

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Jun 02, 2009 16:25

PAPER NUMBER: LTR-09-0251 **LOGGING DATE:** 06/02/2009
ACTION OFFICE: OGC

AUTHOR: Thomas Saporito
AFFILIATION: FL
ADDRESSEE: Gregory Jaczko
SUBJECT: Whistleblower ERA case....

ACTION: Information
DISTRIBUTION:

LETTER DATE: 05/30/2009
ACKNOWLEDGED: No
SPECIAL HANDLING:
NOTES: Action as Information per Emile/RAS
FILE LOCATION: Files

DATE DUE: **DATE SIGNED:**

Template
SECY-017

e-rids
SECY06

Linda Mike

From: Thomas Saporito [support@saporitoenergyconsultants.com]
Sent: Saturday, May 30, 2009 12:38 PM
To: Kugler, Clarence - OSHA
Cc: Tracy Orf; Jason Paige; Melanie Checkle; Oscar DeMiranda; R2ORA_EICSMailCenter Resource; Son Ninh; NRCExecSec Resource; Tony Gody; Jeffrey Hamman; Leonard Wert; Marvin Sykes; Stephanie Coffin; Andrew Kugler; Joelle Starefos; John-Chau Nguyen; Ryan Whited; 'Donna Andrews _ OSHA'; 'Darlene Fossum - OSHA'
Subject: <<< FPL WHISTLEBLOWER ERA CASE >>>
Attachments: 2009-05-30 Complainant's Reply to Respondent FPL Second No..pdf

Please find the attached PDF document for your consideration.

Best regards,

Thomas Saporito, President
Saporito Energy Consultants
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Jupiter, Florida 33468-8413
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(148.184.100.43) with Microsoft SMTP Server id 8.1.358.0; Sat, 30 May 2009
12:38:49 -0400

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X-SBRS: 5.5

X-MID: 3017436

X-IronPort-Anti-Spam-Filtered: true

X-IronPort-Anti-Spam-Result:

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X-IronPort-AV: E=Sophos;i="4.41,276,1241409600";

d="scan'208,217";a="3017436"

Received: from 166-m.netfirms.com (HELO mx-relay.netfirms.com)

([38.113.189.166]) by mail2.nrc.gov with SMTP; 30 May 2009 12:38:46 -0400

Received: (qmail 75463 invoked by uid 0); 30 May 2009 16:38:36 -0000

Received: from unknown (HELO sec5197b19ad60)

(support@saporitoenergyconsultants.com@65.11.168.173) by

q4-relay-norm.netfirms.com with SMTP; 30 May 2009 16:38:36 -0000

X-Remote-Host: unknown

X-RBL-Msg: none

Reply-To: <support@saporitoenergyconsultants.com>

From: Thomas Saporito <support@saporitoenergyconsultants.com>

To: "Kugler, Clarence - OSHA" <Kugler.Clarence@dol.gov>

CC: "Tracy Orf" <Tracy.Orf@nrc.gov>,

"Jason Paige" <Jason.Paige@nrc.gov>,

"Melanie Checkle" <Melanie.Checkle@nrc.gov>,

<Oscar.DeMiranda@nrc.gov>,

<R2ORA_EICSMailCenter.Resource@nrc.gov>,

"Son Ninh" <Son.Ninh@nrc.gov>,

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"Donna Andrews _ OSHA" <andrews.donna@dol.gov>,

"Darlene Fossum - OSHA" <fossum.darlene@dol.gov>

Subject: <<< FPL WHISTLEBLOWER ERA CASE >>>

Date: Sat, 30 May 2009 12:38:26 -0400

Organization: Saporito Energy Consultants, Inc.

Message-ID: <000001c9e145\$108f4e70\$0101a8c0@sec5197b19ad60>

MIME-Version: 1.0

Content-Type: multipart/mixed;

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X-Priority: 3 (Normal)

X-MSMail-Priority: Normal

X-Mailer: Microsoft Outlook, Build 10.0.2616

Importance: Normal

X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2900.2180

Return-Path: support@saporitoenergyconsultants.com

Thomas Saporito v. Florida Power and Light Company
ARB No. 09-009, ALJ No. 2008-ERA-00014
Complainant's Reply to Respondent Florida Power & Light
Company's Second Notice of Supplemental Authority
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UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ADMINISTRATIVE REVIEW BOARD

Thomas Saporito,

ARB No. 09-010

Complainant,

ALJ NO. 2008-ERA-00014

v.

DATE: 30 MAY 2009

Florida Power and Light Co.,

Respondent.

COMPLAINANT'S REPLY TO RESPONDENT FLORIDA POWER & LIGHT
COMPANY'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

On May 28, 2009, Respondent, Florida Power and Light Company (FPL) submitted *Respondent Florida Power & Light Company's Second Notice of Supplemental Authority* (Notice) in the above-captioned matter. For the reasons stated below, the Administrative Review Board (ARB) should DENY FPL's Notice accordingly:

First, FPL makes reference to an Administrative Law Judge (ALJ) Order to Show Cause in ALJ No. 2009-ERA-006 [sic] and suggests to the ARB, without any apparent explanation, that the ALJ's order is somehow connected to the instant action? Notably, Complainants in ALJ No. 2009-ERA-00006 amply and timely responded to the ALJ's order in ALJ No. 2009-ERA-00006; however,

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the presiding ALJ in that particular ERA case has yet to issue a ruling. In any event, despite the ALJ's recommended decision in ALJ No. 2009-ERA-00006, the ARB should not consider the same because it is not a final agency action but merely a recommended decision which has yet to be made by the ALJ. Thus, the ARB should deny FPL's Notice to the extent that FPL requests consideration of a non-binding anticipated and recommended adjudication.

Next, FPL suggests that the ARB should consider a preliminarily decision by the Occupational Safety and Health Administration (OSHA) in OSHA No. 1050-04-09-038, but here again, the decision rendered by OSHA is not a final agency action and has been appealed by the undersigned. Thus, the ARB should deny FPL's Notice to the extent that FPL requests consideration of a non-binding adjudication.

Next, FPL suggests that the ARB should consider the preliminary notice of investigation by OSHA in OSHA No. 4-1050-09-052, but here again, the decision rendered by OSHA is not a final agency action and is presently under investigation by OSHA. Thus, the ARB should deny FPL's Notice to the extent that FPL requests consideration an ongoing OSHA agency action.

Finally, the ARB should reject and deny FPL's Notice because once again, Respondent has willfully and knowingly violated the dictates of the ARB in filing a document outside the parameters defined by the ARB. Specifically, FPL's Notice contains a footnote with a font size that is not in compliance with the ARB's pleading requirements in size and type. Such arrogance and defiance by FPL cannot be simply dismissed or ignored by the ARB as the ARB has in the past sanctioned *pro se* complainants for such egregious conduct. Here, FPL's polished and seasoned and professional attorneys make a mockery of the ARB's dictates in this respect for all the public to see.

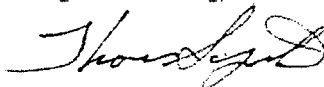
CONCLUSION

FOR ALL THE FOREGOING REASONS, and as a matter of law, the ARB should reject and deny FPL's Notice accordingly and consider FPL's continued conduct in filing such frivolous actions before the ARB to be "proof positive" of FPL's continuing violation of the ERA in adverse actions taken against the undersigned since FPL was found by the U.S. Department of Labor (DOL) Secretary of Labor (SOL) to have illegally violated the ERA in reprisal for the undersigned's raising nuclear safety concerns directly to the U.S. Nuclear Regulatory Commission (NRC) in 1988 regarding

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operations at the FPL Turkey Point Nuclear Plant. See, ALJ No. 89-ERA-07/17, Decision and Remand Order, Sec'y (June 3, 1994). Notably, on remand, the FPL senior vice president, John Odom (Odom) who made the decision to fire Saporito, stated in open court under oath that (1) [h]e would not have fired Saporito if Saporito had not raised any nuclear safety concerns; (2) [h]e made the decision to fire Saporito before Saporito was sent to be examined by the FPL company doctor; and (3) [h]e required Saporito to holdover on November 30, 1998 to ask Saporito about his safety concerns. Although the ARB issued a Final Decision in that case in favor of FPL, the matter is currently before the Office of the President of the United States for reconsideration by the U.S. Supreme Court.

Respectfully submitted,



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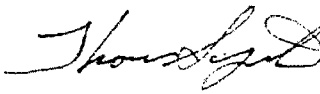
SERVICE SHEET

Case Name: Thomas Saporito v. Florida Power and Light Company

Case Number: ARB No. 09-010, ALJ No. 2008-ERA-00014

Document Title: Complainant's Reply to Respondent Florida Power
and Light Company's Second Notice of Supplemental Authority

I **HEREBY CERTIFY** that a copy of the above-referenced document
was provided to the following on this 30th day of May, 2009 as
indicated below:

By: 

Thomas Saporito

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{One Copy via Fax}

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Office of Administrative Law Judges
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{Hard Copy - Regular Mail}

Hon. Robert B. Rae
Administrative Law Judge
U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002
{Hard Copy - Regular Mail}

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