



*MM Docs*

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST**

**FOIA - 94-373**

RESPONSE TYPE

FINAL #8  PARTIAL

DATE **DEC 16 1994**

DOCKET NUMBER(S) (if applicable)

REQUESTER

Thomas J. Saporito, Jr.

**PART I. - AGENCY RECORDS RELEASED OR NOT LOCATED** (See checked boxes)

- No agency records subject to the request have been located.
- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request that are identified in Appendix(es) N are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
- The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
- Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request are enclosed.\*
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- Fees (Waived)
- You will be billed by the NRC for fees totaling \$ \_\_\_\_\_.
- You will receive a refund from the NRC in the amount of \$ \_\_\_\_\_.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated \_\_\_\_\_, No. \_\_\_\_\_.

**PART II. A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE**

- Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

**COMMENTS**

\*Agency records subject to your FOIA request that are identified on the enclosed Appendix N and the releasable portions of the record identified on the enclosed Appendix O are enclosed.

This completes NRC's action on your request.

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

*[Handwritten Signature]*

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PDR FOIA  
SAPORIT94-373 PDR

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST  
(CONTINUATION)**

FOIA NUMBER(S)

**FOIA — 94-373**

DATE

**DEC 16 1994**

**PART II.B — APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendix(es) 0 are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

- 1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)
- 2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)
- 3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- 4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).
  - The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).
- 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:
  - Deliberative Process. Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client.)
- 6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)
- 7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)
  - Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))
  - Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7(C))
  - The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))
- OTHER

**PART II. C — DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

| DENYING OFFICIAL | TITLE/OFFICE   | RECORDS DENIED | APPELLATE OFFICIAL |           |    |
|------------------|--|----------------|--------------------|-----------|----|
|                  |  |                | EDO                | SECRETARY | IG |
| Stephen G. Burns | Associate General Counsel for Hearings, Enforcement and Administration | Appendix 0     |                    | X         |    |
|                  |  |                |                    |           |    |
|                  |  |                |                    |           |    |
|                  |  |                |                    |           |    |
|                  |  |                |                    |           |    |

**PART II. D — APPEAL RIGHTS**

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

APPENDIX N  
DOCUMENTS BEING PLACED IN THE PDR

| NUMBER | DATE     | DESCRIPTION   |
|--------|----------|---|
| 1.     | 10/09/92 | Note from Varga to Richardson, Thadani, and Congel..with attachment (9 pages)                               |
| 2.     | 11/18/92 | Annotated handwritten notes from Berkow..with attachment (8 pages)  |
| 3.     | 11/18/92 | Handwritten notes from Berkow..with attachment (8 pages)  |
| 4.     | 11/18/92 | Comments from Security Branch (1 page)  |
| 5.     | 12/21/92 | Note from Raghavan to Gody..with attachment (10 pages)  |
| 6.     | 12/22/92 | Note from Raghavan to Gody..with attachment (10 pages)  |
| 7.     | 01/04/93 | Note from Berkow to Mitchell..with attachment (9 pages)   |
| 8.     | undated  | Yellow note indicating response (input) to Sen. Graham's constituents' questions..with attachment (8 pages) |
| 9.     | undated  | Draft letter from Taylor to Graham..with attachment (6 pages)   |
| 10.    | undated  | One annotated page of letter to Shaw (1 page)   |
| 11.    | undated  | Yellow note indicating HP Branch comments..with attachments (9 pages)                                       |
| 12.    | undated  | Input to the Response to Sen. Graham (1 page)   |
| 13.    | undated  | Input to the Response to Sen. Graham (1 page)   |

APPENDIX O  
DOCUMENTS BEING RELEASED IN FART

| NUMBER | DATE    | DESCRIPTION  |
|--------|---------|--|
| 1.     | undated | Annotated draft Director's Decision<br>Under 10 CFR 2.206 (23 pages)<br>Exemption 5 (Deliberative Process,<br>Attorney work-product privilege, &<br>Attorney-client privilege) |



# Florida Energy Consultants, Inc.

520 North U.S. Hwy. 1, Suite 6, Jupiter, Florida 33469-3241  
Telephone and Facsimile: (407) 745-1186

*Toll Free Hot-Line for Safety Concerns and Assistance: (800) 328-3222*

August 13, 1994

FREEDOM OF INFORMATION  
ACT REQUEST

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
White Flint Building  
Washington, D.C. 20500

FOIA-94-373  
Rec'd 8-18-94

Re: Freedom of Information Act Request

Dear Sir:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Part 552, et seq., Florida Energy Consultants, Inc. ("FEC") by and through the undersigned, hereby request copies of any and all U.S. Nuclear Regulatory Commission ("NRC") records and information regarding NRC licensee, Florida Power & Light Company ("FPL"), Docket Nos. 50-335; 50-389; 50-250; and 50-251 and directly or indirectly related to the NRC's response and/or notification to the licensee of actions sought by individuals and/or organizations from the NRC against the licensee.

Specifically, FEC requests a copy of the following:

1. All NRC responses and/or director's decisions regarding petitions filed under 10 C.F.R. 2.206 seeking action by the NRC against FPL during the time period of January, 1988, until and including August, 1994;
2. All NRC responses, determinations, and/or rulings regarding NRC Atomic Safety and Licensing Board decisions, rulings, and/or determinations concerning FPL during the time period of January, 1988, until and including August, 1994;

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3. All NRC responses, determinations, decisions, and/or rulings concerning any action sought by any individual and/or organization from the NRC regarding FPL during the time period of January, 1988, until and including August, 1994.

This FOIA request seeks information as described above and includes but is not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data, notebooks, books, telephone messages, computations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the three enumerated paragraphs above.

FEE WAIVER REQUEST

In accordance with 10 C.F.R. 9.41(a)(2) and (b), FEC hereby requests that all fees be waived because:

Purpose:

1. The information sought will contribute significantly to the public's understanding of the operations of the government and/or is primarily in the public interest. This FOIA request seeks information relevant to a Department of Labor ("DOL") discrimination complaint filed under the Energy Reorganization Act of 1974 as amended 42 U.S.C. 5851 ("ERA") concerning the undersigned and FPL. The Secretary of Labor has determined that cases under 29 C.F.R. Part 24 involve the litigation of "health and safety hazards to the public" not merely "private harms." See, Polizzi v. Gibbs & Hill, Inc., Case No. 87-ERA-38, slip op. of SOL at pp.2-3 (July 18, 1989).

Extent:

2. FEC will diligently extract and analyze the substantive content of the agency record.

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Nature & Qualifications:

3. FEC's activity and research will support and provide a basis for litigation under the ERA as described above. The undersigned is an experienced worker in the nuclear industry with over 10-years of knowledge about the agency's regulations and the DOL process. Moreover, the undersigned won a favorable decision in ERA Case No. 92-ERA-30 as a pro se litigant. There in that case as here in Saporito v. FPL et. al., similar procedures are followed in presenting a *prima facie* case.

Likely Impact on the Public's Understanding of the Subject:

4. The information and subsequent actions by FEC will be widely disseminated to the public through press releases and through grassroots environmental organizations and through FEC. Thus, the public's awareness and understanding of the agency's behavior and performance and that of the DOL and NRC's licensee as well as the adverse consequences born by whistleblowers like the undersigned will be greatly enhanced.

Size and Nature of the Public:

5. Nationwide distribution of materials across the continental United States of America.

Means of Distribution:

6. Via the media; news releases; FEC publications; public school lectures; television and radio programs; etc.

Public Access to Information:

7. Public access to information will be provided free of charge.

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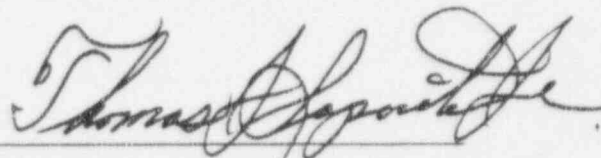
Requester's Commercial or Private Interest:

8. The requester has no commercial or private interest.

For any documents or portions of documents that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C. Cir. 1973). Cert. denied, 415 U.S. 977 (1974).

I look forward to your timely response to this FOIA request within 10-days as the law provides.

Very truly yours,



Thomas J. Saporito, Jr.  
President and CEO

cc: file