred to as the Petitioner, submitted a 2.206 Petition  
12 to the NRC. In that Petition, Mr. Saporito requested  
13 that the NRC: 1) take escalated enforcement action  
14 against the licensees and suspend or revoke the NRC  
15 licenses granted to the licensees for operation of any  
16 nuclear reactor facility; 2) that the NRC issue a notice  
17 of violation with a proposed civil penalty against the  
18 licensees in the total amount of \$1 million; and 3) that  
19 the NRC issue a confirmatory order to the licensees  
20 requiring the licensees to take their nuclear facilities  
21 to cold shutdown until specific actions described fully  
22 in the Petition have been completed. And those actions  
23 include completing a number of independent assessments  
24 and comprehensive evaluations.

25 The circumstances of the Petition are

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1 described in the October 1 Petition submitted to the  
2 Agency and these circumstances pertain to a potential  
3 chilled work environment related to a personnel matter  
4 at an NRC-licensed facility.

5 With respect to the NRC's activities to date  
6 on this Petition, I will summarize these in a moment, on  
7 October first the Petitioner submitted the Petition to  
8 the NRC. On October 12th, Mr. Trace Orf, the Petition  
9 Manager, contacted Mr. Saporito to inform him of the  
10 NRC's receipt of the Petition. During that time, Mr.  
11 Saporito requested an opportunity to address the  
12 Petition Review Board and that is the purpose of today's  
13 teleconference.

14 On October fifth, the Petition Review Board  
15 Members and advisors met to discuss the request for --  
16 the Petitioner's request for immediate action, which was  
17 to require that licensees take their nuclear reactors and  
18 facilities to a cold shutdown condition as described in  
19 the Petition.

20 In an email dated November 28, 2012 the  
21 Petition Manager, Trace Orf, informed the Petitioner of  
22 the Petition Review Board's decision to deny the request  
23 for immediate action. In accordance with Management  
24 Directive 8.11, the Petition Review Board determined  
25 that no information was provided regarding the existence

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1 of a safety problem at the plant site that would justify  
2 an immediate shutdown order from the Agency.

3 Again as a reminder for the meeting,  
4 participants please identify yourself prior to your  
5 remarks. This will help up in transcribing the meeting  
6 and that transcript of today's meeting will be made  
7 publically available.

8 And with that by way of introduction, I  
9 would like to turn it over to Mr. Saporito for you to  
10 provide the Petition Review Board with any additional  
11 information you would like us to consider. Mr.  
12 Saporito, you have the floor.

13 MR. SAPORITO: All right. Thank you, Mr.  
14 Chairman and thanks to the NRC and Petitioner Review  
15 Board for this opportunity to expand upon the specifics  
16 of the October 1, 2012 Enforcement Petition.

17 For the record, my name is Thomas Saporito  
18 and I am the Senior Consultant at Saproani Associates  
19 based in Jupiter, Florida. I represent myself and the  
20 interests of Saproani Associates in filing an  
21 Enforcement Petition with the U.S. Nuclear Regulatory  
22 Commission on October 1, 2012 requesting that the NRC  
23 take certain and specific enforcement actions against  
24 the Florida Power and Light, or licensee, in connection  
25 with the licensed operation of Saint Lucie Nuclear Plant,

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1 which appear to have violated NRC regulations and  
2 standards under 10 CFR 50 and CFR 50.7 and under other  
3 NRC regulations and authority, as defined in the NRC  
4 licenses issues to FPL authorizing the licensee to  
5 operate Saint Lucie and Turkey Point Nuclear Reactors in  
6 the State of Florida.

7 To the extent that NextEra Energy, Inc. is  
8 the parent company for FP&L and to the extent that NextEra  
9 Energy, Inc. is identified as an NRC licensee in the  
10 instant action, the Petition specifically requests that  
11 the NRC take enforcement action against both licensees,  
12 FP&L and NextEra Energy, Inc. and require both licensees  
13 to complete an independent safety culture assessment  
14 through a third-party contractor to determine whether  
15 employees at all of the licensees' nuclear facilities  
16 operated by FPL and/or NextEra Energy, Inc. feel free and  
17 are free to raise nuclear safety concerns to management  
18 and to the NRC without fear of retaliation.

19 This additional request is hereby  
20 incorporated into Petitioner's October 1, 2012  
21 Enforcement Petition filed under 10 CRF 2.206 through  
22 this reference and must be considered by the NRC within  
23 the scope of the Petition and in accordance with  
24 Management Directive 8.11 accordingly.

25 As will be discussed later in this

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1 presentation, the NRC has failed in its mission to  
2 protect public health and safety by allowing FP&L and  
3 NextEra Energy, Inc. to foster a work environment which  
4 does not encourage employees to freely raise perceived  
5 nuclear safety concerns to the licensee without fear of  
6 retaliation. Therefore, Petitioners request that a  
7 copy of the record transcripts be provided to the United  
8 States President's Office of Professional  
9 Responsibility and to the NRC Office of the Inspector  
10 General to enable those government agencies the ability  
11 to make an informed decision about whether to initiate  
12 the investigation of the NRC in these circumstances.

13 Notably, two well-respected NRC employees,  
14 Richard H. Perkins and Larry Criscione, that is spelled  
15 C-R-I-S-C-I-O-N-E, had recently publicly accused the NRC  
16 of being both disconcertingly sluggish and  
17 inappropriately secretive about severe and potentially  
18 catastrophic flood risks at nuclear plants built  
19 downstream from large dams. Perkins and Criscione are  
20 risk analysts with the NRC who have stated that the NRC  
21 is not leveling with the public.

22 At this time, I will now address in  
23 specifics the Petitioners' Enforcement Petition.  
24 Petitioners have an open and ongoing investigation  
25 surrounding the specifics described in the Enforcement

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1 Petition and I have requested that the NRC Region II  
2 Office of Investigation conduct an investigation of the  
3 licensee with respect to apparent retaliation taken  
4 against the former licensee employee Mark Hicks,  
5 H-I-C-K-S. To date, the NRC Region II Office of  
6 Investigations have failed to contact Petitioners.

7 Mr. Hicks was employed by FP&L in January  
8 2009 in the position of Operations Manager at the Saint  
9 Lucie Nuclear Plant. It was responsible to protect the  
10 health and safety of the public with respect to licensed  
11 operations at that nuclear facility.

12 During his employment at FP&L, Hicks  
13 excelled in his position and received high marks in his  
14 performance reviews. Prior to his employment at FP&L,  
15 Hicks completed a 20-year career in the U.S. Navy,  
16 serving on a nuclear warship in nuclear Navy program.  
17 While in his service with the Navy, Hicks also held the  
18 position of Operations Director at the Wolf Creek Nuclear  
19 Plant.

20 In approximately late 2009, Hicks observed  
21 that a code safety relief valve had resulted in reactor  
22 coolant leakage. Hicks was on-duty at the Saint Lucie  
23 Nuclear Plant during that event and ordered the immediate  
24 shutdown of the nuclear reactor, as required under 10 CFR  
25 Part 50 of the NRC's regulations. Hicks was concerned

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1 that leakage of reactor coolant created a great potential  
2 of causing core damage, which could result in a core  
3 meltdown endangering the public at large.

4 Notably but similar, reactor coolant leak  
5 resulted in the Three-Mile Island accident several years  
6 ago where radioactive particles were released into the  
7 environment. More recently, the Fukushima Nuclear  
8 Plant in Japan had reactors actually melt down after  
9 losing reactor coolant following an earthquake event.

10 At the time of the event involving Hicks at  
11 the Saint Lucie Nuclear Plant, the nuclear reactor was  
12 being ramped up from a cold shutdown mode of operation  
13 and Hicks ordered the immediate shutdown of the reactor  
14 so that repair activities could take place following a  
15 cool-down period.

16 NRC regulations and requirements under 10  
17 CFR Part 50, Appendix B, as incorporated in the  
18 licensee's technical specifications at Section 6.8, as  
19 well as other NRC authorities specified under 10 CFR  
20 50.54(a)(1), 10 CFR 50.34(b)(6)(ii) require Hicks and  
21 the licensee to immediately shut down the nuclear  
22 reactor, do complete repairs to the reactor coolant  
23 system prior to taking the nuclear reactor to power. At  
24 the time of this event, Hicks reported to the FPL  
25 Executive Vice President Manoochehr Nazar -- I will spell

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1 that, M-A-N-O-O-C-H-E-H-R, Nazar, N-A-Z-A-R.

2 Incredibly, upon learning that Hicks  
3 ordered the immediate shutdown of the nuclear reactor,  
4 Nazar used his position of authority to insist that Hicks  
5 start up and bring the reactor to power, without first  
6 repairing the valve associated with the reactor coolant  
7 leak. Notably at all times relevant to this event, Nazar  
8 and other senior licensee management were made fully  
9 aware of the safety concern in bringing the reactor to  
10 power with a leak in the reactor coolant system.  
11 Nonetheless, high-level licensee management were  
12 apparently more focused on its revenues rather than  
13 public health and safety, insisting that the nuclear  
14 reactor be taken to power in those circumstances.  
15 However, Hicks maintained his order that the reactor  
16 remain in its shutdown mode of operation until repairs  
17 could be completed.

18 At some point, Hicks left the plant to rest  
19 at home. Shortly thereafter, FPL employee Weller  
20 contacted Hicks by phone, who informed Hicks that FPL  
21 management was attempting to circumvent his order to keep  
22 the reactor shutdown for repairs. Hicks then directed  
23 Weller to assure that the reactor was not restarted.  
24 Notably, it was later determined that Hicks' assessment  
25 was correct and that a valve was incorrectly installed

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1 and associated piping was not properly aligned on the  
2 stresses and the reactor coolant leakage. Moreover, two  
3 other valves and piping were discovered with similar  
4 damage, requiring the licensee to cut and re-weld the  
5 affected systems.

6 In all, the licensee is believed to have  
7 expended approximately \$6 million during the duration of  
8 this event before returning the reactor to power.

9 Petitioners note here that although the  
10 safety concern raised by Hicks was proved to be true and  
11 correct, employees are, nonetheless, protected from  
12 retaliation by the licensee under NRC regulations and  
13 requirements, even if the employee's perceived nuclear  
14 safety concern is eventually determined to be invalid.  
15 It is the act of raising that safety concern to the  
16 licensee management or to the NRC that is protected under  
17 NRC regulations and requirements.

18 Hicks thereafter was the recipient of  
19 numerous retaliatory actions taken against him by  
20 licensee management, which is believed to have fostered  
21 a very hostile work environment at the Saint Lucie  
22 Nuclear Plant dissuading other employees from raising  
23 nuclear safety concerns to licensee management.

24 Licensee management placed Hicks on a  
25 performance plan or probation following Hicks' challenge

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1 to the will of Nazar during the event.

2 Nazar and other high-level licensee  
3 management acted to lower Hicks' compensation by  
4 conspiring to have Hicks' immediate supervisor, Richard  
5 Anderson, decrease Hicks' performance rating in  
6 assessment reviews. Notably, Hicks' performance  
7 ratings were downgraded, despite higher peer review.

8 It is apparent that Hicks' performance was  
9 lowered as a direct result from his challenge to the  
10 authority of Nazar at the time of the event. The lower  
11 performance rating had a direct role in decreasing the  
12 amount of bonus pay which Hicks was entitled to receive.

13 Following a subsequent complaint filed by  
14 Hicks to the NRC, which could result in enforcement  
15 action taken against the licensee, Nazar and other  
16 high-level licensee management, the licensee offered a  
17 settlement to Hicks, which will place Hicks in the  
18 position of Excellence Plan Director, a promotion  
19 according to the licensee. Hicks accepted the  
20 settlement from the licensee. However, it appears that  
21 the licensee, Nazar, and other high-level licensee  
22 management who were directly or indirectly involved in  
23 the settlement with Hicks, knowingly made false  
24 statements of fact in that they offered a real position,  
25 concealing the fact that they were determined to

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1 terminate that position and remove Hicks from the nuclear  
2 division with either a demotion or termination of  
3 employment.

4 Notably, it is a violation of NRC  
5 regulations and requirements for high-level licensee  
6 management to engage in wrongdoing by knowingly making  
7 false and misleading statements to the NRC. To the  
8 extent that the licensee appears to have engaged in  
9 wrongdoing in these circumstances, where the NRC was  
10 actively involved in a settlement process, the licensee  
11 appears to have violated regulations and requirements as  
12 a matter of law. Here, the licensee apparently  
13 solicited Hicks to accept a settlement to preclude an NRC  
14 investigation of wrongdoing in the part of the licensee.

15 Subsequent to signing the settlement, the  
16 licensee apparently removed the performance plan from  
17 Hicks' personnel file, giving the appearance that the  
18 licensee was complying with the settlement. Hicks  
19 excelled in his new position of Excellence Plan Director  
20 and significantly reduced the number of outstanding  
21 backlogged work orders at the plant.

22 Nonetheless, another high-level licensee  
23 manager, a corporate outage vice president, screamed  
24 loudly at Hicks in front of his fears that Hicks was a  
25 "fucking embarrassment to the company for losing several

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1 hours in a planned outage." Moreover, the licensee  
2 management repeatedly cursed at Hicks with such  
3 outbursts as "goddamn you," knowing that Hicks was a  
4 devout Christian and intending to cause harm to Hicks and  
5 intending to dissuade other employees from raising  
6 nuclear safety concerns to anyone.

7           These retaliatory actions on the part of the  
8 licensee clearly fostered a hostile work environment for  
9 Hicks and for other licensee employees, contrary to NRC  
10 regulations and requirements. Retaliation continued  
11 and intensified over time with Nazar requiring Hicks to  
12 meet with him biweekly, at which time Nazar would  
13 ridicule and embarrass Hicks by screaming questions and  
14 accusations at Hicks related to many of Hicks' job  
15 aspects and responsibilities.

16           Notably, Nazar routinely cursed at Hicks by  
17 screaming "goddamn you" during the biweekly meetings and  
18 pounding his fist on the table at times for 30 minutes.  
19 These meetings were very demeaning toward Hicks and many  
20 took place in front of other licensee employees. This  
21 type of conduct by high-level licensee management serves  
22 to create a severe chilling effect on other licensee  
23 employees, dissuading them from freely raising nuclear  
24 safety concerns. This appears to have been the motive  
25 of Nazar and other high-level licensee management in

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1 publicly retaliating against Hicks to foster a hostile  
2 work environment at the Saint Lucie Nuclear Plant to  
3 discourage other employees from raising nuclear safety  
4 concerns to anyone.

5           After weeks of this type of abuse, Nazar  
6 decided to terminate the position created for Hicks,  
7 calling it a temporary position. Licensee management  
8 then increased retaliation against Hicks by skewing  
9 Hicks' performance rating. Notably, Hicks' peers rate  
10 his performance at a level 5 but Hicks' immediate  
11 supervisor was required to rate Hicks at level 2, thereby  
12 reducing Hicks' overall performance rating to a level 3.  
13 The lower rating ultimately resulted in a lower bonus pay  
14 for Hicks. Incredibly, the licensee's rating  
15 guidelines required an explanation as to how the lower  
16 rating was determined. But the licensee still hasn't  
17 provided any examples of incident reports to justify or  
18 to explain the lower performance ratings for Hicks.

19           Here, the licensee apparently and  
20 intentionally made a false misleading record of poor  
21 performance and a pretext for the retaliatory actions  
22 taken against Hicks, simply because Hicks engaged in  
23 protected activity by ordering the immediate shutdown of  
24 the nuclear reactor earlier.

25           Notably, prior to Hicks' ordering the

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1 reactor to be shut down and Hicks' challenging the  
2 authority of Nazar who wanted to restart the reactor,  
3 Hicks had enjoyed a very professional relationship with  
4 Nazar. In fact, Hicks had flown with Nazar on the  
5 corporate jet to visit other nuclear plants in the  
6 licensee's fleet. Moreover, Hicks had previously acted  
7 as a site Vice President in the [absence] of Richard  
8 Anderson.

9 In 2012, the licensee scheduled a  
10 leadership summit to discuss the next step in the  
11 excellence plan for the nuclear plant in fleet. At the  
12 time, Hicks was the Excellence Plan Director for the  
13 Saint Lucie Nuclear Plant and his input was critical to  
14 that plant. However, the licensee excluded Hicks from  
15 the meeting and it was a very public humiliation for  
16 Hicks. The licensee's actions in further retaliating  
17 against Hicks by omitting Hicks from participating in the  
18 leadership summit is additional evidence that the  
19 licensee intended to foster a hostile work environment  
20 at the Saint Lucie Nuclear Plant in direct violation of  
21 NRC regulations and requirements.

22 As I explained earlier, the NRC did not  
23 conduct any investigation into the circumstances of the  
24 alleged retaliation taken against Hicks by the licensee  
25 due to the settlement reached between Hicks and the

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1 licensee for which the NRC was fully aware of at the time.  
2 The licensee remained fearless of NRC enforcement action  
3 in continuing to retaliate against Hicks and they did so  
4 at will.

5 The licensee eliminated the new position  
6 given to Hicks with the pretext that the project had been  
7 completed. However, as described in the settlement,  
8 Hicks was given a new position not assigned to a project  
9 and the work related to the position continued. Indeed,  
10 there were three active capital projects, each budgeted  
11 in the amount of \$5 million and ongoing.

12 Again, Hicks complained to the NRC about the  
13 licensee's retaliatory employment action taken against  
14 him stemming from the event described earlier, involving  
15 Hicks' challenge to Nazar related to the power up of a  
16 nuclear reactor which was found to have a reactor coolant  
17 leak.

18 Hicks made his complaint to the NRC on or  
19 about February 17, 2012. Following Hicks' further 10  
20 CFR 50.7 protected activity and reporting the licensee's  
21 retaliatory conduct taken against him to the NRC, the  
22 licensee subsequently terminated Hicks' employment on or  
23 about June 25, 2012. The licensee subsequently notified  
24 Hicks that he could apply for a non-nuclear position with  
25 the company within 45 days. This was apparently another

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1 pretextual settlement offer by the licensee to again  
2 deter the NRC from investigating the circumstances  
3 surrounding the retaliation complained about by Hicks to  
4 the Agency. The licensee settlement offer is pretextual  
5 on the mere basis that Hicks' entire career path stemming  
6 from his service to the United States military all  
7 involve nuclear power. Clearly, the licensee had no  
8 expectation that Hicks would accept a demotion offered  
9 in the settlement.

10 The licensee continued, in violation of NRC  
11 regulation and requirements in further retaliatory  
12 conduct directed at Hicks. The licensee caused its  
13 employees to shun Hicks, a community of people which  
14 Hicks had become accustom to working with on a  
15 professional basis. Notably, the licensee went so far  
16 as to isolate Hicks from his coworkers to the extent that  
17 the licensee specifically briefed Hicks' co-workers and  
18 prohibited them from returning phone calls to Hicks or  
19 otherwise communicating with Hicks, despite the fact  
20 that some of those employees were personal friends of  
21 Hicks.

22 The licensee's conduct in causing the  
23 co-workers of Hicks to shun Hicks is paramount to  
24 creating a hostile work environment, as further  
25 retaliation for Hicks' engaging in 10 CFR 50.7 protected

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1 activities related to the ordering the immediate  
2 shutdown of the nuclear reactor and related to Hicks'  
3 contacting the NRC on more than one occasion to complain  
4 about the licensee's retaliatory action taken against  
5 him.

6 The licensee's extreme retaliation taken  
7 against Hicks as described above resulted in Hicks'  
8 suffering, mental anguish, physical pain, suffering,  
9 injuries, fear, humiliation, emotional trauma, loss of  
10 earnings, loss of earnings capacity, and loss of  
11 enjoyment of life in general.

12 The retaliatory actions on the part of the  
13 licensee taken against Hicks stem from a pattern of  
14 practice by the licensee spanning years and years in  
15 retaliating against employees who raised perceived  
16 nuclear safety concerns. The NRC has failed in its  
17 mission to protect public health and safety in these  
18 circumstances where the agency has turned a blind eye and  
19 a deaf ear to the complaints of Hicks and other licensee  
20 employees who simply did their job in reporting nuclear  
21 safety concerns as required under the Agency's  
22 regulations, requirements, standards, expectations, and  
23 under the licensee's operational licenses issued by the  
24 NRC under 10 CFR Part 50, authorizing licensed activity  
25 at the Saint Lucie Nuclear Plant.

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1           Incredibly, the Agency's own records show  
2           that the licensee rates second in the nation for having  
3           the most nuclear safety complaints sent secretly by  
4           employees directly to the NRC because the employees are  
5           too afraid to put those safety concerns to licensee  
6           management.

7           Notably from January 2008 to October 2012,  
8           the NRC received 154 nuclear safety concerns from FPL  
9           employees and second only to the San Onofre Nuclear Plant  
10          of 167 nuclear safety concerns received by or sent to the  
11          Agency by employees of that nuclear facility.

12          Moreover, Petitioners have made a written  
13          request via electronic mail to the NRC Chairman  
14          requesting that the NRC Region II Office of Investigation  
15          open an investigation into the circumstances of his  
16          termination from the Saint Lucie Nuclear Plant by the  
17          licensee.

18          Petitioners further requested that NRC  
19          Office of Investigations arrange for a meeting wherein  
20          the Petitioners could provide the Agency with additional  
21          information to assist the Agency's investigation to  
22          protect public health and safety. To date, the NRC  
23          Region II Office of Investigation has not contacted  
24          Petitioners.

25          At this time, Petitioners will elaborate on

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1 the basis stated in their 2.206 Enforcement Petition,  
2 requesting that the NRC take escalated enforcement  
3 action against the licensee, FP&L and NextEra Energy,  
4 Inc. in these circumstances.

5 Under 10 CFR 50.7, employee protection, it  
6 is stated that discrimination by a Commission licensee,  
7 an applicant for a Commission license, or a contractor  
8 or subcontractor of a Commission license or applicant  
9 against an employee for engaging in certain protected  
10 activities is prohibited. Discrimination includes  
11 discharge and other action that relate to compensation,  
12 terms, conditions, or privileges of employment. The  
13 protected activities are established in Section 211 of  
14 the Energy Organization Act of 1974, as amended, and in  
15 general are related to the administration or enforcement  
16 of a requirement imposed under the Atomic Energy Act or  
17 the Energy Organization Act.

18 "The protected activities include but are  
19 not limited to: providing the Commission or his or her  
20 employer information about alleged violations of either  
21 of the statutes named in the prior paragraph,  
22 introductory text of this section, or possible  
23 violations of requirements imposed under either of those  
24 statutes; refusing to engage in any practice made  
25 unlawful under either of the statutes named in the

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1 paragraph (a) introductory text or under these  
2 requirements if the employee has identified the alleged  
3 illegality to the employer."

4 And just to elaborate on this particular  
5 paragraph, you know Hicks' ordering the shutdown of the  
6 nuclear reactor and his subsequent challenge to Nazar's  
7 authority and position in refusing that reactor to  
8 restart complies with the meaning of this paragraph  
9 because Hicks' actions were legal and in accordance with  
10 NRC regulations and requirements and in accordance with  
11 the licensee's technical specifications that required  
12 that the reactor coolant leak needs to be repaired prior  
13 to that reactor being powered up. And that is where that  
14 applies.

15 It is unlawful for Nazar or any manager at  
16 the licensee to otherwise interfere with Hicks in the  
17 performance of his duties under NRC's authority.

18 Next, "requesting the Commission to  
19 institute action against his or employee for the  
20 administration or enforcement of these requirements."  
21 Again, here Hicks on more than one occasion contacted the  
22 NRC asking them to investigate retaliation taken --  
23 ongoing retaliation taken against him by the licensee.

24 "Testifying in any Commission proceeding,  
25 or before Congress, or at any Federal or State proceeding

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1 regarding any provision (or proposed provision) of  
2 either of the statutes named in paragraph (a)  
3 introductory text."

4 "Assisting or participating in, or is about  
5 to assist or participate in, these activities."

6 "These activities are protected even if no  
7 formal proceeding is actually initiated as a result of  
8 the employee assistance or participation."

9 A violation of a paragraph of this section  
10 by a Commission licensee, which Florida Power and Light  
11 Company and NextEra Energy, Inc. are a Commission  
12 licensee, an applicant for the Commission license, or  
13 a contractor or subcontractor of a Commission licensee  
14 or applicant may be grounds for: 1) denial, revocation,  
15 or suspension of the license; 2) imposition of a civil  
16 penalty on the licensee, applicant, or a contractor or  
17 subcontractor of the licensee or applicant; and 3) other  
18 enforcement actions.

19 And I am going to pause and put an additional  
20 comment here that Petitioners were going to orally modify  
21 their 2.206 Petition in these circumstances. We are  
22 going to request not only that the NRC take enforcement  
23 action against the Florida Power and Light Company and  
24 NextEra Energy, Inc. but also against Mr. Nazar, who at  
25 that time was the Vice President for FP&L and any other

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1 manager who is named in the Petition or through any  
2 subsequent investigation which the NRC may perform finds  
3 that they participated in any type of retaliation  
4 directed towards Mr. Hicks in these circumstances.

5 A summary of retaliatory actions taken  
6 against Hicks by the licensee were in direct violation  
7 of NRC regulations, requirements, and standards. First  
8 I am going to identify the specifics of the protected  
9 activity.

10 Hicks engaged in 10 CFR 50.7 protected  
11 activity as follows: 1) Hicks confronted and challenged  
12 Nazar's authority as the licensee's vice president in  
13 Hicks ordering the immediate shutdown of the Saint Lucie  
14 Nuclear Plant reactor upon learning that a reactor  
15 coolant leak had occurred;

16 2) Hicks subsequently directed another  
17 employee to ensure that the nuclear reactor would not be  
18 restarted, despite attempts by the licensee to  
19 circumvent Hicks' prior order to shut down the reactor;

20 3) Hicks complained to the NRC that the  
21 licensee was retaliating against him as a direct result  
22 from the order he gave to shut down the reactor and a  
23 subsequent direction he gave to another employee to keep  
24 the reactor shut down;

25 4) Hicks made a second complaint to the NRC

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1 that the licensee continued to retaliate against him,  
2 stemming from his order to shut down the nuclear reactor  
3 and stemming from his complaint filed with the NRC;

4 5) Hicks publicly announced to the media  
5 that the licensee had retaliated against him, fired him,  
6 because he raised nuclear safety concerns at the Saint  
7 Lucie Nuclear Plant; and

8 6) Hicks filed a legal action against the  
9 licensee seeking a jury trial and a make whole remedy and  
10 publicly announced that action to the media.

11 Now I'm going to specifically identify how  
12 the licensee retaliated against Hicks. The licensee  
13 retaliated against Hicks in direct violation of NRC  
14 regulations, requirements, and standards as follows:

15 1) Nazar used his position of authority to  
16 insist that Hicks start up and bring the nuclear reactor  
17 to power.

18 2) The licensee subsequently attempted to  
19 circumvent Hicks' order in directing other employees to  
20 restart the reactor after Hicks had left the plant for  
21 home.

22 3) The licensee created and fostered a  
23 hostile work environment by publicly retaliating against  
24 Hicks in front of other employees.

25 4) The licensee placed Hicks on a

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1 performance plan or probation.

2 5) Nazar and other high-level licensee  
3 management acted to lower Hicks' compensation by  
4 conspiring to have Hicks' immediate supervisor Richard  
5 Anderson decrease Hicks' performance rating in  
6 assessment reviews, despite higher peer review.

7 6) The licensee's lowering of Hicks'  
8 performance rating resulted in Hicks receiving less  
9 bonus pay than he was otherwise entitled.

10 7) The licensee induced Hicks to sign a  
11 pretextual settlement placing Hicks in the position of  
12 Excellence Plan Director.

13 8) The licensee offered Hicks a settlement  
14 to dissuade NRC from investigating wrongdoing  
15 allegations filed by Hicks with the Agency.

16 9) The licensee knowingly made false and  
17 misleading statements and representations to the NRC in  
18 offering a settlement to Hicks which was subsequently  
19 violated by the licensee.

20 10) Subsequent to placing Hicks in the  
21 position of Excellence Plan Director, the Corporate  
22 Outage Vice President screamed loudly at Hicks in front  
23 of his peers, shouting that Hicks was a "fucking  
24 embarrassment to the company".

25 11) Licensee management repeatedly cursed

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1 at Hicks with bursts of "goddamn you," knowing that such  
2 terminology was harmful to Hicks due to his religious  
3 beliefs.

4 12) Nazar required Hicks to meet with him  
5 on a biweekly basis where Nazar further ridiculed and  
6 embarrassed Hicks by screaming questions and accusations  
7 at Hicks related to many of Hicks' job aspects and  
8 responsibilities.

9 13) During the biweekly meetings with  
10 Hicks, Nazar would pound his fists on the table, at times  
11 for 30 minutes.

12 14) The biweekly meetings were intended by  
13 the licensee to be very demeaning towards Hicks and many  
14 took place in front of other employees of an example of  
15 what happens to employees who raise nuclear safety  
16 concerns.

17 15) The licensee's actions in retaliating  
18 against Hicks created a chilling effect at the Saint  
19 Lucie Nuclear Plant, serving to silence other employees  
20 for raising nuclear safety concerns to anyone.

21 16) Nazar ultimately terminated the  
22 position created for Hicks by pretextually claiming it  
23 was a temporary position.

24 17) -- well let me go back up to 16.

25 Nazar may have also claimed it was a

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1 project. I mean not a temporary position but a temporary  
2 project. I think that may be more accurate, so let me  
3 put that in there.

4 17) The licensee then intentionally skewed  
5 Hicks' performance rating, taking them from a level 5 to  
6 a level 3, which resulted in a decreased bonus pay for  
7 Hicks. The licensee failed to provide any explanation  
8 for the lower performance ratings.

9 18) In 2012, the licensee scheduled a  
10 leadership summit to discuss the next steps in the  
11 Excellence Plan during the time that Hicks held the  
12 position of Excellence Plan Director. Yet, the licensee  
13 excluded Hicks from the meeting and caused further public  
14 humiliation for Hicks.

15 19) The licensee deliberately engaged in  
16 wrongdoing under the nose of the NRC by inducing Hicks  
17 to sign one or more settlements so that the NRC would not  
18 conduct a 10 CFR 50.7 investigation, which could have  
19 resulted in the Agency taking enforcement action against  
20 the licensee.

21 20) Following a second complaint of  
22 retaliation filed with the NRC by Hicks on February 17,  
23 2012, the licensee subsequently terminated Hicks'  
24 employment on June 25, 2012.

25 21) The licensee engaged in further

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1 wrongdoing by later notifying Hicks that he could apply  
2 for a non-nuclear position with the company within 45  
3 days where the notice was pretextual and intended to once  
4 again prevent the NRC from conducting a 10 CFR 50.7  
5 investigation. Moreover, the licensee was well aware of  
6 Hicks' 20-year career in the Navy's nuclear program and  
7 his employment at the Wolf Creek Nuclear Plant and that  
8 Hicks would never accept such a demotional position.

9 22) The licensee, nonetheless, continued  
10 to retaliate against Hicks by causing employees at the  
11 Saint Lucie Nuclear Plant to shun Hicks. Incredibly,  
12 the licensee isolated Hicks from his coworkers by  
13 specifically prohibiting other employees from returning  
14 some calls to Hicks or otherwise communicating with  
15 Hicks.

16 23) The licensee's conduct in causing the  
17 coworkers of Hicks to shun Hicks is paramount to creating  
18 a hostile work environment at the Saint Lucie Nuclear  
19 Plant where employees are chilled from raising nuclear  
20 safety concerns to anyone.

21 Conclusion: In accordance with the NRC  
22 Safety Conscious Work Environment Policy, the  
23 Commission's policy statement, "Freedom of Employees in  
24 the Nuclear Industry to Raise Safety Concerns Without  
25 Fear of Retaliation" dated May 14, 1996, describes the

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1 Safety Conscious Work Environment as "a work environment  
2 where employees are encouraged to raise safety concerns  
3 and where concerns are promptly previewed, given the  
4 proper priority based on their potential safety  
5 significance, and appropriately resolve with timely  
6 feedback to the originator of the concerns to other  
7 employees." Safety Conscious Work Environment is  
8 described as an attribute of the safety culture in  
9 SECY-04-0111, which is the "Recommended Staff Actions  
10 Regarding Agency Guidance in the Areas of Safety  
11 Conscious Work Environment and Safety Culture" dated  
12 August 30, 2004.

13 The NRC has developed guidance for  
14 establishing and maintaining a Safety Conscious Work  
15 Environment.

16 In this instance, meaning the entirety of  
17 this, October 1, 2012 petition, and incorporating the  
18 record transcripts of this meeting, I will state on this  
19 record that the ongoing nuclear disaster at the Fukushima  
20 Nuclear Plant is illustrative of the need for the NRC to  
21 take meaningful enforcement action against its licensees  
22 like the Florida Power and Light Company and NextEra  
23 Energy, Inc. to ensure that employees at the Saint Lucie  
24 Nuclear Plant and employees at all NRC-licensed  
25 facilities are free and feel free to raise perceived

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1 nuclear safety concerns to anyone to protect public  
2 health and safety.

3 And with that, I will stay on the line to  
4 answer any questions that the committee may have or the  
5 public may have.

6 CHAIRMAN NIEH: Okay, thank you Mr.  
7 Saporito for your presentation and the information you  
8 provided in the context of your position. At this time,  
9 I would like to offer the opportunity for the NRC Staff  
10 to see if there are any questions they have of you to  
11 further clarify the information you presented. Why  
12 don't we start here in the Headquarters Building?

13 MR. ORF: This is Trace Orf, the Petition  
14 Manager. Mr. Saporito, do you have specific examples  
15 chilled environments at the Saint Lucie Plant, either  
16 information or a specific example?

17 MR. SAPORITO: Yes, I think the most  
18 startling and outrageous example of that is the NRC's own  
19 records and they are documented at Reactor Allegations  
20 by CY received January 2008 to October 2012. This is a  
21 table of allegations sourced by the NRC representing the  
22 104 nuclear reactors currently licensed for operation in  
23 the United States.

24 And this particular document which can be  
25 found at the NRC's own website, it clearly shows that the

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1 Florida Power and Light Company or the South  
2 Florida-based nuclear plant have reported a total of 154  
3 nuclear safety concerns secretly, anonymously, without  
4 the knowledge of licensee management at FP&L directly to  
5 the NRC. They are second to none except to the San  
6 Onofre, which holds the first place in that category.

7 This is paramount to evidence demonstrating  
8 that there is a severe problem at the Florida Power and  
9 Light Company Florida-based nuclear plants which  
10 encompass two reactors at the Saint Lucie Nuclear Plant  
11 located near Fort Pierce, Florida, and two reactors  
12 located in South Miami called the Turkey Point Nuclear  
13 Plant.

14 This conduct, these safety concerns being  
15 reported over the course of four years holding second  
16 place across the nation, is indicative of a failed safety  
17 culture at those nuclear plants. And I have attended  
18 many meetings that the NRC hosted with Florida Power and  
19 Light Company in Florida, where the specific meetings  
20 were addressed why people were going secretly to the NRC  
21 to get their concerns resolved. And FPL continues to  
22 respond to the NRC to the extent that well you know we  
23 changed the managers for the employee concerns program.  
24 Well you know, we enhanced the employee concerns program.  
25 We made it better. And we changed the plant managers and

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1 we did this and we did that. But yet, the nuclear safety  
2 concerns continue secretly to be channeled to the NRC  
3 rather than to licensee management.

4 And that more than demonstrates that there  
5 is a chilling effect at the nuclear plants operated by  
6 Florida Power and Light in the State of Florida and it  
7 shows that there is not a healthy work environment and  
8 in fact, it is a hostile work environment, actually where  
9 the licensee takes retaliatory actions as described in  
10 the Petition and as described in this record transcript  
11 today against an employee who has engaged in 10 CFR 50.7  
12 protected activity. And you take those retaliatory  
13 actions in front of other employees and that serves to  
14 keep them from coming forward with nuclear safety  
15 concerns.

16 And in that regard, I have got to say on this  
17 record that I am shocked that the NRC Petition Review  
18 Board initially determined that there was no need to take  
19 any type of enforcement-related action against the  
20 licensees because of the detail that was contained in the  
21 October 1, 2012 Petition. Because clearly, if you have  
22 that many employees second in the nation streaming  
23 nuclear safety concerns directly to the NRC secretly,  
24 then you have to wonder are there safety issues,  
25 unresolved safety issues at Florida Power and Light

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1 Company's Florida-based nuclear plants which the NRC is  
2 not aware of or the FPL licensee management is not aware  
3 of. Because for those people that were bold enough to  
4 even contact the NRC in these dire circumstances, there  
5 are many, I can tell you from my own personal experience  
6 that there are many who would not have come forward under  
7 any circumstances because they have families and  
8 mortgages, and they need their job and cannot afford to  
9 be out of work like Mr. Hicks is now doing.

10 I hope that answers your question.

11 MR. ORF: Thank you.

12 CHAIRMAN NIEH: Thank you, Mr. Saporito.

13 At this point, I would like to see if there are any NRC  
14 Staff on the phone line out in the regions that have any  
15 questions for Mr. Saporito.

16 I'm not hearing any.

17 MR. RZEPKA: We don't have any questions.

18 CHAIRMAN NIEH: Okay, thank you.

19 At this point does any licensee  
20 representatives on the phone have any particular  
21 questions for Mr. Saporito?

22 MR. BLAIR: We have no questions for Mr.  
23 Saporito.

24 CHAIRMAN NIEH: Okay, thank you very much.  
25 I just did have one question and I wanted to just make

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1 sure I understood the question that Trace asked. And if  
2 I understood it correctly, I think you were asking  
3 whether or not there were any examples of a chilled work  
4 environment that perhaps were not described in the  
5 presentation that he gave before in the filing that was  
6 attached to his petition. Is that correct?

7 MR. ORF: That is correct.

8 CHAIRMAN NIEH: So I guess maybe let me just  
9 rephrase that question just a little bit differently.  
10 Mr. Saporito, are you aware of any current issues that  
11 could be indicative of a chilled work environment at any  
12 of these licensed facilities today?

13 MR. SAPORITO: Well, yes. This is an  
14 ongoing problem and I will just give you a very brief  
15 history lesson. There was two other employees that  
16 worked with Florida Power and Light Nuclear facilities.  
17 One's name was Thomas King. He was a contractor at the  
18 same power plant, the Saint Lucie Nuclear Plant.  
19 Another was Dave Hoffman was a Senior Reactor Operation,  
20 a high-level manager at the Turkey Point Nuclear Plant.

21 In the case of King, he engaged in protected  
22 activity under 10 CFR 50.7 by raising issues related to  
23 the documentation of training, that the contractors  
24 weren't properly trained. There was some falsification  
25 issues identified with the paperwork over there. And I

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1 brought this to the attention of the NRC and I even spoke  
2 with the NRC Region II Office of Investigation. And the  
3 Agency being the NRC, they just do not have the requisite  
4 understanding of just what protected activity is under  
5 10 CFR 50.7. And on that basis, they never were able to  
6 cite the licensee with a violation.

7 Specifically, with the King issue although  
8 his termination resulted from an action outside of his  
9 employment, he was definitely retaliated against when he  
10 brought these safety -- at one point the security  
11 personnel wanted to revoke his unescorted access just  
12 because he brought this safety issue to their attention.  
13 Just on that one issue alone, NRC should have taken  
14 enforcement action and they didn't. So that is very  
15 troubling.

16 With respect to Hoffman, his issues it is  
17 so well documented. You have got the NRC -- none of the  
18 retaliation taken against Hoffman did the NRC find them  
19 with a violation of NRC requirements. The problem is  
20 here that the Agency wants to sit and wait and do  
21 nothing. They want to wait for the Department of Labor  
22 to make a decision if there is a whistleblower complaint  
23 filed under the Energy Reorganization Act. And so when  
24 the Agency does that, it allows the utility, the licensee  
25 to continue to retaliate against other employees. And

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1 when the Agency relies solely upon the determination by  
2 its sister agency, the Department of Labor, the NRC errs  
3 as a matter of law because even though -- the Department  
4 of Labor can only -- their job is to give the employee  
5 a makeover. Get him back to work, get him benefits, get  
6 him pay or whatever. But the NRC's responsibility is to  
7 protect public health and safety by making sure that no  
8 employee is retaliated against if they raise safety  
9 concerns.

10 In both of those situations, the employees  
11 raised safety concerns and they were retaliated against  
12 in many ways. And the NRC waits until there is a  
13 determination to make by the Department of Labor with  
14 respect to something that is not even in the NRC's  
15 purview, an economic make over.

16 The NRC needs to be proactive, not reactive.  
17 They need to be proactive. When there is a documented  
18 violation of NRC requirements and regulations, the NRC  
19 needs to take enforcement action right then and there.  
20 You don't need to be waiting on your sister agency.

21 So I think that is a problem here at the  
22 Agency that perhaps their Office of Investigation, those  
23 people, maybe they need some more training because my  
24 experience was that they are just knowledgeable enough  
25 to understand what protected activity is and how to

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1 investigate it. And if they don't have just the basics  
2 in those areas, how can they even perform the job? And  
3 you know what? Public health and safety is hanging in  
4 the balance because we don't know how many employees out  
5 there might to this day right now have nuclear safety  
6 concerns at FPL's Nuclear Power Plant and nobody knows  
7 about them because those people are too scared to speak  
8 up.

9 CHAIRMAN NIEH: Okay. Thank you very  
10 much, Mr. Saporito.

11 I'll just do a second call for any further  
12 questions here at Headquarters. Any questions out in  
13 the regions?

14 MR. RZEPKA: No questions.

15 CHAIRMAN NIEH: Okay, licensee, any  
16 further questions before we conclude?

17 MR. BLAIR: No questions.

18 CHAIRMAN NIEH: Okay, thank you very much.

19 Mr. Hicks, are you still on the bridge?

20 MR. HICKS: Yes, I am.

21 CHAIRMAN NIEH: Mr. Hicks, at this time, do  
22 you have any questions about the Petition request?

23 MR. HICKS: Repeat that question. Do I  
24 have any comments? Is that what you said?

25 CHAIRMAN NIEH: Do you have any questions

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MR. TICKTIN: This is Peter Ticktin. May I just comment at this point that really Mr. Hicks and we are only here for purposes of observation.

CHAIRMAN NIEH: I understand that.

MR. HICKS: Yes, I agree with that. So I really have no questions.

CHAIRMAN NIEH: Okay, I just wanted to offer that opportunity just to be --

MR. HICKS: I appreciate that.

CHAIRMAN NIEH: I guess for any of the public participants on the bridge, are there any questions for the NRC Staff here with respect to how the 2.206 process works?

Okay.

MR. SAPORITO: Mr. Chairman, this is Thomas Saporito. I just wanted to point out to the Petition Review Board I think the public should be given an opportunity to ask questions of any party in this proceeding, either the Petition Review Board or myself about any aspect of the Petition, not necessarily restrict public to only engaging the NRC Petition Review Board with respect to the process. I mean, everybody can read the process for themselves. There is a public document to tell you how the process works and you very

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adequately described it at the beginning of the meeting.

So I think it would be more appropriate for the NRC to give the public an opportunity to ask any questions that they -- or concerns they might have about the Petition itself to the NRC and myself. Thank you.

CHAIRMAN NIEH: Thank you for that comment, Mr. Saporito. Thank you very much.

Okay, I don't think there are any further questions here for you. I do appreciate you taking the time to provide this additional information with respect to the Petition you submitted on October first.

Before we conclude the meeting, I would like to ask if the court reporter that is on the line requires any additional information for the meeting.

COURT REPORTER: Nothing further.

CHAIRMAN NIEH: Okay, thank you.

Well with that, I would like to conclude this meeting and I appreciate everyone taking the time and we will be terminating the phone connection. Thank you.

(Whereupon, at 1:40 p.m., the foregoing conference call was concluded.)

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