

EDO Principal Correspondence Control

FROM: DUE: 08/20/09

EDO CONTROL: G20090458
DOC DT: 08/08/09
FINAL REPLY:

Thomas Saporito
Saporito Energy Consultants, Inc.

TO:

Chairman Jaczko

FOR SIGNATURE OF :

** PRI **

CRC NO: 09-0403

Chairman Jaczko

DESC:

ROUTING:

Letter from Executive Director for Operations on
July 31, 2009, Regarding Matters Related to
Florida Power and Light Company
[EDATS: SECY-2009-0388]

Borchardt
Virgilio
Mallett
Ash
Ordaz
Burns/Gray
Reyes, RII
Carpenter, OE
Caputo, OI
Burns, OGC
Bell, OIG

DATE: 08/11/09

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

Note: Immediate release of incoming to public
processed in ADAMS per SECY thru EDO/DPC.

Template: SECY-017

E-Regs: SECY-017

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2009-0388

Source: SECY

General Information

Assigned To: NRR

OEDO Due Date: 8/20/2009

Other Assignees:

SECY Due Date: 8/24/2009

Subject: Letter from Executive Director for Operations dated July 31, 2009, on Matters Related to Florida Power and Light Company

Description:

CC Routing: NONE

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20090458, LTR-09-0403

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

OEDO Monthly Report Item: NO

Process Information

Action Type: Letter

Priority: High

Sensitivity: None

Signature Level: Chairman Jaczko

Urgency: NO

OEDO Concurrence: YES

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions:

Document Information

Originator Name: Thomas Saporito

Date of Incoming: 8/8/2009

Originating Organization: Saporito Energy Consultants, Inc.

Document Received by SECY Date: 8/11/2009

Addressee: Chairman Jaczko

Date Response Requested by Originator: NONE

Incoming Task Received: Letter

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Aug 11, 2009 09:21

PAPER NUMBER: LTR-09-0403 **LOGGING DATE:** 08/10/2009
ACTION OFFICE: EDO
AUTHOR: Thomas Saporito
AFFILIATION: FL
ADDRESSEE: Gregory Jaczko
SUBJECT: Concerns 7/31/2009 response from the EDO concerning matters related to the Florida Power and Light Company....
ACTION: Signature of Chairman
DISTRIBUTION: RF, SECY to Ack
LETTER DATE: 08/08/2009
ACKNOWLEDGED: No
SPECIAL HANDLING: Made publicly available via SECY/EDO/DPC
NOTES: Commission Correspondence
FILE LOCATION: ADAMS
DATE DUE: 08/24/2009 **DATE SIGNED:**

EDO --G20090458

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08 AUG 2009

Hon. Gregory B. Jaczko, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

*In re: July 31, 2009, Letter From R.W. Borchardt, NRC Executive Director for
Operations to Thomas Saporito, President, Saporito Energy Consultants, Inc.*

Dear Chairman Jaczko:

This letter serves to acknowledge and to respond, in relevant part, to Mr. Borchardt's letter dated July 31, 2009, in which [h]e responds on your behalf to the undersigned's July 9, 2009, letter to you regarding matters related to the Florida Power and Light Company (FPL), a NRC licensee as follows:

Specifically, Mr. Borchard stated in his letter that:

"... you stated that you believe the Staff improperly decided not to consider your May 8, 2009 petition because that petition did not

challeng[e] the NRC's previous conclusion that FPL had a right to question Saporito about [h]is safety concerns, but rather that once FPL was put on notice by Saporito that [h]e desired to express [h]is nuclear safety concerns directly to the NRC, FPL was prohibited under the ERA and under NRC regulations at 10 C.F.R. 50.7 to retaliate against Saporito...

The Staff has been aware of your retaliation claim against FPL since 1994 and has fully reviewed and evaluated the Department of Labor orders and decisions and the information you provided directly to the NRC through numerous 2.206 petitions. Your May 8, 2009 petition did not contain any new or additional information not already considered by the NRC in its decision not to take enforcement action against FPL regarding your retaliation claim. The Staff, therefore, properly decided not to consider your May 2, 2009 and May 8, 2009 petitions under 10 CFR 2.206..."

Id. at 1-2.

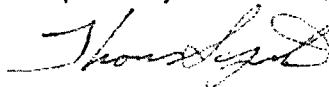
Here, Mr. Borchardt, as did the NRC Staff, simply restated the NRC's previous position with respect to the Secretary of Labor's (SOL's) Decision and Remand Order (DRO) (June 3, 1994), which specifically held that FPL violated the ERA. The NRC Staff rejected the undersigned's 2.206 petitions without any explanation why the NRC failed to follow its own enforcement policy which requires the agency to take enforcement action against its licensees based upon a finding by the DOL that a violation of the ERA occurred. Notably, as amply documented and described in the undersigned's aforementioned 2.206 petitions, the NRC has consistently taken enforcement action in at least two other ERA cases where FPL was found by the DOL to have illegally violated the ERA in retaliating against nuclear workers at its Turkey Point Nuclear Plant (TPN). Here, in the instant matter, the NRC is treating the undersigned in a "disparate" manner separate and apart from the agency's enforcement policy taken against FPL in the past with respect to other nuclear whistleblowers.

To the extent that the NRC has failed to comply with the agency's Management Directive 8.11 in properly considering and accepting the undersigned's aforementioned 2.206 petitions related to FPL's illegal violation of the ERA as found by the SOL in 1994 with respect to FPL's retaliation taken against the undersigned, the NRC Chairman is hereby requested to act with the Commission in reconsidering the undersigned's 2.206 petitions requesting that the NRC take enforcement action against its licensee FPL accordingly.

To the extent that the NRC and the Commission is believed to have departed from the agency's enforcement policy and departed from the agency's policy regarding 2.206 petitions under Management Directive 8.11, a copy of this letter is being provided to the NRC's Office of the Inspector General (OIG) signifying that the undersigned requests the OIG to investigate the NRC and the Commission regarding the agency's performance and conduct as described above.

In closing, I respectfully request a written response to this letter directly from the NRC Chairman in a timely fashion specifically addressing each item described above and particularly elaborating on what, if any, action the NRC intends to take.

Respectfully submitted,



Thomas Saporito
President