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PETITION RULE PRM 30-62

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OFFICE OF THE
SECRETARY
ADJUDICATIONS

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

**Re: Florida Power & Light Company Comments
Petition for Rulemaking - Employee Protection Training
Docket PRM-30-62, 64 Fed. Reg. 57785 (Oct. 27, 1999)**

Dear Ms. Vietti-Cook:

Florida Power & Light Company (FPL), the owner and operator of the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, hereby submits the following comments on the above-referenced petition for rulemaking. In summary, the petition does not present an adequate factual or legal basis that would justify the proposed rulemaking. Accordingly, for the reasons set forth below, the Nuclear Regulatory Commission (NRC) should deny the petition.

1. FPL agrees that it is essential that nuclear plant licensees maintain a safety-conscious work environment. In order to meet this goal, FPL provides ongoing training on handling safety concerns in an effective and efficient manner to its managers and supervisors. The success of such training is largely attributable to the flexibility permitted by NRC¹ to tailor this training toward the unique issues facing its workforce and to incorporate actual experience into such training. In this regard, a mandatory requirement for employee protection training would eliminate this flexibility. Further, the need for employee concerns training may vary widely, and what is effective for one licensee may not be effective or appropriate for another licensee. As NRC has recognized in rejecting the concept of codifying aspects of a safety-conscious work environment, 63 Fed. Reg. 6235 (1998), "there needs to be flexibility in considering appropriate action to address each situation on a case by case basis." For these reasons, the determination of the need for and content of employee protection training should be left to the discretion of individual licensees.
2. The petitioner asserts that the proposed employee protection training requirement would permit NRC to pursue enforcement actions against individuals under the deliberate misconduct rule, 10 CFR 50.5, for violations of the NRC's employee protection regulations (10 CFR 50.7). The petitioner fails to explain why existing mechanisms to ensure compliance with 10 CFR 50.7, including enforcement actions

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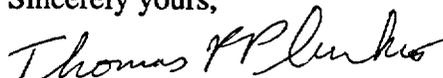
¹ Employee concerns training is encouraged by the NRC's Policy Statement on "Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation," 61 Fed. Reg. 24336 (1996).

against licensees, civil penalties, confirmatory orders, and press releases to announce the action taken, are not sufficient to deter discriminatory behavior or to encourage corrective action. In its decision not to adopt a regulation codifying a safety-conscious work environment, NRC concluded that these tools were adequate to ensure safety-conscious work environments at nuclear plants. Further, NRC has also included monitoring attributes of a safety-conscious work environment as part of the new performance assessment process. Therefore, NRC has ample tools available to redress violations of 10 CFR 50.7.

3. The petitioner also argues that a requirement for employee concerns training would make it easier for the NRC to take personal enforcement action, in that an individual could no longer argue that they were not aware of NRC employee protection requirements. FPL disagrees with the suggestion that every violation of 10 CFR 50.7 necessarily includes a finding of deliberate misconduct against individuals involved in such cases. Many cases involving alleged violations of 10 CFR 50.7 result from good faith attempts by managers and supervisors to deal with difficult situations, and shifting legal interpretations of 10 CFR 50.7 and of the underlying statute (Section 211 of the Energy Reorganization Act), and not from deliberate attempts to discriminate against nuclear workers. While employee concerns training might remove the ability of a particular manager or supervisor to argue that he was not aware of the existence of 10 CFR 50.7, the fact that a manager or supervisor had such training would not automatically mean that the individual has violated the deliberate misconduct rule.
4. The petitioner's assertion that there are frequent violations of 10 CFR 50.7 is not supported by the facts. Even assuming that the petitioner's statistics are correct, the mere fact that there were 23 enforcement actions against licensees for violations of 10 CFR 50.7 in a 3-year time period (less than 8 violations in a single year) does not illustrate a widespread and pervasive industry problem warranting a rule requiring employee protection training.²
5. The petition cites a proposed enforcement action against FirstEnergy as a basis for requiring employee protection training. Since this case has not been finally adjudicated, it is premature to rely on that matter as the basis for rulemaking.

We appreciate the opportunity to comment on the petition for rulemaking.

Sincerely yours,



Thomas F. Plunkett
President
Nuclear Division

² Further, the NRC's web site does not identify whether other non-public sanctions (reprimands, demands for information, orders) were pursued by NRC against the employees involved in these cases.