

Dean C. Baker
29 Tarpon Avenue
Key Largo, FL 33037

February 26, 1997

Ms. Shirley Jackson
Chairman - US Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Md 20852-2738

Dear Chairman Jackson:

The purpose of my letter is to document my concern with a recent plant specific licensing action taken by your Region II staff against Florida Power & Light Company's St. Lucie plant. My concern relates to the use of an internal NRC letter, prepared by the Office of Nuclear Reactor Regulation (NRR), in an enforcement action against the previously identified plant. This letter (attached) could be construed, if not unchallenged, as a de facto change to regulations and their enforcement without either Commission concurrence or public comment.

The issue of concern deals with the Staff's position on the introduction of new failure modes as they relate to permitted compensatory actions. TIA 95-013 contains a narrower interpretation of the use of administrative controls, specifically compensatory actions, when compared to a position set forth in NRC Part 9900 interim guidance on 10 CFR § 50.59 issued in April 1996. Part 9900 asserts that, "...the staff has found compensating effects such as changes in administrative controls acceptable in offsetting uncertainties and increases in the probability of occurrence or consequences of an accident previously evaluated in the SAR or reductions in margin of safety, provided the potential increase or reductions in margin are negligible."

The response to TIA 95-013 suggests that compensatory measures can no longer be credited to offsetting small potential increases in probability. In the case cited, a compensatory measure of operator action was used in place of an automatic function. Specifically, the TIA asserts that, "an unreviewed safety question exists because the proposed change introduces a new procedure and associated malfunction of a different type (operator error)..." The TIA further asserts that, "[I]n general, the introduction of compensatory measures suggests that there is an unreviewed safety question for which compensation is needed, hence, a 50.90 submittal should be prepared by the licensee and evaluated by the staff to determine whether the compensation is adequate." The new failure mode (malfunction of a different type) aspect of 50.59 is not identified as an issue in the interim guidance and represents a potential new Staff position.

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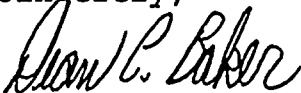


The new position also has implications for the NRC's operability guidance in GL 91-18 which recognizes that substitution of manual action for automatic actions may be acceptable under certain circumstances. In an NRC letter to Northeast Nuclear Energy Company dated October 21, 1994 (John F. Stolz to Richard. M Kacich) it is stated that, "[I]f an operability conclusion is made based upon implementing compensatory actions resulting in a change to the facility or procedures as described in the FSAR, an evaluation pursuant to § 50.59 must be performed..." However, as stated above, the new position taken in the TIA with regard to compensatory measures would always prevent satisfying the 50.59 criteria.

The inconsistencies between the positions set forth in the TIA response, the Part 9900 guidance, and the other activities that are going on in the industry, illustrates the current state of confusion regarding the interpretation of 10 CFR § 50.59. Based on the currently evolving NRC position on 10 CFR § 50.59, I question whether there can be consistent enforcement of the 50.59 regulation at this time for any operating nuclear plant. It would be premature for the Staff to implement enforcement based on evolving interpretations of 50.59 until the NRC, after appropriate management review, has resolved the interpretational differences that now exist. Repeated assertions by the Commission and the Staff that there are no new positions being taken in this area are, as demonstrated supra, without foundation.

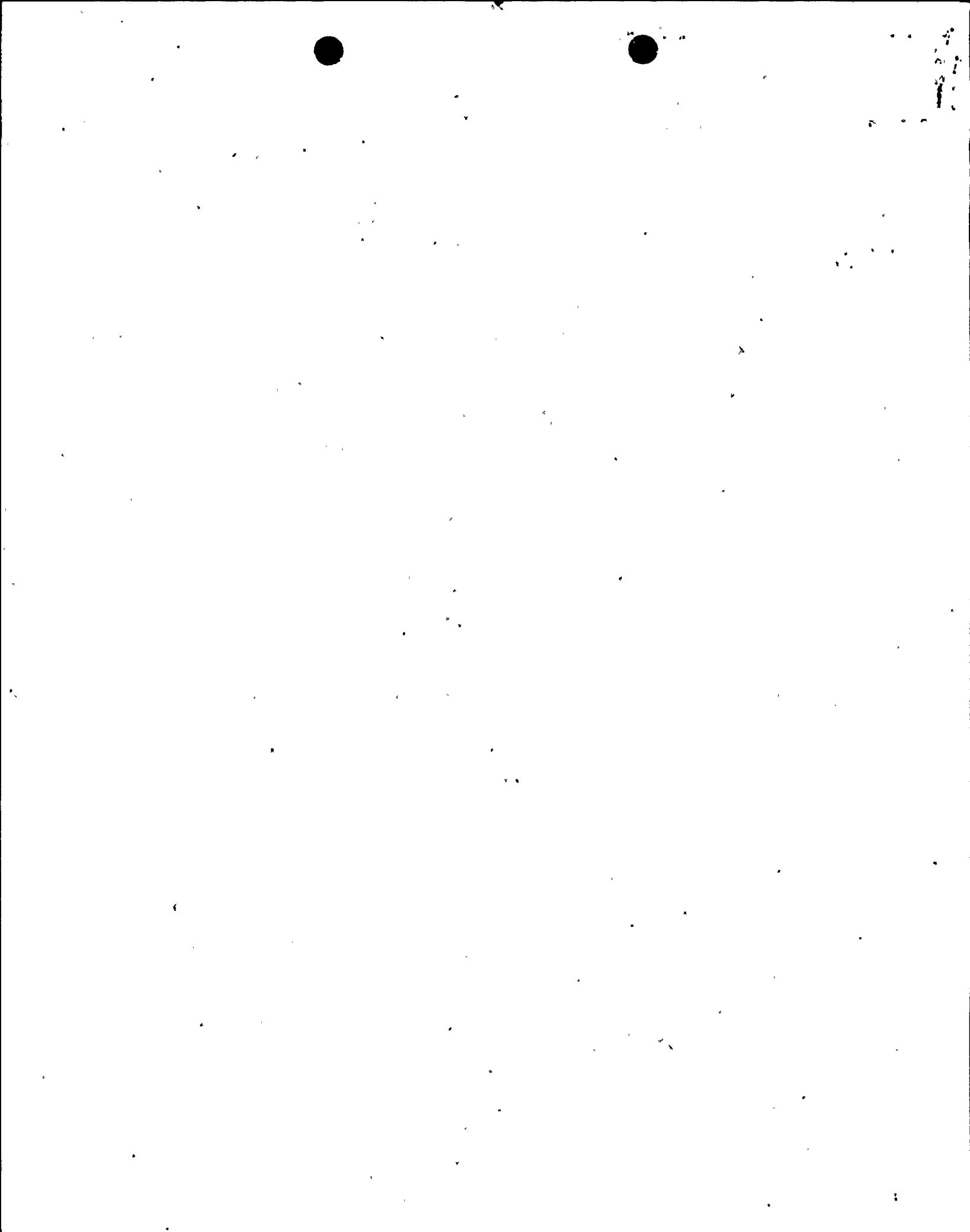
Thank you in advance for your attention on this matter.

Sincerely,



Dean C. Baker

cc: The Honorable Connie Mack
The Honorable Bill Graham



March 28, 1997

DOCKET NO(S): 50-335 and 50-389

SEE ATTACHED LIST

SUBJECT: FLORIDA POWER AND LIGHT COMPANY - ST. LUCIE PLANT, UNITS 1 AND 2

The following documents concerning our review of the subject facility are transmitted for your information.

| ✓ | DESCRIPTION OF DOCUMENT | DATED |
|---|--|---------|
| | Notice of Receipt of Application | |
| | Draft/Final Environmental Statement | |
| | Notice of Availability of Draft/Final Environmental Statement | |
| | Safety Evaluation Report, or Supplement No. _____ | |
| | Environmental Assessment and Finding of No Significant Impact | |
| | Notice of Issuance of Environmental Assessment | |
| | Notice of Consideration of Issuance of Facility Operating License or Amendment to Facility Operating License | |
| | Biweekly Notice: Applications and Amendments to Operating Licenses Involving No Significant Hazards Conditions See Page(s) _____ | |
| | Exemption | |
| | Construction Permit No. CPPR-_____, Amendment No. _____ | |
| | Facility Operating License No. _____, Amendment No. _____ | |
| | Order | |
| | Monthly Operating Report for _____ Transmitted by Letter | |
| X | Annual/Quarterly Report: <u>Radioactive Effluent Release</u> _____ Transmitted by Letter | 2/24/97 |
| | Other _____ | |

Office of Nuclear Reactor Regulation
 Project Directorate II-3
 Division of Reactor Projects - I/II

Enclosures: As stated

cc:

DOCUMENT NAME:

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

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| DATE | 03/28/97 | | | | | | | |



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Chief
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