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L-96-306
10 CFR 50.7

DCS
PDR

Mr. James Lieberman
Director - Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Turkey Point Units 3 and 4
Docket Nos. 50-250 and 50-251
EA 96-051 - Notice of Violation and Proposed Imposition of Civil Penalty
(Department of Labor Case No. 92-ERA-010), July 16, 1996


Dear Mr. Lieberman:

In the cover letter transmitting the above-referenced Notice of Violation (NOV) dated July 16, 1996, NRC directed that Florida Power & Light Company (FPL) keep NRC informed of the status of the underlying Department of Labor (DOL) proceeding upon which NRC's proposed enforcement action is based. Accordingly, I am writing to advise you that on November 4, 1996, the Administrative Review Board (ARB) of the DOL issued a Final Order Approving Settlement and Dismissing Complaint in the underlying DOL proceeding (92-ERA-010). A copy of the Final Order is enclosed.

The NOV provides that "FP&L may defer written response and payment of the proposed civil penalty until 30 days after judicial review of this case is completed and a decision based on the review is issued." Since there will be no judicial review of the underlying DOL case, completion of the case has occurred upon ARB approval of the settlement documents and issuance of a final order of dismissal.

FPL interprets the NOV as requiring a response to the NOV within 30 days following final DOL dismissal of the underlying proceeding. FPL will therefore respond to the NOV by no later than December 4, 1996.

Sincerely yours,


T.F. Plunkett
President - Nuclear Division

IE 14/1

Enclosure

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In the Matter of:

REGINO R. DIAZ-ROBAINAS

ARB CASE NO. 97-013

COMPLAINANT,

ALJ CASE NO. 92-ERA-10

v.

DATE: NOV 4 1996

FLORIDA POWER & LIGHT COMPANY

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Settlement Agreement seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge issued a Recommended Decision and Order on October 23, 1996.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 24 C.F.R. § 24.6. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the ERA. See § 4. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

We have therefore, limited our review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA.

Section 14 provides that the agreement will be governed by the laws of Florida. We construe this to except the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the laws and regulations of the United States. See *Phillips v. Citizens' Ass'n for Sound Energy*, Case No. 91-ERA-25, Final Ord. of Dismissal, Nov. 4, 1991, slip op. at 2.

Section 7 provides that the Complainant shall keep the terms of the settlement confidential, with certain specified exceptions. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. § 552 (1988)(FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure. . . ." *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, ARB Case No. 96-141, Final Order Approving Settlement and Dismissing Complaint, June 24, 1996, slip op. at 2-3. See also *Plumlee v. Alyeska Pipeline Services Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6; *Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to FOIA); *Ratliff v. Airco Gases*, Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2 (same).

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the record of this case is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in FOIA would be


applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding.

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70 (1995). ^{2/}

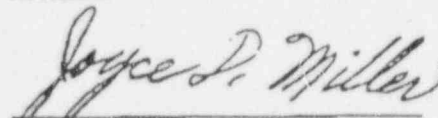
Sections 4 and 5 of the Settlement Agreement could be construed as a waiver by Complainant of any causes of action he may have which arise in the future. As the Secretary has held in prior cases, see *Johnson v. Transco Products, Inc.*, Case No. 85-ERA-7, Sec. Ord., Aug. 8, 1985, such a provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. See also *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir 1986).

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. See Settlement Agreement § 2.

SO ORDERED.


DAVID A. O'BRIEN
Chair


KARL J. SANDSTROM
Member


JOYCE D. MILLER
Alternate Member

^{2/} Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor shall notify the submitter promptly, 29 C.F.R. § 70.26(e); and the submitter will be given a reasonable period of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).