

EDO Principal Correspondence Control

FROM: DUE: 11/10/08

EDO CONTROL: G20080695  
DOC DT: 10/05/08  
FINAL REPLY:

Thomas Saporito  
Saporito Energy Consultants

TO:

Borchardt, EDO

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO:

Leeds, NRR

DESC:

ROUTING:

2.206 - Florida Power and Light (Individuals)  
(EDATS: OEDO-2008-0770)

Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Cyr/Burns  
Reyes, RII  
Carpenter, OE  
Caputo, OI  
Cyr, OGC  
Mensah, NRR  
Marco, OGC

DATE: 10/16/08

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001

E-RIDS: EDO-01

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** OEDO-2008-0770

**Source:** OEDO

## General Information

**Assigned To:** NRR

**OEDO Due Date:** 11/10/2008 5:00 PM

**Other Assignees:**

**SECY Due Date:** NONE

**Subject:** 2.206 - Florida Power and Light (Individuals)

**Description:**

**CC Routing:** Region II; OE; OI; OGC

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20080695

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

**Action Type:** 2.206 Review

**Priority:** Medium

**Signature Level:** NRR

**Sensitivity:** None

**Urgency:** NO

**OEDO Concurrence:** NO

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:**

## Document Information

**Originator Name:** Thomas Saporito

**Date of Incoming:** 10/5/2008

**Originating Organization:** Saporito Energy Consultants

**Document Received by OEDO Date:** 10/10/2008

**Addressee:** R. William Borchardt, EDO

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter



## Saporito Energy Consultants

05-Oct-2008

R. William Borchardt  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

**Re: Request for Enforcement Action Against the Florida Power and Light Company ("FPL"), and FPL Group, and FPL Energy Point Beach LLC and FPL Energy Seabrook LLC and Individuals Steven Hamrick and Antonio Fernandez and Mitchell S. Ross**

Saporito Energy Consultants ("SEC") and its undersigned President, Thomas Saporito, ("Petitioners") herein request that the U.S. Nuclear Regulatory Commission ("NRC") take enforcement action against its licensees the Florida Power and Light Company ("FPL"), FPL Group, FPL Energy Point Beach LLC, FPL Energy Seabrook LLC, and individuals Steven Hamrick and Antonio Fernandez and Mitchell S. Ross in accordance 10 C.F.R. 2.206 ("Petition") and state as follows:

### **Standard for Review Under 10 C.F.R. §50.7**

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

- (i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;
- (ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

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

must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

- (2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415-5877, via e-mail to [forms@nrc.gov](mailto:forms@nrc.gov), or by visiting the NRC's Web site at <http://www.nrc.gov> and selecting forms from the index found on the home page.

- (f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

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

**Specific Request:**

Petitioners specifically request that the NRC:

- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against NRC licensee FPL; and
- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against NRC licensee FPL Group; and
- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against NRC licensee FPL Energy Point Beach, LLC; and
- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against NRC licensee FPL Energy Seabrook, LLC; and
- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against Steven Hamrick and prohibit Steven Hamrick from engaging in any NRC license activities for a period of not less than five-years; and
- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against Antonio Fernandez and prohibit Antonio Fernandez from engaging in any NRC license activities for a period of not less than five-years; and

- issue a notice of violation and imposition of a civil penalty in the amount of \$100,000 against Mitchell S. Ross and prohibit Mitchell S. Ross from engaging in any NRC license activities for a period of not less than five-years.

**Basis and Justification:**

On September 30, 2008, FPL Energy Point Beach, LLC ("FPL") through its attorneys Steven Hamrick and Antonio Fernandez filed a motion entitled "*FPL Energy Point Beach, LLC's Motion to Strike Saporito's Reply and for Sanctions*", ("Motion") before the NRC Atomic Safety and Licensing Board ("ASLB"), in a proceeding brought by Petitioners regarding the FPL Energy Point Beach, LLC (Point Beach Nuclear Plant, Unit 1), Docket No. 50-266-LA, ASLBP No. 08-870-01-LA-BD01. In its motion, the licensee and its aforementioned attorneys requested that the ASLB,

"... impose sanctions against Saporito and SEC, including but not limited to, barring him from filing further meritless hearing requests against FPL Group entities.

*Id. at 2.*

On October 3, 2008, FPL Energy Seabrook, LLC ("FPL") through its attorneys Steven Hamrick and Mitchell S. Ross filed a motion entitled "*FPL Energy Seabrook, LLC's Motion to Strike Saporito's Reply and for Sanctions*", ("Motion") before the NRC ASLB, in a proceeding brought by Petitioners regarding the FPL Energy Seabrook, LLC (Seabrook Station, Unit 1), Docket No. 50-443-LA, ASLBP No. 08-872-02-LA-BD01. In its motion, the licensee and its aforementioned attorneys requested that the ASLB,

"... impose sanctions against Saporito and SEC, including but not limited to, barring him from filing further meritless hearing requests against FPL Group entities. . . "

*Id. at 2.*

Petitioners aver here that NRC licensees FPL, FPL Group, FPL Energy Point Beach LLC, FPL Energy Seabrook LLC, and individuals Steven Hamrick, Antonio Fernandez, and Mitchell S. Ross (hereinafter collectively "licensee") intentionally discriminated against Petitioners in direct violation of NRC requirements under 10 C.F.R. §50.7 by seeking sanctions against Petitioners before more than one NRC ASLB solely because Petitioners brought several licensing proceedings involving more than one of the licensee's nuclear power plants before the NRC ASLB over the last 20-year period and because Petitioner Saporito brought several retaliation complaints against the licensee before the U.S. Department of Labor ("DOL") under the Energy Reorganization Act ("ERA") 42 U.S.C.A. §5851 over the last 20-year period. The licensee admitted to this violation as documented in their aforementioned motions<sup>1</sup> submitted to the NRC ASLBs.

The NRC licensee is no stranger to violation of NRC requirements under 10 C.F.R. 50.7 and violation of Section 211/210 of the ERA and has a well document history of these types of violations.

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<sup>1</sup> A copy of FPL's motions was previously provided to NRC Region II headquarters.

On June 5, 2003, the NRC issued the licensee a Notice of Violation (U.S. DEPARTMENT OF LABOR ALJ CASE NO. 200-ERA-5, ARB CASE NO. 00-070) where an employee of the licensee at the Turkey Point Nuclear Plant ("TPN") was illegally discriminated against after he engaged in ERA protected activity within the scope of NRC requirements under 10 C.F.R. 50.7. See, EA-00-230 – Turkey Point 3 & 4 (Florida Power & Light Co.); <http://saporitoenergyconsultants.com/NRC.html>

On July 16, 1996, the NRC issued the licensee a NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$100,000 (Department of Labor Case No. 92-ERA-010) where an employee of the licensee at TPN was illegally discriminated against after he engaged in ERA protected activity within the scope of NRC requirements under 10 C.F.R. 50.7. See, EA-96-051 – Turkey Point 3 & 4 (Florida Power & Light Co.); <http://saporitoenergyconsultants.com/NRC.html>

On June 3, 1994, the Secretary for the DOL found that the licensee illegally discriminated against an employee of the licensee at TPN after he engaged in ERA protected activity within the scope of NRC requirements under 10 C.F.R. 50.7. See, *Sec'y Decision and Remand Order (June 3, 1994)*, ALJ Case Nos. 89-ERA-7 and 89-ERA-17. In that particular case, the Secretary found the licensee's Site Vice President, John Odom to have testified disingenuously under oath. See also, <http://saporitoenergyconsultants.com/NRC.html>

On August 3, 1993, the NRC issued a NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$55,000 (Office of Investigations Report 1-98-005) where the licensee illegally discriminated against one of its employees at the Seabrook Nuclear Station for his engagement in ERA protected activities within the scope of NRC requirements under 10 C.F.R. 50.7. See, EA-98-165 – Seabrook 1 (North Atlantic Energy Service Corp.); <http://saporitoenergyconsultants.com/NRC.html>

## CONCLUSION

For all the above stated reasons, the NRC should GRANT Petitioners' request for enforcement action against the licensee to make sure that workers in the nuclear industry continue to play an important role in ensuring safe operations and practices in handling nuclear materials. The NRC considers licensee management ultimately responsible for regulatory compliance, and NRC licensee management relies on the nuclear workers to assist them in complying with NRC requirements by identifying and reporting safety concerns. NRC inspectors can observe only a small part of the day-to-day activities in nuclear facilities. Therefore, the nuclear worker's every-day knowledge and operating experience can provide valuable insight in identifying safety concerns in the workplace to the licensee management and to the NRC directly. In the past, workers in NRC-regulated nuclear activities and concerned citizens have raised important safety issues and, as a result, public health and safety have benefited.<sup>2</sup> This vigilance must continue not only to protect public health and safety but also to promote the construction of new nuclear power

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<sup>2</sup> See, U.S. Nuclear Regulatory Commission (NUREG/BR-0240, Rev.3, April 2005)

plants to ensure for the national security of the United States of America by lessening our country's dependence on foreign oil supplies.

Respectfully submitted,

/ Signed Electronically By /

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