

Thomas E. Murley, Director

(10 CFR §2.206)

INTRODUCTION

On December 21, 1988, Thomas J. Saporito, Jr. (Petitioner) submitted a request pursuant to 10 CFR §2.206 that the Nuclear Regulatory Commission (NRC) take certain actions with regard to the Turkey Point Plant, Units 3 and 4. The request of December 21, 1988, was supplemented by five later submittals dated January 13 and 30, February 7, and April 25 and 26, 1989. These six documents were referred to the Office of Nuclear Reactor Regulation (NRR) for consideration pursuant to 10 CFR §2.206. These documents will be jointly referred to herein as the "December 21, 1988, Petition." Subsequently, the Petitioner filed additional requests for action with regard to the Turkey Point facility dated July 7 and August 12, 1989.

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On July 12, 1989, a Partial Director's Decision, DD-89-05, was issued which responded, in part, to the request for action in the December 21, 1988, Petition. This Director's Decision responds to the remaining issues from the December 21, 1988, Petition as well as the Petitions dated July 7, 1989, and August 12, 1989, which have also been referred to NRR for consideration.

As discussed in Partial Director's Decision DD-89-05, two issues identified in the December 21, 1988, Petition required further investigation by the NRC staff. The two issues involved (1) a chilling effect on reporting safety concerns as a result of discrimination and harassment, and (2) the falsification and destruction of documents. This Petition requested that the operating licenses for Units 3 and 4 be immediately suspended and revoked and that an escalated civil penalty be imposed on Florida Power & Light Company (FPL, the licensee) based upon these issues.

The July 7, 1989, Petition requested that the NRC take immediate actions to cause the suspension of Turkey Point operating licenses DPR-31 and DPR-41, cause the imposition of an escalated civil penalty upon the licensee, and cause an investigation into unlawful actions of the licensee. As a basis for these requests, the Petitioner alleged that reprisals and retaliatory measures were taken against employees at the Turkey Point facility after these employees voiced safety concerns to licensee management.

The August 12, 1989, Petition requested that the NRC investigate the violations of NRC requirements delineated in the Petition and take immediate actions to (1) cause the suspension of operating licenses DPR-31 and DPR-41; (2) cause the imposition of an escalated civil penalty upon the licensee; (3) cause a criminal investigation concerning the behavior and conduct of



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licensee's counsel; and (4) reverse the chilling effect instilled at the Turkey Point facility resulting from the illegal licensee conduct. In the Petition, the Petitioner states that the licensee has violated the NRC's regulation 10 CFR §50.7, "Employee Protection." To support this statement, the Petitioner alleges that the following activities at the Turkey Point facility have occurred:

- (1) The Petitioner's employment was adversely affected at the Turkey Point facility after engaging in protected activity embraced within the requirements and meaning of 10 CFR §50.7.
- (2) The licensee "appears to have" intimidated and coerced the Petitioner by hiring a law firm to interrogate him concerning information that he conveyed to the NRC concerning operations at Turkey Point.
- (3) The licensee, through its counsel, "appears to have" attempted to prevent the Petitioner from "delineating" additional information to the NRC by offering the Petitioner a transfer to the St. Lucie facility owned and operated by the licensee.
- (4) The licensee, through its counsel, "appears to have" influenced two potential witnesses, whereby the witnesses' testimony could not be relied upon during the Petitioner's hearing before the Department of Labor (DOL).
- (5) The licensee, through its counsel, "appears to have" intimidated and coerced a supervisor at the Turkey Point facility into attending a meeting with the licensee's counsel in order to enable counsel to

question the supervisor against his wishes concerning the scheduled hearing before the U. S. Department of Labor (DOL) in February 1989.

DISCUSSION

Previously, Petitioner had filed several complaints, beginning in October 1988, with DOL alleging that he had been subjected to harassment, discriminatory conduct, and, ultimately, dismissal by the licensee for engaging in certain protected activity, in violation of Section 210 of the Energy Reorganization Act. These complaints were investigated by DOL's Wage and Hour Division and were the subject of a hearing held before a DOL Administrative Law Judge (ALJ).

An investigation, as discussed below, was initiated by the NRC's Office of Investigation (OI) in response to a request from the NRC Regional Administrator, Region II, to resolve the allegations contained in the July 7 and August 12, 1989, Petitions as well as the two issues remaining open from the December 21, 1988, Petition. In addition to the allegations contained in these Petitions, OI was also requested to investigate additional allegations concerning FPL's Turkey Point and St. Lucie nuclear plants that had been received by the NRC's Region II office.

On December 21, 1988, the NRC Regional Administrator, Region II, requested that OI conduct an investigation to resolve allegations that had been raised by the Petitioner of falsification, alteration, and destruction of plant nuclear safety-related documents at both the Turkey Point plant (December 21, 1988, Petition) and the St. Lucie plant. Subsequently, requests made by the Regional Administrator sought additional assistance to resolve allegations

raised by the Petitioner that licensee employees at Turkey Point were harassed and intimidated for reporting nuclear safety-related deficiencies and concerns (December 21, 1988 and July 7, 1989, Petitions), that some licensee officials had created a "chilling effect" at the plant by threatening to retaliate against individuals who openly discussed or reported these issues (December 21, 1988 and August 12, 1989, Petitions), and that licensee personnel and/or attorneys representing the licensee interfered with DOL proceedings by threatening witnesses or offering them favorable employment opportunities if they declined to testify on his behalf (December 21, 1988 and August 12, 1989, Petitions). The Regional Administrator also requested OI to resolve additional allegations of improprieties, including allegations that the use of an independent law firm and the unethical conduct and behavior of the licensee's counsel before and during the DOL hearing were harassing and intimidating actions that interfered with the Petitioner's participation in the DOL matter (July 7 and August 12, 1989 Petitions).

On January 22, 1990, OI completed its investigation. The results of this investigation are contained in OI Report, Case Number 2-88-012, dated January 22, 1990.¹ With one exception, all of the allegations remaining open from the December 21, 1988, Petition and those contained in the July 7 and August 12, 1989, Petitions were investigated by OI. The only allegation that was not investigated by OI was that Petitioner's employment was adversely affected after he engaged in protected activity, as this allegation was the subject of DOL's investigation.

¹ A copy of the synopsis of the OI report summarizing the investigation and its findings was transmitted to the Petitioner by copy of a letter from Stewart D. Ebner (NRC) to J. H. Goldberg (FPL), dated March 22, 1990.

The OI investigation concluded, based upon the large volume of testimony received from numerous interviewees and the extensive review and analysis of pertinent records, correspondence, and documents, that the allegations of employee harassment, the chilling effect condition, and licensee discrimination against individuals who reported or identified nuclear safety-related concerns could not be substantiated as alleged. Additionally, there was insufficient evidence to confirm the allegations that instrumentation and control maintenance records were willfully and intentionally falsified, altered, and/or destroyed to conceal procedure violations. Finally, the investigation also concluded that no Turkey Point employee who testified for the Petitioner at the DOL hearing was knowingly harassed or discriminated against by the licensee for this activity, and that evidence failed to support the allegation that attorneys for the licensee acted improperly or behaved in an unethical manner during the independent law firm investigation or the DOL matter.

Concerning the Petitioner's allegation that his employment was adversely affected after he engaged in protected activity, on June 30, 1989, the DOL ALJ issued a Recommended Decision and Order denying the Petitioner's complaint. In his decision, the ALJ held that the Petitioner failed to present a prima facie case that he had been discriminated against for engaging in protected activity, and that his discharge resulted solely from his own insubordination. The Petitioner has appealed this decision, and that appeal is pending before the Secretary of Labor.

Because the DOL ALJ did not substantiate the Petitioner's allegation, and because nothing in the Petition or otherwise available to me leads me to conclude that the Petitioner's allegation is valid, I have concluded that

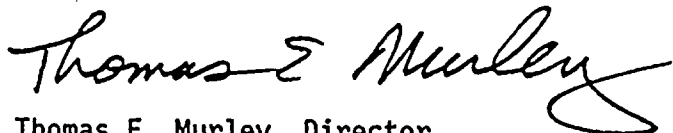
there is no basis for the requested relief. I am aware that the ALJ's decision has been appealed to the Secretary of Labor. As is the NRC staff's practice, if the Secretary reverses or modifies the ALJ's decision, the NRC will consider whether enforcement or other action against the licensee is appropriate.

CONCLUSION

The institution of proceedings in response to a request pursuant to 10 CFR §2.206 is appropriate only when substantial health and safety issues have been raised. See Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 176 (1975) and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). This is the standard that has been applied to determine whether the actions requested in the Petitions are warranted. For the reasons discussed above, no basis exists for taking the actions requested in the Petitions as no substantial health and safety issues have been raised by the Petitions. Accordingly, the Petitioner's requests for action pursuant to 10 CFR §2.206 are denied.

A copy of this decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR §2.206(c).

FOR THE NUCLEAR REGULATORY COMMISSION



Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 22nd day of March, 1990.