

National Litigation Consultants

Nuclear Whistleblower Specialists

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March 29, 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:

National Litigation Consultants ("NLC"), and its Executive Director, Thomas J. Saporito, Jr., (hereinafter "Petitioners") submit this petition under 10 C.F.R. 2.206 and in accordance with NRC regulations¹ found at Title 10 of the Code of Federal Regulations seeking certain and specific action by the U.S. Nuclear Regulatory Commission ("NRC") with respect to its licensee Florida Power & Light Company ("FPL") as described below:

Specific Request

1. that the NRC initiate actions to cause an investigation under 10 C.F.R. 50.7 and 10 C.F.R. 50 and 42 U.S.C. to determine if a violation of NRC requirements occurred with respect to FPL employees John Giles; Jim Murphy; Charles Bogacki; seven instrument control specialists including one supervisor; and Thomas J. Saporito, Jr.; and
2. that the NRC's investigation consider whether or not a pervasive "hostile work environment" exists at the St.

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

Lucie and Turkey Point Nuclear Stations which dissuades employees from freely raising safety concerns to the NRC without fear of retaliation by FPL; and

3. that the NRC's investigation consider whether or not FPL's settlement of John Giles' Section 211 complaint which apparently contains a confidentiality provision may directly or indirectly "chill" the licensee's work force by preventing licensee employees from gaining sufficient knowledge about the settlement agreement to determine if Section 211 can provide them with a make-whole remedy if they elect to engage their rights under the Energy Reorganization Act ("ERA"); and
4. that the NRC's investigation determine what, if any, actions by the NRC provided any measure of protection to licensee employees who felt that they were retaliated against by FPL for engaging in protected activities at the St. Lucie or Turkey Point Nuclear Stations; and
5. that the NRC's investigation determine whether the licensee' employee concerns program is effective in encouraging employees to freely raise concerns without fear of discrimination or reprisal by the licensee; and
6. that the NRC take immediate actions and initiatives to protect licensee employees from licensee reprisals for the employees having engaged in protected activities; and
7. that the NRC conduct a public hearing granting Petitioners leave to intervene for the purpose of assisting the NRC on behalf of the public in determining if a violation of 10 C.F.R. 50.7 has occurred at the licensee's nuclear stations.

Basis and Justification for Request

Pursuant to Section 103, 161(i), 161(o) and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.204 and 10 C.F.R. Part 50, the NRC has authority to take the actions requested above.

The NRC has a duty under 10 C.F.R. 50 mandated by the United States Congress to insure public health and safety by keeping channels of communication open to allow employees to freely and **CONFIDENTIALLY** contact the agency with safety concerns without

fear of retaliation by the licensee. In keeping with its duty, the NRC is required to provide licensee employees with protection from retaliation for their engagement in protected activities.

In accordance with 10 C.F.R. 19.16 (1992), (The name of any worker who requests an inspection "shall not appear in [the] copy [of the request provided to the licensee] or on any record published, released or made available by the [NRC] . . . "). Therefore employees have a right to communicate confidentially with the NRC about their safety concerns.

There appears to be a wide spread and pervasive "hostile work environment" at the St. Lucie Nuclear Station as evidenced by complaints of retaliation from licensee employees in the operations department; the mechanical maintenance department; the instrument control department; and the health physics department. Such a cancer if left unchecked will engulf the entire nuclear station with a severe chilling effect which significantly decreases the safety margins in the daily operation of the nuclear plant with adverse consequences to public health and safety.

Although Section 211 settlement agreements may provide the aggrieved employee with a compromised economic solution to his or her discrimination or retaliation, such agreements because of their confidentiality provisions, may necessarily "chill" the workforce. Indeed, if employees were privy to the terms of such settlement agreements via plant posting requirements, then the employees would be encouraged to raise safety concerns believing that Section 211 would provide them protection from discrimination and retaliation by the licensee. The uncertain circumstances and the secret nature of sealed settlement agreements undermines the effectiveness of Section 211 and 10 C.F.R. 50.7 in providing a free and open work environment which encourages employees to raise safety concerns.

On April 25, 1997, the DOL issued a Recommended Order Approving Settlement and Dismissing Cases with respect to Case Nos. 92-ERA-38 and 45 and 93-ERA-28 involving NRC licensee Houston Lighting and Power Company. Although the NRC was advised that discrimination and retaliation under 10 C.F.R. 50.7 occurred in early 1992, the NRC failed to take any enforcement action; and instead engaged a "wait and see" posture until the DOL rendered a decision in that case. Since the case settled without a DOL decision, the NRC apparently did not take any enforcement action against the licensee even though an NRC OI investigation determined that a violation of NRC requirements did, in fact, occur.

In Dec. 1988, the undersigned informed the NRC that he was being retaliated against by FPL and, in fact, discharged because he raised safety concerns to the NRC. The NRC failed to conduct an investigation under 10 C.F.R. 50.7 insisting that they would wait for the DOL to issue a decision. It is now 10 years later and the case is still before the DOL and the NRC has yet to conduct an investigation! See, 89-ERA-07 and 17 (consolidated).

On September 19, 1996, the NRC issued Houston Lighting and Power Company a Notice of Violation and Proposed Imposition of Civil Penalties - \$200,000 with respect to DOL cases 93-ERA-016 and 95-ERA-004. Here again the NRC waited for the DOL to make a decision before the agency took enforcement action. See, EA 96-133 and 136.

On March 7, 1996, the NRC issued Arizona Public Service Company a Notice of Violation and Proposed Imposition of Civil Penalty - \$100,000 (NRC Office of Investigations Report 5-93-023R) EA 93-159. That case involved discrimination against the undersigned for raising safety concerns at the Palo Verde Nuclear Station. Although the violation occurred in late 1992, the NRC waited 4 years until the DOL made a decision to take any enforcement action against the licensee. Notably, the NRC stated to the licensee that, "In making this decision, the NRC is not disagreeing with the factual information APS provided nor with APS's statements about the effectiveness of the actions it has since taken to improve the environment at Palo Verde for employees to raise concerns. However, the violation is significant because it went undiscovered and uncorrected for more than 19 months, during which time the overall environment at Palo Verde for raising safety concerns was in need of substantial attention."

It doesn't take a rocket scientist to figure out that the government being the NRC, failed to conduct an immediate 10 C.F.R. 50.7 investigation and failed to take swift enforcement action against APS. Instead, the NRC waited 19 months for the DOL to issue a decision before the NRC acted; and then the agency shifted the blame to the licensee APS for not reporting the violation for 19 months. It is simply incredible that the NRC violates its own Congressionally mandated duty to protect public health and safety by not conducting 10 C.F.R. 50.7 investigations and by not taking swift enforcement action against its licensees for violation of NRC requirements. Indeed, in this DOL Case No. 92-ERA-30, the NRC significantly contributed to the overall "hostile work environment" at the Palo Verde Nuclear Station by

not performing its duty to protect licensee employees engaged in protected activities. See also, Diaz-Robainas v. Florida Power & Light Company, Case No. 92-ERA-10 (Order of Secy. April 15, 1996).

The purpose of the employee protection provision of the Energy Reorganization Act of 1974, as amended ("ERA"), 42 U.S.C.A. 5851 (1981) and 10 C.F.R. 50.7 is to keep channels of communication open to the NRC to protect public health and safety. Among other things, an employee is protected under the ERA and 10 C.F.R. 50.7 when he is "about to" report safety concerns to a government agency or another level of management. See, Couty v. Dole, 886 F.2d 147, 148 (8th Cir. 1989) (threatening to make complaints to the NRC protected activity).

The NRC has authority under 10 C.F.R. 2.206 and 10 C.F.R. 2.202 to grant Petitioners a public hearing with respect to the issues delineated in this petition.

RESPECTFULLY SUBMITTED, this 29th day of March, 1998

NATIONAL LITIGATION CONSULTANTS



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Media

ACTION

COPY

EDO

FROM: DUE: 05/07/98 EDO CONTROL: G980204
DOC DT: 03/30/98
FINAL REPLY:

Thomas J. Saporito, Jr.
National Litigation Consultants

TO: Chairman Jackson

FOR SIGNATURE OF : ** GRN **
Collins, NRR

CRC NO: 98-0293

DESC: 06 -- FLORIDA POWER AND LIGHT COMPANY,
LUCIE AND TURKEY POINT

ROUTING:
Callan
Thadani
Thompson
Norry
Blaha
Burns
Reyes, RII
Lieberman, OE
Cyr, OGC
Goldberg, OGC
Gleaves, NRR

DATE: 04/07/98

ASSIGNED TO: NRR CONTACT: Collins

SPECIAL INSTRUCTIONS OR REMARKS:

NRR ACTION: DRPE:Zwolinski
NRR RECEIVED: April 7, 1998

NRR ROUTING: Collins/Miraglia
Boger
Sheron
Travers
Roe
Zimmerman
NRR Mailroom

ACTION
DUE TO NRR DIRECTOR'S OFFICE
BY 5/4/98

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-98-0293 LOGGING DATE: Apr 3 98
ACTION OFFICE: EDO
AUTHOR: THOMAS SAPORITO
AFFILIATION: FLORIDA
ADDRESSEE: CHAIRMAN JACKSON
LETTER DATE: Mar 30 98 FILE CODE:
SUBJECT: PETITION UNDER 10 C.F.R. 2.206 REQUEST FOR AGENCY
ACTION
.....
ACTION: Appropriate
DISTRIBUTION: CHAIRMAN
SPECIAL HANDLING: 2.206
CONSTITUENT:
NOTES:
DATE DUE:
SIGNATURE: DATE SIGNED:
AFFILIATION: