

**National Litigation Consultants**

*Nuclear Whistleblower Specialists*

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February 26, 1998

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 fear of reprisal by the licensee;
2. that the NRC take escalated enforcement action in accordance with 10 C.F.R. 2.202 and/or in accordance

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

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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;

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 fear of reprisal from 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;
7. that the NRC initiate actions to cause an investigation into the circumstances surrounding recent adverse employment actions taken against licensee employee Mr. John Giles and other licensee employees at the St. Lucie Nuclear Station as a direct or indirect result of the employees' engagement in protected activities as defined under 10 C.F.R. 50.7 and Title 10 of the Code of Federal Regulations and under 42 U.S.C. 5851; and to determine if a "hostile work environment" exists at the St. Lucie Nuclear Station; and to determine if a "chilling effect" has been sufficiently instilled at the licensee's nuclear station to dissuade employees

from raising safety concerns; and to determine if the licensee' Employee Concerns Program is effectively utilized by the employees and whether the employees are comfortable or even willing to utilize the program; and to determine whether licensee management needs further training in addressing employee concerns and training in developing interpersonal skills to encourage employees to utilize the concerns program; and

8. that the NRC initiate actions to formulate an Augmented Maintenance Inspection Team ("AMIT") to determine why the licensee' performance at the St. Lucie Nuclear Station has continually deteriorated over the last several years; to determine if licensee layoffs "restructuring" has resulted in a core work force that is not properly trained or skilled to properly maintain the balance of the plant; to determine whether the licensee has an adequate number of employees to safely operate and maintain the St. Lucie Nuclear Station; and to determine whether FPL management has acted impudently in purchasing other power stations in the Eastern United States for which said actions have directly or indirectly resulted in management becoming overwhelmed by strained resources overall.

#### Basis and Justification for Request

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).

As a direct result of the NRC's impotence and failure to timely implement its mandate in protecting licensee employees under 10 C.F.R. 50.7 and other federal regulations, 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. Mr. John Giles, a former licensee employee at the St. Lucie Nuclear Station has filed a complaint as did one or more of his coworkers, alleging retaliation by FPL for engaging in protected activities. Moreover, FPL has engaged in a spate of punitive suspensions at the St. Lucie Nuclear Station against numerous employees for what the licensee alleges to be procedure violations. Mr. Richard Curtis, local president, of the International Brotherhood of Electrical Workers ("IBEW") opined that the disciplined workers had no history of disobedience and some had never taken a sick day before being sent home last week. Previously, the punishment for failing to follow plant procedures has been a written letter of reprimand or a day's suspension. Mr. Curtis was quoted by a local newspaper stating that, "The more (plant management) uses tactics of fear and intimidation, the more we're going to stick together." The licensee vowed to continue the increased discipline policy; however, the licensee made no mention of a failed training program at the station or a desire of the licensee to increase and enhance training of employees in the proper use of plant procedures. Thus, one can infer that the licensee's real intentions are to silence the work force from engaging in protected activities at the station due to the fact that the plant employees had more complaints substantiated by federal investigators last year than any of the nation's 65 nuclear plants.

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 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).

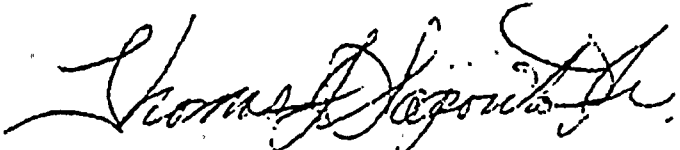
Petitioners and the public are entitled to have the NRC conduct an investigation and to take enforcement action against FPL to insure that the channels of information from FPL's employees to the NRC remains open and unfettered by discriminatory practices of FPL. In that vein, Petitioners' request for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

Petitioner have enclosed relevant newspaper articles for consideration by the NRC.

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

RESPECTFULLY SUBMITTED, this 26th day of February, 1998

NATIONAL LITIGATION CONSULTANTS



Thomas J. Saporito, Jr.  
Executive Director

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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.

cc:

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Inspector General  
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General Media Distribution List (NLC)

## FPL workers pass the hat to ease effect of suspension

By Eric Alan Barton  
of the News staff

HUTCHINSON ISLAND — St. Lucie Nuclear Plant employees are scheduled this morning to ask their colleagues to donate money for fellow workers they say were unfairly suspended by plant officials.

Workers will be collecting donations at the Hutchinson Island plant's two main entrances from 6 to 7 a.m. today, and will give the money to five employees suspended for three days without pay last week, said Rick Curtis, local president of the International Brotherhood of Electrical Workers.

Plant officials say last week's spate of punitive suspensions is meant to keep employees from making procedural errors such as the ones that have plagued the plant in recent years.

"What we're trying to do here is make sure the employees know that they are responsible and accountable for their work," said Dale Thomas, a spokesman for Florida Power and Light Co., the plant's owner. "We want to make sure they're following procedures that are meant to make the plant safe."

The collection comes a week before a U.S. Labor Department investigator is scheduled to interview 53 plant employees about a worker who was fired two months ago.

Please see FPL on A2

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# The Stuart News

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## FPL

■ CONTINUED FROM A1

The worker was fired after refusing to sign a waiver promising he would not break a new policy by working overtime hours not approved by a computer system. Curtis said the employee wanted to talk to an attorney before signing the form and was fired for disobedience.

The plant has taken criticism lately from employees who claim managers fail to answer employees' safety concerns. Plant employees had more complaints substantiated by federal investigators last year than any of the nation's 65 nuclear plants, according to re-

cords released recently to *The Stuart News/Port St. Lucie News*.

Of the code violations found at the St. Lucie plant, overtime abuses surface most often, according to Nuclear Regulatory Commission records.

Curtis said the union started its "discipline relief fund" after five longtime workers were suspended for three days without pay last week for doing work that did not follow plant regulations.

The workers had no history of disobedience and some had never taken a sick day before being sent home last week, he said. Previously, the punishment for failing

to follow plant procedures has been a written letter of reprimand or a day's suspension, Curtis said.

Curtis didn't have the details Wednesday of what mistakes the employees had made.

"The more (plant management) uses tactics of fear and intimidation, the more we're going to stick together," Curtis said. "Right or wrong, what they have done did not warrant a three-day suspension."

Thomas said the stepped-up discipline is the same corrective action taken at FPL's Turkey Creek Nuclear Plant in Miami-Dade County after a string of errors there in the late 1980s caused

its performance rating to drop to among the worst in the nation.

Most of St. Lucie's problems are a result of employees who do not follow procedures, Thomas said. The increased discipline policy will continue until the number of errors has been reduced, he said.

The Labor Department investigator was scheduled to interview plant workers Wednesday but postponed the visit until next week, Curtis said. The investigator is scheduled to spend 15 to 45 minutes with each of 53 employees who might have knowledge of the fired worker's case or might have a dispute with the policy themselves.



## The Palm Beach Post

THURSDAY, FEBRUARY 19, 1998

# Problems force FPL nuclear shutdowns

By John Murawski  
*Palm Beach Post Staff Writer*

JUNO BEACH — Florida Power & Light Co. has shut down units at both of its nuclear plants — in St. Lucie County and at Turkey Point in Miami-Dade County — because of mechanical problems.

The malfunctions don't threaten public safety and won't affect customers' service. Both plants should be back up soon, FPL said, and the shutdowns won't be a drain on FPL's power supplies.

"We're not having to buy power," company spokeswoman Stacey Shaw said. "It's a very mild time of year, so we're able to generate power with our other facilities."

At St. Lucie, officials had been tracking a problem in the Unit 1 reactor cooling system for about a month. They shut the unit down Monday night after the problem intensified in one of the pumps. The pump, which carries water heated to 600 degrees and compressed to 2,250 pounds per square inch, wasn't decompressing water as required in the cooling process. FPL plans to reactivate the unit by early next week.

Turkey Point's Unit 3 was shut down at 4:38 a.m. Monday, after alarms alerted plant officials that valves directing steam to the main turbine had closed. Minutes later, a pipe developed a steam leak. FPL said the unit, near Miami, should be back in service today.

The Nuclear Regulatory Commission will investigate whether operator error played a part in the problems and whether FPL should be cited or fined.

"There's no indication at this point that employee error was involved," said Ken Clark, a NRC spokesman.

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THE PALM BEACH POST

FRIDAY, JANUARY 16, 1998

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# FPL powers up stock while customers wait

If words could electrocute, Florida Power & Light Co. just got zapped by the Florida Public Service Commission: "By virtually every measure examined," the PSC concluded in a report released last week, "FPL distribution service quality has declined over the period 1992 through 1996."

OK, but what can the commission, and Floridians in general, do about it?

The answer is, little except talk. Quality of service is considered when setting rates, and the commission will accept evidence about it, but Public Counsel Jack Shreve says he has never seen poor service affect a rate. The report that shocked FPL mentions ways other states attempt to tie rates to service but suggests that those methods can produce bad as well as good consequences. The PSC can levy fines. But fines don't repair lines.

The PSC compared the state's largest power company with the next three. In length of interruptions and customer complaints, FPL has been the worst since 1992. Only in interruptions per 1,000 customers was FPL out-fumbled, by Florida Power. But that company's record leveled off; FPL's is worsening.

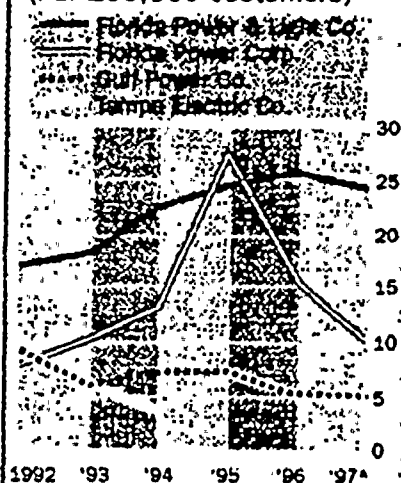
FPL cut response time from 55 minutes to 45 for top-priority calls since 1993. But longer responses for other calls increased the average to 81 minutes from 61.

The company says this is old news. Indeed, the PSC noted FPL's "Reliability 2000 Plan" and said "substantial progress" has been made.

It all happened because the company cut jobs. The maintenance staff shrank from 894 to 762 from 1995 to mid-1997. James Broadhead, chairman of the parent company, FPL Group, put the company on a course to thin down and boost productivity (and stock prices) in expectation of competition in the power industry as it has come to the phone industry. FPL Group agreed to buy 35 power plants in Maine this month to get in on competition expected to open in New England this year.

Coincidentally, this week's freeze started New Englanders rethinking the idea. They are asking: When power is out, whose customers have it restored

## Number of service inquiries (Per 100,000 customers)



SOURCE: Florida Public Service Commission  
Division of Consumer Affairs statistics of the  
Florida Electric Utility Industry

MARK HENFELL/Staff Artist

first? The PSC notes that "even in an era of retail competition, where a customer has a choice of generation suppliers, the exact same local distribution system will provide that customer's power through its power lines."

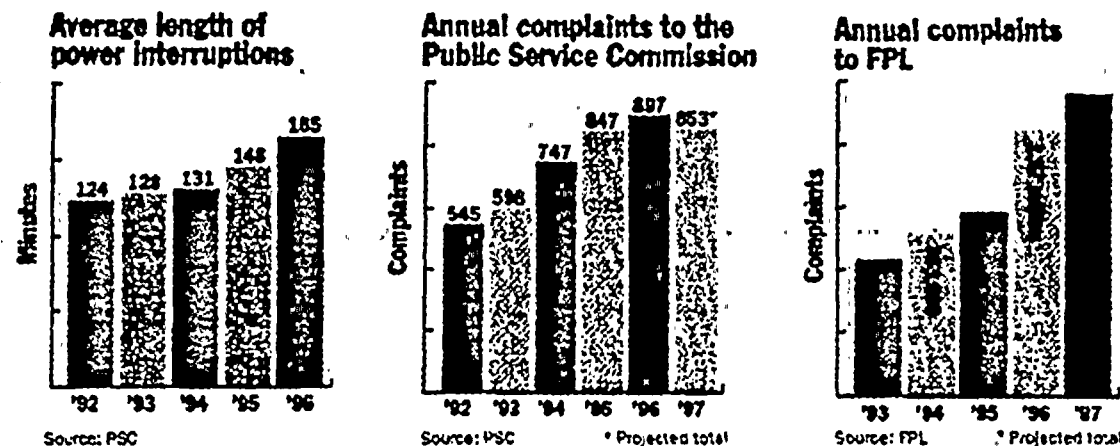
If competition only means better service for staying with the old company than customers get while saving money with a new one — but less service than they used to get — everyone loses except stockholders. If that turns out to be the case, Mr. Broadhead is driving FPL up a dead-end street.

Florida electric rates are low compared with other areas, but FPL's service is poor compared with other Florida companies. The PSC report, "Review of Electric Service Quality and Reliability," is available by writing to the Public Service Commission Division of Research and Regulatory Review, 2540 Shumard Oak Blvd., Tallahassee, Fla. 32399-0850 or by calling (850) 413-6800.

When people read all of what the PSC said about FPL, the utility may be hounded into providing better service. That would help.

## Complaining about FPL

In a lengthy study, state regulators said that FPL's service quality had declined over the past 5 years by nearly every measure.



ROB BARGE/Staff Artist

## Layoffs helped stock, hurt service

### FPL

From 1A

FPL's slippage coincided with a series of well-publicized citations by federal regulators for violations at the company's nuclear power plant in St. Lucie County.

The years covered by the commission's study also saw FPL move ahead with an aggressive program of downsizing that trimmed hundreds from the company's payroll, while transforming FPL into a darling on Wall Street.

The layoffs were undertaken in the name of competitiveness, in preparation for the day when utility deregulation comes to Florida — the day when customers would be able to choose their electric company much as they pick their long-distance provider today.

But the rising customer complaints tell a different story than the upward movement of FPL stock, which nearly doubled in value in the past several years, closing at \$57 a share Friday.

"In a future competitive arena in which retail (competition) provides a choice of electric service ... to customers," the commission warned in its report, "the quality of service issues will be of critical importance to the (power) suppliers, as well as to customers."

Armando Olivera, FPL's new vice president of distribution, said that increasing customer complaints paint a misleading picture. Olivera said the increase reflects the fact that FPL, which serves 7.5 million Floridians, adds thousands of new customers every year.

"If you look at those early surveys, the customer satisfaction level actually kept increasing," Olivera said. "It's hard to say the customer perceived there was actually a problem."

But the problems are readily apparent in the commission's report. The regulatory agency said that cutbacks in tree trimming in the early 1990s are partly to blame for FPL's declining performance.

Customers today also are bet-

ter able to tell when power has been interrupted: video players, digital clocks and computers register the slightest disruption in electricity.

"Twenty years ago, you wouldn't know if your electric alarm clock might be two or three minutes off. Now, you come home and you see your VCR blinking," said Carl Vinson, who oversaw the study as senior management analyst in the commission's Research and Regulatory Review Division.

"It's as if the customers have a much more sensitive electrical monitors at home that give them a much more accurate picture of the level of service they're receiving."

Vinson said that FPL has demonstrated that it is serious about improving its performance. But he also said the commission will monitor the utility's efforts to make sure the promises are kept.

Vinson said the commission's surest method for pressuring utilities to improve is by publicizing negative findings

THE PALM BEACH POST

SATURDAY, JANUARY 10, 1998

# Service from FPL in decline, state says

A report by regulators found Florida's largest utility's service has dropped, 'by virtually every measure examined.'

By John Murawski  
*Palm Beach Post Staff Writer*

State regulators have confirmed what many Florida Power & Light customers have been saying for years: The state's largest utility is not as dependable as it used to be.

Power interruptions have increased in number and last longer each year; and it's taking increasingly longer for FPL's trouble-shooters to fix reported problems. Those are the conclusions of a long-awaited study released Friday by the Florida Public Service Commission.

"By virtually every measure examined, FPL distribution service quality has declined," the report said. "It is clear that problems affecting service quality were increasingly an issue of concern to FPL's customers."

The commission decided to study the power company's service reliability after an increase in customer complaints in recent years. The report examines utility service from 1992 to 1997, looking at the performance of FPL along with that of Florida Power Corp. in St. Petersburg, Gulf Power Co. in the Panhandle and Tampa Electric Co.

An FPL spokeswoman said the report depicts the past, and that the company is moving quickly to improve service quality.

"The report of the PSC is history," FPL's Kathy Scott said Friday. "Many of the programs are already in place to take corrective measures."

Among the fixes FPL promises: \$460 million pumped into programs for replacing cables and transformers, deploying master trouble-shooters and increasing tree-trimming. FPL, which admits to the problems outlined by the commission, also made top-level personnel changes and conducted internal stud-

# FPL is buying into Maine

The purchase of 35 power plants will give FPL control of 520,000 accounts there.

By John Murawski  
*Palm Beach Post Staff Writer*

**JUNO BEACH** — In a move that will provide valuable training for the day it has to hustle for customers in Florida, the parent company of Florida Power & Light has agreed to buy 35 power plants from Maine's largest electric company.

FPL Group's announcement Tuesday comes just 26 months before Maine is scheduled to allow utilities to compete for residential, commercial and industrial business. FPL's Maine operations are expected to provide the company with a learning laboratory, analysts say.

The \$846 million acquisition also will give FPL access to two other New England states — which, like Maine, are moving toward competition. Massachusetts and Rhode Island are scheduled to begin deregulating their utilities this year.

"It will teach them how to compete for a customer," said Wall Street analyst Daniel Ford, managing director at HSBC James Capel in New York. "They'll be involved in selling electricity to anyone who will buy it."

FPL is buying virtually all of Central Maine Power Co.'s assets. The buyout will give FPL a customer portfolio that includes 520,000 residential, commercial and industrial accounts.

In addition, FPL announced its intention to build three power plants in Maine. The construction would more than double the megawatt output of Central Maine Power's 35 facilities.

Also on Tuesday, FPL announced it will buy two power plants outside of Maine, one near Boston and the other near New York. The plants have

The Palm Beach Post

WEDNESDAY, JANUARY 7, 1998

2/27

EDO Principal Correspondence Control

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DUE: 04/06/98

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FINAL REPLY:

Thomas J. Saporito, Jr.  
National Litigation Consultants

TO:

Chairman Jackson

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO:

Collins, NRR

DESC:

ROUTING:

ITION UNDER 10 CFR 2.206 REQUEST FOR AGENCY  
ION -- FLORIDA POWER AND LIGHT COMPANY,  
ST. LUCIE, UNITS 1 & 2, AND TURKEY POINT, UNITS  
3 & 4 - EMPLOYEES RAISING SAFETY CONCERNS  
(Charles Bogacki)

Callan  
Thadani  
Thompson  
Norry  
Blaha  
Burns  
Cyr, OGC  
JGoldberg, OGC  
BGleaves, NRR  
Lieberman, OE

DATE: 03/04/98

ASSIGNED TO:

CONTACT:

NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS: