

EDO Principal Correspondence Control

FROM: DUE: 04/02/09

EDO CONTROL: G20090107
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FINAL REPLY:

Thomas Saporito, President
Saporito Energy Consultants

TO:

Borchardt, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

Leeds, NRR

DESC:

ROUTING:

2.206 - Request for Enforcement Action and
Confirmatory Order Under 10 CFR 2.206 Against
Florida Power and Light Company
[EDATS: OEDO-2009-0091]

Borchardt
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Reyes, RII
Cyr, OGC
Mensah, NRR
Marco, OGC
Trocine, OEDO

DATE: 03/03/09

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

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E-EDS: EDO-01

EDATS

Electronic Document and Action Tracking System

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Source: OEDO

General Information

Assigned To: NRR

OEDO Due Date: 4/2/2009 5:00 PM

Other Assignees:

SECY Due Date: NONE

Subject: 2.206 - Request for Enforcement Action and Confirmatory Order Under 10 CFR 2.206 Against Florida Power and Light Company

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Response/Package: NONE

Other Information

Cross Reference Number: G20090107

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OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions:

Document Information

Originator Name: Thomas Saporito

Date of Incoming: 1/11/2009

Originating Organization: Saporito Energy Consultants

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Addressee: R. W. Borchardt, EDO

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Saporito Energy Consultants

January 11, 2009

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20500

In re: Request for Enforcement Action and Confirmatory Order Under 10 C.F.R. §2.206
Against Florida Power and Light Company

Saporito Energy Consultants by and through and with its undersigned President, Thomas Saporito, ("Petitioners"), hereby submit a request for enforcement action and a request for a confirmatory order under 10 C.F.R. §2.206 against the Florida Power and Light Company ("FPL") of which said company FPL is a licensee of the U.S. Nuclear Regulatory Commission ("NRC") and subject to NRC regulations and requirements under 10 C.F.R. Part 50.

Specific Request:

Petitioners request that the NRC take enforcement action against FPL by issuing a "Notice of Violation and Imposition of Civil Penalty" in the amount of \$1,000,000 and further issue a "Confirmatory Order" modifying FPL's operating licenses DPR-31 and DPR-41 for the Turkey Point Nuclear Plants ("TPN") Docket Nos. 50-250 and 50-251 as delineated below:

Confirmatory Order:

In accordance with sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations under 10 C.F.R. §2.202 and 10 C.F.R. Part 50, Petitioners request that the NRC issue a Confirmatory Order modifying FPL License Nos. DPR-31 and DPR-41 as follows:

1. Effective February 1, 2009, FPL will integrate into its overall program for enhancing the work environment and safety culture at TPN a "Cultural Assessment" conducted by an independent contractor. The Cultural Assessment shall include both a written survey of employees, including supervision and management, and baseline contractors, and confidential interviews of selected individuals. The first assessment shall be completed no later than the second quarter of 2009 and will be performed at least three more times at intervals of 18 to 24 months. In addition, annual surveys will be conducted and shall include, but not be limited to, annual surveys through at least the year 2020. Prior to conducting each annual survey, the Licensee shall identify to the NRC Regional Administrator the departments and divisions to be surveyed. The Licensee shall submit to the NRC for review all Cultural Assessment results, including all intermediate annual surveys. In addition, within 60-days of receipt of any survey results, the Licensee shall provide to the NRC Regional Administrator any plans to address issues raised by the survey results.
2. FPL shall conduct annual ratings of supervisors and managers by employees through a written assessment tool and provide the same to the NRC through the year 2020.
3. FPL shall conduct a mandatory continuing training program for all supervisors and managers which shall include:
 - a. Scheduled training on building positive relationships. The training program shall incorporate the objective of reinforcing the importance of maintaining a safety-conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safely-conscious

work environment. The training program shall also include a course entitled "Safely Talking to Each Other" which shall explain how to properly deal with safety concerns raised at TPN.

- b. Annual training on the requirements of 10 C.F.R. §50.7 and 42 U.S.C.A. §5851, through the year 2020, including, but not limited to, what constitutes "protected activity" and what constitutes "discrimination" within the meaning of 10 C.F.R. §50.7 and 42 U.S.C.A. §5851, and appropriate responses to the raising of safety concerns by employees. Moreover, the training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.
4. The Licensee shall issue a site-wide publication informing all employees and contractor employees of this Confirmatory Order as well as [t]heir rights to raise safety concerns to the NRC and to [t]heir management without fear of retaliation.

Basis and Justification:

On or about January 17, 2008, the Licensee completed a "Self-Assessment" of the TPN facility and specifically an assessment of the TPN Employee Concerns Program "ECP" in order for the Licensee to understand and address weaknesses in the ECP. The assessment identified 8-weaknesses as summarized below:

1. Management attention to the ECP did not meet expectations and management's awareness of the ECP was superficial and program values had not been emphasized with employees.
2. The ECP facility was of low quality and did not give the impression of being important to management.
3. There is a perception problem with the ECP in the areas of confidentiality and potential retribution. The perception remains as evidenced by surveys, interviews and the high percentage of anonymous concerns. Previous surveys and assessments identified this perception, but little or no progress has been made in reversing this perception.
4. The ECP was most frequently thought to be a mechanism to use in addition to discussing concerns with the NRC and not as the first alternative to the Correction Action Program "CAP".
5. While meeting most of the program requirements and having a technically qualified individual in the ECP coordinator position, the overall effectiveness of the program was marginal.
6. The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities.
7. The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to non-anonymous individuals is impersonal and lack feedback mechanisms for the ECP coordinator to judge the program's effectiveness.

8. The ECP process also does not provide assurance that conditions adverse to quality identified in the ECP review process would get entered into CAP, creating potential to miss correction and trending opportunities.

Please refer to the Licensee's related documents identified as:

CR 2008-8142, CR 2008-8145, CR 2008-8146, CR 2008-8148, CR 2008-8150, CR 2008-8151, and CR 2008-8153. See also, CR 2008-8164 used as a tracking mechanism.

On July 6, 2007, the NRC issued the NRC Problem Identification and Resolution Inspection Report which stated that inspectors noted reluctance by several departments to utilize the ECP because Licensee employees felt that the program only represented management's interest. NRC inspectors also noted a declining confidence in the Licensee's ECP.

On January 7, 2009, the Florida Public Service Commission "FPSC" issued Order No. PSC-09-0024-FOF-EI which stated, in relevant part, that:

". . . The OAG also states that there is evidence in the record that FPL failed to comply with its own security policies. The OAG points out that witness Jones testified that to gain unescorted access to the plant, a person is subjected to a screening that includes: (1) a detailed background investigation, including verification of employment history, credit check, and a character verification, including reference checks, and where applicable, education and military checks, (2) each individual is required to pass a rigorous psychological examination consisting of nearly 600 questions, with responses screened for psychological stability and other characteristics, and may be subject to further psychological review as required, (3) an FBI criminal history verification, including fingerprints, with no disqualifying criminal background, and (4) a drug and alcohol screening with additional random drug and alcohol testing during the period of unescorted access. The OAG contends that the testimony of witness Jones is that failure to successfully complete any of these steps will result in the individual being denied unescorted access to FPL's nuclear facilities. And yet, according to the OAG, the FOIA response indicates that the person of interest had six arrests, failed a written psychological test, and had admitted to drug use. The OAG asserts that FPL approved the person of interest for unescorted access in violation of its own policy. The OAG concludes that the drilled hole incident was preventable. According to the OAG, not only did FPL fail to carry its burden of proof, but the evidence shows that the company acted imprudently in this circumstance.

. . . Additionally, we note that 10 CFR §73.56(4) states:

The licensee may accept an access authorization program used by its contractors or vendors for their employees provided it meets the requirements of this section. The licensee may accept part of an access authorization program used by its contractors, vendors, or other affected organizations and substitute, supplement, or duplicate any portion of the program as necessary to meet the requirements of this section. In any case, the licensee is responsible for granting, denying, or revoking unescorted

access authorization to any contractor, vendor, or other affected organization employee.

(emphasis added) The licensee is FPL. Unescorted access refers to individuals FPL allows to enter a specific protected area of the power plant without accompaniment of another individual, supervisor, or security personnel.

Regarding the NRC AIT report, witness Jones opined that the NRC found FPL prudent and reasonable, although he acknowledges that those specific statements are not within the NRC AIT report. Based on the NRC's review, witness Jones believes the person of interest had been properly authorized to have unescorted access to the area where the pressurizer piping is located. . . . FPL did not offer any internal records regarding access screening or other FPL data in support of witness Jones' testimony. We reviewed the NRC AIT report to determine its contents regarding FPL's management and oversight of temporary contract personnel. . . . Consequently, we find that the NRC AIT report is insufficient or not dispositive in addressing the prudence of FPL in management and oversight of its temporary contract personnel. We performed similar reviews of Exhibit 9, FPL's Corporate Security Investigative Report, and the NRC's notification letter with the same results.

We find that FPL had reasonable opportunity to carry its burden, but failed to provide evidence that would show it prudently managed and exercised proper oversight of temporary contract personnel during the spring outage of 2006. FPL failed to show the replacement fuel cost of \$6,130,000 was prudently incurred, and therefore FPL shall be required to implement a customer refund, with interest. . . ."

Petitioners specifically cite to the above-PSC document because the FBI report referenced in that document is believed to contain additional information which indicates that at least one other FPL contractor employee was aware of the "hole drilling" incident at TPN but failed to timely report the incident. Petitioners contend that the witness to this incident feared retaliation in reporting the incident to FPL and therefore remained silent.

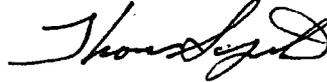
On June 5, 2003, the NRC issue a Notice of Violation (U.S. Department of Labor ALJ Case No. 2000-ERA-5, ARB Case No. 00-0070) to FPL for retaliating against one of its employees for raising safety concerns at TPN. The NRC noted that, ". . . it is clear that both the ALJ and ARB concluded that complainant's demotion was motivated, in part, by the illegitimate reason of complainant's protected activity, and these findings form the bases for the NRC's conclusion that a violation of its Employee Protection regulation occurred. . . and involves a violation of 10 C.F.R. 50.7, Employee Protection.. . ."

On July 16, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$100,000 (Department of Labor Case No. 92-ERA-010) to FPL for retaliating against one of its employees for raising safety concerns at TPN. The NRC noted that, ". . . Based on the information developed by the Secretary of Labor, the information provided in your April 24, 1996 letter, and the information you presented at the conference, the NRC has determined that a violation of NRC requirements occurred . . . and involves the failure of FP&L to adhere to the requirements of 10 CFR 50.7, Employee Protection, which prohibits discrimination against employees for engaging in protected activities.

Petitioners aver here that FPL has continually engaged in retaliatory actions against its own employees who raise safety concerns at TPN over the last 20-years and that the enforcement actions sought by the Petitioners, including the confirmatory order, will act to dissuade FPL from further violations of NRC regulation and requirements under 10 C.F.R. 50.7 and will protect public health and safety by eliminating the "chilling effect" which currently exists at TPN and fostering a work environment where employees can freely raise safety concern directly to the NRC to FPL management without fear of retaliation. Notably, Petitioners are aware of at least 3-employees of FPL who allege that they have been retaliated against for having raised safety concerns at one or more of FPL's nuclear power plants in the last 12-month period.

WHEREFORE, in the interest of public health and safety, the NRC should GRANT Petitioners' 10 C.F.R. §2.206 petition in its entirety.

Respectfully submitted,



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