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Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420

FPL

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

DOCKET NUMBER PROPOSED RULE PR 170 + 171 (65FR16250)

**Re: Florida Power & Light Company Comments**
**Proposed Rule - Revision of FY 2000 Fee Schedules**
**65 Fed. Reg. 16250 (March 27, 2000)**

Dear Ms. Vietti-Cook:

Florida Power & Light Company (FPL), the licensee for 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 rulemaking to assess licensing, inspection, and annual fees under 10 CFR Parts 170 and 171. As an operator of commercial nuclear power plants, FPL would be substantially affected by the proposed fees. FPL requests that NRC withdraw the proposed rule, and republish a new proposed rule that does not unfairly assess power reactor licensees for NRC activities unrelated to reactor regulation.

Under the proposed rule, each reactor licensee will be assessed an annual fee of $2,815,000 per unit. The NRC proposes to escalate the FY 1999 annual fee by 1.4% without consideration of whether the underlying costs have any rational connection to power reactor regulation or whether the assessment is fair and equitable. The proposed rule is flawed because it provides no explanation for the reasons for this increase. For these reasons, NRC should issue a new proposed rule for comment that provides a reasoned explanation for this increase[1] or it should abandon the proposed increase entirely.

In light of the recent improved efficiency of NRC's regulatory processes, the proposed increase cannot be reasonably related to the costs of regulating power reactors. The only specific reason cited for the increase in the Part 171 annual fees is the reduction in the number of materials licensees paying fees as the result of Ohio becoming an Agreement State. 65 Fed. Reg. At 16253. This suggests that the increase in the annual fee for reactor licensees is solely attributable to the costs of regulating materials licensees.

[1] See Connecticut Light & Power Co. v. NRC, 673 F.2d 525, 530-31 (D.C. Cir.), cert. denied, 459 U.S. 835 (1982) (agency commits "error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary").

TEMPLATE = SECY-067

SECY-02

The proposed rule provides no basis for accurately quantifying the precise amount of the surcharge to cover budgeted costs. Based on the surcharge identified in the 1999 rulemaking, approximately $500,000 of the annual fee appears to be a surcharge to cover budgeted costs that have no relation to power reactor regulation. The components of this surcharge that have no relation to reactor regulation are fees for international activities, Agreement State oversight and support, Site Decommissioning Management Plan activities, low-level radioactive waste generic activities, non-profit educational institutions, licensing and inspection of Federal agencies, and costs not recovered from small entities. Notwithstanding the fact that power reactor licensees such as FPL receive no benefit from any of these services, NRC proposes to allocate 80% of these agency costs to reactor licensees.

All of these costs should be recovered through user fees assessed directly to the persons, entities, and/or Federal agencies receiving the benefits of these costs. The Omnibus Budget Recovery Act requires that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." 42 USC 2214(b). Assessment of such fees against reactor licensees is arbitrary, capricious, and violates the Equal Protection requirements of the Due Process clause of the U.S. Constitution because it discriminates against reactor licensees without any rational basis. Accordingly, the costs of such services should be assessed directly to the persons, entities, and/or Federal agencies that benefit from such services.

In summary, NRC should withdraw the proposed rule and issue a new proposed rule that adequately explains the reason for the 1.4% increase in the annual fee and that eliminates the power reactor surcharge that is included in the annual fee that has no relation to power reactor regulation.

FPL appreciates the opportunity to comment on the proposed rule.

Very truly yours,

R. John Gianfrancesco Jr.

R. John Gianfrancesco, Jr.
Manager
Administrative Support and Special Projects