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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PETITION REVIEW BOARD (PRB)

CONFERENCE CALL:

FLORIDA POWER AND LIGHT 2.206 PETITION

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THURSDAY, AUGUST 14, 2008

The conference call was held at 10:00
a.m., MARK MAXIN, PRB Chairman, presiding.

NRC HEADQUARTERS STAFF:

MARK MAXIN, Acting Deputy Director of Policy and
Rulemaking, NRR

RUSSELL ARRIGHI, Office of Enforcement

TOM BOYCE, NRR Branch Chief

MARY KAY FAHEY, Office of Investigations

MICHELLE HONCHARIK, PRB Coordinator

JENNY LONGO, Office of General Counsel

BRENDA MOZAFARI, NRR Project Manager

TRACY ORF, Petition Manager

KIMBERLY SEXTON, Office of the General Counsel

DAVID SOLORIO, Office of Enforcement

PETITIONER:

THOMAS SAPORITO

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LICENSEE: FLORIDA POWER AND LIGHT:

MARJAN MASHHADI, Esquire

BOB TOMONTO, Manager

P-R-O-C-E-E-D-I-N-G-S

(10:09 a.m.)

CHAIRMAN MAXIN: Good morning and welcome to the NRC meeting regarding the 2.206 petition submitted regarding the Turkey Point nuclear power plant in Florida.

Before we get into the heart of the discussion, I would like to provide some general information about the NRC's 2.206 petition process.

A) Under the Title 10 of the Code of Federal Regulations, section 2.206, any person may petition the NRC to take an enforcement-related action, such as modifying, suspending, or revoking a license. B) The NRC's staff guidance for the disposition of 2.206 petition requests is in management directive 8.11, which is publicly available for review.

The purpose of today's meeting is to provide the petitioner an opportunity to submit any relevant additional explanation in support of the petition. The meeting is not a hearing, nor is it an opportunity for the participants to examine or question the PRB on the merits of the issues presented in the petition request.

No decisions regarding the merits of this petition will be made at this meeting. Following the

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1 meeting, the PRB will conduct its internal
2 deliberations as to accept or reject the petition for
3 review. The outcome of this internal meeting will be
4 documented in the acknowledgement letter to the
5 petitioner.

6 I would like to summarize the scope of the
7 petition under consideration and the NRC activities to
8 date. On August 3, 2008, Mr. Thomas Saporito -- and
9 I will spell that name, and, of course, Mr. Saporito,
10 feel free to correct it if we've got it wrong --
11 Thomas, T-h-o-m-a-s, Saporito, S-a-p-o-r-i-t-o, --
12 submitted to the NRC a request under 2.206 regarding
13 a Florida Power and Light violation of the Energy
14 Reorganization Act of 1974, as discussed in the
15 Secretary of Labor's decision dated June 3, 1994. In
16 this petition request, Mr. Saporito requested that the
17 NRC issue a notice of violation and proposed
18 imposition of civil penalty of \$100,000 to the
19 licensee.

20 On August 6th, the Petition Manager, Tracy
21 Orf -- that's T-r-a-c-y, Orf, O-r-f -- contacted the
22 petitioner, Mr. Saporito, to acknowledge receipt of
23 the petition and to make available the opportunity for
24 the petitioner to address the PRB.

25 On August 10th, the petitioner forwarded

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1 additional information to the Petition Manager. These
2 documents have been made available to the PRB for
3 review. At this time the PRB has not reviewed the
4 petition as a Board.

5 Mr. Saporito, if I did not capture the
6 essence of the petition and the issues correctly, can
7 you please clarify during your remarks?

8 MR. SAPORITO: Yes. Yes, I will.

9 CHAIRMAN MAXIN: Thank you, sir.

10 Again, the purpose of the meeting today is
11 to provide additional information and explanation in
12 support of the petition. The purpose of this meeting
13 is not to provide an opportunity for the meeting
14 participants to question or examine the PRB regarding
15 the merits of the petition request. This meeting is
16 not a hearing. No decision regarding the merits of
17 the request will be made during this meeting.

18 Subsequent to this meeting, the PRB will
19 conduct an internal meeting to make a recommendation
20 on whether to accept or reject the petition for
21 review. The results of that meeting will be
22 documented in an acknowledgement letter to the
23 petitioner.

24 At this time I would like to introduce the
25 Board and then turn the meeting over to you, Mr.

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1 Saporito, the petitioner. The PRB typically consists
2 of a chairman, usually an SES-level manager at the
3 agency. It has a petition manager, which for a
4 plant-specific petition, is usually the licensing
5 project manager. Other members of the Board are
6 determined by the NRC staff request on the content of
7 the information in the petition request.

8 I am the Petition Review Board Chairman.
9 My name is Mark Maxin, M-a-r-k M-a-x-i-n. Tracy Orf
10 is the Petition Manager, the Petition Manager for the
11 petition under discussion today. Michelle Honcharik,
12 M-i-c-h-e-l-l-e, Honcharik, H-o-n-c-h-a-r-i-k, is the
13 office's 2.206 coordinator.

14 In addition, we have headquarters
15 technical staff and Region II personnel on the
16 Petition Review Board. We also obtain advice from our
17 Office of General Counsel represented by Jenny Longo,
18 J-e-n-n-y L-o-n-g-o, from the Office of Enforcement
19 represented by Doug Starkey.

20 MS. LONGO: Doug is not here.

21 CHAIRMAN MAXIN: Oh. Excuse me. Could
22 you please identify for the record? I apologize.

23 MR. ARRIGHI: Office of Enforcement,
24 Russell Arrighi, R-u-s-s-e-l-l, Arrighi,
25 A-r-r-i-g-h-i.

1 CHAIRMAN MAXIN: And the Office of
2 Investigations?

3 MS. FAHEY: Mary Kay Fahey, M-a-r-y K-a-y
4 F-a-h-e-y.

5 CHAIRMAN MAXIN: If there is anyone else,
6 could other people who are not essentially referenced
7 herein identify who you are in the room and spell your
8 name clearly for the court reporter, please?

9 MR. SOLORIO: My name is Dave Solorio. I
10 work in the Office of Enforcement. Dave is D-a-v-i-d,
11 Solorio, S-o-l-o-r-i-o.

12 MS. MOZAFARI: Brenda Mozafari. That's
13 B-r-e-n-d-a M-o-z-a-f-a-r-i. I'm the Project Manager
14 for the Turkey Point plant at NRR.

15 MR. BOYCE: Tom Boyce. That's T-o-m
16 B-o-y-c-e. I'm a Branch Chief in NRR Projects for the
17 Turkey Point plant.

18 MS. SEXTON: This is Kimberly Sexton. I'm
19 with the Office of the General Counsel,
20 K-i-m-b-e-r-l-y, Sexton, S-e-x-t-o-n.

21 CHAIRMAN MAXIN: That is everyone in the
22 room? I will now proceed. As described in our
23 process, the NRC staff may ask clarifying questions in
24 order to better understand the petitioner's
25 presentation and to reach a reasoned decision whether

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1 to accept or reject the petitioner's request for
2 review under the 2.206 process.

3 I will note that the licensee for the
4 Turkey Point nuclear power plant has also been invited
5 to this meeting and will be afforded an opportunity to
6 ask clarifying questions of the petitioner.

7 For those people who are representing
8 Turkey Point, could you please identify your name and
9 spell your names out for the record, please?

10 MS. MASHHADI: My name is Marjan Mashhadi.
11 It's M-a-r-j-a-n. The last name is Mashhadi, M-a-s,
12 two h's, a-d-i. And I'm counsel with Florida Power
13 and Light.

14 CHAIRMAN MAXIN: Is there anyone from
15 Florida Power and Light online?

16 MR. TOMONTO: My name is Bob Tomonto. Bob
17 is B-o-b. Tomonto is T-o-m-o-n-t-o. I'm the
18 Licensing Manager at Turkey Point.

19 CHAIRMAN MAXIN: We invite the licensee so
20 that they are aware of an ongoing request for action
21 against their facility and provide an opportunity to
22 ask any questions so that they may understand the
23 details pertaining to the facility.

24 Are there any general questions regarding
25 the 2.206 process before I turn it over to you, Mr.

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1 Saporito?

2 MR. SAPORITO: Yes. This is Mr. Saporito.

3 I would like for the record a point of
4 clarification. I would like to have identified for
5 the record those NRC employees who are representing
6 Region II, please.

7 CHAIRMAN MAXIN: Thank you.

8 Is there anyone from the region online?

9 (No response.)

10 CHAIRMAN MAXIN: Well, let the record
11 reflect there was nobody from the region that is
12 online, sir.

13 MR. SAPORITO: All right. I thought you
14 mentioned earlier that there was some representation
15 from Region II. That's why I queried.

16 CHAIRMAN MAXIN: Yes. That was incorrect.
17 Obviously no one from Region II is currently on the
18 line.

19 MR. SAPORITO: Okay. Is there a reason
20 that Region II is not represented since the licensee
21 being Florida Power and Light and specifically the
22 subject of the petition regarding the Turkey Point
23 nuclear plant is within the jurisdiction of Region II?

24 MS. HONCHARIK: They have been informed of
25 the petition and then copied on all documentation you

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1 have submitted unless the -- did you have something to
2 add?

3 THE REPORTER: Excuse me. This is the
4 court reporter. I am going to need everyone to say
5 their names before they speak because I can't identify
6 everyone.

7 MS. HONCHARIK: I apologize. That was
8 Michelle Honcharik.

9 MR. ORF: Yes. This is Tracy Orf.

10 The region was invited to the phone call,
11 but, for some reason, which we can't really speculate
12 on, they were unable to attend. As per management
13 directive 8.11, they are not required to be on the
14 phone call, but they're usually invited.

15 MS. HONCHARIK: And they will be provided
16 a transcript of today's call to review as well.

17 CHAIRMAN MAXIN: As a reminder for the
18 phone participants, please identify yourself if you
19 make any remarks, as already stated, as they will help
20 in the preparation of the transcript.

21 And thank you, Mr. Saporito. The phone is
22 all yours.

23 MR. SAPORITO: All right. Thank you, Mr.
24 Chairman. And thank you, members of the Petition
25 Review Board for providing me an opportunity to engage

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1 you in this manner.

2 The documents which I have provided to Mr.
3 Orf for your review, I would like you to put four
4 documents in front of you, if you would, one being the
5 August 3rd, 2008 petition, the second document being
6 the enforcement action identified as NRC number
7 TA-00-230 entitled "Turkey Point 3 and 4, Florida
8 Power and Light."

9 It's dated June 5th, 2003. The third
10 document would be document dated July 16th, 1996.
11 This is NRC identifier. That's another enforcement
12 action EA-96-051.

13 CHAIRMAN MAXIN: Could you say it a little
14 slower, please?

15 MR. SAPORITO: Oh, sure. I'm sorry. E,
16 as in Eddie, A, as in apple, dash, 96-051, "Turkey
17 Point 3 and 4" and of "Florida Power and Light
18 Company, the licensee."

19 And then the final document would be the
20 August 10th, 2008 motion for reconsideration to bring
21 it into justice. Those are the primary documents I am
22 going to be referencing. So if you all would have
23 those in front of you, it would be appreciated.

24 CHAIRMAN MAXIN: Can you give us a minute,
25 sir?

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1 MR. SAPORITO: Absolutely.

2 CHAIRMAN MAXIN: We are just going to go
3 off the record for a moment, and we are going to go
4 mute for a second. Okay?

5 MR. SAPORITO: Okay. I forgot. There is
6 one more document.

7 CHAIRMAN MAXIN: Okay.

8 MR. SAPORITO: I'm sorry about that. It's
9 dated the 19th of January 2005. And it's a
10 recommended decision and order approving settlement
11 and dismissing complaint. And it's Department of
12 Labor case number 2005-ERA-00003.

13 MS. HONCHARIK: Okay. We are going to go
14 mute for a minute while we gather the documents.

15 MR. SAPORITO: Thank you.

16 (Whereupon, the foregoing matter went off
17 the record briefly.)

18 MS. HONCHARIK: This is Michelle
19 Honcharik. We are back now.

20 MR. SAPORITO: All right. May I continue
21 now?

22 CHAIRMAN MAXIN: Yes, sir.

23 MR. SAPORITO: All right. Thank you.

24 CHAIRMAN MAXIN: Thank you, sir.

25 MR. SAPORITO: First of all, for the

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1 Board, I would like to make a clarification on the
2 record regarding the Chairman's opening remarks. He
3 identified the petition correctly. That's not an
4 issue. But he specifically made reference within his
5 discussion of the petition to the Energy
6 Reorganization Act of 1974. And that certainly is
7 applicable to the petition, but I would like to direct
8 the PRB's attention.

9 I'm looking at the August 3rd, 2008
10 petition, page 2. I'm not going to read through that,
11 but pages 2 and 3 encompass 10 CFR Part 50.7. That is
12 germane to the NRC's jurisdiction over complaints
13 filed within the ambit of the Energy Reorganization
14 Act, which is a Department of Labor type of
15 proceeding.

16 The NRC jurisdiction clearly, clearly
17 falls under 10 CFR 50.7, which is an employee
18 protection provision much like the Energy
19 Reorganization Act, which is codified as an ERA
20 proceeding within the Department of Labor.

21 So I just wanted that point of
22 clarification that the PRB should make a reliance on
23 50.7 in addition to the Energy Reorganization Act when
24 they're considering this petition.

25 Okay. The general outline, I'm bringing

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1 it to the Board's attention that this petition that is
2 seeking the civil penalty of \$100,000, which all I'm
3 asking for is the NRC to take enforcement action
4 within the ambiance of the 2.206 petition. That is
5 one of the requirements of the 8.11 mandate for the
6 Board to consider. The petitioner needs to be
7 requesting some type of enforcement action. And that
8 would be my request, for the imposition of a civil
9 penalty of \$100,000.

10 Now, the base of the justification
11 section, page 4 of this petition, I generally outline
12 on here a decision by the Secretary of Labor, the
13 honorable Robert Reich at the time. He issued a June
14 3rd, 1994 decision, in which he explicitly held that
15 Florida Power and Light violated the Energy
16 Reorganization Act when they discharged me from my
17 employment at the Turkey Point plant. AT that time I
18 was an instrument control specialist at the journeyman
19 level. And I had been employed with the licensee for
20 approximately eight years.

21 I'm going to give you a brief summary. If
22 you all need more detail, I certainly can go in more
23 detail. But just briefly, during my employment at the
24 Turkey Point plant, which, to the best of my
25 memories/recollection at this instant, was

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1 approximately April of 1988 through December 22nd of
2 1988. I was working there as an instrument control
3 technician.

4 And throughout the context of that brief
5 period of time, I engaged in what's termed to be
6 protected activity within 10 CFR 50.7 and within the
7 Energy Reorganization Act vis-a-vis an employee
8 raising perceived safety concerns to the licensee
9 management and/or to the NRC or any other type of form
10 of protected activity, such as going to the media, et
11 cetera.

12 Now, at the time of my employment there,
13 there was an organization. I don't even know if they
14 still exist, but at the time, there was an industry
15 organization called the Institute of Nuclear Plant
16 Operators, I believe is what it was. It was codified
17 as INPO, I-N-P-O.

18 And they were a collective group of people
19 that were taking individuals from the nuclear industry
20 that worked at different licensee power nuclear plants
21 is my understanding. And this group of people would
22 periodically go around the country to do their own
23 inspection, much like the NRC at the time, had a team
24 of people going around. They issued these SALT
25 reports, Systematic Assessment of Licensee

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1 Performance, if my memory serves me correct.

2 Well, INPO, which has no affiliation
3 whatsoever with the government or the Nuclear
4 Regulatory Commission but they were members of the
5 nuclear industry, they did a similar type of
6 inspection.

7 So back then, April-May, I guess, area,
8 INPO was on site at Turkey Point nuclear plant. And
9 back then Turkey Point was on the -- NRC had a watch
10 list it's called, a watch list of troubled plants.
11 And Turkey Point was very much at the top of this
12 list.

13 We had undergone a bunch of enforcement
14 actions from the NRC for violation of procedures and
15 some very serious types of violations. To the best of
16 my memory, I think the cumulative penalties were well
17 over a million dollars by this time.

18 Through my employment there, I observed
19 more violations of procedures. And it was so bad at
20 the time that the NRC mandated that the licensee had
21 to go to operate their facility under what was called
22 at that time verbatim compliance procedures.

23 The licensee specifically defined that for
24 us, meaning that if there is a 20-step procedure to
25 calibrate a valve in a reactor containment building,

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1 for example, you had to systematically go through each
2 step, initial it, and date it as being complete.

3 You couldn't go through steps 1, 2, and 3
4 and then skip over and do 9, 10, 11, and 12. You had
5 to do each and every step. And the reason that the
6 NRC required that was because of the continuous
7 violation of procedure there. I mean, some of them
8 were on misalignment. So there was very good
9 justification to implement that type of requirement.

10 My work at the St. Lucie plant prior to
11 that engagement, was the skill of the trade because we
12 didn't everything correctly. We didn't violate
13 procedures religiously. And the plant was very
14 well-maintained. So we could be the skill of the
15 trade, meaning you go out there and you accomplish
16 your procedures, but there was no verbatim compliance.

17 So during my tenure down at Turkey Point
18 in 1988, we had what's called plant work orders. You
19 get a document. And it outlined a piece of equipment
20 in a plant that required some type of maintenance.

21 It could be just a loop calibration. You
22 know, one official will go into the reactor
23 containment building and put some test equipment onto
24 a pressure transmitter and run that calibration signal
25 at 4 to 20 signal while his coworker would be in the

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1 control room and monitoring the receiving instrument
2 of that, whether it be pressure temperature, flow,
3 whatever, and then would document that on your work
4 report, your calibration data.

5 These are the types of procedures that I
6 was engaged in doing. And these are the types of
7 procedures where I noticed other people we're not
8 properly complying with and/or the procedures were
9 actually written incorrectly. And in some instances
10 it would cause the employee to receive a higher dose
11 of radiation just simply because of the way that the
12 employee was required to execute the procedure.

13 So I brought these issues. I wrote them
14 down, my concerns, on a lot of these, a very lot of
15 these, work orders and would comment to my supervisors
16 at the time about these issues also.

17 And because I didn't get any feedback from
18 management regarding resolution fees concerned, I went
19 and communicated verbally and in writing to one or
20 more members of the INPO inspection team that works
21 there at the plant.

22 And then following that engagement, I
23 started receiving retaliation from Florida Power and
24 Light management. And as that retaliation continued
25 as I continued to raise these concerns, it got to the

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1 level at some point -- I don't remember exact dates --
2 but at some point in that April to December time
3 period, I actually observed a falsification by a
4 couple of employees, where they actually falsified a
5 job involving nuclear safety-related type of
6 equipment.

7 I brought that -- at that time, things had
8 just gone too far. And management was not responsive
9 to my request outside of giving me retaliation. I
10 mean, that was my feedback. I would get disciplined
11 or accused of something, blah blah blah, every time I
12 would raise a concern.

13 So it got to the point where I said, well
14 -- and I have never done it in the eight years I have
15 been with a licensee, I have never contacted the NRC.
16 But I went out and I searched for this NRC form 3,
17 which at the time they were required to post.

18 And I read through that form and told me
19 that I have ever right to bring my concerns directly
20 to the NRC. And I figured, well, if anybody is going
21 to do something, the NRC is going to come inhere and
22 investigate this, they're going to correct these
23 problems before something happens and you could have
24 a release of radiation to the public.

25 So the management at the plant somehow

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1 learned that I had raised safety concerns and it's my
2 understanding learned that I raised them outside the
3 ambiance of management there to the NRC.

4 And I got something -- November the 23rd,
5 1988, this fellow, John Odom, who at the time was
6 employed there as a senior vice president for nuclear.
7 And he specifically had authority over the Turkey
8 Point nuclear plant. There are two of them there:
9 units 3 and 4. And they held the licenses of DPR-31,
10 DPR-41. And he had complete responsibility and
11 authority over everybody at that facility, including
12 all of my management.

13 So because of the retaliation, I mean,
14 they give me too many job assignments. The production
15 supervisor, for example, this fellow by the name of
16 Jerry Harley, he sent me into the containment
17 building, 120 degrees in there. You had to wear
18 scooper gear, forced air respirator, sent me on a job
19 that really didn't require to be done.

20 It was so harsh an environment I had to go
21 home sick. I was dehydrated, heat exhaustion. And he
22 ran around the plant with that work order that he had
23 assigned me bragging that he got me. He got me. He
24 finally sent me home sick and testified in court he
25 wished I had died in there. He tested right under

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1 oath he wished I had died in there, in that
2 containment building. That's the hostility, the
3 degree of hostility, at the time.

4 So when I came back, anyway, back, in
5 November 23rd, they have this meeting, November 23rd,
6 1988, Odom called this meeting. At this meeting, they
7 had all the high-level managers there. Odom was the
8 highest level manager, this fellow by the name of
9 Joseph Kappes, K-a-p-p-e-s. Odom is O-d-o-m, I
10 believe. Kappes was there and some subordinate
11 managers. It's a huge table. And union people were
12 there because the International Brotherhood of
13 Electrical Workers was our representative collective
14 bargaining entity.

15 So you had the president of the union
16 there and all these jobs who -- anyway, Odom at this
17 meeting, at one point in this meeting, he says, "Well,
18 I have heard or understand you have some safety
19 concerns."

20 And he wanted to know what those safety
21 concerns was. And I told him that I was -- that I had
22 contacted the NRC my safety concerns. At one point he
23 stood up and he supposedly according to him gave me a
24 direct order to tell the NRC my safety concerns. And
25 I just communicated that, you know, I am in

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1 communication with the NRC. Anyway, this fellow gives
2 me according to him a direct order to tell the NRC my
3 safety concerns, which I had already engaged with a
4 fellow, Demiranda.

5 Oscar Demiranda at the time was -- I think
6 he was a senior allegations coordinator. Anyway, I
7 sat a while with him at the time providing my concerns
8 to him. There was a lot of communication with him.

9 CHAIRMAN MAXIN: Could you spell that,
10 please, spell that name for the record?

11 MR. SAPORITO: Yes, absolutely. I'm
12 sorry. It's D, as in David, e-m, as in Mary, i-r, as
13 in Rick, a-n, as in Nancy, d-a, Demiranda.

14 CHAIRMAN MAXIN: Thank you.

15 MR. SAPORITO: Oscar Demiranda. Yes, sir.
16 And so the NRC vis-a-vis Mr. Demiranda had been
17 brought up to speed all along for my raising concerns.
18 And if my memory serves me correctly, Region II had
19 the information about my rights as a protected
20 employee and the DOL process, et cetera, et cetera.

21 So by this time, I had already engaged the
22 Department of Labor. I filed a discrimination
23 complaint under the Energy Reorganization Act because
24 as soon as I went to INPO, they retaliated against me.

25 They gave me so many job assignments.

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1 This guy is going around wishing I was dead. He's
2 going around bragging I am sick. They're accusing me
3 of all kinds of stuff, like making racial slurs, oh,
4 just a host of things. This guy Kappes calls me into
5 a high-level management meeting, you know, through the
6 whole course of that month.

7 We were working a refueling outage at the
8 time. So they had us working ten hours a day. I
9 don't recall something -- it was a five or seven-day
10 work week, but it was not uncommon to work seven days
11 a week ten hours a day at that time. And I distinctly
12 remember we were working ten hours a day.

13 So by the time November 23rd, 1988 rolls
14 around, Odom hired -- and I had already engaged an
15 attorney at this time because I'm going to be going to
16 court on an ERA proceeding.

17 Odom hires three attorneys, Steir,
18 Anderson, Malone, a law firm, to come in and
19 investigate me. So these guys, they go up to the St.
20 Lucie nuclear plant, and they interrogate all of my
21 coworkers up there, call them into offices and asking
22 all about me. Then they come down to Turkey Point.
23 They were doing the same thing.

24 So I took that as another retaliatory
25 action. And Odom at the -- during the November 23rd

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1 meeting, there was a break in that meeting. They're
2 holding me over beyond my ten hours I had already put
3 in. This meeting was late at night. And, you know,
4 at the time I had three small children and a wife.
5 And I couldn't leave the facility.

6 So they take a break. And the union
7 people approach me. You know, well, their concern was
8 that the Florida Power and Light, the licensee, they
9 wanted the Department of Labor complaint -- and they
10 attended the hearing -- to go away. I said, "Well,
11 look, if they want to settle this matter, that's
12 fine."

13 They're obviously -- you know, the
14 discussion, to the best of my recollection, to date
15 was, you know, I'm not going to have a job here
16 anymore. So they're going to have to pay my wages
17 going out ten years. I have a family, a house, a car,
18 and a boat, blah blah blah. I'm making -- I was
19 making like \$50,000 a year there. So I'm looking at
20 ten years.

21 I tell him, "Tell them give me \$500,000,
22 and I'll dismiss this complaint," I said, because I'm
23 going to have to, you know, find alternative
24 employment. And this is going to have to get me
25 through for who knows how long until I can get back

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1 into the industry because, you know, what's going
2 through my mind is they could just turn around and
3 blacklist me. All of these utilities talk. And I may
4 not even be able to get back into there.

5 So they go back and approach FP&L. And
6 they reject that. And the DOL investigator was a
7 fellow by the name of John Guinness I believe was his
8 name. He came on site. He interviewed me, FP&L.
9 And, anyway, my attorney came on site. FP&L's
10 attorney came on site, this guy name of James
11 Brammick, B-r-a-m-m-i-c-k, I think, if memory serves
12 me. And Guinness is G-u-i-n-n-e-s, I believe.

13 Anyway, they had a big meeting. And they
14 come out of the meeting. And they couldn't reach a
15 settlement figure. So the matter was going to go to
16 trial. And so after that, everybody -- and I go back
17 to work.

18 And a week -- no. I think two days after
19 that November 23rd meeting, Kappes calls me into his
20 office. And they said, "Well, because you refused a
21 direct order to tell Odom your safety concerns, we're
22 removing you from the instrument control shop. And
23 we're assigning you to go" -- like they had like a
24 training building, a completely separate building far
25 and away from the instrument control department. "We

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1 want you to go in there and rebuild valves, valve
2 actuators."

3 And so that was another retaliatory act.
4 And all my coworkers saw that. And they would sneak
5 out there and tell me more safety concerns about the
6 plant. And I would file these back to the NRC, to
7 Region II and this guy, DeMiranda. And, you know,
8 he's saying, "Well, why don't they -- why don't you
9 just tell them to call me directly?"

10 And I said, "Oh, I suggested that, but
11 they're not going to do that because they're
12 retaliating against me. And they're scared for their
13 jobs."

14 So the next thing that happened was a week
15 after the November 23rd meeting, which was November
16 30th, 1988. I put in my ten-hour day. And I wasn't
17 feeling too hot. And I stand there with my coworkers
18 in the shop, and we're ready to go home.

19 And Kappes -- Jerry Harley approached me.
20 It was the production supervisor, tells me that "You
21 have to stay overtime because Odom wants you, to ask
22 you about your safety concerns," you know.

23 I said, "I don't have any safety concerns
24 I want to discuss with Odom."

25 And so Harley runs and tells Kappes what

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1 I had said. So Kappes comes to the instrument control
2 shop. And he again says, "You have to stay overtime
3 because Odom wants to ask about your safety concerns."

4 And again I refuse. I have, you know,
5 personal family matters to attend to and, you know,
6 it's my quitting time. I'm going home. And he says,
7 "Oh, I'm giving you a direct order. You have to stay
8 for this meeting to tell Odom about your safety
9 concerns."

10 I said, "Well, I'm going home sick." I
11 said, "I haven't been feeling good all this time."
12 And I've been going under this retaliation since
13 April. And this is already the end of November. And
14 so he immediately suspends me and has Harley escort me
15 off of the property.

16 And I get home late in the day. And the
17 next day I go to the doctor. And my doctor says,
18 "You've got severe gastritis." And I explained to her
19 what had been going on at the plant, what I had been
20 under."

21 She said, "Well, it's stress. It's from
22 the stress you're undergoing over there. And you're
23 getting your stomach." And she explained all of that
24 medical stuff and told me not -- you know, she gave me
25 a medical leave of absence for like two weeks, if my

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1 memory serves me right.

2 And so I'm recovering from this illness.
3 And Kappes calls me at home. And they're wanting to
4 send these attorneys, no less, if you can believe me.
5 They want to send these attorneys to my house to
6 question me.

7 I said, "This is not going to happen." I
8 said, "You're upsetting me calling me at home telling
9 me you're sending attorneys here." I said, you know,
10 "I'm represented by counsel. You should go deal with
11 my attorneys."

12 Anyway, I go back to work mid December.
13 And there Kappes again holds a meeting and says,
14 "Well, Odom is requiring you to go see a company
15 doctor."

16 I says, "Well, what for?"

17 He says, "Well, he wants to find out if
18 you -- you know, they want to find out -- management,"
19 being all of them together because they had meetings,
20 obviously. "They want to find out if you were too
21 sick to go to Odom's office when you left the plant
22 after I had suspended you."

23 I said, "Listen, my doctor gave me a slip
24 saying I was legitimately sick. You all paid my sick
25 time. So you all affirmed that I was legitimately

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1 sick" because if you weren't legitimately sick, they
2 wouldn't pay you your sick leave. "What's the real
3 reason you're forcing me to go? Is this fitness for
4 duty? Is that what you're saying?"

5 He wouldn't say whether it was or whether
6 it wasn't. They kept going around and around. And I
7 says, "Well, here's my doctor's name. Call her up.
8 I don't need to go see another doctor."

9 Oh. Well, then there was a break in that.
10 And he ran it by somebody or other. And he come back,
11 and he says that -- their doctor I think was this
12 fellow by the name of Dr. Dolsey. And I think it's
13 spelled D-o-l-s-e-y, but I'm not certain on that. And
14 he says, well, they had a conversation. "Dolsey is
15 not satisfied. You know, he is going to need a
16 thorough examination."

17 And this is an examination, mind you, to
18 find out if I was well enough two weeks ago. This guy
19 is going to make a medical determination of whether a
20 patient is two weeks prior able to go from point A to
21 point B.

22 So, anyway, I go to this doctor. And I
23 says, "I would like to know, why are you examining
24 me?" I'm asking him questions about why I am there to
25 be examined.

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1 And he goes out of the office. I just
2 presume he made a phone call or something because I
3 don't know what he did when he left the office. He
4 came back in. He instructed me to leave. I had a
5 union representative at the time there who witnessed
6 all of this.

7 And I go back to the plant. And they tell
8 me I'm -- you know, they call me into a meeting. They
9 say, "Well, you're fired because you refused to tell
10 Odom your safety concerns on the 23rd. You refused to
11 tell Odom your safety concerns on the 30th. And then
12 you refused to be examined by our company doctor."

13 Anyway, the matter went to trial, went to
14 a hearing after I was fired. The Department of Labor
15 at the time, the Wage and Hour Division, they ruled in
16 my favor. And they awarded me \$100,000.

17 The matter was appealed on both sides. We
18 went to trial. And the first judge heard the case.
19 He ruled in FP&L's favor. Then the Secretary of Labor
20 reviewed that decision, which is required.

21 And the Secretary of Labor said that the
22 judge did not consider the case within the legal
23 framework that he was required to, being you have to
24 consider it in what is called a dual motive analysis,
25 being "Was the employee engaged in protected activity?"

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1 If the employee was engaged in protected activity, did
2 any part of that protected activity play a role in the
3 employer's decision to terminate the employee? And if
4 it did, then the employee wins." So the Secretary
5 looked at the decision by the judge, and he said,
6 "Well, the judge didn't properly apply dual motive
7 analysis to this case because the judge didn't even
8 find that there was a prima facie case." All right?

9 And by the time this went to trial, they
10 had already consolidated the case. There was actually
11 two complaints filed: one after the INPO incident and
12 one after the discharge. So it ended up becoming case
13 number 89-ERA-7/17. That's why because it's two
14 consolidated cases there.

15 The Secretary affirmed that -- the judge's
16 decision that the agency causation on the first
17 complaint but held that FP&L did violate the law. And
18 when they disciplined/discharged me because of my
19 refusal to tell Odom my nuclear safety concerns at the
20 November 23rd meeting, in fact, the Secretary of Labor
21 -- may I refer the Board at this time to page 8 of the
22 August 10th, 2008 motion for reconsideration? On page
23 8, the second paragraph down there, the Secretary
24 wrote in June 3rd --

25 CHAIRMAN MAXIN: Mr. Saporito?

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1 MR. SAPORITO: Yes, sir?

2 CHAIRMAN MAXIN: Mr. Saporito, just so we
3 can catch up with you, sir?

4 MR. SAPORITO: I am sorry.

5 CHAIRMAN MAXIN: That's fine. You're
6 doing great. Thanks.

7 (Pause.)

8 CHAIRMAN MAXIN: Okay. Go ahead.

9 MR. SAPORITO: In his decision, the
10 Secretary stated, "His grounds for dismissal," on page
11 7, 7 and 8 -- I'm sorry about that. Page 7 at the
12 bottom, towards the bottom, it says, "when Saporito
13 refused to reveal his safety concerns to Mr. Odom at
14 the meeting November 23rd, 1988, he said he would only
15 tell them to the NRC. He was insisting on his right
16 to bypass the chain of command in those
17 circumstances."

18 The Secretary then made a finding. He
19 said, "I find FP&L's rationale for requiring Saporito
20 to reveal his safety concerns to the site vice
21 president disingenuous. If Saporito told Odom on
22 November 23rd, 1988 when Odom gave him a 'direct
23 order'" -- and that's in quotes -- "to tell Odom his
24 nuclear safety concerns that Saporito would only talk
25 to the NRC, Odom then ordered Saporito to tell the NRC

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1 his nuclear safety concerns at the first available
2 opportunity. Saporito said he would.

3 "At that point, FP&L knew the NRC, the
4 government agency, responsible for nuclear safety
5 would be notified. And it was reasonable to assume
6 the NRC would notify FP&L immediately if there were an
7 imminent threat to public health or safety."

8 The Secretary made a second finding, "I
9 find that FP&L violated the ERA when it later
10 discharged Saporito, among other reasons, for refusing
11 to obey Odom's order to reveal his safety concerns.

12 "As grounds for dismissal, FP&L also cited
13 Saporito's refusal to stay after his regular workday
14 on November 30, 1988 to attend a meeting at which Odom
15 again wanted to ask Saporito about his safety concerns
16 and Saporito's refusal to be examined by a company
17 doctor.

18 "Odom's decision to require Saporito be
19 examined by a company doctor grew out of the excuse
20 Saporito gave on November 30 for refusing to stay late
21 for the meeting with Odom, that Saporito was ill and
22 Saporito was taking 12 days sick leave after November
23 30, that Saporito was suffering from stress-related
24 medical problems.

25 "Each of these reasons for discharge is

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1 related, at least in part, to Saporito's refusal to
2 reveal his safety concerns to FP&L, an act I have held
3 protected under the ERA."

4 And he remands the case back to the judge
5 with the statement that "This case is remanded to the
6 ALJ to review the record in light of this decision and
7 submit a new recommendation to me on whether FP&L
8 would have discharged Saporito for the unprotected
9 aspect of his conduct in these instances."

10 So what the Secretary did here, which is
11 very critical to this 2.206 petition, is the Secretary
12 made a finding and a holding of law that the November
13 23rd, 1988 refusal to tell Odom the safety concerns by
14 Saporito is a protected activity.

15 Saporito was wholly protected within the
16 umbrella of the Energy Reorganization Act to take his
17 concerns, his safety concerns, directly to the NRC and
18 that when FP&L, Odom ordered Saporito to reveal his
19 concerns and later discipline him because of his
20 refusal, in that instance, that FP&L violated the ERA.

21 So that is a matter of law now, an
22 upholding that has withstood the test of time. This
23 case has been cited in numerous cases, subsequent
24 cases, as a protection under the ERA, which because
25 the Nuclear Regulatory Commission was actually tiraded

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1 within the Energy Reorganization Act of 1974 and
2 because NRC regulations under 10 CFR 50.7 are drawn
3 within and parallel the employee protection provisions
4 of the Energy Reorganization Act, the NRC has to
5 accept the Secretary of Labor's finding with respect
6 to the November 23rd, 1988 instance of the subsequent
7 retaliation by FP&L that the Secretary found the
8 licensee to have violated the ERA. Therefore, the
9 NRC, in kind, has to find that FP&L violated NRC
10 requirement at 10 CFR 50.7.

11 Now, this decision by the Secretary of
12 Labor, on the 16th of July, 1996, the NRC issued a
13 notice of violation, an imposition of a civil penalty
14 of \$100,000 against the Florida Power and Light
15 Company for illegally discriminating against another
16 nuclear worker there at the Turkey Point nuclear power
17 plant again.

18 And if the Board would turn to -- what
19 page is this? -- the second page of that document,
20 it's entitled "EA-96051, Turkey Point 3 and 4, Florida
21 Power and Light." The first page is a letter
22 addressed to Mr. Plunkett, who is an FP&L manager
23 there. It's an NRC letter to Mr. Plunkett.

24 Well, the second page of that letter and
25 the second paragraph of that letter specifically state

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1 that "While any discrimination against a person for
2 engaging in protected activity is cause for concern to
3 the NRC, this violation is of very significant
4 regulatory concern because it involves discrimination
5 by a member of management above the first-line
6 supervision."

7 The NRC places a high value of freedom
8 provided to nuclear industry employees to raise
9 potential safety concerns to their management and to
10 the NRC.

11 So what's the NRC is saying here, we're
12 issuing this notice of violation. And this notice of
13 violation is very serious because the discrimination
14 was involving a member of management above the
15 first-line supervision.

16 Now, in my particular case, the Secretary
17 of Labor found on June 3rd, 1994 that John Odom, he
18 was the senior vice president for nuclear. He was the
19 top dog at the plant. There was nobody with higher
20 authority over him over those two nuclear plants.

21 So this violation of the ERA in the
22 holding by the Secretary of Labor in case 89-ERA-7/17
23 is more egregious, more egregious, than the violation
24 that the NRC found against Florida Power and Light in
25 EA-96-051, involving a nuclear engineer, a Regino R.

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1 Diaz-Robainas, who is an engineer down there at the
2 nuclear plant and a significant -- also because the
3 date of issuance is 16th of July 1996, the date that
4 the NRC issued this notice of violation, but this
5 comes on the heels within two years of the Secretary
6 of Labor's finding of June 3rd, 1994 about that Odom,
7 Senior Vice President, was not only found to have
8 violated the law and violated the ERA and violated 10
9 CFR 50.7, but he was also found to be disingenuous in
10 the Secretary's view on his reasoning for taking the
11 retaliation.

12 So it's kind of -- I don't know what the
13 proper word -- it's surprising to me, I guess, that
14 the NRC didn't reference the prior case, the
15 89-ERA-7/17, when they issued this notice of violation
16 in the Robainas case because of the short duration of
17 time between the two adjudications.

18 However, following this 1996 adjudication
19 by the NRC finding that the licensee violated the law
20 -- I'm getting just a little bit ahead of myself here.
21 I'm going back again to the 16 July 1996 notice of
22 violation. And I'm still on page 2. So I'm going
23 just to the next paragraph.

24 The second sentence of that paragraph says
25 that the NRC determines -- it says that "In your

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1 letter of April 24th, 1996," meaning FP&L's, "response
2 to the NRC," it says that -- it says, "The NRC
3 determined that your letter of April 24th, 1996 and at
4 the conference, you," being FP&L, "stated that
5 corrective actions were not required because no
6 violation occurred and that existing programs have
7 been effective in ensuring that employees feel free to
8 raise safety concerns."

9 That -- you know, when I read something
10 like that, that just sends chills through my body
11 because that's how it's made. It just reeks of
12 arrogance on the part of FP&L management that a
13 government agency that oversees licensee activities
14 with respect to nuclear power for the protection of
15 public health and safety that their response to a
16 government agency would say, "We're not guilty. We
17 didn't do it. There was no violation. You have no
18 right to take enforcement action against us." I mean,
19 that's what you're telling the government.

20 So that is an egregious and outrageous
21 position and to me tells me that the cancer is still
22 alive and growing at that nuclear power plant, even
23 after the Secretary's finding in 1994, even after the
24 NRC's finding in July 1996.

25 So what happens is in June of 2005, there

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1 is a document that you all have in front of you. It's
2 entitled "EA-00-230, Turkey Point 3 and 4 (Florida
3 Power and Light Company."

4 In June 5th, 2005, the NRC again issued a
5 notice of violation with respect to another Department
6 of Labor discrimination complaint, which is identified
7 as the case number 2000-ERA-5, ARB case number 00-070.

8 The NRC sends this notice to Mr. Stall,
9 who is still employed there at Florida Power and
10 Light. And, again, they reference a violation of 10
11 CFR 50.7, which, again, is the employee protection
12 provision.

13 The gist of this case was that a plant
14 operator who filed a complaint was being demoted
15 because he engaged in protected activity. And
16 although there was no relief afforded him by the
17 Department of Labor, there was a finding by the judge
18 and it was affirmed by the administrative Review
19 Board, which is the ARB, that FP&L actually did
20 violate the Energy Reorganization Act, at least in
21 part, through disciplining this employee.

22 And on that basis, the NRC issued this
23 notice of violation, imposition of civil penalties.
24 And, again, FP&L denies that there is a violation,
25 nothing is wrong here, employees can raise these

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1 safety concerns to anybody they want. We're not going
2 to beat them up.

3 But they certainly did. And the
4 government, Department of Labor, found that they
5 violated the law. The government, being the NRC,
6 found that they violated the law. And they arrogantly
7 deny they violated the law. And so the NRC takes
8 enforcement action. You know, that's only five years
9 ago, only five years ago, this last time.

10 Now, the NRC's rationale in the Deprey
11 case, this last case, this case, case number 00-7-070,
12 ARB case number 00-070, just so the record is pretty
13 clear on that, the NRC rationalized correctly that
14 just because there is no relief granted to the
15 employees doesn't mean a violation of the NRC
16 requirements didn't occur because both the judge and
17 the ARB said that FP&L, at least in part,
18 discriminated against its employee under the ERA.

19 And that now is very critical again to my
20 petition, my 2.207 petition, which I'm going to
21 discuss here in a bit again with respect to the latter
22 part of the Secretary's June 3rd decision in that
23 case.

24 The Secretary of Labor already made a
25 concrete finding that, yes, FP&L violated the ERA with

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1 respect to the November 23rd, 1988 meeting, where Odom
2 demanded my safety concerns.

3 Before I get into that, I would like to
4 direct the Board's attention to the last document. It
5 is identified as a Department of Labor document. It
6 is case number 2005-ERA-00003. 2005-ERA-00003 stated
7 the 19th of January 2005. So this is only two years
8 later, after the last violation that the NRC gave to
9 FP&L that we just talked about.

10 This comes on the heels two years later.
11 There was a recommended decision and order by a judge
12 approving a settlement dismissing the complaint. This
13 was affirmed by the Administrative Review Board.

14 So what you have here is an employee at
15 FP&L's nuclear plant engaging in a protected activity
16 sufficient to carry a prima facie case to court and
17 consideration by FP&L's counsel obviously. And
18 negotiations transpired at some point before this goes
19 to trial. And they end up settling the case. That is
20 all fine and good. That's what the employee wanted
21 and gave that employee some relief.

22 But, nonetheless, here the government,
23 being the NRC, stopped short. And they just take this
24 settlement on face value. And in my view, the OI
25 should have gotten engaged also. The Office of

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1 Investigations. The NRC OI should have gotten engaged
2 and executed a 10 CFR 50.7 investigation to find out
3 if there was a violation of NRC requirements. Just
4 because there's a settlement in the ERA proceeding,
5 this doesn't immunize any licensee from violating 10
6 CFR 50.7.

7 I don't think the government, being the
8 NRC, fully understands that principle of law because
9 I reviewed numerous, numerous cases over the last 20
10 years. And, believe me, every time that I have seen
11 a settlement, I have never seen any follow-up by the
12 NRC. Anyway, that's just an extraneous point I wanted
13 to bring on this record.

14 So, going back to the petition and going
15 back to the Secretary's finding, referencing again the
16 August 3rd, 2008 petition -- I'm at page 4, where the
17 Secretary made his finding. And, with that in mind,
18 I am going to direct the Board's attention back to the
19 August 10th, 2008 motion for reconsideration on page
20 8 and 9. What happened --

21 CHAIRMAN MAXIN: Just a minute, sir.

22 MR. SAPORITO: Oh, sure. I am sorry.

23 CHAIRMAN MAXIN: I want to turn to the
24 page. You said it was 8 and 9?

25 MR. SAPORITO: Yes, sir, on the motion for

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1 reconsideration.

2 CHAIRMAN MAXIN: Got it. Thank you.

3 MR. SAPORITO: Okay. At the bottom of
4 page 8 and continuing on to page 9, there is some
5 discussion about a Secretary of Labor who made a
6 ruling subsequent to FP&L's filing a motion for
7 reconsideration of the June 3rd, 1994 decision.

8 And the Secretary sustained his initial
9 decision, saying that there was no justification to
10 reconsider that decision. And it stood as a matter of
11 law. And he again reiterated that the FP&L violated
12 the ERA when it discharged for refusing to obey
13 management's order to reveal its safety concerns.

14 Following that, I wanted to talk about the
15 decision with respect to the Secretary of Labor's June
16 3rd, 1994 polling. He issued the -- following the
17 June 3rd decision and remand order and following
18 FP&L's challenge, unsuccessful challenge, the
19 Secretary specifically in his remand order
20 specifically directed the judge -- it's going to be a
21 second judge because this is another hearing. The
22 first judge retired. And so they assigned it to
23 another judge, who hadn't ever heard the case.

24 So the Secretary specifically told,
25 instructed, and directed the judge to look at

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1 Saporito's case with respect to the November 30th
2 refusal to tell the safety concerns, now, with respect
3 to the incident where Saporito allegedly refused to be
4 examined by FP&L company's doctor. And only look at
5 those two issues and give me another recommended
6 decision of whether Saporito could have been legally
7 discharged for any unprotected aspect of those two
8 incidences.

9 And so what occurred was the judge -- we
10 did go back to trial. And the judge issued another
11 recommended decision and order, which was subsequently
12 affirmed by the Administrative Review Board finding in
13 favor of FP&L. But the problem with that decision and
14 the genesis for this motion for reconsideration is the
15 fact that the Administrative Review Board and the
16 administrative law judge were required by the
17 Secretary's 1994 order on remand to evaluate the case
18 on a -- you again have to apply the principles of a
19 dual motive analysis to try to discern if the
20 protected activity and the disciplinary action can be
21 separated. And if they can't be separated, the
22 employee has to win.

23 So if you look at the -- you don't have to
24 look right now, but if you re-review the judge's
25 decisions and review the ALB's decision with respect

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1 to the November 30th incident, the one in my safety
2 concerns, and the subaccount requirement on the
3 judge's physical examination, you will see that both
4 the judge and the Administrative Review Board, they
5 failed to properly apply the dual motive analysis
6 because they specifically said that those were
7 unprotected acts. Okay?

8 They did not consider the protected parts
9 of those incidents, the protected part being that the
10 reason, the sole reason, -- and I emphasize those
11 words, "the sole reason," for the November 30th
12 meeting that was conveyed to Saporito by Harley, Jerry
13 Harley; and by Joseph Kappes, both licensee managers
14 above the first level because my first-level manager
15 was Greg Verhoeven. That's spelled V-e-r-h-o-e-v-e-n,
16 if my memory serves me. Hew as my first-line
17 supervisor.

18 So two managers above my first level were
19 directing me to divulge my safety concerns again to
20 Odom. And I refused to both of those orders by Jerry
21 Harley and later by Kappes.

22 The only reason that they told Saporito he
23 was being required to hold over was because Odom
24 wanted to ask him about his safety concerns again.
25 That's all. There was no other reason given.

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1 They didn't say, "Oh, you know Odom
2 collected a bunch of these work orders. And he wants
3 to sit there and go through them with you." No, they
4 didn't say that. They didn't say, "Oh, you know,
5 Odom, you know, he wants to make sure that you
6 understand what a nuclear safety concern really is."
7 No. That was never conveyed. And the transcripts of
8 those hearings will validate what I am telling the
9 Board.

10 So the only, only direction and the only
11 reason given to Saporito for that meeting is because
12 Odom wanted to ask Saporito about his nuclear safety
13 concerns again.

14 And when I refused Harley's order to give
15 my safety concerns to Odom, he went to Kappes. And
16 it's in the court's transcripts. He went to Kappes.
17 And he told him, "Saporito is refusing to stay late to
18 tell Odom his safety concerns at this meeting."

19 So Kappes upon hearing that, he personally
20 came to the instrument control shop, where I was on
21 November 30th. And he again told me the reason that
22 I was required to stay overtime beyond my quitting
23 time was because Odom wanted to ask me about my safety
24 concerns. That's the only reason Kappes gave me.

25 And when I refused to attend that meeting

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1 and Kappes suspended me, Kappes went back to Odom's
2 office immediately following that incident. And he
3 told Odom that I refused.

4 So both the incident involving -- where
5 Kappes refused to tell Harley the safety concerns,
6 that he was not going to stay to tell him the safety
7 concerns, and the subsequent incidents, where Saporito
8 told Kappes he's not going to stay late because, you
9 know, how he was to have told Odom his safety
10 concerns.

11 That's twice more that Saporito refused,
12 two more direct orders to reveal his safety concerns
13 to management's orders, a finding that the Secretary
14 of Labor has found to be a violation of the ERA. And
15 Odom communicated both of those refusals.

16 Kappes told him he refused Harley.
17 Therefore, Odom sent Kappes to come get Saporito. And
18 Kappes then goes back and says, "Saporito refused
19 Kappes' direct order."

20 So the Secretary of Labor -- excuse me.
21 The Administrative Review Board, who is legally the
22 agent representing the Secretary of Labor -- there's
23 no legal difference between the two entities.

24 The Administrative Review Board and the
25 administrative law judge both incorrectly applied the

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1 legal standard of a dual motive analysis on the
2 November 30th incident because they did not consider
3 the protected aspects of that engagement.

4 When you have an employee at a nuclear
5 power plant where he is approached by two levels of
6 management in front of his immediate supervisor and
7 they are ordering him to divulge his safety concerns,
8 you're saying, "You're going to stay late because the
9 Senior Vice President of the nuclear power plant wants
10 to ask you about your nuclear safety concerns" and
11 that employee refuses, he is protected. He is well
12 wholly and fully within the umbrella of protection
13 under the Energy Reorganization Act.

14 And because the Administrative Review
15 Board and the judge did not consider that protected
16 status of the employee, they incorrectly found that
17 FP&L carried their burden in arguing a legitimate
18 reason for requiring Saporito to stay late that day.
19 There was no legitimate reason.

20 And the record will prove me out that not
21 only was Saporito engaged in protected activity in
22 refusing to attend that meeting, but Odom already
23 knew. He already knew what Saporito's safety concerns
24 were because Odom had been talking to the NRC. He had
25 been talking to this fellow Demiranda, Oscar Demiranda

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1 --

2 CHAIRMAN MAXIN: Mr. Saporito?

3 MR. SAPORITO: Yes, sir?

4 CHAIRMAN MAXIN: If I could just interrupt
5 just for a moment? A lot of the -- we very much
6 appreciate your perspectives. This is Mark Maxin.

7 We very much appreciate your perspective
8 on this and your opportunity to make this petition.
9 A lot of the points and comments, as you have well
10 pointed out to this point, are clearly articulated and
11 enunciated in the record. And also so once we render
12 a decision one way or the other, you will have an
13 opportunity if you want to comment again later on.

14 So I guess I am just trying to find out if
15 you could kind of punctuate your remarks because, I
16 guess, you know, the court reporter was only scheduled
17 for basically only just another five minutes pretty
18 much is what we agreed to. And based upon that as
19 well, we have other schedules that we have attended
20 to. So I would appreciate --

21 MR. SAPORITO: Well, let me just state for
22 the record, then, that if that's -- because that was
23 not my understanding at all. Number one, for the
24 record, it's my understanding that the petitioner who
25 participates in these PRB conferences, there is no

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1 time limit. That's number one. That's my
2 understanding.

3 And, number two, I want to delineate these
4 points that I am bringing up now with respect to the
5 November 30th incident and with respect to the
6 December 16th incident regarding the doctor visit
7 because I am going to state on the record here that I
8 am amending my 2.206 petition to enclose both
9 incidences because, like I stated earlier on the
10 record, not only is this a matter under the Energy
11 Reorganization Act; it's very germane to 10 CFR 50.7.
12 And because of that requirement under 50.7, you know,
13 the NRC is required to do certain actions to protect
14 the employee. And so it bears directly on the basis
15 for the entire petition in my view.

16 And if we all don't have time to do it
17 today, then we need to continue this proceeding. But
18 I am in no way agreeing to terminate this proceeding.
19 I am not agreeing to cut it short. And I'm not going
20 to be summarizing any of my positions at this time.

21 I can certainly appreciate the Board's
22 scheduling, and I can certainly appreciate the
23 concerns for the court reporter's time. However, I
24 was not communicated those concerns by Mr. Orf in his
25 communications to me. And it's my view that there is

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1 no time limit on this proceeding.

2 And if I'm incorrect, please feel free to
3 correct me, but my position is that I need to continue
4 this at another time, another date at the Board's
5 choosing. And that will be fine. But I am not ending
6 this today, no way.

7 CHAIRMAN MAXIN: We'll take your points
8 under advisement and get back to you on your request
9 for additional time. I guess we will get back to you
10 after this proceeding as to whether we will reschedule
11 another time frame or to -- how much more time do you
12 think you need, sir?

13 MR. SAPORITO: Well, probably an hour.

14 CHAIRMAN MAXIN: This is well beyond the
15 normal time frame that we authorize in these
16 petitions. And it's particularly because a lot that
17 you're talking about, sir, is really elaborately
18 identified in the record.

19 MR. SAPORITO: Yes. But that is the whole
20 reason for public participation and engagement with
21 the NRC, so that the public has an opportunity to
22 clarify points, emphasize points, and to provide the
23 Board, the Petition Review Board, with perspective and
24 not just give documents to the government and say,
25 "Hey, read this and let me know what you think."

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1 I mean, that's the whole rationale behind
2 the participation by the public. And, you know, if
3 the public is going to be denied the unlimited time,
4 which by law is my understanding that the public has,
5 we need to address that issue separately, I guess,
6 because it's my understanding there are no time limits
7 here.

8 I certainly have some aspects of this
9 matter that I need to convey to the Board in my own
10 words and through my own viewpoints.

11 CHAIRMAN MAXIN: Okay. We will take your
12 request for a motion for additional time under
13 advisement and get back to you after this proceeding.

14 You have two more minutes left at this
15 point. Is there anything else that you want to -- oh,
16 we're already behind. Okay.

17 MS. MASHHADI: I am sorry. This is Marjan
18 Mashhadi with Florida Power and Light.

19 CHAIRMAN MAXIN: Yes.

20 MS. MASHHADI: If I may take two minutes?

21 CHAIRMAN MAXIN: Yes, ma'am.

22 MS. MASHHADI: I understand that there are
23 time constrains. But I would like to point out that
24 Mr. Saporito has been attempting to litigate this
25 exact issue for over 20 years.

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1 He has had no success. His appeals have
2 been repeatedly rejected by the ALJ, by the ARB, as
3 well as the Eleventh Circuit Court of Appeals. He has
4 taken this all the way up to the Supreme Court and has
5 lost at that level after two decades of virtually
6 identical, fully litigated and meritless complaints.

7 He is clearly abusing the whistleblower
8 protection process. He is trying to harass FP&L. He
9 is trying to perform an Enron around the numerous
10 unfavorable rulings that he has received from both the
11 Department of Labor and the courts and the NRC in
12 order to harass FP&L.

13 As a result, FP&L would like to ask that
14 the NRC actually order the complainant to cease from
15 filing 2.206 petitions with respect to the 1986
16 discrimination allegations, which has already been
17 fully litigated. We believe that this is a waste of
18 time, this is a waste of resources, both of the
19 Commission and of the Licensing Board and of the PRB
20 as well as of FP&L.

21 We recognize that this is an extraordinary
22 measure, that this is, frankly, an extraordinary
23 petitioner. And we would like to make that request in
24 order to wrap up once and for all these meritless
25 allegations.

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1 MR. SAPORITO: This is the petitioner,
2 Thomas Saporito.

3 I would like to strenuously object on the
4 record, number one, that the licensee was
5 well-instructed, FP&L was instructed, at the beginning
6 of this proceeding that they were allowed to ask
7 questions of the petitioner or questions of the Board,
8 but they were never permitted to make such outrageous
9 comments apart, separate and apart, from that
10 understanding.

11 And to suggest to this Board on a public
12 record that the NRC deny a member of the public an
13 opportunity to file a 2.206 petition is just
14 egregious, outrageous, and arrogant on their part. It
15 just makes my point of how they treat employees at
16 their nuclear power plant. And that is why they file
17 ERA complaints for protection, why they turn to the
18 NRC under 50.7 protection.

19 I would request that their entire lengthy
20 comments be stricken from this proceeding in their
21 entirety. If they want to file a motion with the NRC
22 to ridiculously request that a member of the public be
23 denied access to this 2.206 process, then let them do
24 it in writing under a separate forum. This is not the
25 forum for such conduct violations.

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1 CHAIRMAN MAXIN: We are not going to
2 strike the record, but we will consider the motions.
3 And we will respond accordingly after this hearing.

4 As noted earlier, no NRC decisions
5 regarding the merits of petitioner's requests will be
6 made during this meeting. Subsequent to this meeting,
7 PRB will conduct an internal meeting to make a
8 recommendation on whether to accept or reject the
9 petition for review. The results of the meeting will
10 be documented in an acknowledgement letter to the
11 petitioner.

12 At this time does the staff at
13 headquarters have any questions for the petitioner?

14 (No response.)

15 CHAIRMAN MAXIN: The answer is no. The
16 licensee, I guess you have already made your point, I
17 assume?

18 MS. MASHHADI: Yes. Thank you.

19 CHAIRMAN MAXIN: I want to thank the
20 petitioner for taking the time to provide NRC with the
21 clarifying information on the petition you have
22 submitted.

23 With that, I would like to conclude the
24 meeting. And we are going to --

25 MR. SAPORITO: This is -- hello?

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1 CHAIRMAN MAXIN: Yes, sir?

2 MR. SAPORITO: Yes. I just need to
3 clarify the mailing address. I've been told by the
4 United States post office my mailing address should be
5 illustrated as Post Office Box 8413, Jupiter, Florida
6 33468-8413 just so that the mail gets to me.

7 CHAIRMAN MAXIN: I am just going to have
8 Mr. Orf repeat that address so we make sure that it's
9 accurate. Can you hear him? He is going to start
10 now.

11 MR. ORF: Okay. This is Tracy Orf. I've
12 got P.O. Box 8413, Jupiter, Florida 33468-8413.

13 MR. SAPORITO: That's correct.

14 MR. ORF: All right. Thank you.

15 CHAIRMAN MAXIN: With that, these
16 proceedings are closed.

17 (Whereupon, the foregoing matter was
18 concluded at 11:35 a.m.)

19

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CERTIFICATE

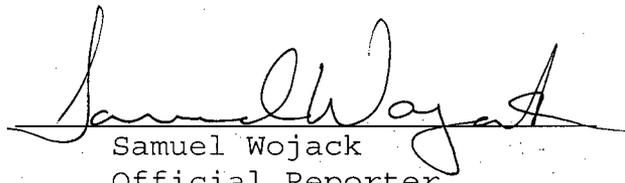
This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Florida Power and Light

Name of Proceeding: Petition Review Board
with Mr. Saporito

Docket Number: (none)

Location: Teleconference

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.



Samuel Wojack
Official Reporter
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