

EDO Principal Correspondence Control

FROM: DUE: 08/04/08

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FINAL REPLY:

Thomas Saporito

TO:

Executive Director

FOR SIGNATURE OF :

** GRN **

CRC NO:

Leeds

DESC:

ROUTING:

2.206 Petition - Request for 10 CFR 50.7
Investigation of the Florida Power & Light Company
(EDATS: OEDO-2008-0569)

Borchardt
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Schaaf, OEDO

DATE: 07/31/08

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

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Other Assignees:

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Urgency: NO

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OCA Concurrence: NO

Special Instructions:

Document Information

Originator Name: Thomas Saporito

Date of Incoming: 7/5/2008

Originating Organization: Petitioner

Document Received by OEDO Date: 7/5/2008

Addressee: Executive Director for Operations

Date Response Requested by Originator: NONE

Incoming Task Received: E-mail

July 5, 2008

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**RE: 10 CFR 2.206 PETITION - REQUEST FOR 10 CFR 50.7
INVESTIGATION OF THE FLORIDA POWER & LIGHT COMPANY**

§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by electronic submissions, for example, via facsimile, Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by calling (301) 415-0439, by e-mail to EIE@nrc.gov; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

(c)(1) Director's decisions under this section will be filed with the Office of the Secretary. Within twenty-five (25) days after the date of the Director's decision under this section that no proceeding will be instituted or other action taken in whole or in part, the Commission may on its own motion review that decision, in whole or in part, to determine if the Director has abused his discretion. This review power does not limit in any way either the Commission's supervisory

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power over delegated staff actions or the Commission's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this section.

(2) No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission.

(3) The Secretary is authorized to extend the time for Commission review on its own motion of a Director's denial under paragraph (c) of this section.

[39 FR 12353, Apr. 5, 1974, as amended at 42 FR 36240, July 14, 1977; 45 FR 73466, Nov. 5, 1980; 52 FR 31608, Aug. 21, 1987; 53 FR 43419, Oct. 27, 1988; 64 FR 48948, Sept. 9, 1999; 68 FR 58799, Oct. 10, 2003; 69 FR 2236, Jan. 14, 2004; 69 FR 41749, July 12, 2004; 70 FR 69421, Nov. 16, 2005; 72 FR 33386, Jun. 18, 2007]

Background:

The undersigned Petitioner, Thomas Saporito is a former employee of the Florida Power & Light Company ("FPL" or Licensee) and was discharged from his employment at the Licensee's Turkey Point nuclear plant ("TPN") on 12/22/1998 following his raising operational safety concerns to the U.S. Nuclear Regulatory Commission ("NRC"). Subsequent to Petitioner's discharge from TPN, he continued to raise operational safety concerns regarding the Licensee's nuclear plants through the current year.

Specific Request:

1. The undersigned Petitioner requests that the NRC take actions to immediately investigate apparent violations of 10 CFR 50.7 by the Licensee against Petitioner in refusing to rehire Petitioner solely because of his past, present, and continuing conduct in raising operational safety concerns to the NRC regarding the Licensee's nuclear power operations.

Basis and Justification:

§ 50.7 Employee protection.

(a) *Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. (1) The protected activities include but are not limited to: (i) Providing the Commission or his or her employer information about alleged violations of either*

of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer; (iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements; (iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text. (v) Assisting or participating in, or is about to assist or participate in, these activities. (2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation. (3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended. (b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The department of Labor may order reinstatement, back pay, and compensatory damages. (c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for-- (1) Denial, revocation, or suspension of the license. (2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant. (3) Other enforcement action. (d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by non prohibited considerations. (e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination. (2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear

Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415-5877, via e-mail to forms@nrc.gov, or by visiting the NRC's Web site at <http://www.nrc.gov> and selecting forms from the index found on the home page. (f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

[58 FR 52410, Oct. 8, 1993, as amended at 60 FR 24551, May 9, 1995; 61 FR 6765, Feb. 22, 1996; 68 FR 58809, Oct. 10, 2003; 72 FR 63974, Nov. 14, 2007]

Petitioner avers here that the Licensee refuses to consider his employment applications and request and that the Licensee refuses to rehire Petitioner solely because of his past, present, and continuing conduct of raising operational safety concerns about the Licensee's nuclear power operations to the NRC.

Respectfully submitted,

/A/

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