

50-335/389



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

July 7, 1999

Florida Power and Light Company
ATTN: Mr. Thomas F. Plunkett
President, Nuclear Division
6351 S. Ocean Drive
Jensen Beach, FL 34957

Dear Mr. Plunkett:

I am responding to your March 2 and April 15, 1999, letters requesting a review of NRC's denial of Florida Power and Light's (FPL) appeal of the Part 170 fees assessed for the costs of resident inspector training (Invoices RS0062-99 and RS0182-99 for St. Lucie Unit 1 and Invoices RS085-99 and RS0205-99 for Unit 2). We acknowledge receipt of your full payment for each of these invoices.

You disagree with the assessment of the training costs, stating that since the inspector was in training he was not providing direct regulatory support and that the training time should be included in the overhead and general administrative costs under Part 171 annual fees. You further believe that the assessment of fees for time spent in training is arbitrary and capricious and violates the Omnibus Budget Reconciliation Act (OBRA). You also believe we did not adequately address the subject of assessing the cost of training time in the FY 1998 fee rule. You requested that we provide the number of hours G. N. Warnick charged to each specific inspection report billed on the above invoices. Finally, you request that the non-inspection costs for each resident inspector be evenly distributed to the St. Lucie dockets.

For the reasons which follow, I am denying your appeal of the fees assessed for the resident inspector's time in training.

Basis for Assessing Full Costs for Resident Inspectors

NRC believes that full cost recovery under Part 170 for resident inspectors is consistent with Title V of the Independent Offices Appropriation Act of 1952 (IOAA), interpretations of that legislation by the Federal Courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of the required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations or the Commission's regulations. Resident inspector activities are services which the NRC provides to specific, identifiable recipients. Ongoing training is an integral part of the resident inspector position. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the services of the resident inspector rather than through annual fees assessed to all of the licensees in that class. Therefore, we disagree with your claim that

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the assessment of fees for a resident inspector's training time is arbitrary and capricious and violates OBRA. Because of the necessity to have resident inspectors at the sites, it is appropriate to charge the licensee for costs associated with ongoing training received by the resident inspector.

Discussion in FY 1998 Fee Rule

The proposed FY 1998 fee rule discussed the rationale for full-cost recovery under Part 170 for resident inspectors:

Currently, resident inspectors' time is billed to the site to which they are assigned only if the time is reported to a specific inspection report number. The remaining costs related to the resident inspector are recovered in the annual fees assessed to all licensees in the class. Because the assignment of a resident inspector to a site is an identifiable service to a specific license, the NRC is proposing that all of the resident inspectors' official duty time (i.e., excluding leave) be billed to the specific licensee under Part 170. This change would be applicable to all classes of licensees having resident inspectors.

Following are excerpts of comments received on the proposed FY 1998 fee rule from NEI, TVA and FPL:

NEI and FPL indicated that NRC should increase the percentage of costs recovered through Part 170 fees. FPL claimed that there is no exemption authority from the provision that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." FPL concluded that NRC has not adequately allocated costs to the beneficiaries of services. NEI and TVA supported NRC's proposed full-cost provision for resident inspectors; however, TVA indicated that time for resident inspectors assigned to special inspections at other plants should be charged to those specific inspections.

The final FY 1998 fee rule stated, "Because the assignment of resident inspectors to a site is an identifiable service to a specific licensee, the NRC will bill the specific licensee for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site."

While we agree the statement of considerations did not specifically say we were charging for time spent in training, we stated we would charge for all official duty time of resident inspectors excluding leave. This means that, except leave time, all resident inspector time, including time spent in training, is billable under Part 170.

Billing for Resident Inspector's Time in Training

With regard to your continued claim that FPL should not be billed for the time a resident inspector is in training, we believe we adequately addressed your concerns in our previous correspondence. Nonetheless, we will reiterate that Mr. Warnick was a resident inspector when he reported to the St. Lucie Unit 1 site in March of 1998. He therefore provides the regulatory services of a resident inspector to the St. Lucie Unit 1 site.

NRC's practice to select and hire employees is based on an individual being the best qualified to carry out the duties of their assigned position. It appears your concern is based on an employee meeting the certification process described in Inspection Manual Chapter (IMC) 1245. IMC 1245 defines training and qualification requirements for staff performing inspections in the Nuclear Reactor Regulation (NRR) inspection program, provides the opportunity for post-qualification training that will enhance the effectiveness of experienced staff in identified specialty areas, and defines refresher training requirements designed to update and maintain an inspector's qualification.

During the certification process, staff undergoing this training may perform inspections under the direction of a certified inspector. When certified, the staff is then allowed to conduct independent inspections in specified areas based on their certification. As with any job within the NRC, staff may be qualified to perform their assigned duties based on related training and other experience, but may not be formally "certified" for certain inspections and functions. This does not imply that these individuals are not "qualified" to perform their assigned duties, but rather that during this process more oversight of the employee is needed. We assess Part 170 fees for staff that actively participate in inspections and provide technical expertise as needed, although they may not be "certified" in accordance with the requirements of IMC 1245.

With regard to your request for the number of hours Mr. Warnick charged to the inspections billed on the four invoices noted above, Mr. Warnick did not charge any time to those specific inspections. However, as previously stated, he did provide the services of a resident inspector. The invoices are correct as issued.

In summary, Mr. Warnick was assigned to the site in March 1998 as a resident inspector. He served as a resident inspector, performed the duties of a resident inspector, and conducted inspections under the direction of a "certified" inspector until he himself became "certified" under the aegis of IMC 1245 in December 1998.

Resident Inspectors Non-inspection Activity Costs at Multi-Unit Sites

At the time we programmed the billing system to implement the FY 1998 fee rule, including full cost for resident inspectors, we did not take into consideration the possibility of multiple ownership of units at a site. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. However, a senior resident inspector may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, the NRC is not able at this time to provide separate billings for each unit for the senior resident inspector time not related to specific inspections. We will pursue modification of the billing system in the future to allocate this senior resident inspector time to each docket on a prorated basis, e.g., if there are two dockets and one senior resident inspector at the site, each docket will be billed for one-half of the senior resident inspector's time that is not related to a specific inspection.

Mr. Thomas F. Plunkett

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July 7, 1999

If you have any questions about our fee policy, please contact Glenda Jackson, Assistant for Fee Policy and Rules at 301-415-6057. If you have any questions about the invoices for Florida Power and Light Company, please contact Doug Weiss, Team Leader, Reactor and Fuel Cycle Team at 301-415-7348.

Sincerely,

Original signed by Jesse Funches

Jesse L. Funches
Chief Financial Officer

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*Previously concurred.

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DAF ACTION ITEM TRACKING

Date Rec'd: 4/30/99

DAF Action: ~~98-75~~ DAF 9098

OC Action: ~~DAF 9-008~~ OC 99-176

DAF Due Date: 5/10/99

Branch: LFARB

Action Item: FPL appeal of fees

Description: Letter from Thomas Plunkett, President, Nuclear Division, FPL, appealing the assessment of fees assessed in November 1998 invoices.

Date to DIR:

Ext. Date:

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