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AUTH. NAME AUTHOR AFFILIATION  
 Saporito, T.J. Saporito, T.J.  
 RECIP. NAME RECIPIENT AFFILIATION  
 THE CHAIRMAN Commissioners (Post 750119)  
 JACKSON, S.A. Commissioners (Post 750119)

SUBJECT: Informs that on 970423 petitioners submitted request for action by NRC against licensee "FPL" operators of St Lucie, units 1 & 2 & Turkey Point, units 3 & 4.

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## National Litigation Consultants

## Nuclear Whistleblower Specialists

6230 West Indian Town Road, Suite 7-355, Jupiter, Florida 33458  
Voice: (561) 622-1667 Facsimile: (561) 622-1241 or (561) 744-6615  
Internet E-Mail Received at TS4574@BELLSOUTH.NET

May 11, 1997

Hon. Shirley Jackson, Chairman  
U.S. Nuclear Regulatory Commission  
White Flint Building  
Washington, D.C. 2055

RE: SUPPLEMENTAL PETITION UNDER 10 C.F.R.2.206  
REQUEST FOR AGENCY ACTION

Dear Chairman Jackson:

On April 23, 1997, National Litigation Consultants and Thomas J. Saporito, Jr., (hereinafter "Petitioners") submitted a request for action by the U.S. Nuclear Regulatory Commission ("NRC") against its licensee Florida Power & Light Company ("FPL") operators of the St. Lucie nuclear station Units 1 and 2 and the Turkey Point nuclear station Units 3 and 4. Petitioners further support their April 23, 1997 petition seeking agency action with this supplemental petition which provides additional requests and grounds for agency action as stated below:

### Specific Request

1. that the agency take enforcement action against the licensee's former Executive Vice President, Mr. Bill Conway, by imposition of a monetary civil penalty in the amount of \$100,000 (One Hundred Thousand Dollars); and
2. that the agency take enforcement action against the licensee's former Site Vice President at the Turkey Point nuclear station, Mr. John Odom, by imposition of a monetary civil penalty in the amount of \$100,000 (One Hundred Thousand Dollars); and
3. that the agency take enforcement action against the licensee's former Maintenance Superintendent, Mr. Joseph Kappes, by imposition of a monetary civil penalty in the amount of \$100,000 (One Hundred Thousand Dollars); and

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4. that the agency refer the subject matter and discriminatory conduct of Mr. Bill Conway, Mr. John Odom and Mr. Joseph Kappes to the U.S. Department of Justice ("DOJ") for consideration of invoking criminal proceedings under the criminal penal code for violation of federal discrimination laws.

#### **Basis and Justification for Request**

On May 9, 1997, the complainant in an action filed under the Energy Reorganization Act ("ERA") in a Department of Labor ("DOL") case codified 89-ERA-07 and 17 (consolidated) submitted complainant's demand and itemization for damages, ("Damages Brief") to the DOL for consideration of a make whole remedy. Complaints filed under the ERA statutes are compatible with NRC regulations found at 10 C.F.R. 50.7 and constructed under the Atomic Energy Act of 1954, as Amended, 42 U.S.C. ss.2011, et. seq. ("Act").

The Damages Brief established the undeniable fact that a "hostile work environment" existed at the licensee's Turkey Point Nuclear Plant in 1988 and that the complainant was subjected to retaliatory harassment, discrimination and discharge as a direct result of his having raised safety concerns to the licensee, to the Institute of Nuclear Power Operators ("INPO") and to NRC regarding operations at the Turkey Point Nuclear Plant at that time. See, Damages Brief at p.13-25.

The Damages Brief also established that the licensee and its managers and supervisors are liable for creating a hostile work environment and that the licensee and its managers failed to take any actions to stop the retaliatory harassment and discrimination which culminated in the complainant's discharge from FPL in December of 1988 for raising safety concerns. See, Damages Brief at p.25-29.

The record in that case is replete with evidence showing direct participation of FPL supervisory and managerial officials including the site vice president of Turkey Point involved in incidents which form the basis of complainant's hostile work environment claim. The evidence overwhelmingly shows that Mr. Conway was advised by Mr. Odom that complainant was going to be discharged in December of 1988. Further, complainant's entire chain of command, (e.g. Mr. Odom, Mr. Bladow, Mr. Kappes, Mr. Tomaszewski, Mr. Harley, Mr. Willis, Mr. Koran and Mr.



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Boger) had some participation and involvement in the retaliatory actions taken against the complainant for his raising safety concerns.

The licensee was put on notice that the complainant felt harassed and discriminated against by his managers and supervisors at the Turkey Point Nuclear Station because he raised safety concerns at that plant. However, the licensee failed to take any action to halt the retaliatory harassment and discrimination taken against the complainant. In this particular case, it is extremely significant that licensee officials responsible for taking action to abate the discrimination actually participated in the harassment and discrimination. Mr. Odom in fact, hired three attorneys to interrogate the complainant about the substance of his DOL complaint and about his safety concerns. Mr. Kappes approached Mr. Odom in June 1988 in an attempt to have complainant fired for raising safety concerns. Numerous retaliatory actions taken against the complainant by his managers and supervisors is fully detailed in the Damages Brief and need not be restated here.

#### Authority

NRC requirements under 10 C.F.R. 50.7 and the Employee Protection Provision of the Act provide that:

... no employer subject to the provision of the [the Act] ... may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, ... engaged in any of the activities specified in subsection (b) below:

(b) Any person is deemed to have violated the particular federal law and these regulations if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has

(1) commenced, or caused to be commenced a proceeding under [the Act] or a proceeding for the administration or enforcement of any requirement imposed under such federal statute;

(2) testified or is about to testify in any such proceeding; or

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(3) assisted or participated, or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purpose of [the Act].<sup>1</sup>

### Congressional Intent of Statute

The Employee Protection Amendment to the Act is remedial in nature and should be broadly construed by the Secretary of Labor (SOL) and the courts. See, DeFord v. Secretary of Labor, 700 F.2d 281, 286 (6th Cir. 1983). The amendment was passed in order to help enforce the ERA and protect public health and safety.<sup>2</sup>

In passing the ERA, Congress intended on employees in the nuclear industry to assist in the enforcement of regulations to protect public health and safety. See, Rose v. Secretary of Dept. of Labor, 800 F.2d 562, 565 (6th Cir. 1986) (J. Edwards concurring). In that matter, Justice Edwards expressed that Congress' intent in passing the nuclear whistleblower protection provision, 42 U.S.C. 5851, was to "encourage employees" to report "unsafe practices in one of the most dangerous technologies mankind has invented." Justice Edwards identified the broad remedial purpose behind the whistleblower protection provisions as follows:

... If employees are coerced and intimidated into remaining silent when they should speak out, the results can be catastrophic. Recent events here and around the world underscore the realization that such complicated and dangerous technology can never be safe without constant human vigilance. The employee protection provision involved in this case thus serves the dual function of protecting both employees and the public from dangerous radioactive substances....

800 F.2d at 565.

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<sup>1</sup>The relevant federal statute to this case is the Atomic Energy Act of 1954, as amended, 42 U.S.C. ss.2011, et. seq.

<sup>2</sup>See. Congressional History of the Act at 1978 U.S. Code Cong. & Ad. News 7303.)



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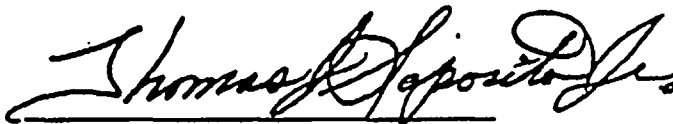


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WHEREFORE, Petitioners have established a basis for requesting agency action. Petitioners hereby request that the NRC grant the requests delineated in their April 23, 1997 petition as supplemented in this supplemental petition under 10 C.F.R. 2.206.

RESPECTFULLY SUBMITTED, this 11th day of May, 1997.

NATIONAL LITIGATION CONSULTANTS



Thomas J. Saporito, Jr.  
Executive Director

cc: w/o attachment

Hon. Bill Clinton, President  
United States of America  
The White House  
1600 Pennsylvania Ave., NW  
Washington, D.C. 20500

Oscar DeMiranda, SAC  
U.S. N.R.C. Region II  
101 Marietta St., NW, Suite 2900  
Atlanta, GA 30323

Louis Reyes, Administrator  
U.S. N.R.C. Region II  
101 Marietta St., NW, Suite 2900  
Atlanta, GA 30323

cc: attachment  
Carolyn Evans, Esq.  
U.S. N.R.C. Region II  
101 Marietta St., NW, Suite 2900  
Atlanta, GA 30323

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