

National Litigation Consultants

Nuclear Whistleblower Specialists

6230 W. Indiantown Road, Ste. 7-355, Jupiter, Florida 33458

Voice: (561) 622-1667 Facsimile: (561) 744-6615

Internet Email saporito@mailexcite.com

February 27, 1998

Hon. Shirley Jackson, Chairman
U.S. Nuclear Regulatory Commission
White Flint Building
Washington, D.C. 20555

RE: PETITION UNDER 10 C.F.R. 2.206
REQUEST FOR AGENCY ACTION

Dear Chairman Jackson:

In accordance with U.S. Nuclear Regulatory Commission ("NRC") regulations¹ found at Title 10 of the Code of Federal Regulations, the undersigned and National Litigation Consultants ("NLC"), (hereinafter "Petitioners") submit this request for action by the NRC with respect to its licensee, Florida Power & Light Company ("FPL") operators of the St. Lucie nuclear station Units 1 and 2 and the Turkey Point nuclear station Units 3 and 4 as fully described below:

Specific Request

1. that the NRC initiate actions to cause an investigation into the circumstances surrounding recent actions taken with respect to licensee employee Mr. Charles Bogacki at the St. Lucie Nuclear Station as a direct or indirect result of the employees' engagement in protected activities as defined under 10 C.F.R. 50.7 and Title 10 of the Code of Federal Regulations and under 42 U.S.C. 5851; and to determine if a "hostile work environment" exists at the St. Lucie Nuclear Station; and to determine if a "chilling effect" has been sufficiently instilled at the licensee' nuclear

¹This provision is contained in Subpart B, Section 2.206 of the NRC's regulations.

9809280114 980914
PDR ADDCK 05000250
G PDR

station to dissuade employees from raising safety concerns; and to determine if the licensee's Employee Concerns Program is effectively utilized by the employees and whether the employees are comfortable or even willing to utilize the program; and to determine whether licensee management needs further training in addressing employee concerns and training in developing interpersonal skills to encourage employees to utilize the concerns program; and

2. that the NRC initiate actions to formulate an Augmented Maintenance Inspection Team ("AMIT") to determine if licensee layoffs "restructuring" has resulted in a core work force that is not properly trained or skilled to properly maintain the balance of the plant; and to determine whether the licensee has an adequate number of employees to safely operate and maintain the St. Lucie Nuclear Station; and
3. that the NRC initiate actions to put the licensee on notice informing the licensee that no adverse employment actions are to be taken against Mr. Bogacki for his engagement in protected activities at the St. Lucie nuclear station in raising safety concerns confidentially and directly to the NRC regarding operations at the station; and require the licensee to author a written document to Mr. Bogacki and all other plant workers at both the St. Lucie and the Turkey Point nuclear stations informing them that FPL encourages employees to raise safety concerns directly to the NRC and that no retaliation will be taken against the employee for such conduct by the employee.

Basis and Justification for Request

The NRC has a Congressional mandate to investigate licensees general employment practices to determine whether those practices are having a "chilling effect" on would-be whistleblowers. That mandate is quite distinct from that of the DOL:

"The [NRC's] investigatory powers and those of the [DOL] under [5851] neither serve the same purpose nor are invoked in the same manner. They are, rather, complementary, not duplicative . . . Under [5851] the [DOL] apparently lacks two remedial powers--which the [NRC] possesses-- . . . the right to take important action against the employer, and the . . . authority to do so immediately. . . . The [DOL] may order only



reinstatement and back pay--not correction of the dangerous practices themselves." *Union Electric*, 9 N.R.C. at 138; cf. 42 U.S.C. 5851(j)(2) (a DOL finding that a retaliation claim has no merit "shall not be considered by the [NRC] in its determination of whether a substantial safety hazard exists").

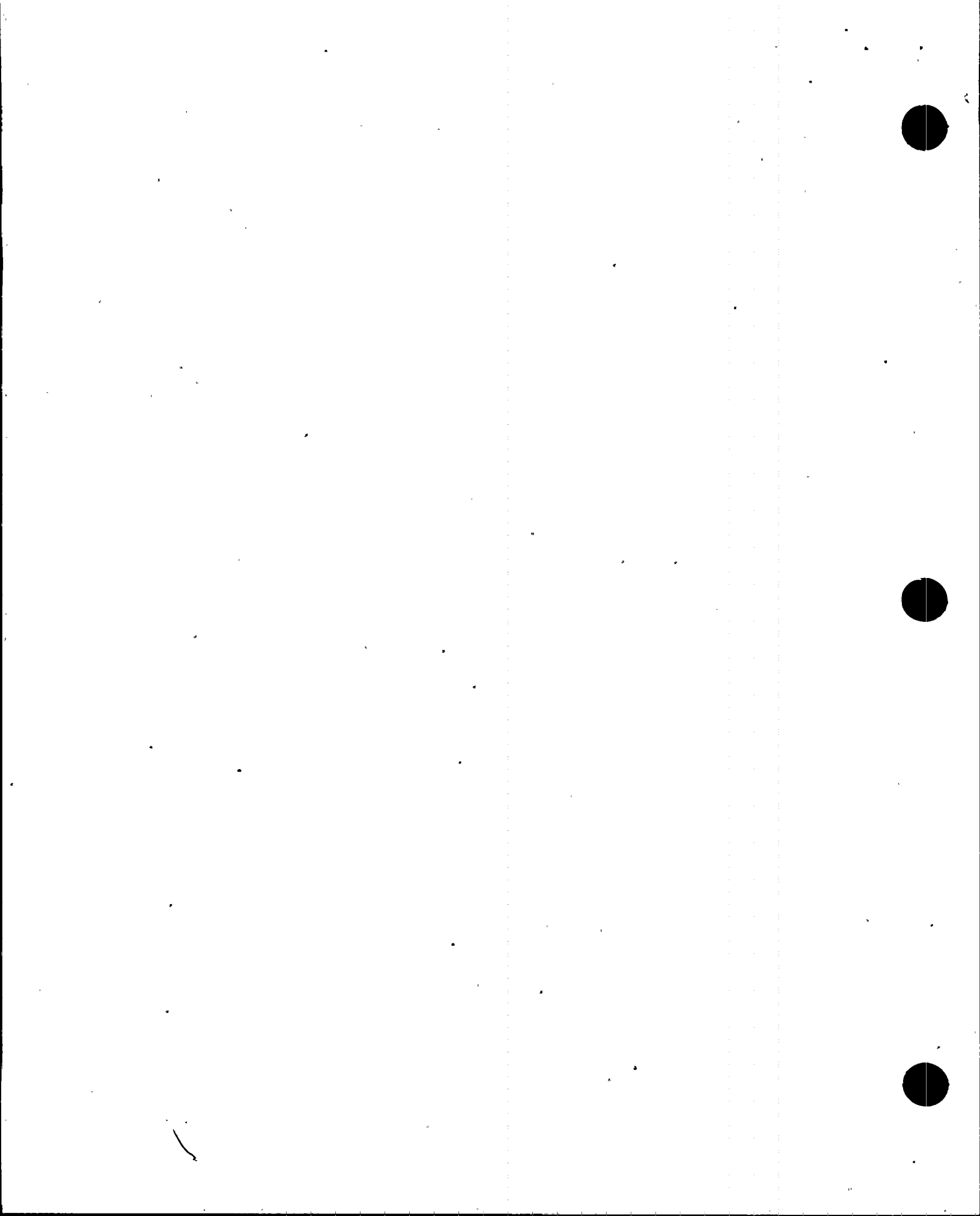
See, *Construction Products Research, Inc.*, 1996 U.S. App. LEXIS 202 (2d Cir. 1996).

As a direct result of the NRC's impotence and failure to timely implement its mandate in protecting licensee employees under 10 C.F.R. 50.7 and other federal regulations, a "chilling effect" was instilled at FPL's nuclear facilities and has continued to dissuade employees from raising safety concerns. Moreover, FPL continues to discriminate against its employees in violation of NRC regulations at 10 C.F.R. 50.7. Mr. Charles Bogacki, a current licensee employee at the St. Lucie Nuclear Station and his coworkers are concerned about retaliation by FPL for their engagement in protected activities in raising safety concerns to the NRC.

Notably, FPL is currently engaged in a pattern of punitive suspensions at the St. Lucie Nuclear Station against numerous employees for what the licensee alleges to be procedure violations. The FPL Vice President, Mr. Art Stall authored a document requiring many employees to undergo more emergency training and threatening employees by holding that, the company "cannot continue to maintain employees in classifications if they are incapable of fulfilling 100 percent of the essential requirements of that classification." Further, the licensee announced its intentions to layoff an additional 45 employees; that they might cut 5 percent of the 850 St. Lucie plant employee work force this month.

Mr. Gary Ward, a licensee employee at the St. Lucie nuclear station, stated, "I've put 18 years into this company. It looks like they're just trying to get the old-timers out." Other employees are concerned that FPL is attempting to silence the work force from raising additional safety concerns to the NRC through this type of intimidation.

Mr. Richard Curtis, local president, of the International Brotherhood of Electrical Workers ("IBEW") opinionated that FPL shouldn't force older employees or those with disabilities to perform emergency response duties. See, newspaper article attached hereto.



The licensee vowed to continue the increased discipline policy and made no mention of enhancing the training program at the station. Thus, it appears that the licensee's intentions are to intimidate and silence the work force from engaging in protected activities at the station.

On May 14, 1996, the NRC issued a policy statement "to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation." Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation; Policy Statement, 61 Fed. Reg. 24336 (May 14, 1996). The policy statement, *inter alia*, stresses, among other things, that management should provide leadership in this regard . . . 61 Fed. Reg. at 24340.

The NRC has authority to penalize its licensees. The NRC can take enforcement action pursuant to 10 C.F.R. 50.7 based on discrimination by an employer even though the Department of Labor ("DOL") has not made a prior determination that section 210 of the Energy Reorganization Act² ("ERA") was violated. Notably, the NRC and DOL have complementary, yet independent authorities and responsibilities in protecting employees from discrimination and retaliation for raising matters bearing on nuclear safety. Section 210/211 empowers DOL to grant remedies directly to employees who have suffered discrimination for engaging in protected activities; it does not limit NRC's authority under the Atomic Energy Act to investigate alleged discrimination and take action to combat it. See, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), 51 Fed. Reg. 25127 (Dockets: 50-413, 50-414, EA-84-93) (order imposing civil money penalty, July 10, 1986).

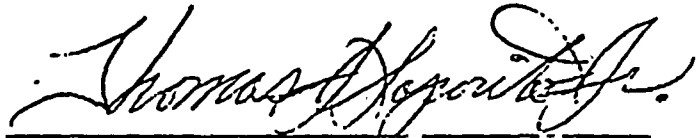
Petitioners and the public are entitled to have the NRC conduct an investigation and to take enforcement action against FPL to insure that the channels of information from FPL's employees to the NRC remains open and unfettered by discriminatory practices of FPL.

For all the above stated reasons, Petitioners seek NRC action in this matter.

²The ERA was amended by the National Energy Policy Act of 1992 and is now coded as section 211.

RESPECTFULLY SUBMITTED, this 27th day of February, 1998

NATIONAL LITIGATION CONSULTANTS



Thomas J. Saporito, Jr.
Executive Director

cc:

Hon. Bill Clinton, President
United States of America
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Louis Reyes, Administrator
Nuclear Regulatory Commission
61 Forsyth St., SW, Suite 23T85
Atlanta, Georgia 30303

Hon. Bob Graham
United States Senator
Senate Office Building
Washington, D.C. 20500

Charles Bogacki
117 Everglades Blvd.
Stuart, FL 34994

James Scarola
Plant Manager
St. Lucie Nuclear Station
700 Universe Blvd.
Juno beach, FL 33408

Billie Pirner Garde, Esq.
Clifford, Lyons & Garde
1620 L. Street, NW, Suite 625
Washington, D.C. 20036-5631

Carolyn Evans, Esq.
Nuclear Regulatory Commission
Atlanta Federal Center
61 Forsyth St., SW, Suite 23T85
Atlanta, Georgia 30303

Executive Director
Nuclear Regulatory Commission
Washington, D.C. 20500

Inspector General
Nuclear Regulatory Commission
Washington, D.C. 20500

James Broadhead, CEO
Florida Power & Light Co.
700 Universe Blvd.
Juno Beach, FL 33408

David K. Colapinto, Esq.
Kohn, Kohn & Colapinto
3233 P Street, NW
Washington, D.C. 20007

General Media Distribution

The Stuart News

©Stuart, Florida ■ Friday, February 27, 1998 ■ Martin County Edition

NRC investigating how complaint secrecy failed

■ Names or identifying descriptions of St. Lucie Nuclear Plant workers who filed safety complaints were released.

By Andy Reid
of the News staff

ST. LUCIE COUNTY -- Nuclear regulators are investigating how they allowed Florida Power and Light Co. to learn the identities of utility employees who filed confidential safety complaints about the St. Lucie Nuclear Plant.

Some past and present FPL employees said Thursday the mistake was another example of how the U.S. Nuclear Regulatory Commission has let them down.

"A lot of employees would not want their names divulged to the company. They feel St. Lucie plant management would take some action against them," said Rick Curtis, plant employee and local president of the International Brotherhood of Electrical Workers. "This is liable to cause people not to go to (the NRC). There's some people very scared."

The investigation follows a federal Freedom of Information Act request made by *The Stuart News/Port St. Lucie News* for copies of the complaints plant employees filed with the NRC in 1997.

The NRC sent the *News* 1,200 pages of documents. The names of employees are supposed to be kept confidential, but the agency released some names in the documents.

Please see **NRC** on A4

NRC

■ CONTINUED FROM A1

The News did not include employee names in stories published Sunday about safety complaints at the nuclear plant, but did use the names to contact several employees about their safety concerns.

After the News' request for information, the NRC placed copies of some documents in its public document rooms in Washington and the Indian River Library in Fort Pierce.

FPL obtained some documents, but not employee names, which were released to the News and also made available in the public document room in Washington, NRC officials said.

The documents FPL did obtain, however, included enough information that "a knowledgeable individual at the St. Lucie site could possibly determine (the person's) identity from the specifics of the allegation information provided," according to a memo from NRC Allegation Adviser Edward T. Baker.

The NRC's Inspector General office, as well as a task force of agency officials, is reviewing the incident, NRC spokesman Ken Clark said.

"The agency is looking into how it handles those (information) requests," Clark said. "If an individual or group feels that, for

whatever reason, revealing an identity might have some adverse consequences, they certainly can ask that they remain anonymous."

The NRC has since removed all documents related to the News' request from the Fort Pierce and Washington rooms as it conducts an internal review to determine what happened and how it will handle future Freedom of Information Act requests.

FPL officials returned or shredded the NRC documents once they realized the information should have been kept confidential, FPL spokesman Dale Thomas said Thursday.

But the damage might already have been done, said former FPL employee Thomas Saporito, who said he was fired as an FPL instrument control technician in 1988 after voicing safety concerns about the St. Lucie and Turkey Point nuclear plants.

Saporito sent a letter this month to the U.S. Office of Professional Responsibility requesting an investigation into the NRC's actions, which he said has left plant employees "afraid to raise safety concerns for fear of retaliation."

"This represents a serious lapse in the federal safety standards that the government is required to follow to protect an employee's identity regarding confidentiality in raising safety concerns to the

agency," said Saporito, whose letter led to the NRC's internal investigation.

Thomas said FPL is pleased to see employees report safety concerns, and that fear of reprisals is "absurd."

FPL has been criticized lately by employees who claim managers fail to respond to employee safety concerns. Plant employees had more complaints substantiated by federal investigators last year than any of the nation's 65 nuclear plants, according to the records obtained by the News.

Employees expressed concerns Thursday about St. Lucie Plant Vice President Art Stall's announcement that many employees must undergo more emergency training, because the company "cannot continue to maintain employees in classifications if they are incapable of fulfilling 100 percent of the essential requirements of that classification."

FPL has a nuclear safety exercise, which will be evaluated by the NRC, scheduled for March 18. The NRC fined FPL \$50,000 in 1997 for lack of emergency planning.

Many on-shift operators at the plant double as members of the fire brigade, first-aid and radiological response teams that respond to emergencies at the nuclear plant before off-site help arrives.

Some employees have fallen be-

hind in the specialized training, such as being certified to use respirators, Thomas said.

"To remedy this, effective immediately all personnel with emergency responder accountability will be required to maintain qualifications," Stall wrote in a Feb. 23 memo to plant employees.

Some employees said the emergency response requirements could lead to more layoffs at the St. Lucie plant.

FPL this month announced layoffs that could mean 45 non-union employees will lose their jobs. Company officials have said they might cut 5 percent of the 850 St. Lucie plant employees this month.

"I'm a disabled Vietnam veteran. These new requirements could end my job," said Gary Ward, a mechanic at the St. Lucie plant. "I've put 18 years into this company. It looks like they're just trying to get the old-timers out."

Curtis said FPL shouldn't force older employees or those with disabilities to perform emergency response duties.

Being physically fit is a requirement for many plant jobs, Thomas said.

"What we're doing is enforcing the contract," Thomas said. "They need to be qualified."

News staff writer Eric Alan Barton contributed to this report.

