

April 8, 2004

Mr. Thomas Saporito, Executive Director
National Environmental Protection Center
Post Office Box 1173
Jupiter, Florida 33458

Dear Mr. Saporito:

Your petition dated January 25, 2004, and addressed to the U.S. Nuclear Regulatory Commission (NRC) Executive Director for Operations, was received on March 17, 2004, and has been referred to the Office of Nuclear Reactor Regulation pursuant to Title 10, *Code of Federal Regulations* (10 CFR), Section 2.206 of the Commission's regulations. You request that the NRC take immediate action to cause the cold shutdown of the St. Lucie Unit 1 nuclear reactor operated by the Florida Power and Light Company. As the basis for your request, which relates to an exemption from certain requirements of 10 CFR Part 50, Appendix R, you state:

The licensee's request to amend its operating license for Unit-1 is in all purposes a "material change" to its operating license which requires that the public be given an opportunity to intervene at a public hearing in opposition to the NRC granting such a request. The NRC apparently failed to provide the public with an opportunity to intervene at a hearing in this matter as required by its own regulations under Title 10.

Following receipt of your letter, we made numerous unsuccessful attempts to contact you by telephone and e-mail to invite you to discuss your petition with our petition review board (PRB). Our PRB reviewed your submittal on March 31, 2004. The staff has concluded that your submittal does not meet the criteria for consideration under 10 CFR 2.206.

In accordance with NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," the staff will review petitions if the request meets all of the following criteria:

The petition contains a request for enforcement-related action such as issuing an order modifying, suspending, or revoking a license, issuing a notice of violation, with or without a proposed civil penalty, etc.

The facts that constitute the bases for taking the particular action are specified. The petitioner must provide some element of support beyond the bare assertion. The supporting facts must be credible and sufficient to warrant further inquiry.

There is no NRC proceeding available in which the petitioner is or could be a party and through which the petitioner's concerns could be addressed. If there is a proceeding available, for example, if a petitioner raises an issue that he or she has raised or could raise in an ongoing licensing proceeding, the staff will inform the petitioner of the ongoing proceeding and will not treat the request under 10 CFR 2.206.

Your request satisfies only the first and third criteria. The second criterion is not satisfied because you have not provided any technical basis to support a conclusion that the NRC staff's evaluation of the licensee's request is incorrect. The request to revise the exemption was initiated after the licensee identified and reported a factual error regarding vertical separation of cables in the previous evaluation supporting the exemption. Subsequently, licensee personnel verified the as-built conditions through extensive inspections. The licensee's request was supported by a newly-developed fire model based on actual conditions in the containment. The revised exemption was issued based on the NRC staff's evaluation of this fire model.

Also, your assertion that this was a request to amend the operating license, which should have provided an opportunity for intervention at a public hearing, is incorrect. It was a revision to a previously issued exemption and the regulatory process for issuing exemptions does not require a public hearing.

Your letter also asserts that the discrepancy in vertical separation between critical trains indicates that the licensee misled the NRC in 1985, but you provided no new information to support this claim. A review of the historical documentation associated with the exemption indicates that the discrepancy apparently resulted from the NRC reviewer misinterpreting the licensee's description of the cables as being on different containment elevations that were separated by approximately 25 feet. The fact that the error was subsequently identified and reported by the licensee also does not indicate an attempt to mislead. In its report, the licensee acknowledged a deficiency in its review of the NRC staff's safety evaluation and stated that administrative controls had been established to ensure that future safety evaluations would be reviewed for any discrepancies with its submittals.

However, in response to your request, your letter has been referred to the Office of the Inspector General.

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

/RA by E. J. Leeds for/

Ledyard B. Marsh, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-335

Enclosure: NEPC 2.206 Request

cc: See next page

Your request satisfies only the first and third criteria. The second criterion is not satisfied because you have not provided any technical basis to support a conclusion that the NRC staff's evaluation of the licensee's request is incorrect. The request to revise the exemption was initiated after the licensee identified and reported a factual error regarding vertical separation of cables in the previous evaluation supporting the exemption. Subsequently, licensee personnel verified the as-built conditions through extensive inspections. The licensee's request was supported by a newly-developed fire model based on actual conditions in the containment. The revised exemption was issued based on the NRC staff's evaluation of this fire model.

Also, your assertion that this was a request to amend the operating license, which should have provided an opportunity for intervention at a public hearing, is incorrect. It was a revision to a previously issued exemption and the regulatory process for issuing exemptions does not require a public hearing.

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Sincerely,

/RA by E. J. Leeds for/

Ledyard B. Marsh, Acting Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

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