

DCS  
PDR



# Florida Energy Consultants, Inc.

1620 North U.S. 1, Suite 6  
Jupiter, Florida 33469-3241

Telephone: (407) 745-1186  
Facsimile: (407) 745-1186

June 07, 1994

**Express Mail:**

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Petition Filed Under 10 C.F.R. 2.206 Against the  
Florida Power & Light Company

Dear Sir:

COMES NOW, Florida Energy Consultants, Inc. ("FEC") and Thomas J. Saporito, Jr., (hereinafter "Petitioners") in accordance with 10 C.F.R. 2.206, and hereby file a request for specific action by the U.S. Nuclear Regulatory Commission ("NRC") within a reasonable time against the Florida Power & Light Company ("FPL") and operator of the Turkey Point and St. Lucie nuclear stations located in the State of Florida.

**Specific Request:**

- A. Petitioners request that the NRC institute a show cause proceeding pursuant to 10 C.F.R. 2.202 to modify, suspend, or revoke FPL's permissive operational licenses authorizing operation of the Turkey Point and St. Lucie nuclear stations.

9407010054 940607  
PDR ADDOCK 05000250  
H PDR

JEH 1/0

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 2

- B. Petitioners request that the NRC invoke escalated enforcement action against FPL for violating NRC requirements under 10 C.F.R. 50.7 in retaliating against Thomas J. Saporito, Jr. for his having engaged in protected activities during his employment period at the FPL Turkey Point nuclear station in 1988 as an instrument control technician.
- C. Petitioners request that the NRC invoke escalated enforcement action against FPL employee Mr. John Odom for violating NRC requirements under 10 C.F.R. 50.7 in retaliating against Thomas J. Saporito, Jr. for his having engaged in protected activities during his employment period at the FPL Turkey Point nuclear station in 1988 as an instrument control technician.
- D. Petitioners request that the NRC invoke escalated enforcement action against each and every individual FPL employee found to have been directly or indirectly involved in violating NRC requirements under 10 C.F.R. 50.7 in retaliating against Thomas J. Saporito, Jr. for his having engaged in protected activities during his employment period at the FPL Turkey Point nuclear station in 1988 as an instrument control technician.
- E. Petitioners request that the NRC conduct an investigation of FPL under 10 C.F.R. 50.7 to determine the direct or indirect involvement each and every individual FPL employee may have had in violating NRC requirements under 10 C.F.R. 50.7 in retaliating against Thomas J. Saporito, Jr. for his having engaged in protected activities during his employment period at the FPL Turkey Point nuclear station in 1988 as an instrument control technician.

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 3

- D. Petitioners request that the NRC refer its investigative findings to the U.S. Department of Justice ("DOJ") for federal prosecution of those FPL employees who were directly or indirectly involved in violating NRC requirements under 10 C.F.R. 50.7 in retaliating against Thomas J. Saporito, Jr. for his having engaged in protected activities during his employment period at the FPL Turkey Point nuclear station in 1988 as an instrument control technician.
- E. Petitioners request that the NRC conduct an investigation of FPL under 10 C.F.R. 50.7 to determine if the overall work environment at the FPL Turkey Point and St. Lucie nuclear stations is free from hostility and ~~encourages~~ employees to freely contact the NRC with perceived safety concerns.
- F. Petitioners request that the NRC conduct an investigation of FPL under 10 C.F.R. 50.7 to determine if the overall work environment at the FPL Turkey Point and St. Lucie nuclear stations provides for employees to "bypass" the FPL "chain of command" in raising safety concerns to the NRC.
- G. Petitioners request that the NRC conduct an investigation of FPL under 10 C.F.R. 50.7 to determine if the overall work environment at the FPL Turkey Point and St. Lucie nuclear stations is free from hostility and ~~encourages~~ employees to freely contact the NRC "confidentially" with perceived safety concerns.
- H. Petitioners request that the NRC conduct an investigation of FPL under 10 C.F.R. 50.7 to determine if the overall work environment at the FPL Turkey Point and St. Lucie nuclear stations is free from hostility and ~~encourages~~ employees to freely contact the NRC with perceived safety concerns without first apprising FPL management about the safety concerns.

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 4

**Basis and Justification:**

1. The NRC generally defers to the DOL process before taking action and normally does not take independent action with respect to alleged discrimination for the exercise of a protected activity prior to a decision by a DOL Administrative Law Judge ("ALJ") absent a compelling safety reason.
2. In Case Nos. 89-ERA-7/17, the ALJ rendered a recommended decision and order ("RDO") in June of 1989 finding that FPL discharged Thomas J. Saporito, Jr. for reasons of insubordination. However, in a June 3, 1994 Decision and Remand Order issued by the DOL Secretary of Labor ("SOL"), the SOL ordered the ALJ to revisit his earlier RDO and issue a new RDO in this case.
3. The SOL held, in part, that "...The Administrative Law Judge (ALJ) recommended that this case be dismissed because Respondent Florida Power & Light Company (FP&L) fired Complainant Thomas J. Saporito, Jr. for what the ALJ viewed as legitimate reasons, three acts of insubordination. I find, however, that one of those acts clearly was protected under the ERA, for the reason stated above, and the others may have had protected aspects. Therefore, I am remanding this case to the ALJ to review the record and submit a new recommendation on whether Saporito would have been fired for legitimate reasons even if he had not engaged in protected activity..." SOL 06/03/94 Decision and Remand Order at p.1-2.

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 5

4. The SOL further found that "...Saporito told Odom on November 23, 1988, when Odom gave him a "direct order" to tell Odom his nuclear safety concerns "at the first available opportunity" and Saporito said he would...At that point, FP&L knew that the NRC, the government agency responsible for nuclear safety, would be notified and it was reasonable to assume the NRC would notify FP&L immediately if there were an imminent threat to public health or safety...Indeed, Odom called the NRC on Nov. 30, 1988 and was told that none of Saporito's concerns had any immediate safety implications...I find that FP&L violated the ERA when it later discharged Saporito, among other reasons, for refusing to obey Odom's order to reveal his safety concerns..." (emphasis added). SOL 06/03/94 Decision and Remand Order at p.6
  
5. The SOL also found that "...As grounds for dismissal, FP&L also cited Saporito's refusal to stay after his regular work day on November 30, 1988 to attend a meeting at which Odom again wanted to ask Saporito about his safety concerns...and Saporito's refusal to be examined by a company doctor. Odom's decision to require Saporito to be examined by a company doctor grew out of the excuse Saporito gave on November 30 for refusing to stay late for the meeting with Odom, that Saporito was ill, and Saporito's reason for taking 12 sick days leave after November 30, that Saporito was suffering from stress related medical problems...Each of these reasons for discharge is related, at least in part, to Saporito's refusal to reveal his safety concerns to FP&L, an act I have held protected under the ERA..." (emphasis added). SOL 06/03/94 Decision and Remand Order at p.7.

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 6

6. The NRC and DOL have a long standing Memorandum of Understanding ("MOU") which provides for the cooperation of these two government agencies to work together on DOL discrimination complaints as in Case No. 89-ERA-7/17. See, 47 FR54585; December 3, 1982. Thus, while NRC actions in discrimination cases are normally held in abeyance pending the DOL process, there are times, because of the significance of the issues to public health and safety, the NRC actions are warranted notwithstanding the ongoing DOL process.
7. FPL violated NRC requirements under 10 C.F.R. 50.7 in Odom's questioning Saporito on November 23, 1988; FPL's placing Saporito on restricted status; FPL's providing Saporito with demeaning job assignments; and Odom's attempted interrogation of Saporito on November 30, 1988. FPL clearly retaliated against Saporito for his having engaged in protected activity in raising safety concerns regarding operations at Turkey Point to the NRC and requesting that the NRC conduct an investigation of his concerns.
8. FPL's retaliatory actions taken against Saporito in 1988 as described above in par.7 constitute a "hostile work environment" under the law. The harassment incidents and adverse actions taken against Saporito by FPL during Saporito's employment in 1988 at Turkey Point, more than satisfy the elements establishing a *prima facie* case of a "hostile work environment". See, Linda E. Mitchell v. Arizona Public Service Company/Arizona Nuclear Power Project, Case No. 91-ERA-9, slip op. of ALJ, at 36-37 (July 2, 1992).

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 7

9. The NRC is mandated by the U.S. Congress to ensure that the overall work environment at facilities authorized and licensed for operation by the NRC is free from hostility and ~~encourages~~ employees to ~~freely~~ and confidentially contact the NRC with perceived safety concerns without fear of reprisal by their employer for doing so. The NRC simply cannot tolerate a "hostile work environment" at the FPL Turkey Point and St. Lucie nuclear stations.
10. In Case No. 89-ERA-19, Sarah C. Thomas v. Arizona Public Service Company/Arizona Nuclear Power Project, the NRC invoked enforcement action against the licensee because the licensee allowed a "hostile work environment" to exist at the Palo Verde Nuclear Generating Station. Indeed, the NRC's Notice of Violation stated, in part relevant hereto, that:
- "...Both situations are significant because discrimination may create a chilling effect which could discourage individuals from raising safety issues. Such an environment cannot be tolerated if licensees are to fulfill their responsibilities to protect the public health and safety. Thus, licensee management must avoid actions that discriminate against individuals for raising safety concerns, and must promptly and effectively remedy actions that constitute discrimination..."
11. The NRC has authority to take the actions requested in this petition to ensure that FPL maintains a work environment which ~~encourages~~ employees to raise safety concerns freely and confidentially to the NRC without fear of reprisal. See, e.g., 55 Fed. Reg. 10397, 10402 (Mar. 11, 1990). See also, *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991).

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 8

12. FPL has engaged in the illegal conduct of a continuing violation of NRC requirements at 10 C.F.R. 50.7 in retaliating against Thomas J. Saporito, Jr. See, Case No. 90-ERA-27/47, Thomas J. Saporito, Jr. v. Florida Power & Light Company et.al. and Case No. 93-ERA-23, Thomas J. Saporito, Jr. v. Florida Power & Light Company. Moreover, FPL appears to have retaliated against other workers at Turkey Point who have raised safety concerns to the NRC. See, Mark Clymer v. Florida Power & Light Company, Terry Dysart v. Florida Power & Light Company, Richard Robaines v. Florida Power & Light Company, and Ben Young v. Florida Power & Light Company. This continuing violation of NRC requirements by FPL has enhanced a "chilling effect" at Turkey Point which was initiated upon Saporito's termination 3-days before Christmas in 1988 for having raised safety concerns to the NRC.
13. The NRC has expressly defined protected activities under the ERA and NRC regulations at 10 C.F.R. 50.7(a) to include:
  - (i) Providing the Commission information about possible violations of requirements imposed under [the ERA or the Atomic Energy Act];
  - (ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;
  - (iii) Testifying in any Commission proceeding.
14. The NRC provides that employees like Saporito may communicate privately without interference from licensee employers like FPL as follows:



Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 9

(a) Commission inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of Commission regulations and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(b) During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which he has reason to believe may have contributed to or caused any violation of the act, the regulations in this chapter, or license condition...10 C.F.R. 19.15.

15. FPL's interrogation of Saporito regarding his safety concerns communicated to the NRC constitutes discrimination under the ERA. NRC regulations at 10 C.F.R. 50.9 provide that the DOL process is an extension of the NRC's authority. Thus, the NRC has authority to act on this petition.

In consideration of the above, FPL cannot demonstrate to the NRC reasonable assurance that it did not illegally retaliate against Saporito in fostering a hostile work environment at Turkey Point, in assigning demeaning jobs to Saporito, in denying benefits, terms, and conditions of employment to Saporito, and in firing Saporito 3-days before Christmas in 1988 for Saporito having engaged in protected activity. Additionally, FPL cannot demonstrate to the NRC reasonable assurance that a "chilling effect" does not exist at the Turkey Point and St. Lucie nuclear stations which dissuades employees from freely raising safety concerns confidentially to the NRC without fear of retaliation for so doing.

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
FPL 2.206 Petition  
June 07, 1994  
Page No. 10

Accordingly, it is appropriate for the NRC to consider this petition under 10 C.F.R. 2.206 wherein the Petitioners have set forth the facts that constitute the basis for the request. See Philadelphia Electric Company (Limerick generating Station, Units 1 & 2), DD 85-11, 22 NRC 149, 154 (1985).

Respectfully submitted,  
For the Environment



Thomas J. Saporito, Jr.  
President and CEO

cc: Hon. Joseph I. Lieberman  
Hon. John Dingell  
Hon. David Williams  
Oscar DeMiranda  
Executive Director for  
the National Whistleblower Center

May 31, 1994

DISTRIBUTION:  
Docket File w/o encl.  
PD II-2 r/f  
ETana

DOCKET NO(S). 50-302, 50-335, 50-389,  
50-250 and 50-251

SEE ATTACHED LIST

SUBJECT: CRYSTAL RIVER UNIT 3, ST. LUCIE UNITS 1 AND 2, AND TURKEY POINT UNITS 3 AND 4

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/Semi-Annual Report: <del>Annual Radiological Environmental Operating Reports</del> <u>for 1993</u> _____ transmitted by Letter	
	Other _____	

Office of Nuclear Reactor Regulation

Enclosures:  
As Stated

cc: See next page

OFFICE▶	NRR/PDII-2						
SURNAME▶	ETana <i>EM</i>						
DATE▶	5/31/94						

Crystal River Unit 3  
St. Lucie 1 and 2  
Turkey Point 3 and 4

cc: Chief  
Division of Habitat Conservation  
U.S. Fish & Wildlife Service  
U.S. Department of the Interior  
Washington, DC 20240

Regional Radiation Representative  
U.S. Environmental Protection Agency  
Region IV Office  
345 Cortland Street, NE  
Atlanta, GA 30365

Dr. William Cunningham  
FDA Research Chemist  
National Institute of Standards  
and Technology  
Reactor Building 235, Room B-108  
Gaithersburg, MD 20899

April 13, 1994

DISTRIBUTION:  
 Docket File w/o encl.  
 PD II-2 r/f  
 ETana

DOCKET NO(S). 50-302, 50-335, 50-389,  
 50-250 and 50-251

SEE ATTACHED LIST

SUBJECT: CRYSTAL RIVER UNIT 3, ST. LUCIE UNITS 1 AND 2, AND TURKEY POINT UNITS 3 AND 4

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/Semi-Annual Report: <del>Radioactive Effluent Release Reports</del> for the period ending December 31, 1993 transmitted by Letter	
	Other _____	

Office of Nuclear Reactor Regulation

Enclosures:  
 As Stated

cc: See next page

OFFICE▶	NRR/PD.II.-2.						
SURNAME▶	ETana. <i>ET.</i>						
DATE▶	4/13/94						

Crystal River Unit 3  
St. Lucie 1 and 2  
Turkey Point 3 and 4

cc: Chief  
Division of Habitat Conservation  
U.S. Fish & Wildlife Service  
U.S. Department of the Interior  
Washington, DC 20240

Regional Radiation Representative  
U.S. Environmental Protection Agency  
Region IV Office  
345 Cortland Street, NE  
Atlanta, GA 30365

Dr. William Cunningham  
FDA Research Chemist  
National Institute of Standards  
and Technology  
Reactor Building 235, Room B-108  
Gaithersburg, MD 20899

Docket No.  
(10 C.F.R. 2.206)

Thomas J. Saporito, Jr.  
Florida Energy Consultants, Inc.  
1620 North U.S. 1, Suite 6  
Jupiter, Florida 33469-3241

Dear Mr. Saporito:

On June 7, 1994, you filed a Petition under 10 C.F.R. 2.206 on behalf of yourself and Florida Energy Consultants, Inc., requesting that the NRC take action against the Florida Power and Light Co. as operator of the Turkey Point and St. Lucie nuclear power stations. This letter acknowledges the Nuclear Regulatory Commission Staff's receipt of your Petition.

In your Petition, you ask that the NRC institute a show cause proceeding under 10 C.F.R. 2.202 to modify, suspend or revoke the Licensee's operating licenses. Further, you ask that the NRC take escalated enforcement action against the Licensee for violating 10 C.F.R. 50.7 by retaliating against you for engaging in protected activities during your employment at the Turkey Point station in 1988 as an instrument control technician. You also ask that the NRC take escalated enforcement action against John Odom, a Licensee employee, as well as every other Licensee employee who is found to have been involved in the retaliatory actions which were taken against you.

In order to determine which Licensee employees were involved in the retaliatory actions, you ask that the NRC conduct an investigation and refer the results of the investigation to the Department of Justice for federal prosecution of the employees involved. You also request that the investigation examine whether the overall work environment at Turkey Point and St. Lucie is free from hostility and encourages employees to freely contact the NRC with safety concerns, to bypass the chain of command in raising those concerns, to contact the NRC confidentially with any safety concerns, and to contact the NRC without first apprising management about safety concerns.

In your Petition, you call attention to the conclusions reached by the Secretary of Labor regarding your claims in *Saporito v. Florida Power & Light Co.*, Case Nos. 89-ERA-7 and 89-ERA-17, issued on June 3, 1994. Further, you allege specific acts of retaliation, such as placing you on restricted status and giving you demeaning job assignments, and claim that those actions comprise a hostile work environment which warrants enforcement action by the NRC. According to your Petition, the Licensee has retaliated against other employees as well, creating a chilling effect at Turkey Point

which began with your termination in 1998. In your view, the Licensee has violated 10 C.F.R. 50.7 and 19.15 and the Energy Reorganization Act.

The Staff will review your Petition in accordance with 10 C.F.R. 2.206. I will issue a final decision with regard to your Petition within a reasonable time. A copy of the notice that is being filed for publication with the Office of the Federal Register is enclosed for your information.

Sincerely,

James Lieberman, Director  
Office of Enforcement

Enclosure: As stated

cc: Florida Power and Light Co.



U.S. NUCLEAR REGULATORY COMMISSION

Docket No.

FLORIDA POWER AND LIGHT CO.  
(Turkey Point and St. Lucie Nuclear Plants)

RECEIPT OF PETITION FOR DIRECTOR'S DECISION  
UNDER 10 C.F.R. 2.206

Notice is hereby given that on June 7, 1994, Thomas J. Saporito, Jr. filed a petition under 10 C.F.R. 2.206 of the Commission's regulations requesting that the NRC take action against Florida Power and Light Co. as operator of the Turkey Point and St. Lucie nuclear power stations.

The Petitioner asks that the NRC institute a show cause proceeding to modify, suspend or revoke Florida Power and Light Co.'s operating licenses and that the NRC take escalated enforcement action for retaliatory actions which were taken against him, a former employee, for engaging in protected activities as defined in 10 C.F.R. 50.7. Petitioner asks that the NRC also take escalated enforcement action against every employee of the company who is found to have been involved in the retaliatory actions.

In order to determine which Licensee employees were involved in the retaliatory actions, and to assess the overall work environment at the plants, Petitioner asks that the NRC conduct an investigation. In addition to the specific acts of retaliation he claims were taken against him, the Petitioner alleges that other employees have also been retaliated against, creating a chilling effect at the Turkey Point plant beginning in 1988. Petitioner

asks that the NRC initiate an investigation into his claims, which involve alleged violations of 10 C.F.R. 50.7 and 19.15 and the Energy Reorganization Act, notwithstanding the fact that they are being pursued within the Department of Labor, because of the asserted public health and safety implications involved.

The Petitioner's request has been referred to the Director of the Office of Enforcement. As provided by 10 C.F.R. 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C. 20555.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director  
Office of Enforcement

Dated at Rockville, Maryland

This \_\_\_\_\_ day of \_\_\_\_\_ 1994.