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 50-389 St. Lucie Plant, Unit 2, Florida Power & Light Co. 05000389
 AUTH.NAME AUTHOR AFFILIATION
 PLUNKETT, T.F. Florida Power & Light Co.
 RECIP.NAME RECIPIENT AFFILIATION
 Office of the Secretary of the Commission

SUBJECT: Requests that NRC review denial of appeal from assessment of fees assessed in 981101 invoice RS0062-99 & assessment of fees in invoice RS0182-99 which was also denied in 990305 ltr. Both invoices are for fees re inspector GG Warnick.

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APR 15 1999
L-99-082
10 CFR 15.31
10 CFR 170.51

REC'D BY SECY

28 APR 99 1:20

Secretary
U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

RE: St. Lucie Units 1 and 2
Docket Nos. 50-335 and 50-389
Appeal of Fees - Invoice Nos. RS0062-99 and RS0182-99

Pursuant to 10 CFR 170.51 and 10 CFR 15.31, Florida Power & Light Company (FPL) requests the Nuclear Regulatory Commission's review of the denial of FPL's appeal from the assessment of fees assessed in the November 1, 1998, Invoice No. RS0062-99 for St. Lucie Unit 1. FPL's initial appeal of this invoice (L-98-316, December 18, 1998, Attachment 1 hereto) was denied in part by the Office of the Chief Financial Officer (NRC CFO) by letter dated March 5, 1999 (Attachment 2 hereto). FPL also appeals the assessment of fees in Invoice No. RS0182-99 that was also denied in the Attachment 2 letter. FPL had appealed this invoice by letter L-99-44, March 2, 1999 (Attachment 3 hereto).

In summary, FPL was improperly billed for fees for 232 hours totaling \$28,768.00 for NRC inspector G. G. Warnick who was in training status during the billing period covered by Invoice RS0062-99. Additionally, FPL was improperly billed for fees for 461.5 hours totaling \$57,226.00 for the same inspector who was in training status during the billing period covered by Invoice RS0182-99.

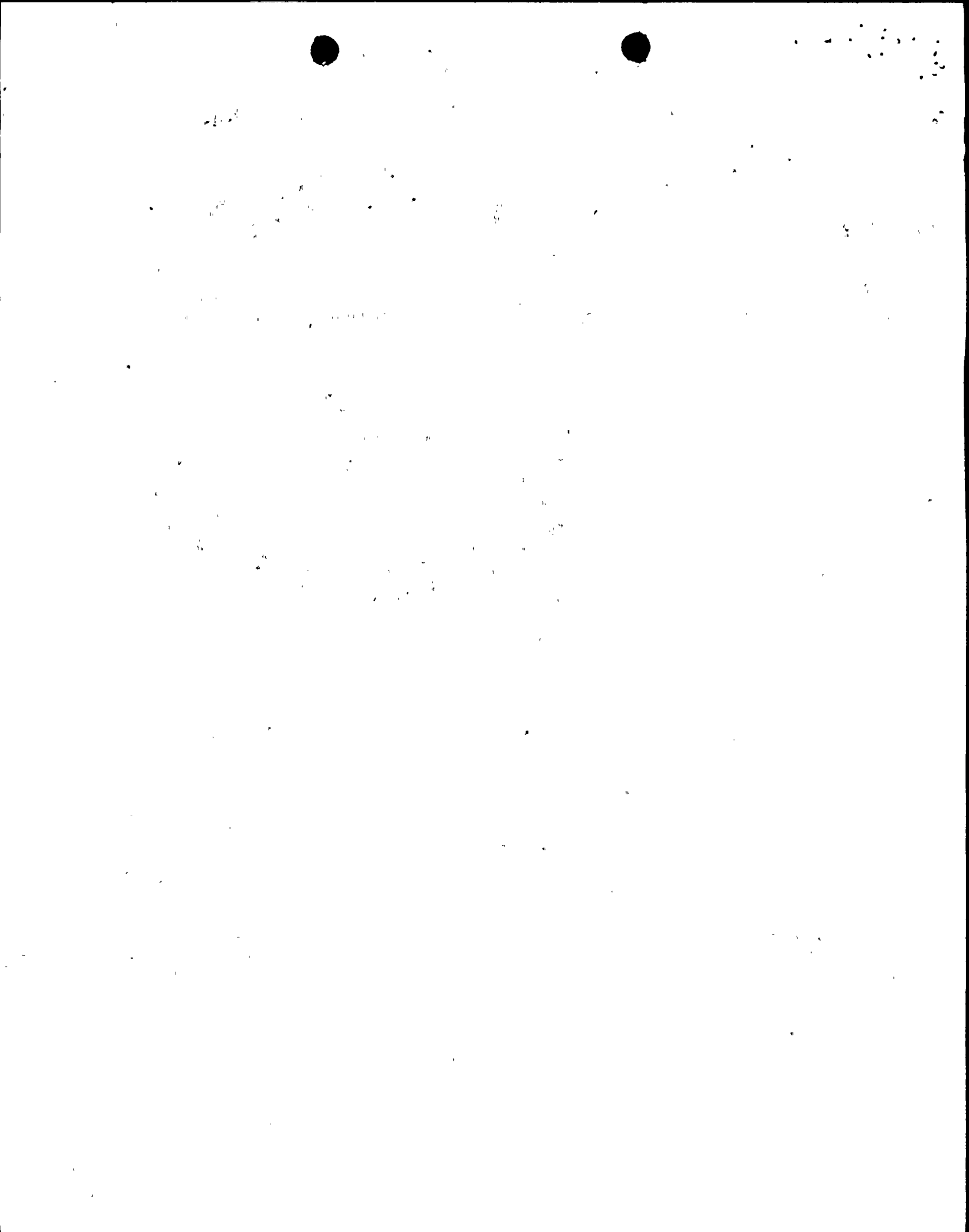
In support of its appeals, FPL stated that (1) the inspector was in training status for the periods in question and was not providing direct regulatory services to FPL; (2) the time that the inspector spent at St. Lucie in training that was not assigned to a specific inspection report should be included in the NRC overhead, general, and administrative costs defined under 10 CFR 171.5; and (3) FPL should not be billed for resident inspectors until they become qualified and provide regulatory services to the licensee.

The NRC CFO's letter denying FPL's appeal (Attachment 2) fails to address FPL's arguments. The letter merely asserts that 10 CFR 170.12(g)(1), amended in June 1998, requires full cost recovery for resident inspector's time, and that Part 170 fees are now assessed for all resident inspector time, excluding leave and time spent at another site to which they are not assigned. The letter further asserts, without explanation or basis, that "[t]he costs associated with resident inspectors, including time in training, are an identifiable service to specific licensees in providing regulatory oversight of their assigned plant or facility." [emphasis added]

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PDR ADOCK 05000335
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Plf: Diane Dandis



With respect to the user fees in 10 CFR Part 170, Congress instructed in the Omnibus Budget Reconciliation Act of 1990 (OBRA) 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." 42 USC 2214(b). Congress instructed the Commission to allocate the aggregate amount "fairly and equitably" among licensees. 42 USC 2214(c)(3). In enacting OBRA, the Conference Committee made clear that the annual fee provision was intended to require NRC to recover "administrative costs not inuring directly to the benefit of regulated parties." 136 Cong. Rec. at H12692. The conferees instructed the Commission to recover the costs of "individually identifiable services to applicants and holders of NRC licenses" through Part 170, "so that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives." *Id.* The remainder of NRC's budget, less appropriations from the Nuclear Waste Fund, is to be covered by annual fees under Part 171.

The assessment of fees for time spent in training under Part 170 is arbitrary and capricious and violates OBRA. The training and qualification of a resident inspector simply enables that inspector to provide regulatory services to a licensee at some later time. During the training process, the inspector is not providing regulatory services to a specific beneficiary.

The June 1998 amendment to 10 CFR 170.12(g)(1) does not end the inquiry. Until a resident inspector is fully trained and qualified, that inspector cannot be considered to be "assigned to a particular plant." It is also inappropriate to consider "all of the resident inspector's time" as including his time before he was qualified to serve as an inspector. Training to qualify an inspector to inspect is simply not a "service" to the entity being inspected. Further, the statement of considerations accompanying the June 1998 amendments do not indicate that the costs of training and qualification will be recovered under Part 170.

Additionally, all resident inspectors are transferred to other facilities after a period of time at one facility. The next licensee that receives the services of that resident inspector is not assessed for the previous training and qualification of that inspector. In this case, when inspector Warnick is assigned to another licensee, FPL will have shouldered the entire burden to pay for the training of that inspector. Since the benefit of this training is spread to other licensees, the burden should also be spread, "fairly and equitably," through the annual Part 171 fee.

In summary, NRC should issue a credit to FPL in the amounts of \$28,768.00 for improperly billed time in Invoice RS0062-99 and \$57,226.00 for improperly billed time in Invoice RS0182-99 for the reasons set forth above.

Please contact us should you have any questions about this appeal.

Very truly yours,



Thomas F. Plunkett
President
Nuclear Division

Attachments (3)

cc: Regional Administrator, Region II, USNRC
Senior Resident Inspector, USNRC, St. Lucie Plant

St. Lucie Units 1 and 2
Docket Nos. 50-335 and 50-389
L-99-082 Attachment 1

FPL Letter L-98-316