

# United States Senate

WASHINGTON, DC 20510-0903

March 17, 1994

Mr. Dennis K. Rathbun  
Director, Office of Congressional Affairs  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Rathbun:

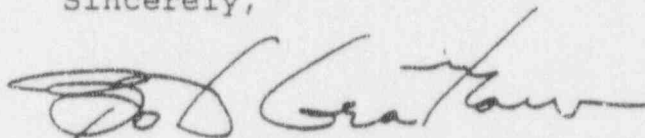
Enclosed is a letter from Mr. Thomas J. Saporito, Jr.

I would appreciate your reviewing his inquiry and providing me with your comments. Please address your reply to my state office: Post Office Box 3050, Tallahassee, Florida 32315, Attention: Ginger Wainner.

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

With kind regards,

Sincerely,



United States Senator

BG/glw

Enclosure

THOMAS J. SAPORITO, JR.

POST OFFICE BOX 7803, JUPITER, FL 33486-7803  
VOICE < FAX > 1-407-745-2118

March 7, 1994

Hon. Bob Graham  
United States Senator  
Subcommittee on Clean Air  
and Nuclear Regulation  
United States Senate  
Committee on Environment and Public Works  
Washington, D.C. 20510-6175

Dear Senator Graham:

My family and I have resided in the State of Florida since 1976. In March of 1982, I obtained employment with the Florida Power & Light Company ("FPL") as an instrument control technician. During the course of my employment at the FPL Turkey Point nuclear station near Miami, Florida in 1988, I identified safety concerns regarding operations at the Turkey Point facility to FPL management and to officials of the Nuclear Regulatory Commission ("NRC"). Shortly after I raised these safety issues to the NRC, my employment at Turkey Point was terminated by FPL management.

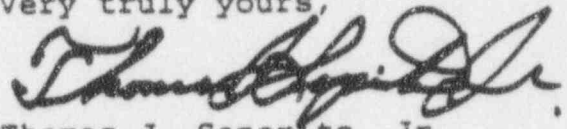
Following my termination from FPL in December of 1988, I filed an employment discrimination complaint with the U.S. Department of Labor ("DOL") against FPL. I also filed a discrimination complaint with the NRC. My DOL complaint in Case No. 89-ERA-7/17 (consolidated) is currently before the Secretary of Labor ("SOL") awaiting a final decision. Since my termination from FPL's Turkey Point nuclear station, the NRC has failed to protect me as an employee who raised safety concerns at a NRC licensed facility and under 10 C.F.R. 50.7.

Most recently, I filed a petition under 10 C.F.R. 2.206, seeking assistance from the NRC. I requested in my 2.206 petition, in part, that the NRC construct and submit an amicus curiae brief to the SOL pursuant to 29 C.F.R. 18.12; 29 C.F.R. 18.10(d); 10 C.F.R. 50.7; and 10 C.F.R. 50.9 regarding issues of fact in DOL Case No. 89-ERA-7/17 (consolidated). See, copy of March 7, 1994 petition under 10 C.F.R. 2.206 attached hereto. The 2.206 petition makes direct reference to citations of law and NRC regulations regarding an employees right to communicate directly to NRC officials concerning safety concerns about

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United States Senator  
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Senator Graham, your cooperation and assistance in this urgent matter is both anticipated and appreciated. I look forward to your timely written response.

Very truly yours,



Thomas J. Saporito, Jr.  
Registered Democrat

cc: w/o enclosures

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Oscar DeMiranda, SACRII  
U.S. Nuclear Regulatory Commission  
101 Mariette St., N.W., #2900  
Atlanta, GA 30323

THOMAS J. SAPORITO, JR.  
POST OFFICE BOX 7603, JUPITER, FL 33468-7603  
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March 7, 1994

Priority Mail Certified:  
P 282 384 450

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Petition Filed Under 10 C.F.R. 2.206 Against The  
Florida Power & Light Company

Dear Sir:

COMES NOW, Thomas J. Saporito, Jr., (hereinafter "Petitioner") pursuant to 10 C.F.R. 2.206, and hereby files his request for specific action by the U.S. Nuclear Regulatory Commission ("NRC") within a reasonable time against the Florida Power & Light Company (hereinafter "Licensee") and operator of the Turkey Point and St. Lucie nuclear stations located in the State of Florida.

Specific Request:

- A. Petitioner requests that the NRC construct and submit an amicus curiae brief to the U.S. Department of Labor ("DOL") pursuant to 10 C.F.R. 50.9; 29 C.F.R. 18.10(d); 29 C.F.R. 18.12; and 10 C.F.R. 50.7 regarding issues of fact in DOL Case Nos. 89-ERA-7/17 (consolidated) concerning the Licensee's retaliatory conduct towards Petitioner during Petitioner's period of employment at the Licensee's Turkey Point nuclear station in 1988 as a direct or indirect result of Petitioner having engaged in "protected activity" under 10 C.F.R. 50.7 and the Energy Reorganization Act of 1974 as amended ("Act"), 42 U.S.C. 5851, Section 210/211.
- B. Petitioner requests that the NRC institute a show cause proceeding pursuant to 10 C.F.R. 2.202 to modify, suspend, or revoke the Licensee's permissive operational licenses authorizing the operation of the Turkey Point nuclear station.

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Petitioner's discharge from the Turkey Point nuclear station in December of 1988.

2. The NRC and DOL have a long standing Memorandum of Understanding ("MOU") which provides for the cooperation of these two government agencies to work together on DOL discrimination complainants as in Case Nos. 89-ERA-7/17 (consolidated). See, 47 FR 54585; December 3, 1982. Thus, while the NRC actions in discrimination cases are normally held in abeyance pending the DOL process, there are times, because of the significance of the issues to public health and safety, that NRC actions are warranted notwithstanding the ongoing DOL process.
3. NRC action in complying with the requests set out above in this petition against the Licensee are warranted for the following reasons:
  - (a) On June 30, 1989, the DOL ALJ issued a Recommended Decision and Order ("RDO") in Case Nos. 89-ERA-7/17 (consolidated) recommending that the case be dismissed. The ALJ's RDO was opposed by Petitioner through his counsel in a March 2, 1994, Reply Brief to the DOL Secretary of Labor ("SOL"). See, copy of Complainant's Reply Brief ("CRB") dated March 2, 1994, and attached hereto.
  - (b) The entire record in Case Nos. 89-ERA-7/17 (consolidated) contains evidence which was completely ignored by the ALJ. The NRC should weigh the entire record in this case in determining whether the Licensee violated the ERA and 10 C.F.R. 50.7 in discharging Petitioner from the Turkey Point nuclear station in December of 1988. See, CRB at p.1.
  - (c) In Case Nos. 89-ERA-7/17 (consolidated), the parties and the ALJ agreed on the six elements that complainant was required to prove in order to establish a prima facie case. The ALJ's conclusion that complainant failed "to show that



DeMiranda and other NRC officials, during these months.

Odom's questioning of Petitioner on November 23, 1988; FPL's placing of Petitioner on restricted status; demeaning job assignments; and Odom's attempted interrogation of Petitioner on November 30, 1988; related directly to Petitioner's protected activity and shortly followed Petitioner's contacts with the NRC and his filing ERA complaints with the DOL. See, CRB at p.7-8.

- (g) The Licensee's actions taken against Petitioner in 1988 as described above constitute a "hostile work environment" under the law. All of the harassment incidents and adverse actions that occurred between May and December, 1988, more than satisfy a prima facie case of "hostile work environment." Mitchell v. APS/ANPP, Case No. 91-ERA-9, slip op. of ALJ, at 36-37 (July 2, 1992). See, CRB at p.8.
- (h) The NRC is mandated by Congress to ensure that a non-hostile work environment exists at facilities licensed to operate by the NRC. The NRC simply cannot tolerate a "hostile work environment" at the FPL Turkey Point nuclear station. Indeed, in Case No. 91-ERA-9 and in Case No. 89-ERA-19, Sarah C. Thomas v. APS/ANPP, the NRC took enforcement action because the licensee allowed a hostile work environment to exist at the Palo Verde Nuclear Generating Station. The NRC's enforcement action taken against Arizona Public Service Company stated, in part, that:

"...Both situations are significant because discrimination may create a chilling effect which could discourage individuals from raising safety issues. Such an environment cannot be tolerated if licensees are to fulfill their responsibility to protect the public health and safety. Thus, licensee management must avoid actions that

uncontested that on two occasions petitioner refused to tell Odom, an FPL vice president, safety concerns that everyone involved knew had already been reported by Petitioner to the NRC. (i.e. DeMiranda and Jenkins and other NRC officials). As a matter of law, an employee's refusal to tell an employer about safety concerns communicated to the NRC cannot be considered insubordination. See, CRB at p.10.

- (k) The ALJ considered Petitioner's conduct to be "insolent", "contemptuous" and "insubordinate" for refusing to be interrogated about his safety concerns by an FPL vice president and for allegedly refusing to be examined by a company doctor after he returned to work from sick leave. The ALJ's conclusion violates precedent of the Secretary which states that:

"...employees engaged in statutorily-protected activity may not be disciplined for insubordination so long as the "activity (claimed to be insubordinate) is lawful and the character of the conduct is not indefensible in its context." The right to engage in statutorily-protected activity permits some leeway for impulsive behavior, which is balanced against the employer's right to maintain order and respect in its business by correcting insubordinate acts. A key inquiry is whether the employee has upset the balance that must be maintained between protected activity and shop discipline. The issue of whether an employee's actions are indefensible under the circumstances turns on the distinctive facts of the case..." See, *Kenneway v. Matlack, Inc.*, Case No. 88-STA-20, slip op. of SOL, at 6-7 (June 15, 1989).

Case No. 89-ERA-7/17 (consolidated) is not a case where the complainant shouted obscenities at management, openly defied work orders or otherwise

safety concerns to the licensee" (see, Respondent's Reply brief at 16), the NRC will contradict its own policies and regulations that expressly recognize the right of employees to bypass management and report their concerns to the NRC directly. NRC Form 3 informs employees that they may contact the NRC directly without first reporting safety concerns to their employers. See, CRB at p.12.

5. The NRC has expressly defined "protected activities" under the ERA and NRC regulations at 10 C.F.R. 50.7(a) to include, but are not limited, to:
  - (i) Providing the Commission information about possible violations of requirements imposed under [the ERA or the Atomic Energy Act];
  - (ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;
  - (iii) Testifying in any Commission proceeding.
6. The interrogation of an employee about safety concerns he or she has communicated to the NRC constitutes discrimination under Section 210 and (now Section 211) of the ERA. See, CRB at p.15-22.
7. The Licensee's request that Petitioner be examined by a company doctor in Case No. 89-ERA-7/17 (consolidated) was not justified and FPL did not prove that Petitioner was insubordinate. See, CRB at p.23-27.
8. The Licensee's disparate treatment of Petitioner was illegal and must be challenged by the NRC. See, CRB at p.28-30.
9. NRC regulations at 10 C.F.R. 50.9 provide that the DOL process is, in fact, an extension of the NRC's authority. Thus, the NRC is required to act on the requests set forth in this petition.