* redacted copy

FPL Energy
Seabrook Station

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November 19, 2004
SBK-L-04120
Docket 50-443

Mr. Samuel J. Collins
Regional Administrator
U.S. Nuclear Regulatory Commission
Region I Office
475 Allendale Road
King of Prussia, PA 19406-1415

Subject: NRC Letter to FPL Energy Seabrook, LLC dated October 20, 2004

Dear Mr. Collins:

FPL Energy Seabrook, LLC (FPL Energy Seabrook) hereby responds to the NRC's letter to FPL Energy Seabrook dated October 20, 2004 regarding a case of alleged employment discrimination by Williams Power Corporation against one of its employees. FPL Energy Seabrook 's response is contained in the enclosure to this letter.

The enclosed response contains personnel information that is exempt from disclosure pursuant to 10 CFR 2.390. Accordingly, please limit distribution of this information accordingly and do not place this information in the NRC's Public Document Room.

Please contact Mitchell S. Ross, Managing Attorney, FPL Energy Seabrook at 561-691-7126 should you have any questions regarding FPL Energy Seabrook's response to the NRC's letter.

Sincerely yours,

Mark E. Warner
Site Vice President

Subscribed and sworn to before me this 19 day of November, 2004.

MICHAEL D. O'KEEFE
MY COMMISSION EXPIRES FEB. 5, 2008
NOTARY PUBLIC
NEW HAMPSHIRE

Mr. Samuel J. Collins, Regional Administrator

SBK-L-04120
Docket 50-443

cc: US Nuclear Regulatory Commission, Document Control Desk
V. Nerses, NRC Project Manager, Project Directorate I-2
G. T. Dentel, NRC Senior Resident Inspector

CONTAINS PERSONNEL INFORMATION
EXEMPT FROM DISCLOSURE
10 CFR 2.390

FPL ENERGY SEABROOK RESPONSE TO EA 04-181
COMPLAINT OF ALLEGED DISCRIMINATION

In an October 20, 2004 letter to FPL Energy Seabrook, LLC (FPL Energy Seabrook), the Nuclear Regulatory Commission (NRC) informed FPL Energy Seabrook of a finding of discrimination by the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) against Williams Power Corporation (WPC). Specifically, OSHA determined, after an investigation, that Williams did not show by clear and convincing evidence that it did not blacklist an individual on September 18, 2003 by de-selecting him from an employee list appointed to work a scheduled maintenance shutdown at FPL Energy Seabrook's Nuclear Power Plant (Seabrook Station).[1] Accordingly, NRC made the following information request of FPL Energy Seabrook:

> A response in writing and under oath and affirmation that describes actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees at Seabrook to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC.

FPL Energy Seabrook hereby responds to the NRC's information request. Please be advised that this Enclosure contains personnel information that is exempt from public disclosure pursuant to 10 CFR 2.390(a)(6) and (7). Please limit distribution of this information accordingly and do not place this information in the NRC's Public Document Room.

1. <u>FPL Energy Seabrook Did Not Violate 10 CFR 50.7 In This Case</u>

FPL Energy Seabrook has determined that the decision by Williams not to hire Complainant was made by Williams alone, and no FPL Energy Seabrook employee had any role in or previous knowledge of that decision. In fact, the first time that FPL Energy Seabrook was made aware of any issue involving Complainant and Williams was upon receipt of the October 20, 2004 letter from the NRC.[2] As such, FPL Energy Seabrook did not violate 10 CFR 50.7(a) because the Company had

[1] Williams appealed the OSHA finding of discrimination to the US Department of Labor (DOL) Office of Administrative Law Judges. In a Recommended Decision and Order dated October 22, 2004, an Administrative Law Judge dismissed the Williams appeal for failure to serve Complainant with the notice of appeal. <u>Ponzi v. Williams Group International</u>, 2004-ERA-28 (ALJ Oct. 22, 2004). On November 1, 2004, Williams filed an appeal of the ALJ's decision with DOL's Administrative Review Board (ARB). The ARB has docketed this appeal and has scheduled briefing by the parties.

[2] [illegible]

absolutely no role in the decision not to hire . for the Fall 2003 outage at Seabrook. While Williams permitted FPL Energy Seabrook to interview the Williams supervisor alleged to have made the decision not to hire Complainant, FPL Energy Seabrook lacks sufficient information to take a position at this time on whether Williams violated 10 CFR 50.7(a) in connection with its decision not to hire Complainant for the Fall 2003 outage at Seabrook.[3] FPL Energy Seabrook reserves the right to supplement its position on this matter.

2. FPL Energy Seabrook Has Taken Prompt Actions in Direct Response to the OSHA Finding Against Williams

FPL Energy Seabrook expects its contractors to maintain a safety conscious work environment (SCWE) at Seabrook Station, and FPL Energy Seabrook will not tolerate instances of retaliation or discrimination against employees or contractors who have raised safety concerns. Indeed, Section 17 of FPL Energy Seabrook's contract with Williams for Nuclear Services, Equipment and Construction requires Williams to comply fully with all federal and state laws that prohibit discrimination against employees who raise nuclear safety concerns.

Because Complainant was at no time employed or otherwise present at Seabrook, and because no FPL Energy Seabrook employees were consulted or informed of Williams' decision not to hire Complainant, there was no actual knowledge of the events underlying the OSHA complaint by FPL Energy Seabrook employees. Nevertheless, to eliminate even the possibility that a chilling effect might result from Williams' actions or OSHA's finding, FPL Energy Seabrook has taken the following steps:

- On October 26, 2004, FPL Energy Seabrook demanded that Williams take action to ensure that Williams is creating and maintaining a SCWE at Seabrook Station, and to mitigate any potential chilling effect at Seabrook Station as a result of the OSHA finding of discrimination by the Williams site manager at Seabrook Station. In response, Williams informed FPL Energy Seabrook that it has taken the following actions:
  - Williams has developed a memorandum that will be distributed to all new hires,

[3] FPL Energy Seabrook notes that Williams has not engaged in discovery, including interviews or depositions of key witnesses, including Complainant, because its appeal of the OSHA finding was dismissed. In the event Williams prevails on appeal before the ARB and can pursue a hearing in this matter, FPL Energy Seabrook may have a better opportunity to assess whether Williams violated 10 CFR 50.7(a) with respect to its decision not to hire Complainant to work the Fall 2003 refueling outage at Seabrook.

reiterating the company's SCWE policy, and listing several phone numbers of persons or entities – including the NRC – to whom concerns can be raised.

- Williams conducted an overview of its SCWE policy, as well as the applicable laws and regulations, for all its Foremen, General Foremen, and Superintendents at Seabrook. Over 60 Williams' employees participated in this session.
- Williams recently reiterated to its Seabrook Station employees the company's overall commitment to SCWE and its commitment to continue adherence to FPL Energy Seabrook's SCWE.

- On October 27, 2004, the Seabrook Station Director counseled Williams senior management and on-site managers regarding FPL Energy Seabrook's expectations for maintenance of a SCWE at Seabrook Station. The Station Director discussed the applicable laws, regulations and policies addressing maintenance of a SCWE, and emphasized that retaliation against employees who have engaged in protected activity will not be tolerated at Seabrook Station.

3. FPL Energy Seabrook's Actions and Policies Support its Commitment to Maintaining a SCWE

FPL has an ongoing policy to establish and maintain a SCWE at its nuclear plants, and to ensure that nuclear workers are not "chilled" from raising safety and compliance concerns. This section describes actions taken in this regard.

- SCWE Training. In the Spring of 2004, FPL Energy Seabrook provided an employee concerns training program entitled "Taking Action" to 187 managers, supervisors and control room crews including personnel employed by Williams and Wackenhut, FPL Energy Seabrook's security contractor. The "Taking Action" program, produced by Employment Learning Innovations and tailored to FPL Energy Seabrook's needs, is an interactive 4 hour session designed to enable participants to: (1) explain the importance of raising safety concerns and identify where concerns can be raised; (2) give an overview of communication guidelines used in raising and resolving safety concerns; (3) explain the legal and business responsibilities related to the raising, reaction to, and resolution of safety concerns; and (4) explain how each individual's behavior impacts the environment and affects the ability of individuals to raise safety concerns. FPL Energy Seabrook's goal is to have all Nuclear Division supervisors, managers, and others in lead positions complete SCWE training every two years.

  Supervisory Development Academy. In 2004, Florida Power & Light Company's (FPL)

Nuclear Division began a Leadership Forum/Supervisory Development Academy (SDA). Each 4-week SDA session includes approximately 25 managers and supervisors drawn from all three nuclear plant sites and from FPL's corporate headquarters and covers a wide range of topics and exercises focused on developing and improving managerial and supervisory skills for each participant. The SDA includes specific sessions on SCWE (including an open discussion with the NRC Senior Resident Inspector at FPL's St. Lucie Nuclear Plant) and on legal issues for supervisors, including a presentation on the legal and regulatory requirements of 10 CFR 50.7 and Section 211 of the ERA. Eleven FPL Energy Seabrook supervisors attended the SDA in 2004 and 22 individuals are scheduled to attend in 2005.

Safety Culture Training. FPL conducted training in 2003 for Nuclear Division managers and supervisors on lessons learned arising out of the discovery of reactor vessel head degradation at the Davis-Besse Plant. While this training focused on maintaining a healthy "safety culture," it also emphasized the need to promptly raise safety concerns and to be receptive when employees raise such concerns. The training included video presentations by FPL's Chairman and Chief Executive Officer, Lew Hay, and FPL's Senior Vice President – Nuclear & Chief Nuclear Officer (CNO), emphasizing the need for a SCWE.

CNO SCWE Messages. Each year, the CNO holds Business Planning Conferences for FPL Nuclear Division managers and supervisors at which the CNO states his expectations that all managers and supervisors shall maintain a SCWE.[4] The CNO reemphasized these expectations at the 2003 Conference.[5] [e

this action was taken because the Site Vice] The CNO also reinforced his expectations that each member of his management team maintain a SCWE and that there would be no tolerance for any actions that could compromise the SCWE.

4 The CNO's expectations are also reflected in "safety" criteria used in performance evaluations for FPL managers and supervisors.

5 The 2004 Business Planning Conference was cancelled due to the impact of Hurricanes Frances and Jeanne on FPL's St. Lucie Nuclear Plant.

The CNO has also videotaped a message reinforcing every employee's right to raise safety and quality concerns without fear of retaliation, and outlining the avenues for raising concerns within and outside the chain of command. This message is played for employees and contractors during Plant Access Training (PAT), which is a prerequisite for unescorted access for all employees and contractors. PAT is given on an annual basis to FPL employees.

- The CNO and his direct reports receive periodic briefings on current employee concerns issues during the CNO's Staff meetings. The purpose of the periodic briefings is to remind the CNO and his direct reports of the philosophy behind employee protection requirements, the importance of strict compliance with NRC employee protection requirements, current developments in the employee concerns area, and the serious regulatory and legal consequences that could result from violations of legal and regulatory requirements. Furthermore, the CNO has established – and regularly enforces – a "no tolerance" policy with respect to retaliation and discrimination against employees who have engaged in protected activity.
- Senior management at Seabrook Station holds periodic skip-level meetings with small groups of employees from all levels of the organization. The purpose of these skip-level meetings is to provide an opportunity for employees to raise issues of concern directly to senior management.
- In June 2004, a SDA class conducted an employee survey at the FPL nuclear plants, including Seabrook Station. The results from this survey indicate that an atmosphere of openness and trust exists between employees and management at Seabrook Station.
- FPL intends to conduct a SCWE survey annually at each of its nuclear plants, including Seabrook Station. Benchmarking is currently underway to prepare for these surveys, which will be rolled out in 2005. The survey audience will include both bargaining and non-bargaining employees, as well as contractors.
- Objective data further supports the conclusion that there has been no discernible impact on the SCWE at Seabrook Station resulting from the allegation in question. The bases for this conclusion are that (1) the rate of allegations relating to Seabrook Station made directly to NRC has been consistently low for the past several years; (2) of the four allegations received by NRC to date in 2004, only one was an allegation of harassment and intimidation; (3) there is high use of the Condition Reporting (CR) process for employees to raise concerns; and (4) a low number of the CRs were submitted anonymously (5 in 2003, and 12 in 2004; of the 12 anonymous CRs, 11 have been addressed and one is currently being addressed). In

addition, NRC problem identification and resolution inspections in 2000, 2001, and 2002 identified no SCWE concerns (no inspection was performed in 2003, and the 2004 inspection is scheduled to commence on November 29, 2004).

FPL also reinforces its SCWE messages in a variety of written media.

- FPL Nuclear Division Policy NP-800, "Employee Concerns Program" provides that:
  - The objective of the employee concerns program is to improve the quality of the nuclear sites by providing every employee with an opportunity to express concerns related to nuclear safety or quality of any nuclear activity or installation without fear of harassment, intimidation or retaliation. These concerns will be promptly investigated and feedback will be provided to the originator.
  - Anonymity and confidentiality will be offered to the extent practicable to all employees. Employees will be assured that their participation will be received in a positive manner without fear of harassment, intimidation or retaliation.
  - Employees at Seabrook Station are encouraged to share any concerns with their supervisors. Employees not wishing to discuss their concerns with supervision should bring them to the attention of the employee concerns program representatives or the NRC or both.
  - Evaluations of employee concerns will be prompt, unbiased, fact based, with appropriate and timely feedback provided to the concerned employee.
  - Harassment or intimidation of employee concerns investigators or of employees providing information to the investigators as well as any other conduct which impedes the investigation will not be tolerated and will result in severe disciplinary action.

  In addition, the FPL Nuclear Division is in the process of finalizing a new policy entitled "Safety Conscious Work Environment," which will emphasize the importance of SCWE and safety culture in the Nuclear Division. The FPL Nuclear Division Policies (including NP-800) are applicable to all FPL and FPL Energy Seabrook nuclear activities and current revisions of the Policies are available to all FPL employees through the Lotus Notes computer database, and to all Seabrook Station employees through the eB computer database.

- FPL Energy Seabrook maintains various postings at Seabrook Station that advise employees of various avenues to raise safety or quality issues. FPL Energy Seabrook posts NRC Form 3 as well as the notice entitled "Your Rights Under the [Energy Reorganization Act]" as found in OSHA regulations at 29 CFR Part 24, App. A. This posting explains the

requirements of Section 211 and procedures that must be followed in filing a complaint under the ERA. FPL Energy Seabrook also posts the telephone numbers for NRC and OSHA in a separate posting. Further, FPL Energy Seabrook displays posters to promote employee use of the Employee Allegation Resolution employee concerns program (EAR) at Seabrook. Any employee may raise concerns with EAR. EAR performs an independent investigation of all nuclear safety and quality concerns, and refers all other concerns to the appropriate department for resolution. Moreover, FPL Energy Seabrook leaves self-addressed envelopes with postage prepaid at various locations in which employees can send concerns to EAR, anonymously or otherwise. A toll-free number is also posted to provide 24 hour access to an EAR representative. EAR maintains an office at Seabrook where employees and contractors can raise concerns. EAR investigates all concerns received relating to nuclear safety and quality, including those that are anonymous.

- FPL's expectations with respect to a SCWE are also reiterated in the company's Ethical Codes. Specifically, FPL's Code of Business Conduct and Ethics, which is posted on FPL's intranet, provides:

  - It is each employee's responsibility to bring to the attention of management any concerns relating to the safety of design, operation and maintenance of our nuclear plants. Alternately, employees can voice concerns through the Nuclear Safety SPEAKOUT Program. In addition, anyone is free to bring such matters, at any time, to the attention of the Nuclear Regulatory Commission. No employee will be discriminated against, in any way, for having brought his or her concerns to the attention of management, Nuclear Safety SPEAKOUT, or the Nuclear Regulatory Commission.

  Likewise, FPL's Nuclear Division Code of Ethics states:

  - We will at all times, regard the safety of the public and our fellow employees as our personal and moral responsibility.
  - We commit to an aggressive and timely approach to the resolution of problems, pursuing the objective of identifying and correcting root causes to improve performance.
  - We will adopt and maintain policies and practices that convey an attitude of trust, encourage communication, and foster teamwork among all groups that operate, maintain and support the nuclear plants.

4. Additional Information Not Directly Related to the Discrimination Allegation Against Williams

CONTAINS PERSONNEL INFORMATION
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10 CFR 2.390

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