[7590-01-P]

NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-250 AND 50-251

LICENSE NOS. DPR-31 AND DPR-41

FLORIDA POWER & LIGHT COMPANY

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

[NRC-2009-0517]

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated January 11, 2009, as amended on July 10, 2009, and a petition dated January 5, 2010, filed by Mr. Thomas Saporito, hereinafter referred to as the "Petitioner." The petition was supplemented on March 19, May 7, and July 10, 2009. The petition concerns the operation of the Turkey Point Nuclear Generating Station, Units 3 and 4 and St. Lucie Nuclear Power Plant, Units 1 and 2.

In the January 11, 2009, petition, the Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) issue a “Notice of Violation and Imposition of Civil Penalty” in the amount of $1,000,000 and a confirmatory order modifying Florida Power & Light Company (FPL) License Nos. DPR-31 and DPR-41. The Petitioner amended the January 11, 2009, petition during a teleconference on July 10, 2009, to request that the NRC require FPL to create a monetary fund rather than issuing a civil penalty to FPL. By letter dated January 5, 2010, the Petitioner filed a separate petition requesting that the NRC issue a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and credibly determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation. The NRC

consolidated the two petitions on the basis that the issues are similar and Mr. Saporito was the principal external stakeholder for both petitions.

As the basis for the January 11, 2009, as amended on July 10, 2009, request, the Petitioner believes that there are weaknesses in the employee concerns program at Turkey Point due to fear of retaliation when a safety issue is raised to FPL management. Also, the Petitioner believes that an employee retention bonus agreement used by FPL contains language that violates Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.7(f). As the basis for the January 5, 2010, request, the Petitioner stated that he has complained to the NRC for the better part of 20 years about the chilled environment, which discourages employees from voicing safety concerns, that currently exists at Turkey Point and has spread to St. Lucie over the years. Mr. Saporito considers such operation to be potentially unsafe and to be in violation of Federal regulations.

On March 19, May 7, and July 10, 2009, the NRC Office of Nuclear Reactor Regulation's Petition Review Board and the Petitioner held conference calls to clarify the basis for the petition.

The NRC sent a copy of the Proposed Director's Decision to the petitioner and to the licensee for comment on April 28, 2010. The petitioner responded with comments on May 28, 2010. FPL did not provide any comments. A summary of the comments and the NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the NRC should deny the requests, to issue a "Notice of Violation and Imposition of Civil Penalty" in the amount of $1,000,000 or establishment of a monetary fund, a confirmatory order modifying FPL License Nos. DPR-31 and DPR-41, and a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown. The reasons for this decision are

explained in the Director's Decision pursuant to Title 10 of *Code of Federal Regulations* (10 CFR) Section 2.206 (DD-10-01), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, http://www.nrc.gov/reading-rm.html.

In summary, the NRC has performed Problem Identification and Resolution inspections at Turkey Point and St. Lucie nuclear power plants. The inspections concluded that the corrective action program (CAP) processes and procedures were effective; thresholds for identifying issues were appropriately low; and problems were properly evaluated and corrected within the CAP. Therefore, the NRC concludes that public health and safety have not been affected by licensee-identified weaknesses in the employees concern program. The NRC has also reviewed FPL's retention bonus agreement and has concluded that it does not violate 10 CFR 50.7(f).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 9th day of July 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION

In the Matter of FLORIDA POWER & LIGHT COMPANY
Docket Nos. 50-250 and 50-251, License Nos. DPR-31 and DPR-41
Turkey Point Plant, Units 3 and 4

DIRECTOR'S DECISION UNDER 10 CFR 2.206 (DD-10-01)

I. Introduction

By letter dated January 11, 2009, and amended on July 10, 2009, Mr. Thomas Saporito ("Petitioner") filed a petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), to the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) concerning Turkey Point Nuclear Generating Station, Units 3 and 4. The Petitioner also filed a separate petition pursuant to 10 CFR 2.206 addressed to NRC Chairman Gregory B. Jaczko on January 5, 2010. This petition concerned Turkey Point and St. Lucie. The NRC has combined this second petition with the original petition and amendment.

Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," issued October 2000 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML041770328), outlines the procedure used by the NRC to process petitions filed under 10 CFR 2.206. This procedure aims to provide appropriate participation by petitioners in, and opportunities for the public to observe, the NRC's decision making activities related to a 10 CFR 2.206 petition.

Action Requested

In the January 11, 2009, petition, the Petitioner requested that the NRC take the following actions against FPL, the licensed operator for the Turkey Point facilities:

(1) Issue a "Notice of Violation and Imposition of Civil Penalty" in the amount of $1,000,000.

(2) Issue a confirmatory order modifying FPL License Nos. DPR-31 and DPR-41 as follows:

(a) Effective February 1, 2009, FPL will integrate into its overall program for enhancing the work environment and safety culture at Turkey Point 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.

(b) 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.

(c) FPL shall conduct a mandatory continuing training program for all supervisors and managers which shall include:

1. 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 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 Turkey Point.

2. Annual training on the requirements of 10 CFR 50.7 and Title 42 of the *United States Code Annotated*, Section 5851 (42 USCA 5851), through the year 2020, including, but not limited to, what constitutes "protected activity" and what constitutes "discrimination" within the meaning of 10 CFR 50.7 and 42 USCA 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.

(d) The licensee shall issue a site-wide publication informing all employees and contractor employees of this Confirmatory Order as well as their rights to raise safety concerns to the NRC and to their management without fear of retaliation.

During a teleconference on July 10, 2009, the Petitioner amended the original petition to request that the NRC require FPL to create a monetary fund rather than issuing a civil penalty to FPL. This fund would be used to enhance FPL's employee concerns program (ECP) by generating cash awards to employees who raise safety concerns; providing wages and benefits to workers who have made retaliation complaints until their complaints have been reviewed; providing training to plant workers on the ECP and discrimination review process; and upgrading the ECP office facilities.

By letter to Chairman Gregory B. Jaczko dated January 5, 2010, the Petitioner filed a separate petition referencing a January 4, 2010, Florida Public Service Commission document.

This document alleges wrongdoing by executive management at the very highest levels of FPL over the protests of several employees. The Petitioner stated that the chilled environment, which discourages employees from voicing safety concerns, that currently exists at Turkey Point has spread to St. Lucie over the years. The Petitioner requested that the NRC issue a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and credibly determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation for so doing. The NRC did not take immediate action based on the staff's determination that there was no immediate threat to public health or safety.

The NRC's acknowledgement letter to the Petitioner, dated November 19, 2009 (ADAMS Accession Number ML091880900), addressed the original petition dated January 11, 2009, and its amendment dated July 10, 2009. In this letter, the NRC accepted for review pursuant to 10 CFR 2.206, concerns regarding the following nine issues raised by the Petitioner:

(1) Management attention to the ECP does not meet expectations; management's awareness of the ECP is superficial, and management has not emphasized the program values to employees.

(2) The ECP is of low quality and does not give the impression that it is 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 is 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 identified individuals is impersonal and lacks 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 the CAP, creating potential to miss correction and trending opportunities.

(9) An employee retention bonus agreement used by FPL contains language that violates 10 CFR 50.7(f).

Furthermore, the NRC also consolidated with the January 11, 2009, petition the Petitioner's concern raised in a separate petition dated January 5, 2010, that the chilled environment, which discourages employees from voicing safety concerns, that currently exists at Turkey Point has spread to St. Lucie. The agency took this step for the following two reasons:

(1) The issues are similar.

(2) Mr. Saporito was the principal external stakeholder for both petitions.

Petitioner's Basis for the Requested Actions

The Petitioner explained that the licensee completed a self-assessment of the Turkey Point facility and also performed an assessment of the ECP at Turkey Point. The purpose of the assessment was for the licensee to understand and address weaknesses in the ECP. The assessment identified eight weaknesses. The Petitioner believes that there are weaknesses in the ECP due to fear of retaliation when a safety issue is raised to FPL management. The Petitioner concluded that at least three FPL employees 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. The Petitioner noted the following chronology of events:

(1) On July 16, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty for $100,000 to FPL for retaliating against one of its employees for raising safety concerns at Turkey Point.

(2) On June 5, 2003, the NRC issued a Notice of Violation to FPL for retaliating against one of its employees for raising safety concerns at Turkey Point.

(3) On July 6, 2007, the NRC issued the NRC Problem Identification and Resolution inspection report that stated that inspectors noted reluctance by several departments to utilize the ECP because licensee employees felt that the program only represented management's interest.

(4) On January 7, 2009, the Florida Public Service Commission issued Order No. PSC-09-0024-FOF-EI which concluded that at least one other FPL contractor employee was aware of the "hole drilling" incident at Turkey Point but failed to report the incident in a timely manner. The Petitioner noted that this issue was not reported by the employee due to fear of retaliation from FPL management.

(5) On January 4, 2010, three concerned employees of NextEra Energy Resources wrote a letter to the Florida Public Service Commission stating that "the culture of cover up and intimidating employees into being quiet still persists here at the FPL Group of companies and retaliation is a real fear."

NRC Petition Review Board's Meeting with the Petitioner

On March 19 (ADAMS Accession No. ML090840318), May 7 (ADAMS Accession No. ML092860275), and July 10, 2009 (ADAMS Accession No. ML092860099), the NRC Office of Nuclear Reactor Regulation's Petition Review Board and the Petitioner held conference calls to clarify the basis for the petition. The NRC staff considers transcripts of these meetings to be supplements to the petition. These transcripts are also 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 are also accessible from ADAMS in the Public Electronic Reading Room on the NRC Web site at 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.

By letter dated April 22, 2009 (ADAMS Accession No. ML091100274), the NRC staff requested that FPL provide information related to the petition, more specifically, a copy of a blank retention bonus agreement referenced by Mr. Saporito. This information was needed for the NRC staff to complete its review of item nine, as stated in the November 19, 2009, acknowledgement letter. FPL responded on April 28, 2009 (ADAMS Accession No. ML100640252), and the information provided was considered by the staff in its evaluation of the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to Florida Power & Light Company (FPL, the licensee) for comment by letters dated April 28, 2010. The NRC staff received comments on May 28, 2010, from the Petitioner. No comments were provided to the NRC staff from FPL. The comments and the NRC staff's response to them are included in the director's decision.

II. Discussion

Issues 1-8 concern the effectiveness of the Turkey Point ECP and the licensee's response to issues identified through the ECP and CAP. Operating reactor licensees are not required to implement an ECP, but are required by 10 CFR Part 50, Appendix B, Criterion XVI to establish and implement an effective CAP. The NRC performs Problem Identification and Resolution biennial team inspections with annual follow-up of selected issues at licensed facilities. The goal of these inspections is to establish confidence that the licensee is effectively detecting, correcting, and preventing problems that could impact public health and safety. During the Problem Identification and Resolution inspections, the NRC reviews a sample of employee concerns that were raised through the CAP and ECP as part of its assessment of the licensee's compliance with NRC regulations, regardless of which program the employee uses.

In the latter half of 2008, the licensee conducted a 20 to 30 question survey of the safety conscious work environment (SCWE), fleet-wide. More than 400 employees responded at each site. Through these surveys, FPL identified weaknesses in its program for identifying and correcting issues raised by employees, which included dissatisfaction with the three primary avenues for raising concerns internally (management, CAP, and ECP). With regard to the ECP, the results showed nuclear plant employees are familiar with the ECP, however approximately 20-25 percent of the survey respondents indicated that they lack confidence that the ECP will

address their concerns or maintain their confidentiality. A similar percentage of employees also believe that management does not support the ECP.

Based on public conversations between the NRC's Region II office and the licensee, FPL has taken a number of appropriate actions to address these ECP issues at both Turkey Point and St. Lucie, including appointment of a new FPL corporate Nuclear Safety Culture Project Lead, relocation of the offices to address accessibility concerns, implementation of monthly meetings with the new Chief Nuclear Officer, and revision of the program procedures to ensure concerns are addressed appropriately and feedback is obtained from stakeholders. Notably, the process was revised to perform three-month follow-up reviews of corrective actions for nuclear safety concerns brought to the ECP to assess the effectiveness.

The NRC held a public meeting on October 20, 2009 (ADAMS Accession No. ML093090274), at the Region II Office in Atlanta, GA to discuss FPL's processes for addressing employee concerns and planned, fleet-wide corrective actions for addressing FPL-identified weaknesses. The licensee indicated that it planned to implement 86 corrective actions to address the weaknesses.

As stated in Problem Identification and Resolution inspection reports 05000335/2010006 and 05000389/2010006 for St. Lucie dated April 19, 2010, the NRC concluded that based on discussions and interviews with plant employees from various departments, individuals remained aware of the processes for raising concerns, were not reluctant to raise safety concerns to management or the NRC, had initiated CAP items, and participated in the safety culture surveys. These interviews also revealed that plant workers were knowledgeable of the various available methods for raising nuclear safety concerns. Furthermore, the workers communicated recent improvements in station supervision's support of the workers raising

issues. None of the workers indicated that they were aware of any examples of being retaliated against for raising safety concerns.

The Problem Identification and Resolution inspection reports also summarized the corrective actions presented to the NRC on October 20, 2009, and the results of those corrective actions. The NRC concluded that FPL initiated a comprehensive plan to improve its safety culture, starting with a root cause evaluation of safety culture issues identified in corporate surveys. From this evaluation, FPL took a number of actions to improve corporate culture, including formalizing the management of employee concerns, taking actions to focus more attention on industrial safety work orders, and improving management oversight of station backlogs and preventive maintenance change requests. At a higher level, FPL is initiating a review of nuclear safety culture issues by the corporate nuclear review board, benchmarking SCWE at other facilities, and planning for effectiveness reviews. The inspections confirmed that FPL scheduled actions had been completed, including the training of senior managers on SCWE and the initiation of routine management reviews on safety culture issues.

The inspectors also met with the newly-appointed station ECP coordinator and the ECP manager. The ECP coordinator described activities that would facilitate more awareness and understanding of the ECP including introducing the program with on-site staff and contractor groups at departmental meetings. Furthermore, FPL has recently relocated the ECP office within the plant protected area and procedures had been developed for uptake of concerns and management of concern resolution. The new process requires close-out of the concern with the concerned individual, typically in a face-to-face meeting.

On April 20, 2010, a public meeting was conducted at the Region II Office in Atlanta, GA to discuss FPL's progress. As of that date, the licensee indicated that it had implemented 71 of the 86 corrective actions and is completing all actions on schedule. The NRC provided a

summary of this public meeting, which is publicly available in ADAMS (ADAMS Accession No. ML101110727).

Although the licensee has identified weaknesses in the ECP at Turkey Point and St. Lucie, the NRC has not identified any current substantive issue relating to SCWE or the CAP. Therefore, the NRC does not believe Mr. Saporito's proposed enforcement action is appropriate at this time. The licensee is taking action to improve the effectiveness of the ECP. The NRC's Region II office is scheduled to complete its next Problem Identification and Resolution inspection at Turkey Point in May 2010. The NRC's Region II office will continue to monitor the Turkey Point and St. Lucie CAPs, including the eight items identified by the Petitioner and the actions the licensee is taking to address the FPL-identified weaknesses in the ECP. The NRC's conclusions will be recorded in the next Problem Identification and Resolution inspection reports, which will be made available on the NRC Web site http://www.nrc.gov/reactors/operating/oversight.html.

Regarding item 9, Mr. Saporito raised concerns about an FPL employee retention bonus agreement that contains a clause that states: "The Employee shall not, at any time in the future and in any way, disparage the Company . . . or make any statements that may be derogatory or detrimental to the Company's good name or business reputation . . ." Mr. Saporito asserts that this clause violates 10 CFR 50.7(f).

The purpose of 10 CFR 50.7(f) is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance. "Nondisparagement" clauses similar to the one in FPL's retention bonus agreement are common in employment agreements. As a general matter, employers and their employees are free to formulate agreements in the context of their employment relationship and within the

parameters of the lawful right of parties to contract with each other. For this reason, the NRC should not interfere with these agreements unless it finds such a clause violates 10 CFR 50.7(f), or a clause that does not violate 10 CFR 50.7(f) on its face is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with the NRC.

The NRC has reviewed the FPL employee retention bonus agreement referenced by Mr. Saporito. The language of the agreement makes no mention of providing information to, or cooperating with, NRC or any other governmental agency. Similarly, it makes no reference to engaging in activity that is protected by NRC enabling statutes. For these reasons, the NRC has determined that the agreement does not violate 10 CFR 50.7(f). However, the agreement strays from the guidance the NRC has provided licensees for drafting employment and settlement agreements, available on the NRC Office of Enforcement website at http://www.nrc.gov/about-nrc/regulatory/enforcement/examples-of-restrictive-terms.pdf, because it does not include specific language making clear that employees can freely engage in protected activities. While not required by 10 CFR 50.7(f), settlement agreements that contain language reinforcing employees' rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could violate 10 CFR 50.7(f). The NRC has learned that FPL has discontinued use of the bonus agreement referenced by Mr. Saporito, and that future FPL employment agreements will contain language specifically addressing employees' rights under 10 CFR 50.7, "Employee Protection," in order to avoid any perception that employees are prohibited, restricted, or discouraged from raising safety concerns.

NRC Response to Comments on the Proposed Director's Decision

This section documents the NRC staff's response to Mr. Saporito's comments on the proposed Director's Decision. The NRC issued the proposed Director's Decision on

April 28, 2010 (ADAMS Accession No. ML100630413). The NRC received comments from the Petitioner on May 28, 2010 (ADAMS Accession No. ML101760181). The licensee did not provide any comments to the NRC on the proposed Director's Decision. The NRC staff has amended the proposed Director's Decision to acknowledge the Petitioner's comments; however, the NRC staff determined that the comments provided by Mr. Saporito did not provide any relevant additional information and support for the petition that had not already been considered. Thus, the comments did not change the conclusion of the proposed Director's Decision and the final Director's Decision denies the Petitioners' request for enforcement action. The comments and NRC staff's response to them are discussed below:

Summary of Comments

Mr. Saporito states, "notably, NRC determines the quality of a licensee's SCWE by the effectiveness of the licensee's CAP. Therefore, where a licensee fails to properly maintain an effective CAP, there cannot be a satisfactory SCWE at its nuclear facility. Moreover, where a licensee is found by NRC to have discriminated against its employees for raising nuclear safety concerns, the licensee cannot demonstrate the existence of a satisfactory SCWE at its nuclear facility. Finally, where NRC fails to take adequate enforcement action against its licensee for failing to maintain an SCWE at its nuclear facilities, a chilling effect results and places public health and safety in jeopardy." Mr. Saporito supports his conclusion by referencing violations and enforcement action taken by the NRC against Turkey Point and St. Lucie dating from 1996, and by referencing the FPL drop-in meetings on October 20, 2009, and April 20, 2010, to discuss concerns about FPL Nuclear Safety Culture and the ECP at Turkey Point and St. Lucie.

The Petitioner also noted that in a February 2008 inspection report, the NRC noticed an increasing trend in the cross-cutting theme of appropriate and timely corrective action indicating that the underlying weaknesses within the Problem Identification and Resolution cross-cutting

area may not yet have been addressed or fully understood to ensure consistent and sustainable future performance. The NRC requested that FPL conduct an independent assessment of the effectiveness of the licensee's corrective action program. Mr. Saporito continues by stating, "As of June 2008, NRC completed its inspections to evaluate the effectiveness of FPL's corrective action program improvement initiatives which the agency had found to be deficient only (three months prior) and for the better part of the previous four assessment periods for the Turkey Point Nuclear Plant. Nonetheless, NRC advised FPL that overall corrective actions developed and implemented for issues were effective in correcting the problems and that employees felt free to raise concerns without fear of retaliation. The NRC considered this longstanding cross-cutting theme closed."

NRC Response to Comments

As stated earlier in this Director's Decision, operating reactor licensees are not required to implement an ECP, but are required by 10 CFR Part 50, Appendix B, Criterion XVI to establish and implement an effective CAP. The NRC performs Problem Identification and Resolution biennial team inspections with annual followup of selected issues at licensed facilities. The goal of these inspections is to establish confidence that each licensee is effectively detecting, correcting, and preventing problems that could impact public health and safety. Based on the results of these inspections the NRC takes any appropriate enforcement action to ensure compliance with 10 CFR Part 50, Appendix B, Criterion XVI.

In the Turkey Point mid-cycle calendar year 2006 assessment letter dated August 31, 2006 (ADAMS Accession No. ML062430288), the NRC identified a substantive cross-cutting issue in problem identification and resolution based on numerous examples of inadequate corrective action related to long-standing plant equipment deficiencies. However, the individual findings involved issues of very low safety significance. In response, FPL

developed plans to improve the effectiveness of the CAP. Also, the NRC requested that FPL conduct an independent assessment of the effectiveness of the CAP. Normally, the NRC would have requested FPL to conduct a safety culture assessment since the same substantive cross-cutting issue was identified in four consecutive assessment letters. However, due to FPL already completing an assessment during the inspection period from January to December 2007, the NRC requested a more targeted independent assessment be completed. The purpose of the independent assessment was to help the licensee identify issues with the CAP and improve the effectiveness of the CAP.

During the next eight calendar quarters, onsite and region-based NRC inspectors monitored plant activities to improve the CAP, and completed in-depth inspections and assessment activities in spring 2007 and summer 2008 to evaluate the effectiveness of FPL's efforts. These inspections included evaluations of the safety conscious work environment. The inspection results were documented in Inspection Reports 05000250/2007008 and 05000251/2007008, 05000250/2008007 and 05000251/2008007, and 05000250/2008008 and 05000251/2008008, available on the NRC public web site. The NRC also held public meetings with FPL in Atlanta, GA to discuss the effectiveness of the actions to improve the CAP.

Based on these inspections and the extensive review of FPL's activities focused on improving the CAP that stretched over a 2-year period (June 2006 to June 2008), the NRC determined that FPL had made progress in improving all areas addressed by the improvement plan. The NRC also determined that employees felt free to raise concerns without fear of retaliation. At that point the NRC staff considered the substantive cross-cutting issue closed.

Recently, the NRC issued two Notice of Violations to Turkey Point and St. Lucie, each of which cited, in part, FPL's failure to implement corrective actions per 10 CFR 50, Appendix B, Criterion XVI. The violation issued to Turkey Point does not reopen the substantive cross-

cutting issue that was closed in 2008, but the NRC assessed the finding to determine if a cross-cutting aspect of Problem Identification and Resolution was applicable. As stated in the Turkey Point Final Significance Determination letter dated June 21, 2010 (ADAMS Accession No. ML101730313), the NRC determined that the licensee properly identified the boraflex degradation issue and thoroughly evaluated the problems. Therefore, per Inspection Manual Chapter (IMC) 0310, "Components Within the Cross-Cutting Areas," Problem Identification and Resolution cross-cutting aspect P.1(c) is no longer applicable or valid. However, the NRC determined that the finding had a cross-cutting aspect per IMC 0310, Problem Identification and Resolution, P.1(d) since the licensee did not take appropriate corrective actions to address safety issues and adverse trends in a timely manner, commensurate with their safety significance and complexity.

The NRC considers a cross-cutting aspect for all findings identified at a facility and when the NRC identifies four findings with the same cross-cutting aspect then it becomes a substantive cross-cutting issue. Currently, there are not four findings with the same cross-cutting aspect of Problem Identification and Resolution at Turkey Point or St. Lucie. These two violations identified at Turkey Point and St. Lucie will be tracked by NRC inspectors and evaluated during the next Problem Identification and Resolution inspection.

III. Conclusion

The Petitioner raised issues related to weaknesses in the ECP as a means of getting issues entered into the CAP and "chilling effects" that exist at Turkey Point and are spreading to St. Lucie where employees are dissuaded from freely raising nuclear safety concerns to the NRC or within FPL for fear of retaliation by FPL management.

The NRC has performed Problem Identification and Resolution inspections at Turkey Point and St. Lucie that cover the timeframes indicated by the Petitioner. The inspections

concluded that the CAP processes and procedures were effective and thresholds for identifying issues were appropriately low. Furthermore, the NRC is aware of the actions that the licensee is taking to address the FPL identified weaknesses, and the NRC will continue to assess the effectiveness of these actions during the next Problem Identification and Resolution inspection. The NRC determined that FPL had made progress in improving all areas addressed by the improvement plan. The NRC also determined that employees felt free to raise concerns without fear of retaliation. Therefore, the NRC concludes that public health and safety have not been affected by licensee-identified weaknesses in the ECP. The NRC has also reviewed FPL's retention bonus agreement and has concluded that it does not violate 10 CFR 50.7(f).

Based on the above discussion, the Director of the Office of Nuclear Reactor Regulation has decided to deny the Petitioner's request to issue a Notice of Violation and Imposition of Civil Penalty or establishment of a monetary fund and a confirmatory order modifying FPL License Nos. DPR-31 and DPR-41. The actions the licensee is taking make enforcement action unnecessary.

In addition, the NRC is denying the Petitioner's request to place the Turkey Point and the St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation. As explained above, the NRC has assessed the work environment at these facilities and determined that there are no findings of significance and no threat to public health and safety associated with the identified weaknesses of the ECP at Turkey Point or St. Lucie.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of July 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation