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AUTHOR:

Thomas Saporito

AFFILIATION:

FL

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NRC ExecSec

SUBJECT:

Complainants' Third Amended Complaint

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From: Thomas Saporito [support@saporitoenergyconsultants.com]
Sent: Thursday, June 04, 2009 8:33 PM
To: Kugler, Clarence - OSHA
Cc: Jason Paige; Tracy Orf; Melanie Checkle; Oscar DeMiranda; R2ORA_EICSMailCenter Resource; Son Ninh; NRCExecSec Resource; Tony Gody; Jeffrey Hamman; Leonard Wert; Marvin Sykes; 'Donna Andrews _ OSHA'; 'Darlene Fossum - OSHA'; Stephanie Coffin; Andrew Kugler; Joelle Starefos; John-Chau Nguyen; Ryan Whited
Subject: <<< COMPLAINTS' THIRD AMENDED COMPLAINT >>>
Attachments: 2009-06-04 Complainants' Third Amended Complaint.pdf

Dear Mr. Kugler:

Please find the attached PDF document "*Complainants' Third Amended Complaint*" in OSHA Case No. 4-1050-09-039.

Best regards,

Thomas Saporito, President
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UNITED STATES DEPARTMENT OF LABOR
BEFORE THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Saporito Energy Consultants, Inc.
Thomas Saporito,

OSHA CASE NO. 4-1050-09-039

COMPLAINANTS,

DATE: 04 JUNE 2009

v.

U.S. Nuclear Regulatory Commission,

RESPONDENT.

COMPLAINANTS' THIRD AMENDED COMPLAINT

NOW COMES, Saporito Energy Consultants, Inc. (SEC), by and through and with its undersigned president, Thomas Saporito (Saporito) (hereinafter "Complainants") and hereby file *Complainants' Third Amended Complaint* in the above-styled proceeding and state as follows:

BACKGROUND

On March 23, 2009, Complainants filed their initial complaint against the U.S. Nuclear Regulatory Commission (NRC or Respondent) under the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C.A. §5851 (ERA), alleging retaliation on the part of the NRC in violation of the ERA for failing to investigate the Progress Energy Company (PE), et al, under NRC regulations and requirements at 10 C.F.R. 50.7 regarding PE's failure to hire Saporito.

On April 26, 2009, Complainants filed *Complainants' First Amended Complaint* in the instant action. Complainants allege in their First Amended Complaint that the NRC also became aware that Saporito filed an ERA complaint against the Exelon Corporation et al. (Exelon) and that the NRC retaliated against Saporito in failing to conduct any 10 C.F.R. 50.7 investigation of Exelon as required under NRC regulations and requirements.

On May 16, 2009, Complainants filed *Complainants' Second Amended Complaint* in the instant action. Complainants allege in their Second Amended Complaint that the NRC retaliated against Complainants in failing to conduct an investigation of the Florida Power and Light Company (FPL) under 10 C.F.R. 50.7 and/or other NRC regulations.

ARGUMENT

- A. **The NRC Retaliated Against Complainants in Failing to Properly consider the allegations set-forth in Complainants' 10 C.F.R. 2.2.06 petitions dated May 2, 2009 and May 8, 2009 in accordance with NRC MD 8.11 and in failing to grant said petitions accordingly**

By email letter dated June 3, 2009, NRC representative, Jason Paige informed Complainants, in relevant part, that:

"... In accordance with MD 8.11, the NRC staff has concluded that your submittal dated May 2nd does not meet the criteria for consideration under 10 CFR 2.206 because the issues raised have already been the subject of NRC review and evaluation for which resolution was achieved. In addition, your provided no

significant new information to warrant reopening or reconsidering that enforcement action."

". . . In accordance with MD 8.11, the NRC staff has concluded that your submittal dated May 8th does not meet the criteria for consideration under 10 CFR 2.206 because you submitted similar 2.206 request that have already been the subject of NRC review and evaluation for which resolution was achieved, and because you provided no significant new information to warrant reopening. Specifically, in its letter dated October 27, 2008, the NRC staff documented its resolution of similar issues raised by you. In addition, you did not provide in the May 8, 2009, letter any new or additional information that has not already been considered by the PRB. . . "

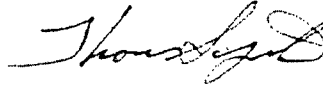
Id. at 2.

Complainants allege here that the NRC improperly evaluated Complainants May 2, 2009 and May 8, 2009, petitions under NRC MD 8.11 and failed to take any enforcement action against the Florida Power and Light Company (FPL), in reprisal for Complainants' engagement in ERA protected activities as identified in Complainants' initial ERA complaint as supplemented by Complainants' First Amended Complaint and Second Amended Complaint in the instant action and further alleges that the NRC continues in violation of the ERA in failing to properly consider Complainants' May 2nd May 8th, 2009 petitions filed under NRC regulations at 10 C.F.R. 2.206 seeking enforcement action against NRC licensee FPL.

Conclusion

FOR ALL THE ABOVE STATED REASONS, the Secretary of Labor should find in Complainants' favor and issue an order requiring the NRC to make Complainants whole in awarding compensatory damages and exemplary damages and punitive damages and costs and fees expensed by Complainants in bringing the instant action. Complainants seek a total monetary award in the amount of \$500,000.00.

Respectfully submitted,



Thomas Saporito, President
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Post Office Box 8413
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SERVICE SHEET

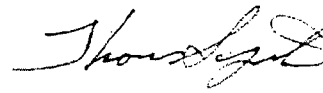
Case Name: Saporito Energy Consultants, Inc. and Thomas Saporito v. U.S. Nuclear Regulatory Commission

Case Number: OSHA CASE NO. 4-1050-09-039

Document Title: Complainants' Third Amended Complaint

I **HEREBY CERTIFY** that a copy of the above-referenced document was provided to the following on this 4th day of June, 2009 by means indicated below:

By:



Thomas Saporito

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