



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 19, 2009

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

Dear Mr. Saporito:

Your petition dated January 11, 2009, and addressed to the Executive Director of Operations, U.S. Nuclear Regulatory Commission (NRC), has been referred to me pursuant to Section 2.206, "Requests for Action under this Subpart," of Title 10 of the *Code of Federal Regulations* (10 CFR) of the Commission's regulations. You request that the NRC take enforcement action against Florida Power & Light Company (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 Generating Units 3 and 4 (TPN) Docket Nos. 50-250 and 50-251. The Order would include requiring an independent assessment of FPL's Employee Concerns Program (ECP) and management implementation of the program in addition to providing training on the program and advertisement of the program to the employees.

You met with our Petition Review Board (PRB) on March 19 (Agencywide Documents Access and Management System Accession No. ML090840318) and May 7 (ML091390233) to discuss your petition. During an additional teleconference with the PRB on July 10, 2009 (ML092860099), you discussed this petition and modified your request to issue a civil penalty to FPL to instead require FPL to create a "monetary fund." This fund would be used to enhance FPL's ECP by generating cash awards to employees who raise safety concerns, by providing wages and benefits to workers who have made retaliation complaints until their complaints have been reviewed, by providing training to plant workers on the ECP and the discrimination review process, and by upgrading the ECP office facilities.

The petition manager initially informed you of the PRB's recommendation on July 1, 2009. Subsequent to your teleconference with the PRB on July 10, 2009, the PRB has made its final recommendation as discussed below. As the basis for your request, you have restated the concerns identified in FPL's self-assessment of its ECP. As the PRB's final recommendation, the following nine issues from the licensee's assessment will be the subject of the PRB review pursuant to 10 CFR 2.206:

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.
9. The bonus agreement phrasing requires a promise to not make derogatory statements against FPL.

The remaining issues discussed during the teleconferences on May 7 and July 10, 2009, will not be reviewed by the PRB. Issues 1 and 2 below have already been the subject of NRC staff review, evaluation, and resolution, and issues 3, 4, and 5 lack sufficient facts to warrant action on our part.

1. On June 5, 2003, the NRC issued a Notice of Violation (EA-00-230) to FPL for retaliating against one of its employees for raising safety concerns at TPN.
2. On July 16, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$100,000 (EA-96-051) to FPL for retaliating against one of its employees for raising safety concerns at TPN.
3. A former FPL employee is charging in a countersuit that the utility is improperly trying to silence his complaints about safety.
4. A former FPL employee states that FPL has chosen to continue to neglect the environment created at Turkey Point regarding the retaliatory nature of the management team in place, multiple examples of this inappropriate behavior will continue to be presented as his lawsuit moves forward.

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5. An employee at TPN knew of the malicious drilling of a hole in the pressurizer at TPN, but was afraid to inform management of the action.

I would like to express my appreciation for your effort in bringing these matters to the attention of the NRC.

As provided by Section 2.206, we will take action on your request within a reasonable time. I have assigned Jason Paige to be the petition manager for your petition. Mr. Paige can be reached at 301-415-5888. Your petition is being reviewed by the Office of Enforcement and the Office of Nuclear Reactor Regulation, as well as the NRC Region II office.

I have enclosed for your information a copy of the notice that is being filed with the Office of the Federal Register for publication. I have also enclosed for your information a copy of Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," and the associated brochure NUREG/BR-0200, "Public Petition Process," prepared by the NRC Office of Public Affairs.

Sincerely,



Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

Enclosures:

1. *Federal Register* Notice
2. Management Directive 8.11
3. NUREG/BR-0200

cc: Licensee (w/copy of incoming 2.206 request)
Listserv

Enclosure 1
Federal Register Notice
ML091880919

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-250 AND 50-251

LICENSE NOS. DPR-31 AND DPR-41

FLORIDA POWER AND LIGHT COMPANY

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated January 11, 2009, Mr. Thomas Saporito (petitioner) has requested that the NRC take action with regard to Florida Power & Light Company's Turkey Point Nuclear Generating Units 3 and 4. The petitioner requests that the NRC take enforcement action against Florida Power & Light Company (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 Generating Units 3 and 4, Docket Nos. 50-250 and 50-251. The Order would include requiring an independent assessment of FPL's Employee Concerns Program and management implementation of the program in addition to providing training on the program and advertisement of the program to the employees.

As the basis for this request, the petitioner restates the concerns identified in FPL's self-assessment of their Employee Concerns Program (ECP):

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.

The ECP facility was of low quality and did not give the impression of being important to management.

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.

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."

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.

The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities.

The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to non-anonymous individuals is impersonal and lacks feedback mechanisms for the ECP coordinator to judge the program's effectiveness.

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.

The request is being treated pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with the Office of Nuclear Reactor Regulation petition review board on March 19 and May 7, 2009, to discuss the petition. The results of that discussion were considered in the board's determination regarding the schedule for the review of the petition. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site,

<http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.Resource@nrc.gov.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "Eric J. Leeds". The signature is fluid and cursive, with the first name "Eric" and last name "Leeds" clearly distinguishable.

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 19 day of November 2009