

April 11, 2005

Mr. Thomas Saporito
National Environmental Protection Center
11911 U.S. Highway One, Suite 201
North Palm Beach, Florida 33408

Dear Mr. Saporito:

On March 13, 2005, you submitted a letter addressed to Luis Reyes, the U.S. Nuclear Regulatory Commission (NRC) Executive Director for Operations. In your letter you state that the March 7, 2005, letter from Ledyard B. Marsh to you regarding your termination from Florida Power and Light's Turkey Point Nuclear Station, you indicated that the:

. . . NRC never conducted such investigation as the agency was required to due [sic] under its own regulations under 10 C.F.R. Part 50, and at [sic] other NRC regulations.

In the letter dated March 7, 2005, the NRC staff reiterated that the Office of Investigations was unable to substantiate ". . . that individuals were terminated as a result of protected activity . . ." This statement should not be construed to infer that the NRC staff did not review your complaint. Your concerns were reviewed consistent with the NRC's Management Directives (MD) on allegations, and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 petitions. Although not specifically cited in recent communications, you previously raised these same issues to the NRC staff under the 10 CFR 2.206 Petition process in a letter dated December 21, 1988, as supplemented in five letters dated January 13 and 30, February 7, April 25 and 26, 1988. The Director's Decision (DD) 90-01 denying your December 1989 petition was issued in a letter from Thomas E. Murley to you dated March 22, 1990. In DD 90-01, Mr. Murley stated that:

Concerning the Petitioner's allegation that his employment was adversely affected after he engaged in protected activity, on June 30, 1989, the [Department of Labor Administrative Law Judge] DOL ALJ issued a Recommended Decision and Order denying the Petitioner's complaint. In his decision, the ALJ held that the Petitioner failed to present a prima facie case that he had been discriminated against for engaging in protected activity, and that his discharge resulted solely from his own insubordination Because the DOL ALJ did not substantiate the Petitioner's allegation, and because nothing in the Petition or otherwise available to me leads me to conclude that the Petitioner's allegation is valid there is no basis for the requested relief.

The DD acknowledges that the DOL decision was under appeal at the time of the DD and, should the initial DOL decision be reversed or modified, the NRC would consider whether enforcement or other action against the licensee was appropriate.

The DOL Administrative Review Board issued a final decision and order on December 17, 2004 (see enclosure). This decision states that your appeal to the United States Court of Appeals for the Eleventh Circuit of the two previous DOL decisions dismissing your complaint made under the whistleblower protection provision of the Energy Reorganization Act of 1974, as amended, was denied for lack of merit. The Administrative Review Board stated that the Eleventh Circuit decision is the final adjudication on the merits of your 1989 complaint and that it bars further review of the merits of your complaint. Consistent with the NRC's MD and DD 90-01, the NRC staff monitored the proceedings. Since these proceedings did not reverse or modify the initial DOL decision that formed the basis of the DD 90-01, the Petition Review Board determined that there was no need for any additional action by the NRC.

Since your release from Florida Power & Light Co. (FPL, the licensee) in December 1988, you have provided the NRC with information regarding your assertion that you were discriminated against as a result of engaging in protected activities. In each case, consistent with the form of the correspondence submitted, the NRC staff reviewed your assertions and responded accordingly. In your letters, and teleconference with the NRC staff in July 2004, you provided your concerns again regarding your discrimination complaint.

Consistent with NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," the staff will not review a petition if the petition raises issues that have already been the subject of NRC staff review and evaluation either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been resolved, and the resolution is applicable to the facility in question." As your employee protection assertion was previously reviewed consistent with NRC policy, your submittals provide no significant new information, and your DOL case was dismissed, the NRC staff continues to find that no basis exists for further review of your 10 CFR 50.7 employee protection assertion under the 10 CFR 2.206 petition process, now or in the future.

If you have additional questions, please feel free to contact Ms. Eva Brown at (301) 415-2315.

Sincerely,

/RA by JLyons for/

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

Docket Nos. 50-250 and 50-251

The DOL Administrative Review Board issued a final decision and order on December 17, 2004 (see enclosure). This decision states that your appeal to the United States Court of Appeals for the Eleventh Circuit of the two previous DOL decisions dismissing your complaint made under the whistleblower protection provision of the Energy Reorganization Act of 1974, as amended, was denied for lack of merit. The Administrative Review Board stated that the Eleventh Circuit decision is the final adjudication on the merits of your 1989 complaint and that it bars further review of the merits of your complaint. Consistent with the NRC's MD and DD 90-01, the NRC staff monitored the proceedings. Since these proceedings did not reverse or modify the initial DOL decision that formed the basis of the DD 90-01, the Petition Review Board determined that there was no need for any additional action by the NRC.

Since your release from Florida Power & Light Co. (FPL, the licensee) in December 1988, you have provided the NRC with information regarding your assertion that you were discriminated against as a result of engaging in protected activities. In each case, consistent with the form of the correspondence submitted, the NRC staff reviewed your assertions and responded accordingly. In your letters, and teleconference with the NRC staff in July 2004, you provided your concerns again regarding your discrimination complaint.

Consistent with NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," the staff will not review a petition if the petition raises issues that have already been the subject of NRC staff review and evaluation either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been resolved, and the resolution is applicable to the facility in question." As your employee protection assertion was previously reviewed consistent with NRC policy, your submittals provide no significant new information, and your DOL case was dismissed, the NRC staff continues to find that no basis exists for further review of your 10 CFR 50.7 employee protection assertion under the 10 CFR 2.206 petition process, now or in the future.

If you have additional questions, please feel free to contact Ms. Eva Brown at (301) 415-2315.

Sincerely,

/RA by JLyons for/

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

Docket Nos. 50-250 and 50-251

Distribution: See next page

Package: ML050970510

Incoming: ML050970294

ADAMS Accession No. ML050970508

NRR-106

OFFICE	PDII-2/PM	PDII-2/LA	PDII-2/SC	DLPM/PD	DLPM/D
NAME	EBrown	BClayton	MMarshall	EHackett	LMarsh (JLyons for)
DATE	04/07/05	04/07/05	04/07/05	04/07/05	04/11/05

OFFICIAL RECORD COPY

Letter to Mr. Thomas Saporito Regarding Reiteration of Employee Protection Concern
(G20050213)

Dated: April 11, 2005

Distribution:

PUBLIC

PD II-2 R/F

RidsEdoMailCenter

LReyes

EMershcoff

RidsNrrOd

RidsNrrDlpm

RidsNrrAdpt

RidsNrrDlpmLpdii

RidsNrrDlpmLpdii2

RidsNrrPMEBrown

RidsNrrPMBMoroney

RidsNrrDlpmLpdiv

RidsNrrPMDSkay

JArroyo

LCox

AKock, OE

NHilton, OE

CMontgomery, OI

WDean

WTravers, RII

KCyr

JGoldberg

WKane

JSilber

JMunday, RII

ODeMiranda, RII

RidsOpaMailCenter

RidsOcaMailCenter

BClayton (Hard Copy)

MVirgilio

SBurns

RidsNrrWpcMail

RidsOgcRp