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Title: 10 CFR 2.206 Petition Review Board
RE St. Lucie Nuclear Power Plant

Docket Number: (n/a)

Location: (teleconference)

Date: Monday, January 14, 2013

Work Order No.: NRC-3040

Pages 1-65

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE

ST. LUCIE NUCLEAR POWER PLANT

+ + + + +

MONDAY, JANUARY 14, 2013

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The conference call was held, Ho Nieh, Chair
of the Petition Review Board, presiding.

PETITIONER: THOMAS SAPORITO

PETITION REVIEW BOARD MEMBERS:

HO NIEH, Director, Division of Inspection and
Regional Support, PRB Chair

ANDREA RUSSELL, Petition [Coordinator] for 2.206
Petition

TRACE ORF, St. Lucie and Turkey Point Plant
Licensing Branch II-2, DORL

MOLLY BARKMAN MARSH, OGC

ALEJANDRO ECHAVARRIA, [Region II, OI]

RAJU PATEL, NRO

SHANE SANDAL, Region II

DAVID VITO, OE

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ALSO PRESENT:

ALEXANDRA LARSON

SUSAN SALISBURY, Palm Beach Post

P-R-O-C-E-E-D-I-N-G-S

(12:05 A.M.)

MR. ORF: This is Trace Orf with the NRC again. Has the court reporter joined us yet?

(No response.)

MR. ORF: Apparently not. This call is going through our Ops Center. It will be recorded anyway, and we can always get the recording to the court reporter to transcribe for us.

So with that, we'll go ahead and get started.

First of all, my name is Trace Orf, and I'm the project manager for St. Lucie and Turkey Point with the NRC, and I'd like to thank everyone for attending this meeting. We are here today to allow the petitioner, Mr. Thomas Saporito, Senior Consultant for SaproDani Associates, to address the Petition Review Board, also referred to as the PRB, for the 2.206 Petition dated October 1st, 2012.

The petition requests that the NRC take enforcement-related action against the Licensees, Florida Power and Light Company, or FP&L, and NextEra Energy, as a result of information provided on a CBS television broadcast that described lawsuits filed by Mark Hicks alleging whistleblower discrimination by

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1 FP&L.

2 I am the petition manager for the petition,
3 and Mr. Ho Nieh is the PRB Chairman. As part of the PRB's
4 review of the petition, the Petitioner was informed of
5 the PRB's initial recommendation and was offered a second
6 opportunity to address the PRB to provide any relevant,
7 additional explanation in support for the petition.

8 At the request of Mr. Thomas Saporito, he
9 requested this opportunity to discuss the PRB's initial
10 recommendation. This meeting is scheduled for one and
11 a half hours, from 12:00 to 1:30 p.m., Eastern Standard
12 Time.

13 The meeting is being recorded by the NRC
14 Operations Center. Prior to placing the transcript of
15 this meeting in ADAMS, the PRB will review it to ensure
16 that it does not contain any sensitive information.

17 I'd like to open this meeting with
18 introductions of the NRC meeting participants. I ask
19 that all the participants clearly state for the record
20 your name, your position, and your organization. For
21 those here in the room, please speak up so that those on
22 the phone can hear clearly, and so that the court reporter
23 can accurately record your name.

24 I will start with myself and the other NRC
25 participants here in the room.

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1 My name is Trace Orf. I'm the project
2 manager for St. Lucie and Turkey Point.

3 MS. RUSSELL: Andrea Russell, 2.206
4 coordinator.

5 MR. NIEH: Ho Nieh, I'm the director of the
6 Division of Inspection and Regional Support in NRR.

7 MS. MARSH: Molly Marsh. I'm an attorney
8 in the Office of the General Counsel.

9 MR. PATEL: Raju Patel, Office of
10 Enforcement.

11 MR. VITO: Dave Vito. I'm an allegation
12 specialist in the Office of Enforcement.

13 MR. ORF: Do we have anyone from Region II
14 of the NRC on the line?

15 MR. SANDAL: Yes, Shane Sandal, acting
16 branch chief, Region II, Atlanta.

17 SPECIAL AGENT ECHAVARRIA: Alex
18 Echavarria, Office of Investigations, Region II.

19 MR. ORF: Do we have others from
20 Headquarters on the line?

21 (No response.)

22 MR. ORF: Okay. Mr. Saporito, would you
23 please introduce yourself for the record?

24 MR. SAPORITO: My name's Thomas Saporito.
25 I am the senior consultant for SaproDani Associates, and

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1 I'd also like to make a quick note on the record that I
2 fully expect that the NRC transcribes this voice record
3 into a written record so I can have a copy of that when
4 it's completed.

5 MR. ORF: Yes, thanks. Okay, let's see.
6 Is there anyone from the Licensee on the line?

7 (No response.)

8 MR. ORF: Okay. This is Trace Orf. I gave
9 them kind of a late notice, so they may not have been able
10 to join. Is anyone else who I have missed on the line?

11 MS. SALISBURY: This is Susan Salisbury
12 with the Palm Beach Post.

13 MS. LARSON: I'm Alexandria Larson, no
14 affiliation.

15 MR. ORF: Okay. I'd like to emphasize that
16 we each need to speak clearly and loudly to make sure that
17 the court reporter can accurately transcribe this
18 meeting. If you do have something that you would like
19 to say, please first state your name for the record.

20 For those dialing into the meeting, please
21 remember to mute your phones to minimize any background
22 noise or distractions. If you do not have a mute button,
23 this can be done by pressing the keys star and six. To
24 unmute, press the star and six keys again. Please note
25 that the Operations Center has already muted the phones

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1 of people who are not addressing the PRB. Those lines
2 will be unmuted during the public comment portion of this
3 meeting. Thank you.

4 At this time, I'll turn it over to the PRB
5 Chairman, Mr. Ho Nieh.

6 MR. NIEH: Thank you, Trace. Good
7 afternoon, and thank you for participating on the call
8 today. Again, the purpose of this, today's call, is to
9 provide the petitioner, Mr. Thomas Saporito, an
10 additional opportunity to provide additional support for
11 his petition that he'd submitted to the NRC pursuant to
12 2.206 of the Code of Federal Regulations, Part 50.

13 Let me just provide some brief background
14 on the 2.206 process for those on the line who may not
15 be familiar with it. The 2.206 process is in Title X of
16 the Code of Federal Regulations, and it describes a
17 process which provides for a mechanism for any member of
18 the public to request an enforcement-related action by
19 the NRC.

20 The process allows a petitioner to submit
21 a request for an enforcement action and provide a basis
22 for that, and the NRC typically reviews the petitions
23 and, depending on the results of the NRC's evaluation,
24 the NRC could modify, suspend or revoke an NRC license,
25 or take any other appropriate enforcement action to

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1 resolve the matter. And the NRC staff's guidance for
2 the 2.206 petition process is provided in Management
3 Directive 8.11, which is a publicly available document.

4 Following this meeting, the PRB will
5 conduct its internal deliberations, and the outcome of
6 this internal meeting will be, again, discussed with the
7 petitioner. I will emphasize that this teleconference
8 -- it's not a hearing, nor is it an opportunity for the
9 petitioner to question or examine the Petition Review
10 Board on the merits of the issue associated with the
11 request, and the Petition Review Board will not be making
12 any decisions on the merits of the petition during this
13 telephone call.

14 As Trace mentioned, I am the Petition Review
15 Board Chair, and each Petition Review Board is chaired
16 by a senior manager at the Agency. The Petition Review
17 Board is also staffed based on the content of the petition
18 request, and I will just state for the record those
19 members of the Petition Review Board today.

20 We have Ms. Andrea Russell, from the Office
21 of Nuclear Reactor Regulation, Mr. Shane Sandal from
22 NRC's Region II Office. We also have Mr. Oscar Demiranda
23 from the NRC's Region II Office. He is not on the call.
24 And that constitutes the Petition Review Board.

25 The Board obtains advice from our Office of

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1 General Counsel, who is represented by Ms. Molly Marsh
2 today, as well as the Office of Investigations,
3 represented in Region II. And we also have support from
4 our two colleagues here from the Office of Enforcement.

5 As described in our process, during this
6 call the NRC staff may ask clarifying questions in order
7 to better understand the petitioner's presentation, in
8 order to facilitate our decisionmaking on whether to
9 accept or reject the petitioner's request.

10 As also described in our process, the
11 Licensees have been invited to participate in today's
12 meeting to ensure that they understand the issues about
13 their facilities or activities. Again, if the Licensee
14 does join us later on in the call, I do want to emphasize
15 that they may ask questions to clarify the issues, but
16 the Licensees are not part of the Petition Review Board's
17 decisionmaking process.

18 Let me briefly summarize the Petition
19 Review Board's understanding of the petition that was
20 submitted by Mr. Saporito on October 1st, 2012. The
21 Petitioner requests that the NRC take escalated
22 enforcement actions against the Licensees and suspend or
23 revoke the NRC licenses granted to the Licensees for
24 operation of any nuclear reactor or facility. That was
25 the first request.

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1 The second request was that the NRC issue
2 a notice of violation with a proposed civil penalty
3 against the Licensees in the total amount of one million
4 dollars.

5 And the third request was that the NRC issue
6 a confirmatory order to the Licensees, requiring the
7 Licensees to take their nuclear facilities to cold
8 shutdown until specific actions, described fully in the
9 petition, have been completed, including the completion
10 of a number of independent assessments and comprehensive
11 evaluations.

12 That petition, as I mentioned, was
13 submitted on October 1st, 2012. The NRC has taken a
14 number of steps since that time, and I will summarize
15 those briefly.

16 On October 12th, the petition manager, Mr.
17 Trace Orf, contacted Mr. Saporito to inform him of the
18 receipt of the petition. On November 5th, 2012, the
19 Petition Review Board and its advisors met to discuss the
20 petitioner's request for immediate action, which would
21 require that the Licensees take their facilities to a
22 cold shutdown condtion, as described in the petition.

23 In an email dated November 28th, 2012, the
24 petition manager informed Mr. Saporito of the Petition
25 Review Board's decision to deny the request for immediate

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1 action. In accordance with our Management Directive
2 8.11, the Petition Review Board determined that no
3 information was provided regarding the existence of a
4 safety issue at the facility that would justify an
5 immediate shutdown order from the NRC.

6 On December 11, 2012, the Petitioner, Mr.
7 Saporito, met with the Petition Review Board over the
8 telephone to provide additional information regarding
9 the petition.

10 On December 19, 2012, the Petition Review
11 Board met to discuss the petition, as supplemented by the
12 Petitioner's information on December 11th that I just
13 mentioned. And the Petition Review Board's initial
14 recommendation was that the petition did not meet the
15 criteria for review under 2.206, because the petition did
16 not provide sufficient facts regarding the existence of
17 a chilled work environment at the site.

18 THE COURT REPORTER: This is the Court
19 Reporter. I'm on the line.

20 CHAIR NIEH: Okay, great. Thank you very
21 much for joining us. I think we got started before you
22 joined.

23 This meeting -- this teleconference is
24 being transcribed via our Operations Center, so we will
25 conduct what is necessary to make sure you have access

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1 to those tapes, so you can do a complete transcription.

2 THE COURT REPORTER: Thank you so much.

3 CHAIR NIEH: You bet.

4 This is Ho Nieh. I'm the Petition Review
5 Board Chair.

6 Getting back to the NRC activities to date,
7 the last item here is on October -- or, I'm sorry, on
8 December 27, 2012, the Petition Manager had contacted the
9 Petitioner to deliver the NRC's initial recommendation
10 and to see if the Petitioner would want another
11 opportunity to address the Board. And Mr. Saporito did
12 indeed request this opportunity, which is the purpose of
13 today's teleconference.

14 So before we get into the Petitioner's
15 presentation to the Board, I just want to remind the
16 meeting participants that I'd like you to please identify
17 yourself before your remarks. Again, this will help the
18 Court Reporter develop a transcript that we will make
19 publicly available after this call.

20 With that introduction, Mr. Saporito, I
21 would like to turn it over to you to provide any
22 information that you feel the Petition Review Board
23 should consider as part of the petition.

24 MR. SAPORITO: All right. Now I heard some
25 beep in here. Can you all hear me?

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1 MR. ORF: Yes, we can hear you.

2 MR. SAPORITO: All right. Thank you, Mr.
3 Chairman. For the record, my name is Thomas Saporito and
4 I'm the Petitioner in this matter, having filed an
5 enforcement petition with the NRC under 10 CFR 2.206.

6 In accordance with NRC Management Directive
7 8.11, the agency held a meeting with me on December 11,
8 2012, regarding the particulars of that petition.
9 Subsequently, I received an email communication from NRC
10 employee Tracy Orf in which Mr. Orf stated in relevant
11 part that "You met with our Petition Review Board on
12 December 11, 2012, to discuss your petition.

13 "The results of that discussion have been
14 considered in the NRC PRB's determination regarding your
15 request for immediate action and whether or not the
16 petition meets the criteria for consideration under 10
17 CFR 2.206. The staff has concluded that your submittal
18 does not meet the criteria for consideration under 10 CFR
19 2.206, because you failed to provide sufficient facts
20 regarding the existence of a chilled work environment at
21 the plant site following the termination of Mr. Mark
22 Hicks to justify taking enforcement action against the
23 licensee."

24 Now, for the record, I vigorously disagree
25 with the NRC PRB's determination related to the petition

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1 as of this date. And I am gravely concerned that the NRC
2 PRB and the NRC Region II personnel have been engaged in
3 apparent wrongdoing and misconduct in failing to protect
4 public health and safety in these circumstances.

5 Therefore, I request that a copy of any and
6 all NRC records and documents, which the agency has in
7 its custody, possession and/or control be provided to the
8 NRC's Office of the Inspector General and to the
9 President's Office of Professional Responsibility and to
10 The Honorable Edward Markey, to enable those entities the
11 ability to make an informed decision as to whether to
12 conduct an investigation of the NRC in these
13 circumstances to protect public health and safety.

14 At this time, I am going to address the NRC
15 PRB's false assertion that the petition does not meet the
16 criteria for consideration under 10 CFR 2.206, as stated
17 in Mr. Orf's email communication.

18 And before I get into that, for the record
19 I just want to really clarify this point. In his email
20 Mr. Orf stated, "The staff has concluded that your
21 submittal does not meet the criteria for consideration
22 under 10 CFR 2.206, because you failed to provide
23 sufficient facts regarding the existence of a chilled
24 work environment at the plant site." And the key word
25 here is "following the termination of Mark Hicks to

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1 justify taking enforcement action against the licensee."

2 That statement, in its entirety,
3 mischaracterizes the entirety of the petition and the
4 supplemental record created on December 11, 2012, by
5 myself in a telecommunication with this agency. That's
6 outrageous. It's just outrageous.

7 Nowhere in the petition will you find the
8 allegation that there is a complaint of a chilled work
9 environment following the termination of Mr. Hicks.
10 Specifically, following the termination of Mr. Hicks.
11 And I'm going to get into the more broad aspects of that.

12 So here we go. At this time, I'm going to
13 address the NRC PRB's false assertion that the petition
14 does not meet the criteria for consideration under 10 CFR
15 2.206 as stated in Mr. Orf's email communication.
16 First, the standard of review for petitions filed under
17 10 CFR 2.206 states as follows.

18 Paragraph A, "Criteria for review of
19 petitions under 10 CFR 2.206. The staff will review a
20 petition under the requirements of 10 CFR 2.206 if the
21 request meets all of the following criteria: the
22 petition contains a request for enforcement-related
23 action, such as issuing an order modifying, suspending,
24 or revoking a license; issuing a notice of violation with
25 or without a proposed civil penalty, et cetera."

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1 In meeting this requirement, the petition
2 states as follows. "Petitioner respectfully requests
3 that the NRC, number one, take escalated enforcement
4 action against the above-captioned licensees and suspend
5 or revoke the NRC licenses granted to the licensees for
6 operation of any nuclear reactor or facility. Number
7 two, that the NRC issue a notice of violation with a
8 proposed civil penalty against the licensees in the total
9 amount of \$1 million. And, three, that the NRC issue a
10 confirmatory order to licensees, requiring the licensees
11 to take their nuclear reactors and/or nuclear facilities
12 to a cold shutdown mode of operation until such time as,
13 number one, the licensee completes an independent
14 assessment to fully understand and correct the potential
15 and/or realized threat posed by licensee's management in
16 taking deliberate retaliation, harassment, and
17 discriminatory actions against Mark Hicks, a former
18 operations manager at the St. Lucie Nuclear Plant; and,
19 two, the licensee completes an independent safety
20 culture assessment through a third party contractor to
21 determine whether employees at all of the licensee's
22 nuclear facilities feel free and are free to raise
23 nuclear safety concerns to FP&L management and to the NRC
24 without fear of retaliation; and, three, the licensee
25 completes an independent safety assessment through a

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1 third party contractor to review all plant nuclear
2 safety-related equipment and/or components at all of the
3 licensee's nuclear facilities to ensure that such
4 nuclear safety-related systems and/or components are
5 capable to perform their intended and designed safety
6 function under 10 CFR Part 50."

7 And you can see the reference is made to
8 October 1, 2012, petition at page 3.

9 The second part of that is, "The facts that
10 constitute the basis for taking particular action are as
11 specified. The Petitioner must provide some element of
12 support beyond the bare assertion. The supporting facts
13 must be credible and sufficient to warrant further
14 inquiry."

15 In meeting this requirement, the petition
16 states as follows. "On September 20, 2012, CBS TV12 news
17 reported an interview with a former FP&L operations
18 manager, Mark Hicks, who was fired from his position at
19 the licensee's St. Lucie Nuclear Plant after Hicks fully
20 complied with NRC regulations in refusing to continue the
21 restart of a nuclear reactor after notice that a safety
22 valve associated with the reactor coolant system was
23 leaking.

24 "Hicks has retained legal counsel and has
25 filed whistleblower legal action against the licensee in

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1 these circumstances." And they note here in the record
2 that the NRC was provided a CD containing the news
3 broadcast, so they could review it in its entirety.

4 It continues. "This is not the first
5 instance where the licensee has fired or otherwise
6 retaliated against one or more of its in-house or
7 contractor employees after reporting perceived nuclear
8 safety concerns to FP&L management. Notably, the NRC
9 has been impotent over the years to reduce the number of
10 anonymous nuclear safety complaints raised by FP&L
11 employees secretly to the NRC because the employees fear
12 retaliation by FP&L management.

13 "The failure of the NRC and FP&L in these
14 circumstances jeopardized public health and safety." And
15 a reference is made to the petition at pages 3 and 4.

16 And, lastly, the third requirement of the
17 Management Directive 8.11 is that "There is no NRC
18 proceeding available in which the Petitioner is, or could
19 be, a party and through which Petitioner's concerns could
20 be addressed. If there is a proceeding available, for
21 example, if a Petitioner raises an issue that he or she
22 has raised, or could raise in an ongoing licensing
23 proceeding, staff will inform the Petitioner of the
24 ongoing proceeding and will not treat the request under
25 10 CFR 2.206."

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1 In meeting the requirement, the petition
2 states as follows, "Petitioner notes here that there is
3 no NRC proceeding available in which the Petitioner is,
4 or could be, a party and through which Petitioner's
5 concerns could be addressed." And, again, reference is
6 made to the petition at page 4.

7 And, notably, on the record the NRC has
8 already accepted this petition filed on October 2012,
9 under 10 CFR 2.206.

10 So here the record in this matter clearly
11 demonstrates that the enforcement petition was properly
12 filed and meets all of the NRC's criteria for reviewing
13 petitions under 10 CFR 2.206 as filed on October 1, 2012.

14 To the extent that the NRC has notified me
15 that the agency has determined otherwise, I have
16 initiated an investigation of the NRC PRB and the NRC
17 Region II headquarters in Atlanta, Georgia, in these
18 circumstances to protect public health and safety.

19 It appears that the congressional oversight
20 panel must convene hearings with the NRC Commission to
21 fully understand and to correct the apparent misconduct
22 and wrongdoing on the part of the NRC before the United
23 States experiences a Fukushima nuclear disaster here.

24 Notably, on December 11, 2012, I
25 participated by telephone in a teleconference call with

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1 the NRC to further discuss the particulars of the 2.206
2 enforcement petition. At that time, I provided explicit
3 details in support of the petition as follows. "Hicks
4 engaged in 10 CFR 50.7 protected activity as follows.
5 Number one, Hicks confronted and challenged Nazar's
6 authority as the licensee's vice president in Hicks
7 ordering the immediate shutdown of a St. Lucie Nuclear
8 Plant reactor upon learning that the reactor coolant leak
9 had occurred.

10 "Two, Hicks subsequently directed another
11 employee to ensure that the nuclear reactor would not be
12 restarted, despite attempts by the licensee to
13 circumvent Hicks' prior order to shutdown the reactor.

14 "Three, Hicks complained to the NRC that the
15 licensee was retaliating against him as a direct result
16 from the order he gave to shut down the reactor, and the
17 subsequent direction he gave to another employee to keep
18 the reactor shutdown.

19 "Four, Hicks made a second complaint to the
20 NRC that the licensee continued to retaliate against him,
21 stemming from his order to shutdown the nuclear reactor
22 and stemming from his complaint filed with the NRC.

23 "Five, Hicks publicly announced to the
24 media that the licensee had retaliated against him, fired
25 him, because he raised nuclear safety concerns at the St.

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1 Lucie Nuclear Plant.

2 "And, six, Hicks filed a legal action
3 against the licensee seeking a jury trial and a
4 make-whole remedy and publicly announced that action to
5 the media."

6 Following that protected activity, under
7 NRC regulations, the licensee retaliated against Hicks
8 in direct violation of NRC regulations, requirements,
9 and standards as follows. "One, Nazar used his position
10 of authority to insist that Hicks start up and bring the
11 nuclear reactor to power.

12 "Two, the licensee subsequently attempted
13 to circumvent Hicks' order in directing other employees
14 to restart the reactor after Hicks had left the plant for
15 home.

16 "Three, the licensees created and fostered
17 a hostile work environment by publicly retaliating
18 against Hicks in front of other employees.

19 "Four, the licensee placed Hicks on a
20 performance plan or probation.

21 "Five, Nazar and other high-level licensee
22 management acted to lower Hicks' compensation by
23 conspiring to have Hicks' immediate supervisor, Richard
24 Anderson, decrease Hicks' performance rating in
25 assessment reviews, despite higher peer review.

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1 "Six, the licensee's lowering of Hicks'
2 performance rating resulted in Hicks receiving less
3 bonus pay than he was otherwise entitled.

4 "Seven, the licensee induced Hicks to sign
5 a pretextual settlement placing Hicks in the position of
6 excellence plan director.

7 "Eight, the licensee offered Hicks a
8 settlement to dissuade NRC from investigating wrongdoing
9 allegations filed by Hicks with the agency.

10 "Nine, the licensee knowingly made false
11 and misleading statements and representations to the NRC
12 in offering a settlement to Hicks which was subsequently
13 violated by the licensee.

14 "Ten, subsequent to placing Hicks in the
15 position of excellence plan director, the corporate
16 outage vice president screamed loudly at Hicks in front
17 of his peers that Hicks was a 'fucking embarrassment to
18 the company.'

19 "Eleven, licensee management repeatedly
20 cursed at Hicks with bursts of 'God damn you,' knowing
21 that such terminology was harmful to Hicks due to his
22 religious beliefs.

23 "Twelve, Nazar required Hicks to meet with
24 him on a biweekly basis where Nazar further ridiculed and
25 embarrassed Hicks by screaming questions and accusations

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1 at Hicks pertaining to many of Hicks' job aspects and
2 responsibilities.

3 "Thirteen, during the biweekly meetings
4 with Hicks, Nazar would pound his fist on the table at
5 times for 30 minutes.

6 "Fourteen, the biweekly meetings were
7 intended by the licensee to be very demeaning towards
8 Hicks, and many took place in front of other employees
9 as an example of what happens to employees who raise
10 nuclear safety concerns.

11 "Fifteen, the licensee's actions in
12 retaliating against Hicks created a chilling effect at
13 the St. Lucie Nuclear Plant, serving to silence other
14 employees from raising nuclear safety concerns to
15 anyone.

16 "Sixteen, Nazar ultimately terminated the
17 position created for Hicks, pretextually claiming that
18 it was a temporary project.

19 "Seventeen, the licensee then
20 intentionally skewed Hicks' performance ratings, taking
21 them from a Level 5 to a Level 3, which resulted in
22 decreased bonus pay for Hicks. Notably, the licensee
23 failed to provide any explanation for the lowered
24 performance rating.

25 "Eighteen, in 2012, the licensee scheduled

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1 a leadership meeting to discuss the next steps in the
2 excellence plans during the time that Hicks held the
3 position of excellence plan director. But the licensee
4 excluded Hicks from the meeting, causing further public
5 humiliation for Hicks.

6 "Nineteen, the licensee deliberately
7 engaged in wrongdoing under the nose of the NRC by
8 inducing Hicks to sign one or more settlements, so that
9 the NRC would not conduct a 10 CFR 50.7 investigation
10 which could have resulted in the agency taking
11 enforcement action against the licensee.

12 "Twenty, following a second complaint of
13 retaliation filed with the NRC by Hicks on February 17,
14 2012, the licensee subsequently terminated Hicks'
15 employment on June 25, 2012."

16 The licensee engaged in -- this is 21, "The
17 licensee engaged in further wrongdoing by later
18 notifying Hicks that he could apply for a non-nuclear
19 position with the company within 45 days, where the
20 notice was pretextual and intended to once again prevent
21 the NRC from conducting a 10 CFR 50.7 investigation.

22 "Moreover, the licensee was well aware of
23 Hicks' 20-year career in the United States Nuclear Navy's
24 program -- in the United States Navy's nuclear program,
25 and his employment at the Wolf Creek Nuclear Plant, and

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1 that Hicks would never accept such a demotion of
2 position.

3 "Twenty-two, the licensee, nonetheless,
4 continued to retaliate against Hicks by causing
5 employees at the St. Lucie Nuclear Plant to [shun] Hicks.
6 Incredibly, the licensee isolated Hicks from his
7 co-workers by specifically prohibiting other employees
8 from returning phone calls to Hicks or otherwise
9 communicating with Hicks.

10 "And, 23, the licensee's conduct in causing
11 the co-workers of Hicks to shun him is paramount to
12 creating a hostile work environment at the St. Lucie
13 Nuclear Plant where employees are chilled for raising
14 nuclear safety concerns to anyone."

15 So clearly the petition, as filed on October
16 1, 2012, standing alone, meets all of the NRC's criteria
17 for review of petitions under 10 CFR 2.206. To the
18 extent that the petition was further supplemented during
19 the December 11, 2012, teleconference call between
20 myself and the NRC Petition Review Board, further
21 demonstrates that the petition meets all of the NRC's
22 criteria for reviewing petitions under 10 CFR 2.206, with
23 respect to retaliation taken by the licensee against
24 Hicks in direct violation of 10 CFR 50 and 50.7 and under
25 other NRC authority.

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1 In addition, the petition, as supplemented
2 on December 11, 2012, and by today's meeting, amply
3 demonstrates that a chilling effect and hostile work
4 environment existed at the time of Hicks' employment at
5 the St. Lucie Nuclear Plant, and that the chilling effect
6 and hostile work environment continues at the St. Lucie
7 Nuclear Plant and at the Turkey Point Nuclear Plant
8 unabated to date.

9 So just from the discussion to this point
10 demonstrates, by way of evidence to the Petition Review
11 Board, that the petition is claiming two points, two
12 major violations.

13 The first violation is retaliation for
14 Hicks for engaging in 10 CFR 50.7 protected activity in
15 raising nuclear safety complaints regarding licensed
16 activities at the St. Lucie Nuclear Plant, and all of the
17 other points of retaliation that I have itemized here on
18 the record to date.

19 Point number two is that a -- there was a
20 chilled work environment and a hostile work environment
21 fostered by the licensee during the employment period
22 that Mark Hicks was employed at the St. Lucie Nuclear
23 Plant. The petition specifically addresses that time
24 period, and there is no reference to -- that there is only
25 a -- that the petition only is complaining with an event

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1 of a chilled work environment subsequent to Mr. Hicks'
2 employment period at Florida Power & Light Company.

3 So Mr. Orf's email incorrectly and falsely
4 represents what the petition states factually and on the
5 record. And Mr. Orf's email represents the opinion and
6 the review of the Petition Review Board to date, and on
7 that basis it causes me grave concern about the
8 independence of the NRC as an agency whose congressional
9 mandate is to protect public health and safety and the
10 environment in these circumstances.

11 And I guarantee you that I am going to follow
12 up with congressional leadership, the Office of the
13 President of the United States, and other entities to
14 investigate the NRC in these circumstances.

15 I now want to talk about the chilling effect
16 and the hostile work environment. First of all -- and
17 I noted on the record on December 11, 2012, NRC has a
18 website, and from that website I recovered a document.
19 It's entitled "Reactor Allegations Received by CY
20 Received." It is dated -- for the period of January 2008
21 to October 2012.

22 What this document is is a two-page
23 document, and it describes and lists all of the nuclear
24 power plants in the United States where employees have
25 communicated secretly to the NRC to raise nuclear safety

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1 concerns because they fear retaliation by their
2 managers. And this period of January 2008 to October
3 2012 wholly encompasses the employment period for which
4 Mr. Mark Hicks was employed with Florida Power & Light
5 Company. Okay?

6 So this document demonstrates and is
7 probative evidence showing that in that time period of
8 January 2008 to October 2012 Florida Power & Light had
9 154 nuclear safety complaints communicated to the NRC by
10 employees at Florida Power & Light's nuclear plants here
11 in South Florida secretly, and that number -- 154 -- is
12 second highest in the nation. The only one higher is the
13 San Onofre plant with 167. So 154, the second highest
14 in the nation.

15 And it happened that reporting period
16 encompasses the employment period of Mark Hicks and
17 demonstrates that the employees at Florida Power & Light
18 fear retaliation from FP&L management in raising nuclear
19 safety complaints. And that is why they go secretly to
20 the agency. There is no other reason.

21 If there was a safety-conscious work
22 environment, a healthy work environment, at Florida
23 Power & Light's nuclear plants in Florida, these
24 employees would contact their managers to get their
25 concerns resolved, and they would expect a pat on the

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1 back, a bonus, an accommodation in their performance
2 review, something.

3 But no, what they get, they get retaliation,
4 they get discrimination, they get cursed at, and they get
5 fired and demoted. That's what happened. It happened
6 to Mark Hicks from January 2008 until October 2012. And
7 there are many other employees, former employees from the
8 Florida Power & Light Company, who have endured the same
9 type of retaliatory actions by FP&L management. I'm not
10 going to go through those cases here today.

11 Now, the NRC publicly publicized on the U.S.
12 NRC blog on December 26, 2012 -- and I'm not going to read
13 the whole thing -- but the relevant part of this posting
14 was by Maria E. Schwartz, an NRC employee, who stated that
15 "Recognizing that licensees have the first
16 responsibility for safety, and are in the best position
17 to respond promptly to a safety matter, the NRC
18 encourages workers to first raise safety concerns with
19 their management."

20 For this to happen, workers must feel free
21 to raise potential safety issues directly to their
22 management. The NRC recognizes that if workers are
23 subject to harassment, intimidation, retaliation,
24 discrimination, or otherwise discouraging behaviors by
25 management for reporting safety concerns, a "chilled"

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1 work environment may be created that could inhibit
2 workers from reporting additional safety concerns.

3 If this happens, a [valuable] source of
4 information for maintaining and improving safety is
5 lost. In its simplest sense, it is a major red flag if
6 a worker at a facility the NRC regulates (or who work in
7 connection with licensed materials) chooses to submit an
8 allegation to the NRC rather than with their employer,
9 or has raised the issue with their management but was
10 unsatisfied with its outcome.

11 For this reason, the trending of allegation
12 information can provide NRC with insights into the work
13 environment of our licensees, including whether they are
14 providing a safety-conscious work environment as
15 required by our regulations.

16 And I'd just reference in the record the
17 NRC's trending report "Reactor Allegations Received by
18 CY Received," and it's for the period January 2008 to
19 October 2012. And on the bottom of this document it
20 says -- has an asterisk that says, "This table refers to
21 allegations from all sources external to the NRC,"
22 meaning these are the nuclear power plants that the NRC
23 regulates in the United States, and St. Lucie/Turkey
24 Point nuclear plants are listed here. And their sum
25 total of allegations are 154, the second highest licensee

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1 who has employees reporting secretly to the NRC about
2 safety concerns.

3 So according to Maria E. Schwartz and the
4 NRC, this should be a red flag, a major red flag. She
5 is quoted as saying "a major red flag." Okay? And,
6 again, this report encompasses the entire employment
7 period for Mr. Mark Hicks with FP&L at the St. Lucie
8 Nuclear Plant.

9 Now, the NRC -- this policy of the NRC of
10 establishing -- of requiring its licensees, which
11 Florida Power & Light and NextEra Energy, who operates
12 numerous nuclear facilities across the United States,
13 they are required to establish and maintain a
14 safety-conscious work environment at their nuclear power
15 plants.

16 So NRC met over the years -- and I'm not
17 going to go through the whole of this -- but they came
18 out with final consensus and policy statement, and the
19 relevant parts of that are this, and this is
20 document -- let me see what this is. It says -- the title
21 of this document -- it's a six-page document. It's
22 Attachment RIS 2005-18. It's entitled "Establishing
23 and Maintaining a Safety-Conscious Work Environment."

24 It's a lengthy document, but I'm just going
25 to have -- there are a couple of parts here I want to put

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1 on the record, and it says here under Paragraph A,
2 "Employees are encouraged to raise safety concerns."

3 Safety-conscious work environment policy,
4 here is what it is. A safety-conscious work environment
5 policy statement, which is -- which, A, is applicable to
6 employees and contractors; B, asserts that it is
7 everyone's responsibility to promptly raise concerns;
8 and, C, makes clear that retaliation for doing so will
9 not be tolerated, may help establish a safety-conscious
10 work environment and communicate senior management's
11 expectations for maintaining it.

12 In addition, the policy may include a
13 statement to, to the extent appropriate, employees are
14 allowed and encouraged to use work hours to report
15 concerns; that sanctions for retaliation by supervisors,
16 management, or peers; that expectation for management
17 behavior that fosters employees' confidence in raising
18 concerns; that information on the various avenues
19 available for raising concerns; that the right of
20 employees to raise concerns externally; and that a
21 commitment to provide safety-conscious work environment
22 training.

23 And under the training aspect of this,
24 safety-conscious work environment training for
25 managers, supervisors, and employees helps reinforce the

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1 principles of the licensee's safety-conscious work
2 environment policy. The primary topics to consider
3 including in this training are applicable laws,
4 regulations, and policies underlying safety-conscious
5 work environment expectations.

6 To effectively communicate
7 safety-conscious work environment concepts to the
8 workforce, licensees, and their contractors, may
9 consider including the following definitions in
10 training. The first definition they talk about is
11 protected activity, which I talk about with respect to
12 Mr. Hicks.

13 And it states here, "It is important that
14 managers and employees know what protected activities
15 are besides raising safety concerns." The term
16 "protected activity" has been broadly interpreted by the
17 Department of Labor and the United States courts.
18 Protected activity, as defined by NRC regulations, are
19 related to the administration or enforcement of a
20 requirement imposed under the Atomic Energy Act or the
21 Energy Reorganization Act, and include, but are not
22 limited to -- the first one, providing the Commission or
23 employer information about alleged or possible
24 violations of the Atomic Energy Act or the Energy
25 Reorganization Act, or possible violations of

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1 requirements imposed under either statute.

2 Also, refusing to engage in the practice
3 made unlawful under either statute or the requirements,
4 if the employee has identified alleged illegality to the
5 employer. Also, requesting the Commission to institute
6 action against the employer for the administration or
7 enforcement of these requirements.

8 Also, testifying in any Commission
9 proceeding or before Congress or at any federal or state
10 proceeding regarding provision of either statute. And,
11 also, assisting or participating in, or being about to
12 assist or participate in, these activities.

13 And Mr. Hicks -- the petition identified
14 specifically and in great detail all of these violations,
15 a violation of all of these requirements.

16 Adverse action -- the NRC policy talks about
17 adverse action and states that "Understanding what an
18 adverse action is can also be important." An adverse
19 action is an adverse change to the compensation, terms,
20 condition, or privilege of employment.

21 Well, gee whiz, didn't I just talk about Mr.
22 Hicks and how his compensation was affected adversely
23 because of retaliation he suffered at the hands of
24 Florida Power & Light management? In fact, he lost his
25 job. He was fired after being demoted and losing pay

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1 several times.

2 And then, the NRC policy goes on to talk
3 about retaliation. It may be appropriate to explore the
4 meaning of retaliation. Under the NRC's regulations,
5 the management can continue to effectively manage
6 employees while remaining cognizant of the NRC's
7 employee protection regulations.

8 Actions taken by an employer or others which
9 adversely affect an employee may be based on
10 non-discriminatory grounds. An adverse action is
11 deemed retaliatory only if it is taken, at least in part,
12 because the individual was engaged in a protected
13 activity.

14 And, again, I delineated with great detail
15 and specificity the protected activity Mr. Hicks engaged
16 in while he was employed at Florida Power & Light and the
17 retaliation that closely followed and was in tandem with
18 that protected activity was taken against him by FP&L
19 management.

20 And so other things to consider in
21 discussing training include appropriate gateways for
22 employees and contractors to identify concerns, manager
23 quality assurance programs, corrective actions and field
24 processes, alternative process for raising concerns,
25 such as licensee Employee Concerns Program or an

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1 Ombudsman Program.

2 And FP&L has had all of these programs
3 throughout the years, and they have consistently failed
4 in the efforts for the licensees to comply with the NRC's
5 policy and expectations that they maintain a
6 safety-conscious work environment at all of their
7 nuclear power plants across the United States.

8 It states here in the latter part of this
9 NRC policy statement that one factor that can
10 significantly impact a safety-conscious work
11 environment is management behavior. Therefore,
12 employers may consider including this topic in training.

13 The following behaviors may be effective in
14 establishing and maintaining a safety-conscious work
15 environment at licensee and contractor facilities. It
16 states here that managers have an open door policy in the
17 office and make themselves available in the field.
18 Also, that managers are aware of employees' potential
19 reluctance to raise concerns. Also, that managers
20 understand the importance of identity protection. And,
21 also, managers have good basic listening skills, can
22 critique input and express appreciation of employees who
23 raise concerns.

24 Mr. Nazar, the Vice President of Florida
25 Power & Light Operations at the time of Mr. Hicks'

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1 employment, he certainly wasn't appreciative of Mr.
2 Hicks who raised a serious nuclear safety concern about
3 reactor coolant leaking at a nuclear reactor at the St.
4 Lucie Nuclear Power Plant that was underway to be brought
5 up to full power.

6 That same safety device was the -- was
7 instrumental and led to the meltdown at the Three Mile
8 Island nuclear reactor years back.

9 And he wasn't given a pat on the back, he
10 wasn't given a raise, a promotion, a commendation, a
11 thank you in front of his peers. Instead, he was
12 berated, humiliated, retaliated against, and ultimately
13 fired by an executive-level manager.

14 The NRC policy goes on to say, "Managers can
15 use various media instruments to communicate their
16 safety-conscious work environment principles.
17 Managers should consider establishing timeliness goals
18 for responding to concerns commensurable with their
19 safety significance, and should consider providing
20 periodic updates to the individuals who identify the
21 concerns."

22 In some circumstances, it may be necessary
23 to evaluate the effectiveness of responses to
24 individuals' concerns to determine whether responses
25 adequately address the concerns.

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1 Well, in Mr. Hicks' case, they isolated him.
2 They told employees not to communicate with him. No one
3 got back with Mr. Hicks and said, "Oh, you know, it was
4 a good concern. These are the steps we took to fix it,
5 and, you know, thank you for raising these concerns."
6 No, none of that was done. Just the opposite. Just the
7 opposite. The guy was retaliated and fired.

8 The policy statement of the NRC goes on to
9 say another way to enhance the safety-conscious work
10 environment is to train managers to, number one -- to
11 identify, number one, situations that make them less
12 receptive to safety concerns, such as operational or
13 maintenance goal pressures; and, two, signs of a chilled
14 environment -- that is, an environment in which employees
15 are afraid to raise safety concerns for fear of
16 retaliations.

17 Well, you know, again, Mr. Hicks was
18 bringing these concerns up at the time that FP&L was
19 struggling for economic desires to get these nuclear
20 plants back online. And he was raising these concerns
21 in front of other employees, and management reacted in
22 front of other employees, and retaliated against him in
23 the many, many ways I described earlier in this
24 discussion.

25 They certainly were taking the opposite

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1 approach. They were --

2 (Whereupon, the proceedings in the foregoing matter went
3 off the record at 12:59 p.m. due to
4 technical difficulties and went back on the
5 record at 2:48 p.m.)

6 CHAIR NIEH: Okay. Hi, Mr. Saporito.
7 This is Ho at the NRR, the PRB Chair. Are you back on
8 the line?

9 MR. SAPORITO: Yes. I am waiting
10 for -- someone there in your meeting said they were going
11 to go through their notes, so they --

12 CHAIR NIEH: Yes.

13 MR. SAPORITO: -- they can tell me where I
14 left off at, because the Court Reporter was trying to play
15 back the tape. I can't hear anything on this end. He
16 apparently can't hear me when he is playing the tape.

17 CHAIR NIEH: Yes. Okay. Thank you.
18 What I had in my notes was that you were really wrapping
19 up your discussion on the Regulatory Issue Summary
20 2005-18. You had gone through the main points about the
21 RIS.

22 The last point you were mentioning was the
23 guidance for, you know, trainers and managers onsite
24 related to that. At least that was the last comment we
25 could hear, so it sounded like you were getting toward

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1 the end. You were kind of summarizing the RIS.

2 MR. SAPORITO: Okay. So I discussed the
3 safety-conscious work environment training aspects?

4 CHAIR NIEH: Yes.

5 MR. SAPORITO: And that's the last that he
6 recorded, right?

7 CHAIR NIEH: Thereabouts. Yeah.

8 MR. SAPORITO: Okay. That's good. I can
9 pick up from there.

10 CHAIR NIEH: All right. Is the Court
11 Reporter on? Hello?

12 THE COURT REPORTER: I am here, sir.

13 CHAIR NIEH: Okay. Great.

14 All right. Mr. Saporito, well, you have
15 the floor. I think we were I guess on the -- I think this
16 would probably carry us until about 3:15, just to give
17 you a sense of where we are on time.

18 MR. SAPORITO: Okay. Thank you. All
19 right. For the record, this is Thomas Saporito. It is
20 about 11 minutes to three. I am going to try to wind up
21 this presentation. I was earlier disconnected
22 inadvertently by the NRC, so I am going to pick this up.

23 I was talking about the NRC document
24 identified as RIS 2005-18, and I was referencing page 4
25 and 5 of that document. I think I left off with the part

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1 with safety-conscious work environment training.

2 And so the document goes on to talk about
3 and describe adverse action, and it states there that
4 understanding what an adverse action is can also be
5 important. An adverse action is an adverse change in the
6 compensation terms, conditions, or privileges of
7 employment. And so the actions I described earlier to
8 this panel with respect to Mark Hicks, those actions of
9 retaliation that I describe certainly meet and exceed the
10 definition of adverse action as reflected in the NRC
11 policy document.

12 Retaliation, as described as policy
13 documentation -- it may be appropriate to explore the
14 meaning of retaliation under the NRC's regulation, so
15 that management can continue to effectively manage
16 employees while remaining cognizant of the NRC's
17 employee protection regulations. Actions taken by an
18 employer or others which adversely affect an employee may
19 be based on non-discriminatory grounds. An adverse
20 action is deemed retaliatory only if it is taken, at least
21 in part, because the individual was engaged in protected
22 activity.

23 Well, in the case of Mr. Hicks, all of the
24 adverse actions that I described earlier were taken after
25 he raised the safety complaints regarding reactor

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1 coolant system and after he engaged in other protected
2 activity, like ordering its immediate shutdown, and for
3 it to remain in shutdown, and all of the other 10 CFR 50.7
4 protected activity I describe there. So that all of the
5 retaliation took place after that in protected activity.

6 The problem with these -- the NRC in
7 regulating its licensees like Florida Power & Light
8 Company and NextEra Energy, Inc. are broad and pervasive,
9 because the NRC has failed over the years to comply with
10 its own mandate to protect public health and safety and
11 the environment with respect to its licensees by
12 maintaining a safety-conscious work environment at their
13 nuclear facilities.

14 Here in Florida we have four reactors
15 operated by Florida Power & Light Company, two at the St.
16 Lucie Nuclear Plant and two at the Turkey Point Nuclear
17 Plant. And then, Florida Power & Light's parent
18 company, NextEra Energy, operates reactors across the
19 United States.

20 The NRC has an inspection manual,
21 Inspection Procedure 23100. It describes the procedure
22 for NRC inspectors to go onsite at these different
23 facilities and how they are to interview people and what
24 documents they need to be looking at and to inspect, so
25 that they can make an informed decision as to whether the

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1 environment is one that encourages employees to raise
2 safety concerns.

3 So all of the written procedures and
4 policies are in place at the agency. They are just not
5 carried out. A representative example of that is -- in
6 the summer, approximately July of 2012, the NRC did an
7 onsite inspection, and two personnel from Region II were
8 there, and the senior resident inspector Tim Hoeg was
9 there, and there was multiple reactor trips at the St.
10 Lucie plant. That was the highlight of the inspection,
11 although there was other safety issues which were the
12 subject of that inspection.

13 The NRC publicly held a public meeting,
14 which I attended, with respect to that inspection. And
15 throughout the entirety of that presentation the NRC
16 never addressed safety-conscious work environment. They
17 talk about it in general terms, the reactor oversight
18 process, and how the St. Lucie Nuclear Plant operations
19 had flipped because of these reactor trips within
20 that -- the parameters of that process.

21 And then, the licensee was given the
22 opportunity to explain what they did to correct these
23 problems. The plant manager, whom I have a great deal
24 of respect for, addressed what they believed to be the
25 root cause and the resolution.

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1 And then, I -- the public had an opportunity
2 to speak, so I was one of those members of the public who
3 spoke. I took issue with the NRC's inspection
4 activities, because there was no enforcement action
5 taken. And so the NRC Region II personnel responded, but
6 where is the violations for us to take enforcement
7 action?

8 Well, number one, licensee never identified
9 the root cause. If the violation -- the root cause was
10 not relevant to the events that took place which caused
11 the reactor to trip offline. The reason the reactor
12 tripped offline was because the employees at the St.
13 Lucie plant violated station procedures in their
14 technical specifications. They didn't properly monitor
15 the temperature of one or more pumps that they were
16 supposed to. That caused the reactor to trip.

17 So the licensee never identified that as the
18 root cause. Therefore, they never resolved it. But you
19 people, your inspectors did identify that, and I showed
20 them their own reports, where it was documented, but the
21 NRC didn't take any enforcement action.

22 What really concerns me is, in its entirety,
23 this report -- the NRC did any evaluation of the work
24 environment. I brought up the issue of Mr. Hicks and
25 that he was retaliated for bringing up these serious

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1 safety concerns I have already talked about. But there
2 is no inspection activities. There is not one word in
3 your report, your July 2012 report, or the report that
4 followed that inspection period, with respect to the work
5 environment.

6 So the agency knows this problem has been
7 ongoing. It has been ongoing for years and years and
8 years. And I have been participating in public meeting
9 after public meeting after public meeting that was either
10 hosted by the NRC or by the licensee, specifically
11 regarding the work environment at FP&L's nuclear plant
12 in South Florida.

13 And every time the licensee gets up there
14 and makes a presentation, "Yeah, we acknowledge that
15 there is a problem. But, look, we [improved] the
16 Employee Concerns Program, we got new plant managers, you
17 know, and everything is fine now." And then a year or
18 so later, same problem, another public meeting, and the
19 licensee gets up there again and says, "Oh, but we could
20 replace the plant managers, we've got new Employee
21 Concerns people heading up that program, we increased our
22 training, and we've got better procedures."

23 And it goes on and on, year after year.
24 It's like the groundhog movie that was out a few years
25 back. Same repetition, the same problems, same

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1 recurrence. No violation cited by the NRC, though.
2 This problem has gone on year after year after year, and
3 now it has escalated to the critical issue where we are
4 second in the nation now, second in the nation with the
5 most employees going to the NRC secretly to raise safety
6 complaints because they fear retaliation by the licensee
7 management.

8 Now, this has to stop. I mean, the NRC
9 needs to enforce its own regulations. And here is where,
10 you know, we are going to have -- there is going to be
11 a congressional oversight panel formed. The
12 Commissioners themselves, including the new Chairman,
13 need to be held accountable and brought before the panel,
14 because the NRC's mission is to protect public health and
15 safety.

16 And the mission of the Department of Labor
17 is to provide a make-whole remedy for an employee who is
18 fired for whistleblower actions against a licensee. In
19 this case, Mr. Hicks, throughout the employment period
20 at Florida Power & Light, when he lost his position as
21 operations manager there was these agreements made, and
22 he was in -- you know, he was solicited to sign onto a
23 settlement agreement which was supposed to resolve all
24 of the issues and make him -- give him an economic
25 settlement, a so-called make-whole remedy.

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1 And, you know, that's an economic solution.
2 It doesn't resolve the issue of whether or not the
3 licensee violated NRC regulations and requirements under
4 their licenses. And the NRC didn't investigate that
5 because there was a settlement agreement. So right
6 there the NRC violated its own mandate.

7 You know, it's fine and well that a licensee
8 makes a settlement with any employee to resolve an
9 economic situation, but that doesn't relieve the NRC as
10 a separate, independent government agency to do its job
11 to protect public health and safety, to go onsite and do
12 an investigation, whether or not there's a settlement,
13 to find out, "Hey, did this -- did they raise these safety
14 concerns? And did this retaliation occur after these
15 safety concerns were raised? Did you tell employees not
16 to contact this individual? You know, was he trying to
17 keep the reactor -- did he order the reactor be shutdown
18 under the parameters of his own NRC license? And did
19 you, as the licensee, try to circumvent that and order
20 employees to restart that reactor?"

21 These are all violations of NRC
22 requirements and regulations and policy, which need to
23 be investigated. My investigation shows the NRC never
24 investigated these issues. And the NRC needs to make a
25 separate determination, separate and apart from any

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1 pretextual settlement agreement you all may have coerced
2 Mr. Hicks into agreeing to, and separate and apart from
3 any subsequent litigation that Mr. Hicks may or may not
4 be involved in with respect to his termination of
5 employment from Florida Power & Light Company.

6 It is the NRC's job -- job and
7 responsibility and congressional mandate to ensure that
8 the work environment at Florida Power & Light Nuclear
9 Plant, and that NextEra Energy, Incorporated nuclear
10 plants across the United States maintain a work
11 environment that encourages employees to raise nuclear
12 safety concerns to licensee management and to anyone else
13 that they so desire.

14 The NRC's own documents from January 2008
15 to October 2012 clearly demonstrate that Florida Power &
16 Light, four nuclear reactors, and two power plant
17 entities, the same as the nuclear power plant -- the
18 Turkey Point Nuclear Power Plant, maintain and foster
19 work environments which do not encourage employees to
20 raise safety concerns to Florida Power & Light
21 management.

22 And the evidence is that they would rather
23 go to the NRC, so much so that they hold second place in
24 the nation as far as the number of employees raising
25 safety complaints to the NRC.

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1 And like I say, the inspection criteria is
2 laid out. You know, the inspectors -- the NRC inspector
3 is supposed to go onsite, supposed to look at the backlog
4 of how many work orders are backlogged, you know, talk
5 to employees who were named in the complaints. Mr. Hicks
6 made two specific written complaints to the NRC. He
7 filed a lawsuit. There's plenty of evidence out there,
8 and there are names, there are dates, there is a
9 chronology.

10 The NRC has more than enough to go on to
11 conduct an investigation. I even offered to assist the
12 agency. I asked, through the Commissioner herself, to
13 order the NRC Region II Office of Investigations to
14 conduct an investigation, and I wanted to participate.
15 I wanted to be interviewed by the agency to assist them.
16 I had no contact from Region II whatsoever.

17 Now, these power plants in South Florida,
18 it's where I live, it's where my family and friends are,
19 and they are at risk. They are jeopardizing public
20 health and safety as they are being operated outside of
21 NRC regulation, under -- outside of the licenses granted
22 to Florida Power & Light Company under 10 CFR Part 50.

23 And the responsibility/accountability,
24 while it's not only on the licensee, but also on NRC
25 Region II personnel who have failed -- failed miserably

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1 over the years to do their job and to take meaningful
2 enforcement action against Florida Power & Light in
3 these types of circumstances. And their own records,
4 the NRC's own records show a lack of enforcement action
5 over the years at both Turkey Point and St. Lucie nuclear
6 power plants.

7 And it points to pervasive and widespread
8 problems within the NRC itself. Apparently, there are
9 other regions in the NRC who do conduct adequate and
10 sufficient and aggressive enforcement action, the very
11 same type of circumstances as at other facilities within
12 their jurisdictions.

13 Region II has failed miserably over the
14 years to enforce their own regulations with respect to
15 the four nuclear plants operating in Florida, and also
16 the fifth one over there at Crystal River.

17 So, in my opinion -- and I'm going to pursue
18 this with Congress no matter what the NRC decides to do
19 with respect to this enforcement petition -- but with
20 respect to this enforcement petition, the enforcement
21 petition clearly meets all of the criteria under
22 Management Directive 8.11, and requires the NRC to accept
23 the petition under 10 CFR 2.206. And that was the
24 October 1, 2012, petition.

25 Now, considering the fact that I

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1 supplemented that on December 11, 2012, and gave more
2 elaboration on the details and the particulars, and
3 specifically outlined in a very accurate chronology the
4 dates that Mr. Hicks engaged in 10 CFR 50.7 protected
5 activity, and the retaliation that followed and is
6 connected through a nexus to that protected activity,
7 clearly qualifies the petition to be accepted by the NRC
8 Petition Review Board and for the NRC to act on that
9 petition and consider taking the enforcement action
10 requested in that petition.

11 Now, that is one issue. The second issue
12 is the petition qualified as a matter of law, because it
13 sets out and specifically detailed what the
14 particular -- a chilled work environment and a hostile
15 work environment are being maintained not only at Florida
16 Power & Light Company's two nuclear reactors in Fort
17 Pierce at the St. Lucie Nuclear Plant, but also at the
18 Turkey Point twin nuclear reactors down there in
19 Homestead, Florida.

20 That hostile work environment, that chilled
21 work environment, it should be of major and paramount
22 concern to the NRC, because although there have been 154
23 secret complaints -- well, more than 154 complaints, but
24 154 employees at Florida Power & Light secretly conveying
25 nuclear safety complaints to the NRC over the period of

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1 January 2008 to October 2012.

2 Who knows how many other complaints were not
3 raised to anybody, because the employees are so scared
4 to talk about nuclear safety concerns, because they have
5 seen what happened to Mr. Hicks and others that came and
6 went before Mr. Hicks. There is quite a trail.

7 So if -- you know, I cannot stress enough
8 that NRC Region II has not done their job, and someone
9 needs to light a fire under them.

10 With respect to this petition, the petition
11 qualifies as a matter of law on those two points -- the
12 point that Mr. Hicks was retaliated against in violation
13 of NRC regulations and authority, and that FP&L has
14 failed to foster a work environment that encourages
15 employees to raise nuclear safety concerns without fear
16 of retaliation at the Turkey Point Nuclear Power Plant
17 and at the St. Lucie Nuclear Power Plant.

18 And with that, I will stay on the line to
19 answer any questions and provide any clarification that
20 may be requested.

21 Thank you.

22 CHAIR NIEH: Okay. Thank you, Mr.
23 Saporito. Appreciate you taking the time to provide
24 further emphasis on the petition that you submitted.

25 I would like to make a couple of general

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1 comments before I open it up to the other NRC staff here
2 that are -- may wish to ask some questions for further
3 clarification.

4 You know, you noted toward the end of the
5 discussion here that, you know, there were some
6 assertions of failures by the NRC Region II office to,
7 you know, enforce its regulations and follow up on issues
8 where there are potential violations of our employee
9 protection provisions.

10 I will say, along those lines, I will
11 ensure -- I will work with my colleagues here in the
12 Office of Nuclear Reactor Regulation to make sure that
13 those concerns are sent to the right part of the NRC
14 organization for further review.

15 I believe you raised that in the previous
16 meeting we had back in December, and I note that you have
17 raised it again. And, again, I will continue to ensure
18 that those assertions are sent to the right part of the
19 NRC organization for followup.

20 Along those lines, it has been my experience
21 in the NRC that the agency treats very seriously its
22 employee protection regulations in, you know, 50.7. And
23 I am not in the position to confirm or deny any
24 investigative activity in relationship to the issue that
25 you have described with the employee at the Florida Power

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1 & Light facility, but it has been my experience that the
2 NRC takes these things seriously. I am just not in a
3 position to discuss any investigative activity, to
4 either confirm or deny any investigative activity by
5 Office of Investigations.

6 With respect to the chilled work
7 environment, I know you had earlier on focused on the word
8 "following action taken against Mark Hicks" in the email
9 from Trace Orf. But I guess I would like to just ask
10 again, with respect to chilled work environment, whether
11 it was before or after.

12 Mr. Saporito, are you able -- can you
13 provide the Board with any specific information related
14 to any other individuals that you have discussed
15 or -- discussed with or been made aware of that have been
16 concerned about providing safety issues to either the NRC
17 or the licensee for fear of retaliation?

18 MR. SAPORITO: Well, yes, I can. But I
19 wanted to make perfectly clear that the NRC records, as
20 we have already talked about, it's the table of
21 allegations from all of the sources external to the NRC,
22 which is -- encompasses the period January 2008 until
23 October 2012.

24 That entire period -- Mr. Hicks was employed
25 within that period at the St. Lucie Nuclear Power Plant,

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1 and that is when he suffered retaliation after raising
2 safety concerns. And that is the same period of time
3 where the retaliation -- a lot of it -- was directed at
4 Mr. Hicks in front of other employees, which would have
5 chilled the work environment, because the action -- the
6 retaliation was taken against him in front of other
7 co-workers, and specifically talked about that they were
8 given direction not to contact him at all.

9 And, you know, when you do that, when
10 licensee management retaliates in front of other
11 employees, it automatically creates a chilled work
12 environment. Any reasonable-minded co-worker of Mr.
13 Hicks would never raise a safety complaint to FP&L
14 management after that. They just wouldn't do it.

15 CHAIR NIEH: Okay.

16 MR. SAPORITO: And during that same period
17 of time, though, there have been -- you know, there have
18 been other employees -- I talked about -- I think last
19 time we had talked about Thomas King. He was a
20 contractor, and he eventually lost his employment at the
21 St. Lucie plant following some safety complaints he
22 raised, but they were -- in my view, his employment was
23 terminated because of some incident he got involved in
24 outside of work hours.

25 But, nonetheless, the actions that FP&L

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1 took against him, they were going to pull his security
2 badge at one point, his security access, before the
3 incident outside of the plant took place. They were
4 going to -- he was onsite, he had raised safety complaints
5 about document falsification, about not -- about
6 co-workers not being qualified to do safety-related work
7 that they were already doing, and these were serious
8 safety complaints that he had raised, and he wasn't given
9 any feedback by the Employee Concerns Program employee.

10 And one of the supervisors/managers at the
11 plant came in and took his security badge and left, called
12 the corporate office in Juno Beach, tried to get his
13 security access revoked after he learned about these
14 safety complaints.

15 And they refused, and then he came back,
16 gave him his badge back, but all of these types of actions
17 were retaliation under NRC regulations, you know. Even
18 though they gave him his badge back, just threatening to
19 take his badge back like that causes an employee, causes
20 a chilling effect at that plant, where employees like Mr.
21 King raise safety issues in good faith about the -- his
22 belief that documents are being falsified and that people
23 were working on safety-related equipment that weren't
24 qualified to do that, their training records had been
25 duped to qualify them.

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1 You know, he should have gotten feedback by
2 Employee Concerns Department or somebody in FP&L. He
3 didn't. Instead, he was -- and he was -- there was
4 retaliation taken against him, including the retaliation
5 I just talked about.

6 There was another incident involving a
7 senior reactor operator at Turkey Point Nuclear Plant.
8 Dave Hoffman was his name. You know, he raised
9 significant nuclear safety concerns. They involved a
10 reactor that tripped offline as the result of a
11 substation. An explosion and a fire in a remote
12 substation caused a variance in the transmission lines
13 which caused a shutdown at Turkey Point Nuclear Plant,
14 two twin reactors.

15 He was on duty at one of those, and then,
16 you know -- and he didn't want that reactor restarted
17 within 10 or 12 hours, but management insisted, and it
18 was a scenario similar to Mr. Hicks. And so eventually,
19 you know, the retaliation became so severe that Hoffman
20 ended up quitting, and he filed a whistleblower
21 complaint.

22 But that's a make-whole remedy. You know,
23 the NRC -- they took no enforcement action with respect
24 to retaliation that Mr. Hoffman and Mr. King raised
25 directly with the NRC. NRC -- you know, they wait until

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1 they get a determination from the Department of Labor,
2 and then they act on that as to whether or not they are
3 going to take enforcement action. That's the wrong
4 path.

5 It is not -- you know, the Department of
6 Labor determination is important to the employee with
7 respect to their economic well-being in a make-whole
8 remedy. But the public needed the NRC to take
9 enforcement action as to whether NRC rules, regulations,
10 and requirements, and policy were violated. In both of
11 those instances, there were clearly 10 CFR 50.7
12 violations, in both of those instances where no
13 enforcement action was taken.

14 And as a matter of fact, I can -- and I don't
15 have time to do this now, but the record -- the NRC records
16 will show that NRC has never, in my investigative
17 research, taken -- from Region II, that is -- taken any
18 meaningful enforcement action with respect to any of
19 Florida Power & Light's nuclear operations over the
20 years. And there have been many instances where Region
21 II was involved.

22 And I personally -- I have had a lot of
23 contact with individuals out in Region II, and I think
24 a lot of -- it is my opinion that a lot of these safety
25 complaints that are being received by Region II are being

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1 watered down, taken very lightly, with a grain of salt,
2 in many instances, and are not being investigated.

3 And whether there is a collaboration
4 between the licensee, the Florida Power & Light Company,
5 and Region II personnel, my investigation is still
6 ongoing. And there is a very significant problem with
7 Region II, and that needs to be addressed. I know the
8 PRC can't address that issue, but OIG can, and the
9 President's Office of Professional Responsibility and
10 Congress can.

11 So I am going to go forward in those areas
12 later on. I bring that to the attention of PRB to gain
13 a more broad understanding of why Florida Power & Light
14 employees would rather go to the NRC than to FP&L
15 management. And these are some of the reasons why.

16 And, you know, you don't have to have -- what
17 do they call it? You don't have to have a smoking gun
18 in your hand to understand that there is a very
19 significant, pervasive chilling effect at Florida Power
20 & Light's Turkey Point Nuclear Plant and St. Lucie
21 Nuclear Plant, and that there is a hostile work
22 environment there because, like the NRC employee Maria
23 E. Schwartz has stated, it's -- in the simplest sense it's
24 a major red flag if a worker at a facility the NRC
25 regulates, or who works in connection with the licensed

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1 material, chooses to submit an allegation to NC rather
2 than with their employer. Okay?

3 So the red flag has already been raised. It
4 has been raised from January 2008 through October 2012,
5 and it continues to this date.

6 Now, my petition talks about retaliation
7 about Mr. Hicks specifically, and it talks about a
8 chilled work environment and a hostile work environment
9 in the time period of Mr. Hicks' employment at the St.
10 Lucie Nuclear Plant.

11 But the petition goes beyond that through
12 my own teleconferences with this panel on December 11,
13 2012, and my discussion today, insofar as the hostile
14 work environment and chilled work environment continue,
15 because Mr. -- because the problem has never been
16 resolved at either St. Lucie Nuclear Power Plant or
17 Turkey Plant Nuclear Plant, where those work
18 environments are not safety-conscious work
19 environments.

20 And there has been, you know -- the
21 employees there don't see the NRC Office of
22 Investigations coming onsite with subpoenas, putting
23 people under oath, taking testimony, making a timely,
24 accurate, meaningful, investigatory record. You don't
25 see it. It doesn't exist because Region II doesn't do

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1 that.

2 And all they see is an employee, a very
3 talented employee with expertise in the nuclear
4 industry, he came from the United States Nuclear
5 Navy -- nuclear program, for goodness sake, he carries
6 an NRC license. They see this highly qualified manager
7 terminated because he raised safety complaints.

8 CHAIR NIEH: Okay. Mr. Saporito, I think
9 some of the stuff you are -- the information you gave in
10 response to my question is repeating some of the
11 information you provided earlier.

12 I am mindful of our time this afternoon, and
13 I want to ask, are there any folks here in the room that
14 have any further questions for Mr. Saporito?

15 (No response.)

16 Region II, are you on the line?

17 MR. SANDAL: Yes, I am.

18 CHAIR NIEH: Do you have any questions for
19 Mr. Saporito?

20 MR. SANDAL: No, I have no questions.

21 CHAIR NIEH: Well, is there anybody else on
22 the line? Did the licensee join us back at this time?

23 (No response.)

24 All right. Well, Mr. Saporito, I do want
25 to appreciate you taking the time to provide further

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1 clarification and emphasis on the issues you raise in
2 your petition.

3 Again, I do apologize for the technical
4 interruption we had earlier today with the phone lines.
5 I got a call from the operations center. They don't know
6 what the problem was, but we didn't seem to have any
7 problems here.

8 But I just want to, again, take the time to
9 let you know that we will review the information you
10 provided today in consideration of the petition you
11 submitted back in October.

12 And let me -- before we close, let me ask
13 the Court Reporter, is there any information you need
14 from any of the participants as far as names, titles, and
15 things like that? Charles?

16 THE COURT REPORTER: Yes. I need only know
17 the speaker from Region II who just said that he had no
18 questions.

19 MR. SANDAL: Yes. My name is Shane Sandal,
20 S-A-N-D-A-L. I am the Acting Branch Chief, Region II,
21 Atlanta, U.S. NRC.

22 THE COURT REPORTER: Thank you very much,
23 sir. That's all I have.

24 CHAIR NIEH: Are there any members of the
25 public on the line? Are there any members of the public

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1 on the line with general questions about the NRC's 2.206
2 process?

3 (No response.)

4 Hearing none, Mr. Saporito, again, thank
5 you very much for your time this afternoon, and we will
6 consider the information that you gave us today.

7 MR. SAPORITO: All right. And if you would
8 be sure to email me a copy of the record when it gets
9 transcribed, I would certainly appreciate it.

10 CHAIR NIEH: Okay. Will do. Okay.

11 MR. SAPORITO: Thank you.

12 CHAIR NIEH: Take care.

13 (Whereupon, at 3:22 p.m., the proceedings in the
14 foregoing matter were concluded.)

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