

January 26, 2009

Mr. Thomas Saporito, President
Saporito Energy Consultants
Post Office Box 8413
Jupiter, Florida 33468-8413

Dear Mr. Saporito:

The letter that you have submitted has been referred to the Office of Nuclear Reactor Regulation pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations. The letter is dated January 1, 2009, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC). In your letter, you stated

Despite the settlement reached by the parties in ALJ No. 2008-ERA-00013, the NRC is herein requested to conduct an investigation to determine whether or not FPL's [Florida Power & Light Company's] actions against *Phipps* with respect to his employment at FPL were due, at least in part, to *Phipps'* engagement in protected activity within the meaning of 10 C.F.R. 50.7. Petitioners also request that the NRC take enforcement action against FPL for having violated NRC regulations and requirements under 10 C.F.R. 50.7 with respect to *Phipps*.

As the basis for this request, you mentioned that Gary Phipps filed a whistleblower complaint on January 17, 2008, before the United States Department of Labor, claiming that FPL violated the Energy Reorganization Act of 1974 (ERA) by illegally discriminating and retaliating against Mr. Phipps for having engaged in protected activity within the meaning of the ERA.

After further consideration of your January 1, 2009, request, it has been determined that your complaint may not be reviewed in the 10 CFR 2.206 process because it is a third party complaint of employee discrimination. The NRC Office of Investigations does not initiate investigations into third party claims that a licensee discriminated against another person and does not pursue such third party complaints. If Mr. Phipps wishes to pursue any claim of discrimination against FPL, he should contact the NRC to initiate an allegation. Mr. Phipps can contact Greg Cwalina at 301-415-2983.

Thank you for bringing this issue to the attention of the NRC. If you have any questions, please feel free to contact Mr. Jason Paige at 301-415-5888.

Sincerely,

/RA/

Thomas B. Blount, Deputy Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Docket Nos. 50-335 and 50-389

cc: Distribution via Listserv

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