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June 20, 1990

BY FEDERAL EXPRESS

The Honorable Peter Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
4350 East West Highway
Bethesda, MD 20814

The Honorable Elizabeth B. Johnson
Administrative Law Judge
Oak Ridge National Laboratory
Bethel Valley Road, Building 3500
Oak Ridge, TN 37831

The Honorable Dr. George C. Anderson
7719 Ridge Drive, N.E.
Seattle, WA 98115

RE: In the Matter of Florida Power and Light Company
(Turkey Point Nuclear Plant, Units 3 and 4):
Docket Nos. 50-250-OLA-5/ 50-251-OLA-5:
ASLBP No. 90-602-01-OLA-5

Dear Chairman Bloch and Judges;

This firm has been retained to represent Thomas J. Saporito and the Nuclear Energy Accountability Project (NEAP) for the sole purpose of advising the organization and Mr. Saporito on responding to the June 15, 1990, Memorandum and Order (Prehearing Conference Order: Parties and Contentions) of this Board, and to the extent necessary appearing before this Board to address and resolve the issue of standing of NEAP and/or Mr. Saporito. A Notice of Appearance is enclosed. In addition to the issue of standing, is the allegation of Mr. Saporito to this Board that the Licensee engaged in activity that violated the Employee Protection Provision of the Energy Reorganization Act, as amended, 42 USC 5851, specifically in regards to his participation as an intervenor in these proceedings.

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In order to provide competent counsel to NEAP and Mr. Saporito on these matters, and in order to assist this Board in resolving the issues before it, I respectfully request an additional two weeks to respond to the Board's June 15, 1990, Order. The Board conditionally admitted NEAP as a party to the proceeding "based solely on its representation of its member, Mr. Thomas J. Saporito." (Order, at 50.) The Order conditioned NEAP participation in this proceeding on Mr. Saporito serving on the Board "a pleading in which he personally stated his willingness to be represented by NEAP," on or before June 19, 1990. (Id.)¹

I first read the portion of the Board Order that dealt with standing on Monday, June 18, 1990. I did not receive the entire Order, or any of the pleadings of the Staff or the Licensee in this case until noon today. I have only had the opportunity to scan the pleadings. However, it is apparent to me that the issues of standing, and potential intimidation of Mr. Saporito, need to be clarified for the Board. Although I will not attempt to set forth the entire basis of this unusual request I would beg the indulgence of the Board on the following points:

1. Mr. Saporito is not a lawyer. He has attempted to argue the issue of standing before this Board to the best of his ability. Standing is a uniquely legal issue, and the subtle differences outlined by the Courts and the NRC in interpreting whether or not an individual or an organization has standing is not a simple task.

Notwithstanding the difficulty that this Board has been presented with in reaching its conclusion about standing the Board reached a determination that NEAP could have standing, on the premise that Mr. Saporito was employed in the Miami area as an instructor for ATI Career Training Institute (ATI). (Order, at 2, fn 2)

Unfortunately, that is no longer true. Mr Saporito was terminated on May 10th, 1990, by Dr. Peter Diaz of ATI. This event, and the earlier incidents of March, 1990, are now at issue in a consolidated proceeding before the U.S. Department of Labor, the Honorable E. Earl Thomas, Administrative Law Judge presiding. (Saporito vs. Florida Power and Light and ATI Career Training Institute, 90-ERA-27 and 90-ERA-47.) The issues raised in the DOL proceeding, the alleged intimidation of Mr. Saporito for his participation in these proceedings, brings me to the second basis for my request.

¹ Mr. Saporito, through the undersigned sought and was granted until June 20, 1990, to file a response to the Order. Neither the Licensee nor the Staff objected to the one day extension.

2. Mr. Saporito has raised a very serious charge of being intimidated in the context of his role as an intervenor in these proceedings. He apparently raised it in the present proceeding on the basis of presenting only selected facts and allegations, amongst inappropriate rhetoric. I have reviewed his pleadings and concede that the charges as presented are somewhat emotional and not properly framed. More importantly, the charges lack the factual basis of the events that gave rise to Mr. Saporito's fears and apprehensions about the actions of the Licensee, and thus the Board was never presented with the material and relevant facts that served as the basis for his serious charges.

That is not to say there are no such facts.

I represent Mr. Saporito in his current Department of Labor proceeding, and I understand the basis for his concerns. I also recognize that the Board does not have the benefit of the full and complete information, and thus has reached conclusions on the propriety of the communications of Mr. John Butler to ATI. I also understand that this Board will not tolerate unfounded charges against a party that go to the character and integrity of the participants without due consideration on the gravity of those charges.

However, with all due respect to this tribunal, the Board's conclusions were not based on any factual presentation of evidence or testimony, or a determination of the motives behind the actions. Nor did the Board look at the context in which the letters were sent from the perspective of Mr. Saporito's past association with FPL as a terminated employee with a pending "Whistleblower" claim before the Secretary of Labor. I respectfully suggest that this Board cannot address the issue of intimidation without all the facts. This is particularly true now that Mr. Saporito has been terminated from the very position that serves as the basis of his standing.

Since Mr. Saporito has alleged in the Department of Labor proceeding that his termination was, at least in part, to undermine his participation in these proceedings, it seems inappropriate for the Board to make a factual finding on that charge (without evidence) resolving the issue in favor of the Licensee.²

² The Board's "finding" on the issue of the Butler letters and the lack of a basis to believe the actions were taken to cause harm to Mr. Saporito has been repeatedly and extensively relied on by the Licensee in the DOL forum, to the unfair advantage of Mr. Saporito, who did not ask for a hearing on the matter before this Board; but, rather has sought relief through the Department of Labor.

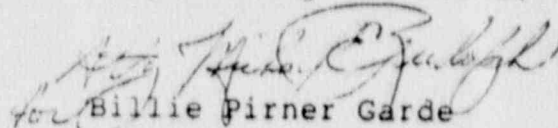
In short, the issue of standing and potential intimidation/harassment are complex. And, respectfully, I need time to evaluate the matter and present to this Board a pleading that will lay out the relevant issues and prepare a motion for reconsideration and/or request for modification of the Board's June 15, 1990, Order on the issue of standing. I also need to evaluate how to proceed before this Board on the issue of deliberate retaliation of the Licensee against Mr. Saporito for participating in this proceeding, if appropriate. However, it doesn't seem logical that the issue could be decided in the Department of Labor context in Mr. Saporito's favor, while being stricken from the record of the very proceeding that is at the heart of his charge.³

In the event that the Board denies this request, I have attached a pleading by Mr. Saporito stating his willingness to be represented by NEAP in this proceeding.

This letter has been prepared while Counsel has been in transit, and without access to 10 C.F.R. 50 Part 2 or any NRC authority, and Counsel apologizes for whatever procedural flaws attend this filing.

I look forward to an Order from this Board providing guidance, and respectfully request a telephone conference call to further discuss the procedural nature of this request if the Board so desire.

Respectfully submitted,


for Billie Pirner Garde

Encl. a/s: Notice of Appearance
Statement of Thomas J. Saporito

BPG/eh
512/bd

³ Counsel needs time to research how the duplicate forum issue has been handled in other NRC licensing cases.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

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In the Matter of)
)
Florida Power & Light Co.)
)
Turkey Point nuclear plant)
(Units 3 and 4))
_____)

Docket Nos.: 50-250-OLA-5
50-251-OLA-5

ASLBP No.: 90-602-01-OLA-5

I hereby certify that a copy of the foregoing documents: Notice of Appearance, Intervenor's Statement to Represent, and Letter to the Board were served on the following by the methods indicated, properly addressed and postage prepaid, on the date shown below:

FEDERAL EXPRESS

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Bethesda, MD 20814

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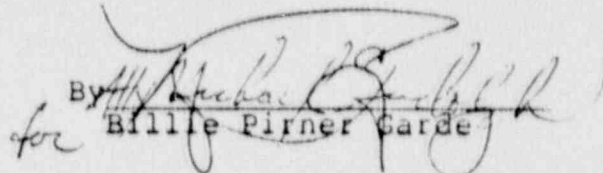
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ATTN: Chief Docketing/
Services Section
(Original plus 3 copies)

Dated this _____ day of _____,
1990, at Appleton, Wisconsin.

By 
for Billie Pirner Garde