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 50-251 Turkey Point Plant, Unit 4, Florida Power and Light C 05000251
 AUTH. NAME AUTHOR AFFILIATION
 CONWAY, W.F. Florida Power & Light Co.
 RECIP. NAME RECIPIENT AFFILIATION
 EBNETER, S.D. Region 2, Ofc of the Director

SUBJECT: Responds to 890206 from Acting Regional Administrator
 ML Ernst re employee protection provisions.

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L-89-95

Mr. Stewart D. Ebnetter
Regional Administrator, Region II
U. S. Nuclear Regulatory Commission
101 Marietta Street, N. W., Suite 2900
Atlanta, Georgia 30323

Dear Mr. Ebnetter:

Re: Turkey Point Units 3 and 4
Docket Nos. 50-250 and 50-251
Employee Protection Provisions of 10 CFR 50.7

This is in response to the letter of February 6, 1989 from then Acting Regional Administrator, Malcolm L. Ernst.

The letter forwarded a copy of a letter dated January 10, 1989, from Robert H. Chauvin, District Director, Employment Standards Administration, Wage and Hour Division, U.S. Department of Labor. In his letter, the Director stated that an investigation has upheld a complaint against FPL by Mr. Thomas J. Saporito, Jr., alleging violation of Section 210(a) of the Energy Reorganization Act (42 U.S.C. 5851(a)). He also directed FPL to abate the violation by taking certain prescribed actions. In turn, Mr. Ernst's letter expressed the NRC's concern that a violation of the employee protection provisions of 10 CFR 50.7 may have occurred and that the actions taken against the employee may have had a chilling effect on other personnel, discouraging them from raising safety concerns. It therefore requested FPL to provide information relating to the employment action regarding Mr. Saporito and also a description of the actions, if any, taken or planned by FPL to assure that action "does not have a chilling affect in discouraging other licensee and contractor employees from raising perceived safety concerns."

Attachment A to this letter sets forth in detail FPL's "basis for the employment action" affecting Mr. Saporito and does, we submit, establish that no violation of 10 CFR 50.7 occurred. The document was prepared with the assistance of FPL's labor counsel in the Department of Labor proceeding which is discussed below. It is based on information he developed in preparing FPL's case for the proceeding. Because it contains information which may be protected from public disclosure under 10 CFR 2.790(a)(6), we request that Attachment A be exempted from public disclosure.

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We emphasize that Attachment A represents FPL's present knowledge and its view of the facts. These may be supplemented or modified upon the receipt of the results of an independent investigation by Stier, Anderson & Malone, a law firm retained by FPL to conduct an independent investigation of the matter. Upon receipt of the report of the results of the investigation, which is expected on or about May 1, 1989, a copy will be made available for NRC review.

It should also be emphasized that the alleged violations of Section 210(a) referred to in the District Director's letter of January 10 are being adjudicated de novo in an evidentiary proceeding before an Administrative Law Judge. Seven days of hearings were concluded on February 14, 1989. However, the post-hearing proceedings are such that the Judge's recommended decision may not issue for a few months. That decision will be subject to further review by the Secretary of Labor and possibly in the courts. The NRC may wish to examine the Judge's recommended decision and the subsequent proceedings in making its determination about a possible violation of 10 CFR 50.7.

With respect to the concern expressed in your letter on the potential for a "chilling effect" which might discourage others from raising perceived safety concerns as a result of this employment action, FPL has taken a number of preventative steps.

As noted above, FPL retained the services of Stier, Anderson & Malone to conduct an independent investigation of Mr. Saporito's allegations relating to harassment, discrimination, and fitness for duty. In the course of their investigation they have interviewed dozens of employees, and in fact, additional safety concerns were volunteered in the course of their interviews. FPL promptly investigated these concerns and reported the results to the concerned employees. We believe this was perceived by many employees as evidence of a genuine interest on management's part with respect to the investigation and resolution of such concerns. In addition, under our newly instituted Employee Concerns Reporting System at Turkey Point, several additional concerns have been identified which were subsequently investigated and resolved by FPL. We believe these actions have reduced the likelihood that any "chilling effect" might have possibly resulted from the subject employment action.

Nevertheless, FPL deems it appropriate to reinforce its policy on the handling of employee safety concerns. A revised corporate policy has been issued, signed by FPL's Chairman, emphasizing FPL's interest in having its employees bring their nuclear safety concerns to the attention of their supervisors and management for resolution. It assures that employees who desire to have their

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concerns treated confidentially may do so with the assurance that their identities will be appropriately protected. It also reaffirms that discrimination, harassment or any other retaliation against employees who raise safety concerns will not be tolerated.

This corporate policy statement has been posted at FPL's nuclear facilities and at the Juno Beach Nuclear Department headquarters along with a Notice to Employees signed by the Senior Vice President-Nuclear expressing the same principles and advising employees on the means available for making their concerns known and having them investigated and resolved. Existing procedures and training, including a recently adopted Turkey Point Employee Concerns Reporting System (O-ADM-002) are being reviewed and will be revised as necessary to conform to these policies. Copies of the policy statement and Notice to Employees are included in Attachment B.

We believe these efforts provide assurance that FPL employees (including contractors and their employees) will feel entirely free to make their concerns known to a sincerely interested FPL management.

Sincerely,



W. F. Conway
Senior Vice President - Nuclear

WFC/PLP/re

Attachments

cc: Document Control Desk, USNRC
Senior Resident Inspector, USNRC, Turkey Point Plant

Basis for Employment Action
Affecting Thomas J. Saporito, Jr.

Mr. Thomas J. Saporito, Jr. was discharged, effective December 22, 1988, as an employee of the Florida Power & Light Company. At the time of his discharge, he occupied the position of Instrument and Control Specialist at the Company's Turkey Point Nuclear Plant. He had occupied that position at Turkey Point since April 25, 1988, having voluntarily transferred from a similar position at the Company's St. Lucie Nuclear Power Plant. The purpose of this memorandum is to explain the circumstances leading to and the basis for the discharge.

Mr. Saporito was hired by the Company on March 8, 1982. Over the course of the next six years, he voluntarily transferred to several different Company power plants. At each plant at which Mr. Saporito was employed (both nuclear and non-nuclear), he became involved in numerous conflicts with peers and supervisors. Prior to arriving at Turkey Point in April, 1988, Mr. Saporito had acquired a reputation for raising unnecessary procedural issues, of not being a productive worker, and of bidding out of plants when problems with supervisors arose.

Within the first two weeks he was at Turkey Point, Mr. Saporito submitted two improper receipts for meals; displayed sub-standard performance and/or non-performance on several jobs which he had been assigned; made derogatory/racial comments about a black female job steward; and violated Company policy by calling in sick one day and stating he would be out for two days. The Instrument & Control

Supervisor, Dan Tomaszewski, brought all of these matters to the attention of the Maintenance Superintendent, Joe Kappes, on the morning of May 9, 1988. A decision was made to conduct a disciplinary meeting with Mr. Saporito, which was held on May 11, 1988.

One of the jobs on which management felt that Mr. Saporito unnecessarily delayed the work to be performed, was a job being observed by an INPO Evaluation Team. That occurred on May 4, 1988. On May 9th, Mr. Saporito wrote a letter to the INPO Evaluation Team describing improvements in the maintenance program that he felt were needed. Months later, Mr. Saporito alleged that the May 11th disciplinary meeting was a result of his having written the letter to the INPO Evaluation Team. However, the decision to hold a disciplinary meeting with Mr. Saporito was made by the Maintenance Superintendent prior to his receipt or knowledge of the INPO letter.

As a result of the May 11th disciplinary meeting, Mr. Saporito received a written reprimand (subsequently downgraded to a written warning) for abuse of sick time (for both his calling in sick for two days, and for a majority of his recent sick days having been tied to weekends), and a written reprimand for sub-standard job performance. In follow-up grievance meetings, the Company agreed to remove the sub-standard job performance report of discipline from Mr. Saporito's file (verbal counseling was substituted); and the sick abuse report of discipline was also reduced to verbal counseling.

Mr. Saporito bid on an Instrument & Control Specialist job at the St. Lucie plant in May, 1988. Based upon Mr. Saporito's prior record at that plant, St. Lucie management bypassed Mr. Saporito for

the position even though he was senior bidder. Article 17 of the collective bargaining agreement states that "seniority ... shall be given full consideration and where ability, skill and qualifications are reasonably equal, seniority ... shall control." St. Lucie management felt that the next senior bidder after Mr. Saporito had more ability, skill and qualifications than did Saporito.

A grievance was filed by Mr. Saporito over that decision, as well as over numerous other issues. Mr. Saporito had a long history at the Company of filing numerous grievances.

Over the course of the next several months, Mr. Saporito was generally given relatively simple jobs to perform and jobs which did not require any other journeyman to work with him. This was necessary because of Mr. Saporito's practice of slowing down virtually every job to which he was assigned by initiating disputes about the procedures to be followed and not cooperating if his view of those procedures, frequently incorrect, was not adopted. He was not a productive worker, and had more job delays than other similarly situated journeymen. Other journeymen did not enjoy working with Saporito.

At the end of September, 1988, Mr. Saporito was told to take a document to a particular department by his supervisor, Bruce Koran. A heated exchange of words occurred between Saporito and Koran when Saporito failed to do what he was told. Again, unnecessary procedural issues were raised by Mr. Saporito in what appeared to be his way of evading the direction that was given to him (and probably also simply to antagonize the supervisor). Shortly after this incident, Mr. Koran took a phone call from an individual identifying

herself as being from "Community Bank" who asked for a reference on Mr. Saporito. After being coaxed into giving his "off the record" opinion, Mr. Koran indicated that he had a difficult time getting Mr. Saporito to do work and that perhaps he just didn't like to work. Mr. Koran indicated that he considered Mr. Saporito's attendance record as sub-standard. Koran also confirmed that Mr. Saporito had worked at the Company for seven years. Subsequently Mr. Saporito confronted Mr. Koran about the remarks which had been made during the telephone call, with Mr. Saporito asking Koran whether he (Koran) had received a call from the "credit union." Several months later, Mr. Saporito stated that the caller had been "Becky" (Saporito allegedly did not know her last name or address), a prospective landlord of Mr. Saporito.

Following these incidents, on September 29, 1988, Mr. Saporito wrote a letter to Maintenance Superintendent Kappes, with a copy to the Nuclear Regulatory Commission, alleging aberrant behavior on the part of Koran. Mr. Saporito requested that Koran "undergo extensive drug testing" and that he be "psychologically evaluated ..." Mr. Koran did immediately volunteer for a drug test, which proved negative. An investigation was conducted by the Company into the alleged aberrant behavior of Mr. Koran. All witnesses agreed that Mr. Koran had never displayed aberrant behavior and was not a threat to the safety of the plant.

On October 13, 1988, Mr. Saporito received a written warning for excessive absenteeism. Mr. Saporito had previously received verbal counseling at the St. Lucie plant regarding excessive absenteeism, and his April, 1988, performance appraisal at St. Lucie

noted a need for an improved attendance record. During the summer of 1988, Mr. Saporito's name appeared on the Company's Industrial Relations Department's list of employees who had an excessive number of sick days. This list is computer generated based upon a certain number of absences. A report of discipline had been given earlier in October, 1988, to another Instrument & Control journeyman for excessive absenteeism.

Mr. Saporito subsequently claimed that the excessive absenteeism report of discipline was harassment and discrimination by the Company, occasioned by the Koran letter. This is not correct. In fact, the report of discipline to Mr. Saporito had been delayed approximately one week while the Instrument & Control Supervisor checked with the Maintenance Superintendent to determine whether he could proceed with giving this report of discipline to Mr. Saporito as they would any other employee. There was a concern as to how such a report of discipline would be perceived following the Koran letter. The Maintenance Superintendent instructed that Mr. Saporito should be treated like any other employee and without regard to the Koran letter. Thus, the report of discipline was given to Mr. Saporito on October 13th.

On the afternoon of October 13th, Mr. Saporito was at the training trailer outside the protected area. He was questioning the validity of various questions he had been given on a requalification test the previous day. When his training instructor (Bob Boger) entered the trailer, an argument ensued between Saporito and Boger. Profanity was used by Boger towards Saporito. The next day, a letter was sent to the NRC by Mr. Saporito alleging aberrant behav-

ior on the part of Mr. Boger. A Quality Assurance investigation subsequently concluded that Boger did not pose a safety threat to the plant and recommended that Boger be given supervisory training addressing confrontational style principles and attitudes.

On or about October 14, 1988, Mr. Saporito filed a complaint with the Department of Labor alleging that the Company was "aggressively discriminating and harassing" him as a result of the September 29th letter to the NRC regarding Mr. Koran. The Department of Labor investigated that complaint. As part of its investigation, DOL reviewed the facts concerning the October 13th report of discipline for absenteeism. As background information only (because it was outside the statute of limitations and, thus, not legally actionable), DOL also reviewed the facts regarding the INPO letter and the May 11th disciplinary meeting. On November 18, 1988, DOL issued a determination concluding that the facts "did not verify that discrimination was a factor in the actions comprising your complaint." Interestingly, in a narrative by the investigator contained in the Department of Labor's file on this matter, the investigator stated that "[a]ll the credibility is on FPL's side." In addition, the investigator stated that a "case could be made that Mr. Saporito was using the statute to terrorize the company rather than being a victim." Mr. Saporito appealed that decision.

In late October, 1988, a decision was made by the Company, with the knowledge of the NRC, to bring in outside independent investigators to review the allegations of harassment, discrimination, and fitness for duty raised by Mr. Saporito in the context of the Koran and Boger letters. The Company interviewed and hired the law firm



of Stier, Anderson & Malone, to conduct the independent investigation. This firm had considerable experience investigating activities at other nuclear plants and was known to the NRC.

Several weeks of meetings occurred during November, 1988, between Site Vice President John Odom, the Union, and Mr. Saporito, concerning the scope and parameters of the investigation. In mid-November, the Union finally agreed to cooperate and permit the employees it represents to be interviewed by Stier, Anderson & Malone. It was agreed that the firm's findings would be provided to the Company, NRC, Union, and Mr. Saporito. However, Mr. Saporito refused to cooperate with the investigation until his personal grievances had been resolved to his satisfaction. At this point, there were more than forty (40) grievances Mr. Saporito had filed since he came to Turkey Point in April, 1988. [This represents more than fifty (50%) percent of all grievances filed at Turkey Point since Mr. Saporito had arrived.]

Additionally, around November 19, 1988, Mr. Saporito submitted a list of items that he described as "Conditions of Agreement to Address FPL Attorneys" [he was referring to the outside investigators]. These demands were unreasonable and, the Company believes, evidence of a lack of good faith on the part of Mr. Saporito. These requests included, but were not limited to, the following:

- (1) ream of high quality manilla bond computer paper with perforated edges.
- (3) Ink pens - red & black flare pens only - no ball point pen.
- (5) number (2) pencils.
- (1) electric pencil sharpener.
- (1) ream of single sheet blank paper.
- (5) lined tablets.
- (1) clip board.

- (3) Hi-Liters - Blue & Yellow.
- (200) hanging folders
- (2) file cabinets with (4) drawers each & key locks.
- (1) Staple remover tool.
- (1) box of staples.
- (3) boxes of small paper squeeze clips.
- (3) boxes of medium paper squeeze clips.
- (3) boxes of large paper squeeze clips.
- (20) floppy disks (5 1/4") with labels.

Paid lodging at the local Holiday Inn with a room on the second floor as the travel to Jupiter each day will not provide me with sufficient rest to adequately perform this task.

On approximately November 21 or 22, 1988, it became known to Mr. Odom for the first time that Mr. Saporito had been expressing to people that he (Saporito) had nuclear safety concerns (as opposed to alleged incidents of harassment and discrimination which were being investigated by Stier, Anderson and Malone). Obviously, Mr. Odom was vitally interested in learning the details of these alleged concerns. On November 22nd, the Quality Assurance Superintendent, Wes Bladow, had a meeting with Mr. Saporito to inquire as to these nuclear safety concerns. Mr. Saporito was evasive, difficult, and uncooperative during this meeting.

Meanwhile, Mr. Odom had decided to get personally involved resolving Mr. Saporito's grievances in an attempt to obtain Saporito's cooperation with the outside investigation. Thus, on November 23, 1988, a lengthy meeting was held by Odom with Saporito and the Union to discuss the numerous grievances which were pending. During this meeting, Mr. Odom raised the fact that he had heard "second hand" that Mr. Saporito had nuclear safety concerns. Mr. Odom stated that he was personally responsible for the safety of the plant and that he wanted to know from Mr. Saporito right then as to what his (Saporito's) nuclear safety concerns were. Mr. Saporito

indicated that he would tell the NRC. Mr. Odom again stated he wanted to know now, and Saporito again stated he would tell the NRC. There was no question that Odom was directing Mr. Saporito to respond, and that Saporito was refusing by evading a straightforward answer. Odom then directed Saporito to tell the NRC what his nuclear concerns were and to do so at the earliest opportunity. The local Union President (who is also a member of the Local Joint Safety Committee) also asked Mr. Saporito at the meeting to divulge his nuclear safety concerns, but Saporito indicated he had said all he was going to say on this subject. Obviously, this meeting did nothing to alleviate Mr. Odom's concerns (as the person responsible for nuclear safety at the site) as to the details of Mr. Saporito's alleged nuclear safety issues.

After this meeting ended, Mr. Kappes (who had been at the meeting) was approached by the job stewards who had attended the meeting. These stewards (who are also employees of the plant) expressed concern that Mr. Saporito had been unable to identify any nuclear safety concerns, and that they felt he might try to find or create a nuclear safety concern. Thus, they were concerned for the plant's safety. The Maintenance Superintendent discussed the matter with Mr. Odom, and they arrived at a decision to restrict the level of access for Mr. Saporito.

On Friday, November 25, 1988, a meeting was held at which Mr. Kappes advised Mr. Saporito that because of his (Saporito's) failure to respond to a direction by Mr. Odom to discuss his nuclear safety concerns, he (Kappes) no longer had confidence that Mr. Saporito would respond to any orders of any other supervisors within the

plant. Thus, Mr. Saporito was told that his access had been restricted to Level One, but that he would not suffer any pay loss whatsoever. An attempt was made later that day to arrange for Mr. Saporito to view over the weekend many of the plant work orders he had previously wished to see. However, even after the Company agreed to a number of Mr. Saporito's "demands" (e.g., bringing his home computer on the property), agreement could not be reached because of Mr. Saporito's refusal for personal reasons to change his work schedule that weekend to accommodate the Company's needs.

Additional grievance meetings were held by Mr. Odom, the Union, and Mr. Saporito on November 28 and 29, 1988. Meanwhile, Mr. Odom had spoken with the NRC and discovered that Mr. Saporito had not yet given any details of his nuclear safety concerns, but had only provided generalities and a promise to send his concerns in a report he would write at a later date. At the grievance meeting on November 29th, the last major issue, the grievance associated with the denial of his transfer, was resolved. It was agreed that Mr. Saporito would report to St. Lucie on December 17, 1988.

His personal grievances having been settled, Mr. Saporito went in to speak with the investigators on November 30, 1988. As part of Mr. Odom's agreement with the Union that the outside investigation would be independent, he (Odom) was not being briefed about any details or facts learned by the investigators. Mr. Odom was informed by Mr. Bladow only that Mr. Saporito had begun discussing his safety concerns. This was of great interest to Odom. Mr. Saporito's alleged nuclear safety concerns had been on Odom's mind

almost continuously since he (Odom) first heard that safety concerns existed and because Saporito, according to Mr. DeMiranda, had not yet communicated his concerns to the NRC. Late in the afternoon, after Mr. Saporito had ended his first session with the investigators, Mr. Odom directed Mr. Kappes to arrange for Mr. Saporito to come to a meeting with him (Odom) to discuss his safety concerns. Mr. Odom was under the impression at this time that Mr. Saporito (along with other journeymen) would be ending his shift at 7:30 p.m. In fact, Mr. Saporito's shift ended at 5:30 p.m. [Even if Mr. Odom had known, however, that Saporito's shift ended at 5:30 p.m., he still would have ordered Saporito to come to a meeting before he left the plant.]

At approximately 5:00 p.m., Mr. Kappes instructed the Production Supervisor, Gerry Harley, to advise Mr. Saporito of the meeting. Harley advised Saporito of the meeting and told him it was to discuss safety concerns and that he (Saporito) might have to "holdover" (i.e., stay on overtime after his 5:30 p.m. shift time ended). Saporito stated that he had not called a meeting, had no safety concerns to discuss, and there was "no way" he was holding over. At no time did he mention to Mr. Harley that he (Saporito) may be ill or not feeling well. Harley advised Kappes of Saporito's response, and Kappes advised Odom. Odom instructed Kappes to arrange for Mr. Saporito to be present at the meeting.

Mr. Kappes approached Mr. Saporito in the Instrument & Control shop, again advised him of the meeting, and told him that he would have to hold over for the meeting. Saporito told Kappes that he had personal family matters to attend to and that he could not hold

over. Kappes gave Saporito a direct order to hold over, and Saporito responded that he was "sick." Other journeymen were observing this exchange. Mr. Kappes did not believe Mr. Saporito was telling the truth about being sick. Kappes gave Saporito another direct order to hold over, and Saporito again stated that he was sick and going home. Kappes then indicated that Saporito was making a "career decision" and that he was again directed to hold over, to which Saporito again replied that he was sick and going home. Kappes then suspended Saporito without pay and instructed Harley to escort him to the gate and remove his access. It should be noted that Mr. Saporito had not asked to leave earlier that day because of any illness, nor had he sought any medical attention at the plant. Mr. Odom's office is less than a two minute walk from the Instrument & Control shop.

Subsequently, Mr. Odom instructed Mr. Kappes to place his order of suspension in abeyance and have Mr. Saporito report back to the site at full pay in order to continue his interview with the investigators. When Mr. Kappes contacted Mr. Saporito by telephone to advise him of this on December 1, 1988, Mr. Saporito stated that he was on medical leave until December 12th and he would return to work with a doctor's note. He also indicated that he was being treated for "medical disorders relating to stress."

On December 5, 1988, Mr. Kappes again contacted Mr. Saporito by telephone to indicate that the Company would like Mr. Saporito to see one of its approved physicians to discuss the stress related issue. Mr. Kappes also indicated that the Company was willing to have the investigators come up to Mr. Saporito's area (Jupiter,

Florida) at his own house or at another site, and that the Company wanted its physician to speak with Mr. Saporito's physician to see whether that was possible. Mr. Saporito responded that he would not address any issues until December 12th. When asked by the Union representative (who was in the room with Kappes) as to whether the Company was requiring Mr. Saporito to see a doctor at this time, Mr. Kappes indicated that he was only being requested to see the Company physician. Mr. Saporito also indicated that even that phone call was giving him "stress."

Prior to December 12, 1988, Mr. Odom made the decision that Mr. Saporito would have to see a Company approved physician before his access to the plant would be restored. This decision was made for two reasons: (1) to determine whether Mr. Saporito was fit for duty as an Instrument & Control Specialist, based upon the fact that he was being treated for "medical disorders relating to stress," and (2) to review the suspicious manner in which Mr. Saporito refused to hold over on November 30th because he was "sick" and as to whether Mr. Saporito could have attended the meeting with Mr. Odom on that day. Mr. Odom advised local Union Vice President Ken Sims of this decision, and also indicated to Mr. Sims that even if the Company physician differed in his opinion from Mr. Saporito's own physician, a third opinion could always be sought. Mr. Odom asked that the information be passed along to Mr. Saporito.

On the morning of December 12, 1988, Mr. Saporito's name [along with approximately one hundred forty (140) other employees' names] came up on the computer for random drug testing. Even though Mr. Saporito at this point did not have any access to the plant, Mr.

Odom directed that the test for Mr. Saporito proceed due to the fact that he (Odom) had no reason to believe that Saporito's access would not be restored in full in the near future. Later in the day, it came to Mr. Odom's attention that Mr. Saporito had still not produced an adequate urine sample for the test. Mr. Odom did not suspect drug use, but only that Mr. Saporito was again being "difficult." Mr. Saporito was held over on the next shift and did not produce an adequate sample for testing purposes through 11:00 p.m. that evening. [It is not an observed sampling procedure.] He was sent home and returned the next day, and again allegedly could not produce an adequate sample until approximately lunchtime on December 13, 1988. The sample proved negative.

In mid-afternoon on December 12, 1988, a meeting was held with Mr. Kappes, the Union, and Mr. Saporito. Even though Saporito the previous week had volunteered to produce a doctor's note when he returned, Saporito questioned the Company's right to the doctor's note. Finally, only after the Union advised Saporito that he would not be paid for his sick time if he did not produce a doctor's note, two notes were produced. One note, dated December 1, 1988, indicated that Saporito was being treated for a "medical disorder" and that he should be excused from work until December 12, 1988. The other note, dated December 9, 1988, indicated that Saporito was being treated for gastritis. Kappes indicated that Saporito had no access to the nuclear facility because he (Saporito) had notified the Company of his being treated for "stress." Kappes indicated that Saporito would have to go see a Company approved physician, but that they would discuss it more the following day. Saporito told

Kappes that he could give him his answer right then --- he was refusing to see a Company doctor.

On December 13, 1988, Mr. Kappes gave Mr. Saporito a direct order to see a Company physician for two reasons: (1) to resolve the issue of sickness of a suspicious nature on November 30th, and (2) to determine whether Mr. Saporito was fit to perform the duties of an I&C Specialist in the future.

On Wednesday, December 14, 1988, Mr. Kappes provided Mr. Saporito with the name of Dr. Richard Dolsey, a Company approved physician who would examine Mr. Saporito that day. Kappes indicated that the Company would pay for the appointment and would also pay for a job steward to accompany Mr. Saporito. Mr. Saporito then raised the possibility of his physician speaking with the Company physician to see if the matter could be resolved in that manner. Kappes indicated that this was potentially a good solution and that he would set it up and then wait to hear from Dr. Dolsey after the two physicians spoke to see if that was sufficient for Dr. Dolsey's purposes.

On December 15, 1988, the two doctors spoke on the telephone. Dr. Dolsey advised the Company that he would still need to evaluate Mr. Saporito. Dolsey was familiar with the nuclear facility and had examined other employees who had worked at Turkey Point. On the other hand, the Company had no knowledge as to whether Mr. Saporito's physician was at all familiar with the nuclear plant or Mr. Saporito's duties at the plant. [It subsequently was discovered in Mr. Saporito's physician's deposition that she in fact did not know anything about Mr. Saporito's duties or responsibilities at the plant.]

On December 16, 1988, a meeting was held first thing in the morning at which Mr. Kappes advised Mr. Saporito that Dr. Dolsey still wanted to see him and an appointment was scheduled at 11:00 a.m. that day. Saporito indicated that he would go to see the doctor but he would refuse to be examined. Saporito indicated that he would not authorize the doctor to do any kind of examination nor would he sign any authorization for him to release any information. When Kappes asked again whether Mr. Saporito was refusing to be examined, Saporito reaffirmed that he would see the doctor but he would not be examined. Rather than simply end the matter there and treat Saporito's comments as direct insubordination, Kappes decided to send Saporito to Dr. Dolsey in hopes that he would change his mind when he got to the doctor's office.

At the doctor's office, Saporito refused to fill out the patient/medical information form that was presented to him. When he met with the doctor (along with a job steward), Saporito began asking numerous questions of the doctor and did not allow the doctor to ask him any questions. The doctor became frustrated because Saporito was not allowing him to proceed with the examination. Dr. Dolsey finally indicated that it was now his (Dolsey's) turn and that he needed to ask Saporito questions. Saporito stated that he would not let the doctor examine him. Dr. Dolsey then told Saporito he could leave his office.

Mr. Odom received a report from the supervisor who accompanied Mr. Saporito to the doctor's office; heard from Dr. Dolsey through the Company Nuclear Energy Personnel Coordinator; and interviewed the job steward who went with Mr. Saporito to the appointment. Mr.

Odom determined that Saporito had refused the examination. No matter whether Saporito had said so directly or not (and Dr. Dolsey indicated that Saporito did say so directly), Saporito did not allow the doctor to examine him and, thus, defied a direct and clear order from Mr. Kappes. Mr. Saporito had done exactly what he had threatened to do at the meeting that morning.

On December 19, 1988, Mr. Saporito was suspended for his failure to obey the direct order to be examined by the physician. After consulting with the Company's Industrial Relations Department (and having its support) and carefully considering the matter (with the knowledge that a termination of Mr. Saporito would, due to all his complaints to the Department of Labor and NRC, look "suspicious"), Odom felt that he had no choice left but to discharge Mr. Saporito for his totally uncooperative and insubordinate behavior over the course of the preceding several weeks. In Mr. Odom's judgment, Mr. Saporito was at the point that he was picking and choosing what orders to obey, and this could no longer be tolerated either at the Turkey Point location or at any other Company location. Mr. Saporito's discharge was effective December 22, 1988.

Several complaints were filed by Mr. Saporito with the Department of Labor (including, among other things, his suspension and discharge) following the determination by DOL against Mr. Saporito on November 18, 1988. Initially, DOL was undecided as to whether to investigate the new complaints or whether they would be automatically consolidated before the administrative law judge who would hear the appeal filed by Mr. Saporito in connection with his first complaint. Finally, during the first week in January, 1989, the

Company was advised that a Department of Labor investigator would investigate the facts as to Mr. Saporito's subsequent complaints but only had several days left to do so under the statute. Several of Mr. Saporito's witnesses were personally interviewed by the investigator. However, none of the Company's witnesses were personally interviewed by the investigator, and only one was questioned for several minutes on the telephone. A determination was issued on January 10, 1989, by the Department of Labor, finding that "the alleged acts of insubordination by Mr. Saporito cannot realistically be divorced from the context of his engagement in protected activities and that Florida Power & Light [C]ompany illegally discriminated against him." The Company was directed to reinstate Mr. Saporito with backpay, together with compensatory damages in the amount of \$100,000.00. In any event, the Company appealed that decision, and Mr. Saporito also appealed the decision on the basis that he should have been awarded more compensatory damages.

The cases were consolidated, and a hearing was held in Miami on February 1, 2, 3, 9, 10, 13 and 14, 1989, before Administrative Law Judge Anthony J. Iacobo. The parties will be submitting proposed findings of fact within approximately thirty days. The Judge will make his ruling sometime subsequent to that date. That decision will be a recommended order which goes to the Secretary of Labor for final decision. Either party may then appeal the decision to the Eleventh Circuit Court of Appeals in Atlanta.

BACKGROUND

With respect to Mr. Saporito's claims of harassment and discrimination by Turkey Point management, it is important to bear in mind other incidents/conflicts/grievances in which Mr. Saporito has been involved prior to arriving at Turkey Point in April, 1988. First, they indicate that Mr. Saporito's employment "problems" did not first commence when he began communications with the NRC, Department of Labor, or INPO. Second, they demonstrate a lack of credibility on the part of Mr. Saporito with regard to his current claims of "harassment," "discrimination," and "mental duress." These previous allegations include, but are not limited to:

1. A well-below average rating on his February, 1983, performance evaluation. Mr. Saporito objected to the ratings and comments made on the appraisal by the supervisor. Mr. Saporito was also uncooperative in signing the form. It was noted at that time by the supervisor that Mr. Saporito's "lack of objectivity seems to override his capabilities." This occurred at the Martin Plant, a fossil facility.

2. In February, 1984, Mr. Saporito received a suspension and demotion at the St. Lucie plant for submitting improper restaurant receipts for payment and dishonesty during the investigation of those receipts.

3. In May, 1985, Mr. Saporito received a below-average performance appraisal from the St. Lucie Plant. Mr. Saporito refused to sign the document and stated that the evaluation was unfair and that the appraiser was not his supervisor long enough to make a judgment on the issue.

4. In August, 1985, Mr. Saporito received a written reprimand, suspension, and demotion at the Fort Lauderdale Plant (a fossil facility) for violating a security rule and disrespect to a supervisor concerning the incident.

5. Following the discipline at the Lauderdale plant in August, 1985, Mr. Saporito attempted to submit three grievances (but the plant manager refused to accept those grievances) requesting: (1) \$5,000.00 to pay for moving expenses incurred "as a direct result of being denied vacation time to make proper arrangements for myself and my family in relocating to Miami"; (2) \$5,000,000.00 for libelous statements by the supervisor witnessing the incident at Lauderdale, and (3) \$10,000,000.00 for "mental anguish and extreme stress placed on myself and my family as a direct result of unwarranted disciplinary action ..."

6. In April, 1986, an attorney for Mr. Saporito wrote the Company regarding the Lauderdale discipline and stated that Mr. Saporito had suffered humiliation and ridicule, loss of wages, and continuing emotional distress as a result of his discipline. The attorney stated that slanderous and libelous actions had been taken by the Company, and Mr. Saporito demanded an immediate and formal written apology. A letter was sent to Mr. Saporito's attorney by Company labor counsel stating that the discipline imposed on his client had been appropriate and his demands for relief were denied. No further action was taken by Mr. Saporito.

7. In April, 1986, at the St. Lucie Plant, Mr. Saporito failed to respond to a supervisor's instructions regarding a job on which he was working. After failing to respond to the instructions,

the supervisor grabbed a telephone away from Saporito with directions to him to go do the job that he was told to do. Mr. Saporito claimed injury to his finger as a result of this incident (but he indicated that he did not need to see a doctor).

8. In August, 1986, a grievance was filed by Mr. Saporito at St. Lucie claiming "extreme mental duress" for management's action in requiring him to sign a release and hold harmless agreement in connection with his taking the POSS test to obtain a reactor control operator position.

9. Also in August, 1986, another grievance was submitted requesting an apology from a St. Lucie supervisor for "discriminatory practices" and "discriminatory remarks" in connection with an alleged attempt to deny Mr. Saporito a reactor control operator job.

10. In October, 1986, during a meeting with the plant manager at St. Lucie on another issue, Mr. Saporito was questioned about whether the shoes he was wearing complied with the safety rule book. Mr. Saporito indicated that he was being discriminated against by being asked about his shoes.

11. While in an operator training program at St. Lucie, Mr. Saporito filed a grievance in November, 1986, requesting the Company to invalidate the physics exam because he was not given adequate training to successfully obtain a passing score on the exam.

12. In November, 1986, Mr. Saporito was counseled at St. Lucie concerning his excessive absenteeism.

13. On December 1, 1986, during an examination review with Mr. Saporito by course instructors, Saporito expressed the opinion that his failure on a test was not due to a lack of knowledge on his

part, but an inconsistency in the examination grading and poorly written tests. He also indicated that several questions on the examination were "ridiculous."

14. After being placed on probation in the operator training course and subsequently being removed from the course in December, 1986, Mr. Saporito had a meeting with the Maintenance Superintendent and I&C Supervisor at St. Lucie. During this meeting, Mr. Saporito stated that he felt his removal from the training course had been in violation of training procedures, but he could not be specific as to what part of the procedures were violated. He also felt he was "singled out" by one of the instructors. The Maintenance Superintendent told Mr. Saporito that his performance in the I&C Department had been unacceptable and that action would be taken against him unless his performance improved to an acceptable level. When asked to repeat his understanding of what was said, Mr. Saporito refused to respond. Mr. Saporito was told that continued inadequate performance was unacceptable and could result in disciplinary action.

15. In December, 1986, Mr. Saporito filed a grievance at St. Lucie requesting management "cease their discriminatory practices" as a result of his removal from the training program.

16. In December, 1986, Mr. Saporito bid on an Instrument & Control Specialist Digital position at Turkey Point. On his bid sheet, he indicated that he had previously been offered a digital job at St. Lucie. When Turkey Point checked with St. Lucie, Turkey Point was told that Mr. Saporito had never been offered such a position and had been found by St. Lucie not to be qualified for that position.

17. In February, 1987, Mr. Saporito filed a grievance requesting that St. Lucie management "desist in threatening me with my job and livelihood if I didn't become the BEST JOURNEYMAN in the ICS dept."

18. In June, 1987, at the Martin Plant, a meeting was held with Mr. Saporito regarding mileage and time which had been submitted by Mr. Saporito for a trip he made to St. Lucie for finger printing. The mileage and time he submitted were in excess of Company guidelines. When the original time ticket was given back to Saporito, he returned it unchanged and it again was not accepted. After this happened several more times, Mr. Saporito refused to change it and he kept the original time ticket. When asked for the time ticket back, he refused to return it. Mr. Saporito was also counseled about his absenteeism during this meeting.

19. In July, 1987, at St. Lucie, Mr. Saporito failed to provide a urine sample for a tritium analysis as requested. Mr. Saporito had a number of questions he wanted answered about the test. When the I&C Supervisor indicated he wanted to see Mr. Saporito in his office for a meeting to discuss the matter, job stewards intervened and requested they be given additional time to work with Mr. Saporito in obtaining the sample. They indicated that Mr. Saporito appeared to be under duress and stated that Saporito had told them he could not urinate during working hours.

20. On August 20, 1987, Mr. Saporito filed a grievance against the Assistant Supervisor in the I&C Department at St. Lucie to "cease and desist" from harassing Mr. Saporito about the shoes he wore to work. Mr. Saporito indicated he had experienced "extreme

mental anguish and undue stress" which was "beginning to affect [his] health and well-being." In addition, he requested an immediate apology from the supervisor.

21. On the same date (August 20, 1987), Mr. Saporito filed a grievance against the St. Lucie I&C Department Head to cease and desist in "threatening his job and livelihood" because the supervisor "assumed" that Mr. Saporito's shoes were not in compliance with the safety rule book. Saporito indicated that the supervisor "acted in haste and did not exercise prudent management practices" causing Saporito "great mental anguish and extreme stress as a direct result of his hasty, unethical, and harassing management practices." In addition, Mr. Saporito requested an immediate apology from the supervisor.

22. In October, 1987, a St. Lucie supervisor had a problem with Mr. Saporito regarding a job Saporito was working. The supervisor stated that Saporito would not communicate with him about job problems but felt the need to discuss the problems with others; would not give supervision a direct answer on a job related question; spent excessive amount of time in job preparation; and worked on the job without a good understanding of what he was supposed to do and would not contact the supervisor for information.

23. In October, 1987, at St. Lucie, Mr. Saporito had a conflict with a co-worker. Apparently, Mr. Saporito was attempting to get the co-worker to join the union. The co-worker stated that he would join the union if Mr. Saporito would start performing work. Mr. Saporito became very upset, threatened a grievance, and threatened to use his computer to cause the co-worker "extensive harassment."

24. Also in October, 1987, at St. Lucie, Mr. Saporito was assigned a job inside containment to continue a splice repair. A Quality Control Inspector accompanied Mr. Saporito and another journeyman. Once inside, the supervisor received a call indicating that Mr. Saporito had refused to give the inspector the calipers because they were a tool and Quality Control was not permitted to use tools. The supervisor instructed the other journeymen to tell Mr. Saporito to give the inspector the calipers and that if he had a problem with that he could see the supervisor after they left containment. At that point, the supervisor realized it was almost the end of the shift and directed the two journeymen to come back to the shop. When they returned, the other journeymen indicated to the supervisor that by the time he returned to Mr. Saporito with the supervisor's message, the calipers had fallen one flight and were damaged. The other journeymen completed his time ticket and went home on schedule. Mr. Saporito wrote an extra (unauthorized) fifteen minutes of overtime on his time ticket. At a meeting following this incident, the I&C Department Head at St. Lucie told Mr. Saporito that he (Saporito) displayed a lack of cooperation, was below average in quantity and quality of work, and required an inordinate amount of supervisory time to get his work completed. Mr. Saporito was put on notice that if improvement was not shown, action would be taken against him. Mr. Saporito was also told that fellow workers did not wish to work with him.

25. In December, 1987, a meeting was held with Mr. Saporito at St. Lucie regarding several issues. The first was Mr. Saporito's several grievances concerning management's consistent refusal to

award him I&C Digital positions. Mr. Saporito was told that the records did not indicate sufficient education nor any related work experience to qualify for this job. Mr. Saporito was also questioned about a time ticket he had submitted two months earlier. The time ticket indicated one-half hour overtime for his going from the I&C shop to the training building outside the plant entrance to attend a training session. Management indicated that it took only five minutes to get to the building. Another issue which was discussed was the overtime Mr. Saporito had placed on his timesheet following the incident with the calipers.

26. In December, 1987, Mr. Saporito filed a grievance against the I&C Department Head "to cease and desist in unjustly and abusively harassing me about my work performance and threatening my job and livelihood." Mr. Saporito stated that the supervisor's "generic statements about my work performance are unfounded and erroneous." Additionally, Mr. Saporito requested an apology from the supervisor.

27. In February, 1988, Mr. Saporito provided a memo to the I&C Department Head discussing test scores he had received several years earlier in a micro processor course. Mr. Saporito stated that the test scores "do not reflect a complete course grade nor do they fairly reflect my qualifications in the digital field." Mr. Saporito also stated that he had been "under extreme stress due to extensive overtime ... & the course was not administered correctly."

28. In February, 1988, a memo was sent by Mr. Saporito to the I&C Department Head at St. Lucie stating that he (the supervisor) did not "have the educational background to determine if I am qualified for ICS-digital."

29. In February, 1988, Mr. Saporito refused to heed the orders of one supervisor (which orders apparently conflicted with the directions of his immediate supervisor) regarding a job he was working. At a meeting in March, 1988, to discuss the incident, Mr. Saporito indicated that the other supervisor was "red in the face." [This is similar to a statement that Mr. Saporito made later at Turkey Point concerning Bruce Koran.] Mr. Saporito also wanted an apology in front of the shop.

30. In February, 1988, at St. Lucie, Mr. Saporito had a dispute with a co-worker in the M&TE laboratory. Mr. Saporito went to the lab to obtain a recorder adaptor. While there, he complained to the M&TE personnel about how the adaptor should have been marked for ease of identification. Noticing a round cylinder object in the same container, Mr. Saporito proceeded to remove it. The co-worker informed Mr. Saporito not to remove the object and to leave it alone. Saporito informed the co-worker that this object was not supposed to be in the container. Saporito then began to remove the outer wrapping on the object. The co-worker grabbed the object and a scuffle ensued and words were exchanged.

31. In March, 1988, memos were exchanged between Mr. Saporito and the Supervisor, Contracts Management at St. Lucie, regarding a quality improvement team. Mr. Saporito advised the supervisor that text in a letter he (the supervisor) had written were "total garbage." Saporito also called the supervisor's statements "bogus."

32. In April, 1988, a Union safety representative at St. Lucie informed Mr. Saporito's supervisor of a confrontation he had with Saporito. Saporito had been using an uncovered electrical cord

across a roadway. When the Union safety representative asked Mr. Saporito to remove the cord or to cover it, Saporito told the individual that he (Saporito) was not violating any safety issues and did not have to conform unless he was.

33. In April, 1988, Mr. Saporito was given a below-average performance appraisal at St. Lucie. Included in this appraisal was the lowest possible score in the area of cooperation, with the supervisor stating that Mr. Saporito required "specific improvement in this area," and that he had "demonstrated a lack of cooperation with his co-workers as well as his supervisors." Saporito was also "constantly challenging the practices and procedures of the department as well as FP&L as a company." Mr. Saporito disagreed with the performance rating and refused to sign the document.

CONCLUSION

Mr. Saporito was not harassed or discriminated against in any way by the management at Turkey Point in connection with the discipline or discharge he received while at that facility. Mr. Saporito was a difficult employee who had walked the line of insubordination for years. Over the course of the last several weeks prior to his termination, Mr. Saporito crossed the line of insubordination several times and his conduct could no longer be tolerated. Mr. Saporito's expression of alleged concerns to the NRC, DOL, and/or INPO, played absolutely no part in any discipline taken against him or in his discharge from the Company. If anything, due to his communications with the government, the Company acted with much greater deliberation in dealing with Mr. Saporito than would ordinarily be the case in comparable circumstances.

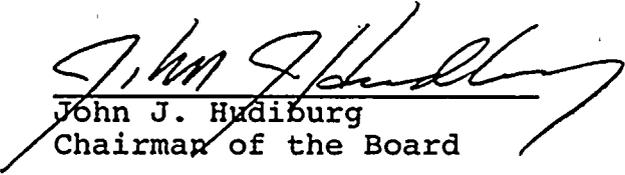
ATTACHMENT B

FLORIDA POWER & LIGHT COMPANY
CORPORATE POLICY ON
EMPLOYEE NUCLEAR SAFETY CONCERNS

Florida Power & Light Company is committed to safety throughout its nuclear energy program. The company as a whole and each of its employees and contractors are responsible for achieving this goal.

To achieve necessary levels of nuclear safety, company management is determined to investigate and address employee nuclear safety concerns and assure that those concerns are properly responded to. It is the duty of employees who have concerns about nuclear safety to bring them to the attention of their supervisors or other responsible management, and to adhere to all procedures for documenting or reporting nuclear safety items. Supervisors and management must act quickly and responsibly to investigate, address and respond to concerns. When requested, nuclear safety concerns will be handled confidentially to protect the identity of the individual reporting the concern. Although employees have a duty to report their nuclear safety concerns to the Company, no employee shall be discouraged from also bringing concerns directly to the Nuclear Regulatory Commission. Discrimination, harassment, or any other retaliation against employees who raise nuclear safety concerns is forbidden and will not be tolerated.

Employees of Florida Power & Light Company and its contractors at all levels are required to implement this policy.


John J. Hudiburg
Chairman of the Board

**NOTICE
ON
EMPLOYEE NUCLEAR SAFETY CONCERNS**

Florida Power & Light Company (FPL) is committed to nuclear safety at its Turkey Point and St. Lucie nuclear plants and throughout the corporate nuclear energy program. FPL as a whole and each employee are responsible for maintaining nuclear safety. This policy applies to management, supervisory, and working-level personnel, including contractors and their employees.

1. It is the policy of FPL to encourage employees with nuclear safety concerns to bring them forward so that they can be investigated and addressed. It is the duty of any employee who has a safety concern to report it immediately. You should ordinarily report nuclear safety concerns to your supervisor, who will assist you in selecting and preparing the most effective method for getting your concern resolved, such as preparation of a Nonconformance Report (NCR), Procedure Change Request (PCR), Plant Work Order (PWO), or other appropriate documents.

2. If you are uncertain where to report a concern, or do not feel that your concern will be adequately resolved through ordinary channels, FPL has established nuclear safety concern programs to assure that your concerns will be addressed. Under these programs, you may report nuclear safety concerns directly to the following individuals:

Turkey Point

Site QC Supervisor (246-6045)
Site QA Superintendent (246-6166)

St. Lucie

Human Performance Evaluation System (HPES) Coordinator (465-3691)
Independent Safety Evaluation Group Chairman (465-4172)

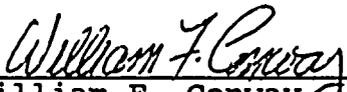
Juno Beach Offices

Corporate Human Performance Evaluation System (HPES)
Coordinator (694-4193)

It is important that you provide sufficient information so that your concern can be clearly identified and investigated. If you have a nuclear safety concern but desire to have your identity kept confidential, your identity will be protected. Although employees have a duty to report their safety concerns to FPL, concerns may also be brought directly to the Nuclear Regulatory Commission.

Notice on Employee Nuclear Safety Concerns (con't)

3. Concerns reported under nuclear safety concerns programs will be investigated, resolved and documented. In cases where action is required to correct a reported condition, the completion of that action will be verified. A description of the actions taken to address the concern will be available to the individual who raised the concern.
4. Employee reporting of nuclear safety concerns is important to the safe and reliable operation of the St. Lucie and Turkey Point plants. Only if these concerns are known can they be investigated and corrected. Accordingly, FPL seeks to maintain an environment in which those having nuclear safety concerns will report them without fear of any retaliation. Florida Power & Light Company will not tolerate harassment, intimidation, discrimination, or any other retaliation against persons raising safety concerns. If you believe that you have been discriminated or retaliated against because of safety concerns, you should immediately report this fact directly to the appropriate site or corporate personnel (listed above).



William F. Conway
Senior Vice President - Nuclear



11-11-11