

September 26, 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Florida Power & Light Company) Docket Nos. 50-250
(Turkey Point Units 3 and 4)) 50-251
)

FPL'S MOTION TO STRIKE SAPORITO'S REPLY AND FOR SANCTIONS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(a), Florida Power & Light Company ("FPL") hereby moves to strike "Petitioner's Response to Answers by the Nuclear Regulatory Commission Staff and by the Florida Power and Light Company" ("Saporito's Reply") filed by Petitioners Thomas Saporito ("Saporito") and Saporito Energy Consultants ("SEC")¹ on September 16, 2008. Saporito's Reply impermissibly raises entirely new allegations and provides a new affidavit with testimony not found in his initial August 18, 2008 "Request for Hearing and Leave to Intervene" ("Saporito's Hearing Request"). Saporito has not sought leave to amend his contentions after his initial filing, as required by 10 C.F.R. § 2.309(f)(2). The amended contention in Saporito's Reply and the new arguments and affidavit in support thereof should be stricken.

This case is one of four NRC actions involving reactors owned by subsidiaries of FPL Group, Inc., on which Saporito has requested a hearing during the past few months (other

¹ While the Hearing Request and Reply were ostensibly filed by Saporito Energy Consultants, the relief FPL seeks in this Motion directly involves Saporito and so we refer to Saporito throughout.

requests were made in proceedings involving FPL Energy Point Beach, LLC (“FPLE-PB”), FPL Energy Seabrook, LLC (“FPLE-S”), as well as another FPL facility, the St. Lucie Nuclear Plant; FPL, FPLE-PB, and FPLE-S are all indirect subsidiaries of FPL Group). These hearing requests are vexatious and amount to harassment and an abuse of the administrative process.

For this reason, FPL also moves, pursuant to 10 C.F.R. §§ 2.319(l) and 2.323(f)(2), the Atomic Safety and Licensing Board (“Board”) to certify to the Commission the question whether to impose sanctions against Saporito and SEC, including but not limited to, barring him from filing further meritless hearing requests against FPL Group entities. *See* 10 C.F.R. § 2.314(c). Saporito’s conduct cannot and should not be condoned.²

PROCEDURAL BACKGROUND

This proceeding arises out of an administrative license amendment request submitted by FPL requesting the NRC’s approval to delete notes regarding the inoperability of the Turkey Point Units 3 and 4 Rod Position Indication system for certain control rods. *See* Letter from William Jefferson, Jr. to NRC, “Administrative changes to Technical Specifications to Remove Notes Regarding the Inoperability of Rod Position Indication for Control Rods F-8 (Unit 4) and M-6 (Unit 3)” (Sept. 5, 2007) (“LAR”). In response, the NRC Staff issued a “Notice of Consideration of Issuance of Amendment[] to [a] Facility Operating License[], Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing”, which provided an opportunity for persons that could be adversely affected by the license amendment

² In an effort to resolve the issues addressed herein, counsel for FPL contacted Saporito and described this Motion. This effort was unsuccessful. FPL also contacted the NRC Staff. The NRC Staff authorized FPL to represent that it supports the motion to strike Saporito's reply and does not oppose FPL's motion for certification to the Commission.

to request a hearing within 60 days of the Notice. *See* 73 Fed. Reg. 43,953, 43,954, 43,956 (July 29, 2008). On August 18, 2008, Saporito filed his initial timely Hearing Request.

On September 11, 2008 FPL filed its “Answer to Request for Hearing and Petition for Leave to Intervene of Saporito Energy Consultants” (“FPL’s Answer”). The NRC Staff also filed its “Answer to Saporito Energy Consultants’ Petition to Intervene and Request for Hearing” (“Staff Answer”) that same day. Both FPL and the NRC Staff argued that Saporito failed to demonstrate standing or plead any admissible contentions. In response, Saporito filed his Reply. Saporito’s Reply “collectively amend[s]” (emphasis in original) the three inadmissible contentions he initially filed by providing additional detail and an affidavit in support of his new amended contention. *See* Saporito’s Reply at 6. This, he claims to do “in accordance with the Commission’s Rules of Practice for Domestic Licensing Proceedings at 10 C.F.R. 2.309”. *Id.* Notwithstanding Saporito’s claim that his actions are consistent with Part 2, his attempt to raise new issues without leave from the Board is impermissible under the Commission’s Rules of Practice and should be stricken.

HISTORICAL BACKGROUND

FPL is reluctantly filing this Motion with the Board following 20 years of abusive, vexatious, and meritless litigation against FPL Group’s subsidiaries by Saporito (and more recently, SEC, the apparent alter ego of Saporito). A history of these proceedings is helpful to put this Motion into context.

1. Discrimination Complaints Arising out of Saporito’s Termination from FPL

In 1988 Saporito was terminated from employment with FPL for cause. He subsequently filed two complaints against FPL with the U.S. Department of Labor (“DOL”) – one alleging

harassment and discriminatory treatment on account of protected activity (Case No. 89-ERA-7) and one alleging discharge on account of protected activity (Case No. 89-ERA-17) under Section 210 (now 211) of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851 (“ERA”). After ten years of fully litigating those claims before the DOL and in federal courts, the final determination was that FPL’s termination of Saporito’s employment was not a violation of Section 211 of the ERA. Rather, as found by a DOL Administrative Law Judge (“ALJ”) and affirmed by both the Administrative Review Board (“ARB”) and the U.S. Court of Appeals for the Eleventh Circuit, the termination was based on “overwhelming” evidence that Saporito was repeatedly insubordinate, “insolent,” “*blatantly lied*” and “clearly lied” to management, and engaged in a “mockery of management’s role.” Thus, Saporito’s claims for relief under the ERA were denied in their entirety. *See Saporito v. Florida Power & Light Co.*, 89-ERA-07, (Recommended Decision and Order, Oct. 15, 1997), *aff’d*, ARB Case No. 98-008 (Final Decision and Order Aug. 11, 1998), *aff’d sub nom, Saporito v. U.S. Dep’t of Labor*, 192 F.3d 130 (11th Cir. 1999) (*per curiam*) (unpublished table decision), *reh’g en banc denied*, 210 F.3d 395 (11th Cir. 2000) (“ARB I”) (emphasis in original ALJ Recommended Decision).

In 2004, more than five years after the ARB’s final decision in ARB I (and four years after the Eleventh Circuit’s affirmance of that decision), Saporito filed with the ARB a Motion for Reconsideration of the ARB’s decision in ARB I, a Motion for a New Trial, and then a Supplemental Motion for Reconsideration. The ARB denied Saporito’s motions and dismissed the case. *See Saporito v. Florida Power & Light Co.*, ARB Case No. 04-079, 2004 WL 3038071 (Dec. 17, 2004) (“ARB II”). Saporito then petitioned the Eleventh Circuit for review of both the ARB I and ARB II decisions. The Court dismissed on *res judicata* grounds. *See Saporito v. Dep’t of Labor*, Case No. 05-10749-DD (11th Cir. Jun. 2, 2005) (*reh’g denied*, Jul. 21, 2005)

(unpublished decision). Saporito then filed a Petition for a Writ of Certiorari with the U.S. Supreme Court, which was also denied. *See Saporito v. Dep't of Labor*, 546 U.S. 1150 (2006).

Saporito has also filed a host of whistleblower discrimination complaints against FPL with DOL that were derivative of Saporito's 1988 discrimination complaint. Every one of these derivative complaints was dismissed by DOL. *See, e.g., Saporito v. Florida Power & Light Co.*, 1996 WL 580922 (ARB Jul. 19, 1996 (ERA complaint dismissed as "frivolous")); *Saporito v. Florida Power & Light Co.*, 1995 WL 848177 (Sec'y Sept. 7, 1995) (ERA complaint dismissed); *Saporito v. Florida Power & Light Co.*, 1994 WL 897461 (Sec'y Aug 8, 1994) (ERA complaint dismissed). In sum, each and every one of Saporito's complaints to the DOL and the federal courts that FPL violated the ERA with respect to Saporito has been rejected.

Saporito has not limited his complaints to FPL. Indeed, his litigious nature is further demonstrated by his filing of blacklisting and/or retaliatory discharge and/or related claims against numerous other companies and against OSHA itself.³

2. Saporito's Attempts to Seek Re-Employment with FPL

Incredibly, in July 2005, Saporito sought *re-employment* with FPL and employment with FPLE, applying for six different positions over a period of two days. In response, FPL informed

³ *See Saporito v. FedEx Kinkos Office and Print Services, Inc.*, 2005-CAA-18; *Saporito v. Central Locating Services, Ltd., et al.*, 2005-CAA-13; *Saporito v. GE Medical Systems, et al.*, 2005-CAA-7; *Saporito v. Central Locating Services, Ltd., et al.*, 2004-CAA-13; *Saporito v. Quarles & Brady et al.*, 2004-CAA-9; *Saporito v. BellSouth*, 2004-CAA-8; *Saporito v. Dep't of Labor*, 2003-CAA-9; *Saporito v. GE Medical Systems, et al.*, 2003-CAA-2; *Saporito v. GE Medical Systems, et al.*, 2003-CAA-1; *Saporito v. The Atlantic Group, Inc.*, 94-ERA-29; *Saporito v. Arizona Public Service Co., et al.*, 93-ERA-45; *Saporito v. Houston Lighting & Power Co.*, 93-ERA-28; *Saporito v. Arizona Public Service Co., et al.*, 93-ERA-26; *Saporito v. Houston Lighting & Power Co., et al.*, 92-ERA-45; *Saporito v. Houston Lighting & Power Co., et al.*, 92-ERA-38; and *Saporito v. Arizona Public Service Co., et al.*, 92-ERA-30.

Saporito by letter “that employees terminated for cause as a result of insubordination are not eligible for rehire with FPL.” Saporito filed yet another discrimination claim with the DOL in January 2006. That claim was voluntarily withdrawn by Saporito and was dismissed by the ALJ. *Saporito v. Florida Power & Light Co.*, 2006-ERA-8 (ALJ Mar. 24, 2006).

On May 18, 2008, Saporito again applied for re-employment with FPL, submitting an application for four different positions posted on FPL’s website. He was not selected for any of these positions. On July 4, 2008, Saporito filed another complaint with DOL, alleging, once again, that FPL retaliated against him in violation of Section 211 of the ERA. OSHA investigated and dismissed the case on July 30, 2008, finding the claim time-barred. Saporito filed an appeal of the OSHA finding to the DOL Office of Administrative Law Judges on August 5, 2008. On August 18, 2008, FPL filed with the ALJ a “Motion to Dismiss and for Further Relief” seeking to bar Saporito from filing further ERA complaints against FPL. The 2008 proceeding is pending before DOL. Even so, Saporito continues to file ERA complaints against FPL, with the most recent complaint filed with OSHA on August 14, 2008.

3. Saporito’s Previous 2.206 Petitions and Hearing Requests

Saporito has also sought to participate in many NRC proceedings during this twenty-year period. He has filed numerous requests for enforcement action pursuant to 10 C.F.R. § 2.206⁴

⁴ See, e.g., *Florida Power & Light Co.*, (St. Lucie Nuclear Power Plant Units 1 and 2; Turkey Point Nuclear Generating Plant Units 3 and 4) DD-98-10, 48 NRC 245 (1998); *Florida Power & Light Co.*, (St. Lucie Nuclear Power Plant Units 1 and 2; Turkey Point Nuclear Generating Plant Units 3 and 4) DD-97-20, 46 NRC 96 (1997); *Florida Power & Light Co.*, (St. Lucie Nuclear Power Plant Units 1 and 2) DD-96-19, 44 NRC 283 (1996); *All Licensees*, DD-95-8, 41 NRC 346 (1995); *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant Units 3 and 4; St. Lucie Nuclear Power Plant Units 1 and 2) DD-95-7, 41 NRC 339 (1995); *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant Units 3 and 4) DD-90-1, 31 NRC 327 (1989); *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant Units

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and hearing requests pursuant to 10 C.F.R. § 2.309 (then § 2.714), all of which were ultimately denied.⁵

4. Saporito's Intervention Request Challenging a St. Lucie Confirmatory Order

Saporito's interest in NRC regulatory actions has recently increased. On July 2, 2008, Saporito (and SEC) requested a hearing to challenge a Confirmatory Order ("CO") issued by the NRC Staff ("Staff") to FPL resolving an enforcement action regarding NRC access authorization regulations concerning FPL's St. Lucie Nuclear Plant. The Licensing Board assigned that hearing request quickly issued a Memorandum and Order denying the request, finding Saporito "failed to establish standing, seeks to litigate concerns that are outside the scope of the issues that may be raised in a hearing on a Confirmatory Order, and has failed to proffer at least one admissible contention." *Florida Power & Light Co.* (St. Lucie Nuclear Plant, Units 1 and 2),

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3 and 4) DD-89-8, 30 NRC 220 (1989); *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant Units 3 and 4) DD-89-5, 30 NRC 73 (1989).

⁵ See, e.g., *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant, Units 3 and 4) LBP-91-2, 33 NRC 42 (1991) (Licensing Board denies a petition to intervene because Saporito failed to demonstrate that he resides and/or works in the vicinity of the plant in question) *aff'd* CLI-91-5, 33 NRC 238 (1991) (Saporito's appeal dismissed for failure to file a timely brief); *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant, Units 3 and 4) LBP-90-5, 31 NRC 73 (1990) (Licensing Board denies Saporito's Petition to Intervene filed eleven months after the close of the time specified in the Notice of Opportunity for Hearing as inexcusably late); *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant, Units 3 and 4) LBP-90-16, 31 NRC 509 (1990) (Admitted to the proceeding), *but see* LBP-90-24, 32 NRC 12 (1990) (Saporito dismissed from proceeding based upon lack of standing due to changed circumstances) *aff'd* ALAB-952, 33 NRC 521 (1991) *aff'd* CLI-91-13, 34 NRC 185 (1991); *Florida Power & Light Co.*, (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (Commission finds that Saporito's request to intervene on an exemption request fails to meet the regulatory threshold).

Memorandum and Order (Denying Request for Hearing), slip op. at 11 (Aug. 15, 2008). Saporito did not appeal this decision.

5. Saporito's Recent 2.206 Petitions Against FPL

Saporito has filed several 2.206 petitions with NRC regarding FPL's Turkey Point Nuclear Plant in 2008 alone. *See* Letter from Mark J. Maxin, Acting Deputy Director Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, to Thomas Saporito, (Aug. 4, 2008) (concluding that Saporito's 2.206 petition dated July 5, 2008 did not meet the criteria for consideration under section 2.206 because it "simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns."); *see also* Letter from Joseph G. Giitter, Director Division of Operator Reactor Licensing, Office of Nuclear Reactor Regulation, to Thomas Saporito, NRC, (July 7, 2008) (concluding that Saporito's 2.206 petition dated April 27, 2008 "provided no significant new information to warrant reopening" a closed enforcement action.). Saporito's most recent 2.206 petition, requesting imposition of a \$100,000 civil penalty against FPL arising out of FPL's 1988 termination of Saporito's employment, remains pending before the NRC. *See* Letter from Thomas Saporito to Executive Director for Operations, NRC, "RE: 10 C.F.R. 2.206 Petition – Docket Nos.: 50-250, 50-251 License Nos.: DPR-31, DPR-41; Request for Notice of Violation and Proposed Imposition of Civil Penalty - \$100,000 (Department of Labor Case Nos. 89-ERA-07/17)" (Aug. 3, 2008).

6. Saporito's Request to Establish a Business Relationship with FPL

While his hearing request was pending on the St. Lucie CO issue, Saporito wrote a letter to various FPL Group executives and employees requesting a business partnership between FPL and SEC involving SEC's purported home energy efficiency business. *See* Letter from Thomas Saporito, President, Saporito Energy Consultants to Mr. Lewis Hay, III, Chairman CEO, FPL

Group “re: REQUEST FOR PARTERSHIP” (August 1, 2008) (Attachment 1); Counsel for FPL replied to Saporito, explaining that, because his employment with FPL was terminated for cause in 1988, “the Company has . . . decided that [he] would be an unsuitable business partner.” *See* Letter from Mitchell S. Ross, Vice President and Associate General Counsel, FPL, to Thomas Saporito, (August 20, 2008) (Attachment 2).

Three days after the date of this letter, Saporito, in a pleading before the Florida Public Service Commission (“PSC”), cited “FPL’s refusal to establish a business partnership with SEC and Mr. Saporito,” as “only serv[ing] to underscore FPL’s arrogance and its continued retaliatory conduct towards Mr. Saporito and now SEC as a direct result of Mr. Saporito having raised safety concerns about the FPL Turkey Point nuclear plants.” Petitioner’s Answer to Florida Power & Light Company’s Response in Opposition to Amended Petition to Intervene of Saporito Energy Consultants, (August 23, 2008) (Attachment 3) (emphasis in original).

7. Saporito’s Recent Intervention Petitions

Undeterred by the Board’s quick resolution of the hearing request in *St. Lucie*, Saporito (and SEC) then proceeded to file a flurry of requests for hearing on NRC licensing actions involving reactors owned by FPL and other FPL Group affiliates. Three days after the *St. Lucie* Board denied his initial hearing request, Saporito requested a hearing in this proceeding. Two days after that, Saporito requested a hearing on a LAR sought by FPLE-PB for Point Beach Nuclear Plant, Unit 1. *See* “Request for Hearing and Leave to Intervene” (August 20, 2008). Most recently, Saporito requested a hearing on a LAR sought by FPLE-S at Seabrook Station. *See* “Request for Hearing and Leave to Intervene” (August 29, 2008).

In none of these cases has Saporito established standing or proffered an admissible contention. Saporito has not made the slightest effort at providing any basis for his

unsubstantiated and meritless contentions, nor has he made any allegation of concrete injury sufficient to establish standing, even though the Board's August 15 *St. Lucie* decision clearly explained the responsibilities of proper contention pleading set forth in the Commission's Rules of Practice. *See St. Lucie*, slip op. at 11. Four days after filing his Turkey Point Reply, Saporito filed a similar reply in the Point Beach proceeding, followed by another in the Seabrook proceeding. *See* "Petitioner's Response to Answers by the Nuclear Regulatory Commission Staff and by the Florida Power and Light Company" (Point Beach) (Sept. 20, 2008); "Petitioner's Response to Answers by the Nuclear Regulatory Commission Staff and by the Florida Power and Light Company" (Seabrook) (Sept. 24, 2008).

Even more illustrative of the baseless nature of the petitions is that Saporito's residence (as represented by the Jupiter, Florida address listed on his pleadings) is more than 100 miles from Turkey Point *and is more than 1000 miles* from the Point Beach and Seabrook reactors. Saporito has not alleged any credible connection with these regions of the United States that are very distant from his residence.⁶

8. Saporito's Intervention Requests at the Florida Public Service Commission

Saporito recently chose to direct further abusive litigation to the Florida PSC. On August 8, 2008 Saporito sought permission to intervene in an FPL state regulatory proceeding. Like the Licensing Board in the *St. Lucie* case, the PSC quickly issued an order denying Saporito's hearing request, finding that the request "fails to demonstrate that either Saporito or SEC has

⁶ It is also worth noting that in the Notice of Appearance filed in this and the *St. Lucie* proceedings, Saporito represented to the Board that he was "Admitted" in the 11th Circuit and the U.S. Supreme Court. Saporito is not an attorney. FPL has filed a charge with the Florida Bar alleging that Saporito engaged in the unauthorized practice of law. The Bar has opened an investigation into FPL's complaint and this matter is pending.

standing to participate as a party in this proceeding [and that] the petition does not allege any facts to show that he has a substantial interest that will be affected by the outcome of this proceeding or that his interest is one this proceeding is designed to protect.” *In re Energy conservation cost recovery clause*, Florida Public Service Commission, Order No. PSC-08-0596-PCO-GU (Sept. 16, 2008).

Most recently, Saporito filed yet another meritless and untimely “Petition for Hearing and Leave to Intervene” before the Florida PSC, captioned “In re: Petition to prohibit the Florida Power & Light Company from collection of customer funds prior to completion of proposed nuclear power plant expansions and proposed construction of new nuclear power plant construction.” (Sept. 20, 2008). This petition came nearly a year after FPL filed its “Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant,” on October 16, 2007. The PSC held hearings on this need petition on January 30 to February 1, 2008, having been duly noticed. *See* “Notice of Commission Hearing and Prehearing to Florida Power & Light Co. and All Other Interested Persons, Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant, by Florida Power & Light Co.” Docket No. 070650-EI (Dec. 4, 2007). The PSC also held hearings on the cost recovery aspects of the Turkey Point Units 6 and 7 project on September 11-12 of 2008. Saporito withdrew this petition after PSC staff counsel advised him that the time for intervention had passed.

DISCUSSION

I. The Board Should Strike Saporito's Amended Contention

Saporito's Reply fails to comply with the NRC's Rules of Practice. Instead of responding to FPL and the NRC Staff, Saporito filed an amended contention to cure his clearly inadmissible initial contentions. Saporito, however, failed to seek leave of the Board to file new or amended contentions. Requesting leave of the Board is a requirement for filing new or amended contentions after a petitioner's initial filing. 10 C.F.R. § 2.309(f)(2). Accordingly, Saporito's new contention and the arguments and affidavit in support thereof should be stricken.

A. Petitioners May Not Raise New Arguments in Replies

Under 10 C.F.R. § 2.309(h)(2), a petitioner may file a reply to any answer within seven days of service of that answer. The Statement of Considerations published with the NRC's 2004 revisions to its procedural regulations and Commission precedent make clear that replies should "be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer." Final Rule: "Changes to Adjudicatory Process," 69 Fed. Reg. 2,182, 2,203 (Jan.14, 2004); *see also Louisiana Energy Services* (National Enrichment Facility) CLI-04-25, 60 NRC 223, 225 (2004) ("LES I"); *Nuclear Management Company* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) ("Replies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it."). It is "well established" in NRC practice that a reply cannot expand the scope of the arguments set forth in a petitioner's original hearing request. *Palisades*, 63 NRC at 732.

In CLI-04-35, the Commission denied reconsideration of its holding in CLI-04-25. *Louisiana Energy Services*, CLI-04-35, 60 NRC 619, 623 (2004) (“LES II”). The Commission affirmed its reasons for not allowing petitioners to add new argument in replies:

Allowing contentions to be added, amended, or supplemented at any time would defeat the purpose of the specific contention requirements,” as the NRC Staff explains, “by permitting the intervenor to initially file vague, unsupported, and generalized allegations and simply recast, support, or cure them later.” The Commission has made numerous efforts over the years to avoid unnecessary delays and increase the efficiency of NRC adjudication and our contention standards are a cornerstone of that effort. We believe that the 60-day period provided under 10 C.F.R. § 2.309(b)(3) for filing hearing requests, petitions, and contentions is “more than ample time for a potential requestor/intervenor to review the application, prepare a filing on standing, and develop proposed contentions and references to materials in support of the contentions.” Under our contention rule, Intervenors are not being asked to prove their case, or to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention, and to do so at the outset.

Id. at 622-23 (footnotes omitted). Further, attempts to raise “new claims in a reply . . . unfairly deprive other participants of an opportunity to rebut the new claims.” *Palisades*, CLI-06-17, 63 NRC at 732. Under 10 C.F.R. § 2.309(h), the licensee and NRC Staff are allowed to file an answer to a petition to intervene, the petitioner is allowed a reply, and “[n]o other written answers or replies will be entertained.”

Saporito filed his hearing request twenty days after the NRC noticed the opportunity for a hearing in the *Federal Register*. As a result, his Reply and its amended contention were filed within the sixty-day timeframe for requesting a hearing. Under 10 C.F.R. § 2.309(f)(2), however, “contentions may be amended or new contentions filed *after the initial filing* only with leave of the presiding officer . . .” (emphasis added). Thus, the requirement to seek Board permission to file new or amended contentions is not limited to untimely contentions, but extends to *any* new or amended contention filed after the petitioner’s initial filing. Prior to the

2004 amendment of NRC's procedural rules, petitioners were free to amend their petitions without prior approval of the presiding officer at any time up to fifteen days prior to the first prehearing conference. *See* 10 C.F.R. § 2.714(a)(3) (2004). Only after the prehearing conference did petitioners need leave of the presiding officer to amend their petitions. *Id.* The new Part 2 regulations amended that previous adjudicatory structure. The plain language of the new provision requires approval of the presiding officer for any new or amended contention (other than certain specific environmental contentions) filed after the initial filing. 10 C.F.R. § 2.309(f)(2).

B. Saporito's Reply Impermissibly Raises New Arguments

Saporito's initial filing was made on August 18, 2008. Even though the time for requesting a hearing had yet to pass, Saporito's September 16 contention amendment was procedurally defective because he failed to seek leave of the Board to file a new or amended contention. As a result, in order to amend his contentions Saporito must seek leave of the presiding officer upon a showing that-

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2). Ignoring this requirement, Saporito failed to even attempt such a showing. *See* Saporito's Reply at 6. Consequently, Saporito's amended contention should be stricken.

In addition to proffering an amended contention, Saporito's Reply offered expanded arguments that go far beyond the extremely limited scope of his initial Hearing Request. Saporito's initial Hearing Request barely addressed the NRC's standing requirement:

Thomas Saporito and SEC have real property and personal property and financial interests of which can be adversely affected should operations at the Florida Power & Light Company ("FPL") or licensee's, Turkey Point nuclear plants cause a release of radioactive particles into the environment. Moreover, such an event could render the requestor's/petitioner's home and property unavailable for human contact or use for many years or forever. Additionally, such an event could forever compromise the environment where the petitioners reside, live, and do business.

Saporito Hearing Request at 2. Now, in his Reply, Saporito raises the completely new argument that his "business involves the geographical area well within the NRC's 50-mile zone of interest," and that, as "President" of SEC, he "requires physical access to SEC's potential customer base located within" that area. Saporito Reply at 4 (emphasis in original). He also mentions an SEC "business plan" for the first time. *Id.* This alleged "business plan" involves Saporito "travel[ing] to the greater Miami, Florida area to ascertain a client base and to ascertain partnerships with existing businesses." *Id.* (citing Saporito's Affidavit). Notwithstanding the hypothetical nature of ascertaining a potential client base, these attempts to bolster his initial standing argument are impermissible in a reply.

Saporito's Reply then provides an overview of control rod drive mechanisms ("CRDM"), in an apparent attempt to burnish his credentials. Saporito's Reply at 6-9. But Saporito's overview was transparently taken without attribution from a Westinghouse Electric Company CRDM patent.⁷ See Patent No. 5,999,583 "Method and Apparatus for [CRDM] Analysis Using

⁷ Compare SEC's Reply at 7 ("There exists movable control rods dispersed throughout the nuclear core to enable control of the overall fission rate by absorbing a portion of the neutrons

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Coil Current Signals” (Dec. 7, 1999) (Available via U.S. Patent and Trademark Office’s Patent Number Search website: <http://patft.uspto.gov/netahtml/PTO/srchnum.htm>). This overview was not included in Saporito’s Hearing Request and is a further example of his improper attempts to bolster his thinly supported contentions.

Finally, Saporito provides his “Amended Contention(s)” [*sic*]. Saporito’s Reply at 9. Saporito announces that “Petitioners hereby collectively amend their 3-contentions previously submitted in the instant matter.” *Id.* at 6. This new Amended Contention seems loosely tied to initial Contention 3, which alleged that the amendment may reduce the margin of safety. Although it is confusing, Saporito apparently intends to replace his three initial contentions with a longer Contention 3.

In his new contention, Saporito describes the proposed deletion of notes from the Turkey Point Technical Specifications, citing the LAR. *Id.* at 9. He then states that operation in accordance with the notes is more conservative “and thereby provides a higher degree of a margin of safety” because the notes allegedly require physical surveillance. *Id.* at 10. Therefore, according to Saporito, removal of the notes “lessens the degree of the margin of safety.” *Id.* Saporito then argues that “it was the inoperability of Unit-3 Control Rod M-6 and Unit-4 Control Rod F-8 Shutdown Bank B, which caused the licensee FPL to request an LAR in the first place.” *Id.* at 11. The fact that these control rods at one point required human surveillance, Saporito argues, is “proof positive that human surveillance is a reliable method to ensure that the affected

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passing between fuel rods, lessening the fission reaction.”) *with* the CRDM Patent (“Movable control rods are dispersed throughout the nuclear core to enable control of the overall rate of fission, by absorbing a portion of the neutrons passing between fuel rods, which otherwise would contribute to the fission reaction.”).

control rods have not changed state.” *Id.* Further, Saporito argues that FPL has “failed to show that the automated system is more reliable or has a higher degree of margin of safety than” human operators.” *Id.* Saporito then argues that FPL has failed to perform either a root cause analysis for the failure of the control rods, to perform a fault-tree analysis illustrating that the CRDM system will alert plant operators to possible CRDM failure, and to demonstrate that the CRDM system will not fail in the future. *Id.*

Saporito, of course, raised none of these arguments in his initial margin reduction contention, reproduced below in its entirety:

Petitioners contend here that the proposed amendments involve a significant reduction in a margin of safety since the removal of the technical notes may reduce margins of safety.

Saporito’s Hearing Request at 2.

As explained in Attachment 1 to FPL’s LAR, the requested changes are administrative in nature and merely remove notes that were added to certain Limiting Condition for Operation and Surveillance Requirement Technical Specifications for Turkey Point Unit 4 in 2004 and Unit 3 in 2006. LAR, Attachment 1 “Evaluation of Proposed TS Changes” at 1. The notes approved the use of an alternate method of determining rod position due to the inoperability of identified control rod position indicators. *Id.* The RPI systems were repaired, obviating the need for an alternative method of rod position determination. *Id.* This administrative change simply cleans out unnecessary notes from the Technical Specifications. Saporito’s proposed contention disregards these pertinent facts and therefore fails to demonstrate the existence of a *genuine* dispute with FPL on a material issue of law or fact as required by the NRC’s contention pleading requirements. 10 C.F.R. § 2.309(f)(1)(vi).

The Commission “does not look with favor on amended or new contentions filed after the initial filing.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004) (internal citations omitted). Petitioners, Saporito included, have an “ironclad obligation” to examine publicly available material with sufficient care to uncover any information in support of their contentions. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982). In this proceeding (and in the Seabrook and Point Beach license amendment proceedings), Saporito chose not to assume this responsibility, but instead chose to submit a string of hearing requests with no support. The Commission, however, “demand[s] a level of discipline and preparedness on the part of petitioners [who must] set forth their claims and the support for their claims at the outset.” *LES I*, 60 NRC at 225 (internal quotations omitted). By contrast, Saporito’s initial filing was nothing but “vague, unsupported and generalized allegations”—his contentions were copied almost word for word from the NRC Staff’s proposed no significant hazards determination finding, with select phrases modified in an attempt to reach the opposite conclusion.⁸ *See LES II*, 60 NRC at 622.

The Commission’s “60-day period provided under 10 C.F.R. § 2.309(b)(3) is ample time for potential intervenors to review an application and develop contentions.” *USEC, Inc.*, (American Centrifuge Plant) CLI-06-10, 63 NRC 451, 458 (2006). But Saporito chose not to

⁸ Compare 73 Fed. Reg. 43,953, 43,956 (July 29, 2008) (“The proposed administrative changes to the Technical Specifications *do not create the possibility* of a new or different kind of accident from any previously evaluated, since the proposed *amendments will not change* the physical plant or the modes of plant operation defined in the facility operating licenses. . . .”) with Saporito Hearing Request at 2 (Contention 2: “Petitioners contend here that the proposed amendments *create the probability* of a new or different accident from any accident previously evaluated since the proposed *amendments may change* the physical plant or the modes of plant operation defined in the facility operating licenses.”) (emphases added).

avail himself of that full time period and instead chose to quickly file an unsupported petition. The Board must not reward Saporito's pattern of baseless, rapid-fire intervention petitions by allowing him to attempt to cure his unsupported initial contentions, after both the licensee and the NRC Staff have had to file answers. The 10 C.F.R. § 2.309(f)(2) requirement that petitioners seek leave to amend contentions after their initial filing provides for just this scenario. "Supporting information," the Commission has held, "is to be provided at the time the contention is filed, not at a later date . . ." *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility) CLI-07-20, 67 NRC 499, 504 (2007). Allowing Saporito to amend his initial filing without leave of the Board would only serve to undermine the Commission's attempts to increase the efficiency of its adjudicatory process. *See LES II*, 60 NRC at 625. If Saporito wishes to file contentions early without providing the requisite support, he must abide by the procedural consequences of that decision.

Saporito's submittal of a new contention, new affidavit, and new arguments concerning standing are not permitted by Commission procedural regulations and precedent. Accordingly, Saporito's new contention (including all arguments in support thereof in his Reply and in his new affidavit, as well as the new standing argument) should be stricken.

II. The Board Should Certify to the Commission the Question of Whether to Sanction Saporito for His Abuse of the NRC Adjudicatory Process

Saporito's failure to abide by the Commission's rules governing replies is hardly his first procedural violation. It is only the latest example of Saporito's disregard of procedural rules.⁹

⁹ FPL affirms its position outlined in its Answer in this proceeding, as well as the Answers of FPPE-PB and FPPE-S that Saporito has failed to establish standing or proffer any admissible contentions.

While NRC case law allows some “leeway in judging the sufficiency of intervention petitions” from pro se intervenors, *Kansas Gas and Electric Co.*, ALAB-279, 1 NRC 559, 576-577 (1975), the Commission nonetheless reserves its hearing process “for genuine, material controversies between knowledgeable litigants.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2) CLI-03-14, 58 NRC 207, 219 (2003). But Saporito, through his campaign of harassing and vexatious litigation, has made a blatant mockery of that principle. As noted above, Saporito can file a hearing request in a matter of minutes by, for instance, copying the NRC Staff’s proposed no significant hazards consideration (“NSHC”) determination and simply reversing its language in an attempt to negate the finding,¹⁰ which is not subject to challenge in any case. *See* Atomic Energy Act § 189.a(2)(A), 42 U.S.C. § 2239.a(2)(A); 10 C.F.R. § 50.58(b)(6) (The NSHC determination is “subject only to the Commission discretion, on its own initiative, to review the determination.”); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 183 (“Commission regulation is very clear that a Licensing Board is without authority to review Staff’s significant hazards consideration determination . . . Staff’s significant hazards consideration determination is beyond the scope of the hearing on the proposed amendment.”). But the Commission, NRC Staff, the Board, and FPL cannot respond so quickly. Many hours of work by lawyers, judges, and support staff are required to evaluate, respond to, and rule upon Saporito’s meritless hearing requests. The current state of affairs must change.

The Commission was recently faced with an analogous situation and responded with a thoughtful solution. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station,

¹⁰ *See* note 8, *supra*.

Units 2 and 3) CLI-06-04, slip op. at 7, 2006 WL 1704521 (2006). In that case, a petitioner, acting through its representative, repeatedly failed to follow established Commission procedures. The Commission ordered the Office of the Secretary to “screen all filings bearing [the representative’s] signature and not to accept or docket them unless they meet all procedural requirements.” *Id.* The Commission directed the Secretary to summarily reject any non-conforming pleadings under the authority granted by 10 C.F.R. § 2.346(h) and not refer them to either the Atomic Safety and Licensing Board Panel or the Commission. *Id.*

A footnote in a previous Commission decision involving the *Millstone* petitioner describes the procedural defects in that case, each of which is applicable to Saporito’s recent hearing requests:

The Board's two orders are riddled with expressions of frustration at CCAM counsel's repeated failures to comply with this agency's procedural rules. In the interest of brevity, however, we cite only the following handful as examples:

“This is only one of several examples in which CCAM has . . . provided little or no sources or specificity so as to warrant admission of a contention. Such lack of care is unjustifiable, notwithstanding counsel representing CCAM on a pro bono basis.” LBP-04-15, 60 NRC at 91.

The Board referred to counsel’s “poorly articulated and misapprehended reference” to a regulatory provision. *Id.* at 92.

The Board referred to counsel’s “failure to read or perform any meaningful analysis of the applications.” *Id.* at 95.

“CCAM has given no reason whatsoever . . . why - despite having numerous opportunities to do so - it chose not to provide this information until now.” LBP-04-22, 60 NRC at 382.

“CCAM has failed to demonstrate even a modicum of the necessary discipline and preparedness.” *Id.* at 384.

The Board referred to “the careless disregard of relevant standards and procedures by CCAM counsel, and the disorganized manner in which the CCAM information has been presented.” *Id.*

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3) CLI-04-36, 60 NRC 631, 643 n.53 (2004). As in *Millstone*, Saporito’s failure to provide “sources or specificity so as to warrant admission of a contention,” to “read or perform any meaningful analysis of the applications,” and to “demonstrate even a modicum of the necessary discipline and preparedness” justify sanctions from the Commission. *See generally* Saporito’s Hearing Request.

A Commission Policy Statement addresses the Board’s authority to impose sanctions on obstreperous parties. *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (May 20, 1981); 46 Fed. Reg. 28,533 (May 27, 1981).¹¹ Boards may “warn the offending party that such conduct will not be tolerated in the future, refuse to consider a filing by the offending party, deny the right to cross-examine or present evidence, dismiss one or more of the party’s contentions, impose appropriate sanctions on counsel for a party, or, in severe cases, dismiss the party from the proceeding.” *Id.* The Policy Statement also lists the factors that a Board should examine when considering the imposition of sanctions:

Boards should consider the relative importance of the unmet obligation, its *potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern of behavior*, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. *Boards should attempt to tailor sanctions to mitigate the*

¹¹ The Commission “continues to endorse” the guidance in this policy. *See Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (July 28, 1998); 63 Fed. Reg. 41,872 (August 5, 1998) (“1998 Policy Statement”).

harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance.

Id. (emphases added).

These factors weigh heavily in favor of a sanction that limits Saporito's ability to abuse the NRC adjudicatory process. There is a real harm to FPL Group and to the NRC from the constant need to respond to Saporito's meritless petitions. FPL Group is hardly complaining of an isolated incident. The facts outlined in this Motion illustrate a pattern of harassment that has continued largely unabated for almost 20 years at the NRC and other federal and state administrative agencies that has worsened over the past few months. In FPL's view, under what we believe to be a reasonable reading of the facts, Saporito has never accepted the fully litigated findings of the DOL, as twice affirmed by the 11th Circuit and by the refusal of the U.S. Supreme Court to hear his case, that FPL did not violate the ERA with respect to him. His vexatious litigation is a blatant attempt to bring leverage against FPL Group and its subsidiaries for employment and/or financial gain, as illustrated in his complaint to the Florida PSC that FPL is refusing to establish a business partnership with him. The Commission should not allow this abusive behavior to continue unabated.

The presiding officer, or the Commission, is authorized under 10 C.F.R. § 2.314(c) to reprimand, censure, or suspend from a proceeding any party who refuses to comply with procedural rules.¹² If sanctions are to be tailored to mitigate the harm caused by Saporito's failure to follow Commission procedures, a sanction similar to that employed in the *Millstone* proceeding should be implemented. This sanction, preventing the docketing of Saporito's

¹² The authority provided by 10 C.F.R. § 2.314(c), as well as this Licensing Board's authority generally, is limited to the instant proceeding.

meritless petitions, is similar to the relief FPL recently sought before the DOL ALJ. *See supra* at 4.

Such a sanction is authorized and appropriate under the circumstances, as the Office of the Secretary has already been delegated the authority to deny any hearing request that fails to comply with the Commission's pleading requirements and fails to set forth an arguable basis for further proceedings. *See* 10 C.F.R. § 2.346(h). The NRC Staff expressed a similar idea recently in the Seabrook proceeding, noting that "[t]his continuing disregard for the Commission's regulatory and case law pleading requirements should warrant summary rejection. In fact, the Secretary, pursuant to 10 C.F.R. § 2.346(h), has the authority to deny requests for failing 'to comply with the Commission's pleading requirements . . . and fail[ing] to set forth an arguable basis for further proceedings.' The resources and efficiencies of the Staff, the Board, and Applicant should not be continuously tested by clearly deficient petitions." NRC Staff's Answer to [Saporito's] Petition to Intervene and Request for Hearing (Seabrook) at 2 n.3 (Sept. 23, 2008).

Based on the foregoing, FPL moves the Board, pursuant to 10 C.F.R. §§ 2.319(l) and 2.323(f)(2), to certify to the Commission the question of whether to employ a solution similar to that utilized in *Millstone*.¹³ FPL's concern is not limited to this single proceeding, but extends to other proceedings before other Licensing Boards, and more importantly, countless potential future proceedings involving facilities operated by subsidiaries of FPL Group. Resolution of the issue raised in this motion would "materially advance the orderly disposition" of this and future

¹³ The Commission "encourage[s] boards] to certify novel legal or policy questions related to admitted issues to the Commission as early as possible in the proceeding." 1998 Policy Statement, CLI-98-12, 48 NRC at 22. While this motion does not involve admitted issues, it certainly raises an important policy issue that the Commission may choose to address.

Commission proceedings. *See* 10 C.F.R. § 2.341(f)(1). The Commission is in the best position to provide relief affecting several current proceedings as well as potential future proceedings. The Office of the Secretary's review of Saporito's filings should also extend to any of his various alter ego organizations, such as SEC, the National Environmental Protection Center,¹⁴ the National Litigation Consultants,¹⁵ or any other group¹⁶ Saporito creates to pursue his objectives.

FPL is mindful that this request for relief could be viewed by some as an attempt to prevent a stakeholder from participating in NRC proceedings. However, the record with respect to Saporito's actions clearly demonstrates that extraordinary measures are appropriate with respect to Saporito based on his 20-year campaign of meritless litigation and regulatory filings against the FPL Group companies.

CONCLUSION

Based on the foregoing, and in accordance with Commission policy, rules, and precedent, FPL respectfully requests the Board to strike Saporito's Reply. Further, FPL moves the Board to certify to the Commission the question whether it should direct the Office of the Secretary to screen Saporito's filings to ensure compliance with procedural rules and not accept for filing or docketing any pleading signed by Saporito that does not conform to the NRC's rules of practice.

¹⁴ *See, e.g., Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Unit 1), unpublished Licensing Board Order, 2002 WL 31688821 (Nov. 22, 2002); *see also* Fax from Thomas Saporito, "Executive Director," National Environmental Protection Center, to William Travers, Executive Director for Operations, NRC, forwarding "Petitioners' Supplemental Petition under 10 C.F.R. 2.206" (June 30, 2004).

¹⁵ *See, e.g., Florida Power & Light*, DD-98-10, 48 NRC 245.

Respectfully Submitted,

Signed (electronically) by,

Steven Hamrick
Counsel for Florida Power & Light Company

Florida Power & Light Company
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Washington, D.C. 20004

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Executed in Accord with 10 C.F.R. § 2.304(d)

Antonio Fernández
Counsel for Florida Power & Light Company

Florida Power & Light Company
Law Department
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Dated: September 26, 2008

Footnote continued from previous page

¹⁶ See, e.g., *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station), DD-96-8, 43 NRC 344 (1996) (Saporito participating as “Florida Energy Consultants”).

ATTACHMENT 1

Saporito Energy Consultants

1095 Military Tr. #8413
Jupiter, Florida 33468-8413
Voice: (561) 283-0613
FAX: (561) 952-4810

August 1, 2008

Mr. Lewis Hay III
Chairman, CEO
Florida Power & Light Company
FPL Group, Inc.
700 Universe Boulevard
Juno Beach, Florida 33408
FAX: (561) 694-4999

RE: REQUEST FOR PARTNERSHIP

Dear Mr. Hay:

My name is Thomas Saporito and I am a former employee of the Florida Power & Light Company, ("FPL"). I was employed at FPL's Turkey Point nuclear plant prior to being fired after I had raised safety issues to the U.S. Nuclear Regulatory Commission, ("NRC") about FPL's nuclear operations. My employment at FPL lasted about 7-years and during that time, I gained a wealth of knowledge about the operation of nuclear power plants. Since then I have continued to bring safety concerns to the NRC about FPL's nuclear operations such as the current matter before the NRC Atomic Safety & Licensing Board ("ASLB") regarding a NRC Confirmatory Order with respect to the FPL St. Lucie nuclear plant.

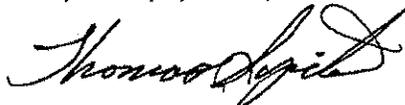
Now, I have formed a company of my own called Saporito Energy Consultants, ("SEC") of which I am the President of the company. To this extent, I desire that our companies partner with each other as FPL has partnered with other area businesses. One of SEC's business focuses is to solicit residential home owners to conduct an "on-premise" inspection and evaluation of the home to identify means and ways for the homeowner to save money by reducing the overall energy needs of their home. Thus, this is a win-win situation where the homeowner saves money by reducing their home energy usage and FPL reduces their need to build additional power plants.

Moreover, I intend to grow SEC through partnerships with other vendor companies with the intent to provide the homeowner with reduced costs for home modifications related to energy usage such as lighting, hot water systems, solar energy, window tinting, air-conditioning, etc. SEC has a website on the Internet located at www.saporitoenergyconsultants.com where you can view more information on my company. This website will serve to identify energy related companies through icons and web-links to provide homeowners ready access to energy information to reduce their home energy needs.

I'm sure by now that you share my excitement in a partnership between our two companies and I look forward to meeting with you in person to discuss the particulars of our partnership in greater detail.

If you are not able to meet with me in person at this time, I ask that you send this letter to the appropriate department within FPL and ask them to contact me about this partnership request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Saporito". The signature is fluid and cursive, with a large initial "T" and "S".

Thomas Saporito, President
Saporito Energy Consultants

ATTACHMENT 2



Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420
Law Department

Mitchell S. Ross
Vice President and Associate General Counsel
(561) 691-7126
(561) 691-7135 (Facsimile)
email: mitch_ross@fpl.com

August 20, 2008

Thomas Saporito
P. O. Box 8413
Jupiter, Florida 33468

Dear Mr. Saporito:

I am writing in response to your letters to Florida Power & Light Company (FPL or the Company) dated August 1, 2008, regarding a proposed business relationship with FPL.

As you are aware, your employment with FPL at the Turkey Point Nuclear Plant was terminated for cause in 1988. Most notably, a U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) found "overwhelming" evidence that you were repeatedly insubordinate, "insolent," *"blatantly lied"* and *"clearly lied"* to management, and engaged in a "mockery of management's role." [emphases in ALJ recommended decision]. You also sought re-employment with FPL in 2005 and again in 2008. You were informed in 2005 that you were not eligible for rehire with FPL.

Similarly, based on the reasons for your termination from employment by FPL, you are not only ineligible for rehire as an employee, but the Company has also decided that you would be an unsuitable business partner. Further support for this conclusion is the fact that you have no apparent expertise in the energy efficiency field. According to the resumes that you have submitted to FPL, you have not held a job in the energy field in the past 15 years.

Based on the foregoing, FPL declines to enter into a business relationship with you.

Sincerely yours,

A handwritten signature in dark ink, appearing to be "M. Ross", is written over the typed name "Mitchell S. Ross".

Mitchell S. Ross

an FPL Group company

DOCUMENT NUMBER-DATE

07651 AUG 22 08

FPSC-COMMISSION CLERK

ATTACHMENT 3

Kimberley Pena

From: Thomas Saporito, President [saporito3@gmail.com]
Sent: Saturday, August 23, 2008 1:21 PM
To: Filings@psc.state.fl.us
Subject: DOCKET 080002
Attachments: Saporito Energy Consultants.vcf; 23 AUG 2008 PETITIONER' ANSWER TO FPL'S OPPOSITION.pdf

Please find the attached PDF for filing in Docket: 080002

Best regards,

Thomas Saporito
Saporito Energy Consultants
Post Office Box 8413
Jupiter, Florida 33468-8413
Voice: (561) 283-0613
Fax: (561) 952-4810
Email: saporito3@gmail.com
Web: SaporitoEnergyConsultants.com

8/26/2008

DOCUMENT NUMBER-DATE
07715 AUG 25 08
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy Conservation
Cost Recovery Clause

DOCKET: 080002
DATE: 23 AUG 2008

**PETITIONERS' ANSWER TO FLORIDA POWER AND LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO AMENDED PETITION TO INTERVENE
OF SAPORITO ENERGY CONSULTANTS**

Saporito Energy Consultants ("SEC") by and through its undersigned President, Thomas Saporito, herein answers Florida Power and Light Company's ("FPL") opposition to SEC's amended petition to intervene and states as follows:

BACKGROUND

On August 22, 2008, FPL submitted its opposition to SEC's amended petition to intervene in the above-captioned matter currently before the Florida Public Service Commission ("FPSC") and stated, in part, that,

" . . . Because this petition fails to allege any new facts sufficient to provide a basis for standing to intervene . . . Mr. Saporito's amended petition should be denied." Id. at 1.

ARGUMENT

Contrary to FPL's assertions, SEC's amended petition does allege facts indicating that SEC and Mr. Saporito will suffer injury in fact. Thus, FPL's assertions to the FPSC is misleading and such a bald assertion should be seen by the FPSC as undermining FPL's credibility going forward as it presents its case at hearing. In its recent filing, FPL asserts that,

" . . . SEC's request to establish a business partnership with FPL . . . does not does not provide SEC with a basis for standing to intervene. . . Mr. Saporito has again failed to show that either he or SEC will suffer any injury in fact which is of sufficient

immediacy to entitle him to a hearing, and that his substantial injury is of a type or nature which the proceeding is designed to protect. . . Mr. Saporito has not alleged any new facts demonstrating that SEC has the legal capacity to intervene in this proceeding. . . While customers are from time to time permitted to intervene and represent their own interests as a *pro se* participant, only an attorney or a 'qualified representative' can represent the interests of others." Id. at 2.

Contrary to FPL's assertions with respect to SEC and Mr. Saporito's injury in fact regarding FPL's conduct related to the Sunshine Energy Program ("SEP") and SEC's attempts at a business partnership with FPL, SEC and Mr. Saporito have suffered injury in fact. Indeed, as a direct result of FPL's conduct in the administration of SEP, FPL rate-payers and customers view FPL as "**arrogant**" and without "**credibility**" as shown below,

"The arrogance of Florida Power & Light Co. apparently knows no bounds. It was bad enough last week when state regulators shut down an FPL green energy program, after an audit showed most of the \$11.4 million collected from customers who volunteered - at \$9.75 a month - for the Sunshine Energy program was used for public relations and marketing efforts. Ah, but now, as customers are screaming about being duped and talking about refunds or some way to get their money back, FPL says, technically, they don't owe customers a thing, because they bought renewable-energy credits and built more solar power. 'We delivered on what the Sunshine Energy program was all about,' an FPL spokesperson said. 'The money spent on marketing and administration

was critical to the successful launch of a program such as this one.' Incredible. Does FPL really think customers - whose income is already stretched extremely thin - signed up to pay \$9.75 a month for administrative, marketing and management expenses, with much of the other money buying renewable energy credits from companies outside Florida? Does FPL really think, with customers feeling they were played for fools, that they can simply claim they 'technically' did the right thing? Does FPL really think the next time they ask customers to voluntarily invest in an alternative energy program, they'll have any takers? The Public Service Commission has talked about customer refunds, or an FPL contribution to proposed solar projects, but the discussion has been put on hold until there is a more complete audit of the Sunshine Energy Program. Until then, FPL better be spending its time thinking about how to restore credibility with customers who have every right to feel like suckers. Claiming that they technically met the program's requirements is an unacceptable response from FPL. Bottom line: FPL needs to shelve arrogance, then work to restore credibility." See, August 5, 2008 Sun-Sentinel article at page 10A.

Clearly, it is FPL's conduct in apparently "duping" its customers into voluntarily contributing \$9.75 a month towards the SEP that calls into question FPL's arrogance and its credibility with its customers and its rate-payers. Thus, FPL's apparent arrogance and questionable credibility with its own customers and rate-payers poorly reflects on SEC and Mr. Saporito's ability to establish business relationships with FPL's customers and rate-payers.

Moreover, FPL's refusal to establish a business partnership with SEC and Mr. Saporito because of a whistleblower law suit where FPL's Vice President, Nuclear, John Odom, was found by the Secretary of Labor, to have been "**disingenuous**" when Odom testified under oath at a public hearing in ALJ Case No. 89-ERA-7 and 17, only serves to underscore FPL's arrogance and its continued retaliatory conduct towards Mr. Saporito and now SEC as a direct result of Mr. Saporito having raised safety concerns about the FPL Turkey Point nuclear plants. See, <http://saporitoenergyconsultants.com/FPSC.html>

Clearly, SEC and Mr. Saporito have suffered injury in fact from FPL's conduct in FPL's administration of the Sunshine Energy Program and SEC has gone to great lengths to divorce itself from FPL's conduct through SEC's website by encouraging FPL customers who participated in the program to file a complaint with the FPSC requesting a full refund of their monies paid into the program.

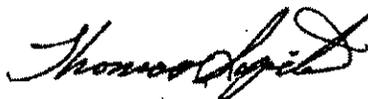
Contrary to FPL's assertion that SEC does not have the legal capacity to intervene in the instant action, SEC and Mr. Saporito are customers of FPL and are therefore have an inherent right to intervene in the instant action as a matter of law. Moreover, Mr. Saporito is more than qualified to represent his interests, the interests of SEC and the interests of FPL customers and rate-payers. As shown in Mr. Saporito's Notice of Appearance filed in the instant action, <http://saporitoenergyconsultants.com/FPSC.html> he has represented his interests and the interests of the general public before the 11th Circuit Court of Appeals and in proceedings brought before the United States Nuclear Regulatory Commission ("NRC") regarding FPL's operation of

its nuclear power plants. Where Mr. Saporito was granted standing to participate before the 11th Circuit Court of Appeals and where Mr. Saporito has intervened before the NRC at public hearings, he has amply demonstrated his qualifications to intervene in the instant action before the FPSC representing his interests, SEC's interests and the interests of FPL's customers for which Mr. Saporito and SEC are customers of FPL.

CONCLUSION

For all the foregoing reasons, Mr. Saporito and SEC should be allowed to intervene in the instant action as a matter of law.

Respectfully submitted,



Thomas Saporito, President
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E: saporito3@gmail.com
I: SaporitoEnergyConsultants.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing document was provided by electronic means or by FAX or by U.S. Mail first class postage affixed, to the following on this 23rd day of August 2008.

Ausley Law Firm (08)

Lee L. Willis/James D. Beasley
Post Office Box 391
Tallahassee, FL 32302
Phone: 850-224-9115
FAX: 222-7560

Beggs & Lane Law Firm (08)

J. Stone/R. Badders/S.Griffin
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FAX: 850-469-3331

Florida Industrial Power Users Group (McWhirter08)

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Florida Power & Light Company

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 50-250
(Turkey Point Units 3 and 4))	50-251
)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	Steven Hamrick
Address:	Florida Power & Light Company 801 Pennsylvania Avenue, NW Suite 220 Washington, D.C. 20004
Telephone:	(202) 347-7082
Fax Number:	(202) 347-7076
E-mail Address:	steven.hamrick@fpl.com
Admissions:	Court of Appeals of Maryland
Name of Party:	Florida Power & Light Company

Respectfully submitted,

Signed (electronically) by,

Steven Hamrick
Counsel for Florida Power & Light Company

September 26, 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 50-250
(Turkey Point Units 3 and 4))	50-251
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MOTION TO STRIKE SAPORITO'S REPLY AND FOR SANCTIONS and NOTICE OF APPEARANCE OF STEVEN HAMRICK, dated September 26, 2008, have been served upon the following persons by the Electronic Information Exchange.

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Atomic Safety and Licensing Board Panel
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Signed (electronically) by,

Steven Hamrick

Dated at Juno Beach, Florida
this 26th day of September 2008