

## National Litigation Consultants

### Nuclear Whistleblower Specialists

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April 23, 1997

Hon. Shirley Jackson, Chairman  
U.S. Nuclear Regulatory Commission  
White Flint Building  
Washington, D.C. 20555

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

Dear Chairman Jackson:

In accordance with U.S. Nuclear Regulatory Commission ("NRC") regulations<sup>1</sup> found at Title 10 of the Code of Federal Regulations, the undersigned and National Litigation Consultants ("NLC"), (hereinafter "Petitioners") submit this request for action by the NRC with respect to 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 as fully described below:

#### Specific Request

1. that the NRC take enforcement action to modify, suspend, or revoke FPL's operating licenses for all four nuclear reactors until such time as the licensee can sufficiently demonstrate to the NRC and the public that employees at the licensee's nuclear facilities are exposed to a work environment which encourages employees to freely raise safety concerns directly to the NRC without being required to first identify their perceived safety concerns to the licensee;
2. that the NRC take escalated enforcement action in accordance with 10 C.F.R. 2.202 and/or in accordance with other NRC regulations due to discriminatory practices of the licensee in violation of NRC regulations at 10 C.R.F. 50.7 and/or in accordance with other NRC regulations; and that the enforcement action be escalated retroactive from the initial occurrence of the violation by the licensee;

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<sup>1</sup>This provision is contained in Subpart B, Section 2.206 of the NRC's regulations.



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3. that the NRC, through its Agency's Atomic Safety and Licensing Board ("ASLB") conduct a public hearing and permit Petitioners leave to intervene at said hearing to perfect an evidentiary record in consideration of whether the licensee has violated NRC requirements and/or regulations with respect to the operating licenses the Agency issued to the licensee to allow operation of its nuclear facilities;
4. that the NRC require the licensee to post a written notice along side each NRC Form-3 currently posted at the licensee's nuclear facilities, which alerts employees that they can directly contact the NRC about safety concerns without first having to identify their safety concerns to the licensee;
5. that the NRC require the licensee to provide a copy the aforementioned posted communications to all employees at the licensee's nuclear facilities and to take necessary measures to insure that all employees are made aware of those communications through the licensee's General Employee Training Program;
6. that the NRC require the licensee to provide the Agency with written documents authored by Mr. James Broadhead, or other officer of the licensee under affirmation that the Agency's requirements as described above in items 4 and 5 have been fully complied with.

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

On May 14, 1996, the NRC issued a policy statement "to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation." Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation: Policy Statement, 61 Fed. Reg. 24336 (May 14, 1996). The policy statement, *inter alia*, stresses, among other things, that management should provide leadership in this regard . . . 61 Fed. Reg. at 24340.

The NRC has authority to penalize its licensees. The NRC can take enforcement action pursuant to 10 C.F.R. 50.7 based on discrimination by an employer even though the Department of Labor ("DOL") has not made a prior determination that section 210 of the Energy

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Reorganization Act<sup>2</sup> ("ERA") was violated. Notably, the NRC and DOL have complementary, yet independent authorities and responsibilities in protecting employees from discrimination and retaliation for raising matters bearing on nuclear safety. Section 210/211 empowers DOL to grant remedies directly to employees who have suffered discrimination for engaging in protected activities; it does not limit NRC's authority under the Atomic Energy Act to investigate alleged discrimination and take action to combat it. See, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), 51 Fed. Reg. 25127 (Dockets: 50-413, 50-414, EA-84-93)(order imposing civil money penalty, July 10, 1986).

The NRC has a Congressional mandate to investigate licensees general employment practices to determine whether those practices are having a "chilling effect" on would-be whistleblowers. That mandate is quite distinct from that of the DOL:

"The [NRC's] investigatory powers and those of the [DOL] under [5851] neither serve the same purpose nor are invoked in the same manner. They are, rather, complementary, not duplicative . . . Under [5851] the [DOL] apparently lacks two remedial powers--which the [NRC] possesses-- . . . the right to take important action against the employer, and the . . . authority to do so immediately. . . . The [DOL] may order only reinstatement and back pay--not correction of the dangerous practices themselves." *Union Electric*, 9 N.R.C. at 138; cf. 42 U.S.C. 5851(j)(2)(a DOL finding that a retaliation claim has no merit "shall not be considered by the [NRC] in its determination of whether a substantial safety hazard exists").

See, Construction Products Research, Inc., 1996 U.S. App. LEXIS 202 (2d Cir. 1996).

On June 3, 1994, the Secretary of Labor ("SOL") found Respondent FPL to have violated the ERA when it discharged an employee who engaged the NRC with safety concerns at the Turkey Point nuclear station. The SOL's findings were further supported in an Order of February 15, 1995. The matter was remanded to the Administrative Law Judge ("ALJ") for further

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<sup>2</sup>The ERA was amended by the National Energy Policy Act of 1992 and is now coded as section 211.

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consideration and issuance of a new recommended decision and order. See, Saporito v. Florida Power & Light Company, Case Nos. 89-ERA-07 and 17 (consolidated).

The parties in that matter filed post-hearing briefs on April 22, 1997, in support of their respective positions in that matter. Petitioners have enclosed a copy of Complainant's brief as further construction in support of their basis in this petition.

Subsequent to FPL's illegal termination of the employee in Case Nos. 89-ERA-7/17, the NRC failed to take any enforcement action against the licensee with respect to 10 C.F.R. 50.7, and instead has taken the posture to await a finding by the DOL notwithstanding several requests for Agency action. See, 10 C.F.R. 2.206 Turkey Point Nuclear Facility, (July 7, 1989).

As a direct result of the NRC's impotence and failure to timely implement its mandate in protecting licensee employees and the general public, a "chilling effect" was instilled at FPL's nuclear facilities and has continued to dissuade employees from raising safety concerns. Moreover, FPL continues to discriminate against its employees in violation of NRC regulations at 10 C.F.R. 50.7. Again, the licensee's continuing pattern and practice of discriminating against employees who engage in protected activity is a direct result of the NRC's lax attitude in taking prompt enforcement action. See, Pillow v. Bechtel, Case No. 87-ERA-35, Sec'y. Dec. Jul 19, 1993, slip op. at 22, involving an employee of a contractor of FPL at Turkey Point; Robainas v. Florida Power & Light Company, 92-ERA-10, D&RO Jan. 19, 1996; Ass't Sec'y & Fry v. Florida Power & Light Company, 96-STA-7 (ALJ Oct. 24, 1997); Phipps v. Florida Power & Light Company, 95-ERA-53 (Sec'y Feb. 21, 1996); Dysert v. Florida Power & Light Company, 92-ERA-26 (Sec'y June 28, 1993); Kleiman v. Florida Power & Light Company, 91-ERA-50 (ALJ Jan. 7, 1992); Young v. Florida Power & Light Company, 93-ERA-30 (Sec'y July 13, 1995); and Collins v. Florida Power & Light Company, 91-ERA-47 (ALJ Dec. 4, 1992).

The Petitioners and the public are entitled to have the NRC take enforcement action against FPL to insure that the channels of information from FPL's employees to the NRC remains open and unfettered by discriminatory practices of FPL. In that vein, Petitioners' request for a public hearing before the NRC's ASLB is wholly warranted as a matter of public policy and should be granted by the NRC.

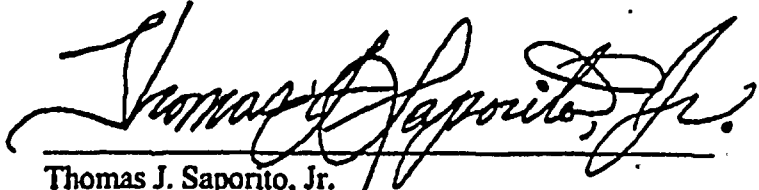


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For all the above stated reasons, Petitioners seek NRC action in this matter.

RESPECTFULLY SUBMITTED, this 23rd day of April, 1997.

NATIONAL LITIGATION CONSULTANTS



Thomas J. Saporito, Jr.  
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cc: w/o attachment

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