

May 23, 2020

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sent via Email
MSHD.Resource@nrc.gov

**REQUEST FOR NRC ENFORCEMENT ACTION AGAINST
NEXTERA ENERGY AND FLORIDA POWER & LIGHT CO.**

This Request for NRC Enforcement Action is submitted by Thomas Saporito (hereinafter "Petitioner") – a former employee at the NextEra Energy - Florida Power and Light Company (FPL) Turkey Point Nuclear Plant (TPN) in 1988.

§ 2.206 REQUESTS FOR ACTION UNDER THIS SUBPART.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by electronic submissions, for example, via facsimile, Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to *MSHD.Resource@nrc.gov*; or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

(c)(1) Director's decisions under this section will be filed with the Office of the Secretary. Within twenty-five (25) days after the date of the Director's decision under this section that no proceeding will be instituted or other action taken in whole or in part, the Commission may on its own motion review that decision, in whole or in part, to determine if the Director has abused his discretion. This review power does not limit in any way either the Commission's supervisory power over delegated staff actions or the Commission's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this section.

(2) No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission.

(3) The Secretary is authorized to extend the time for Commission review on its own motion of a Director's denial under paragraph (c) of this section.

[39 FR 12353, Apr. 5, 1974, as amended at 42 FR 36240, July 14, 1977; 45 FR 73466, Nov. 5, 1980; 52 FR 31608, Aug. 21, 1987; 53 FR 43419, Oct. 27, 1988; 64 FR 48948, Sept. 9, 1999; 68 FR 58799, Oct. 10, 2003; 69 FR 2236, Jan. 14, 2004; 69 FR 41749, July 12, 2004; 70 FR 69421, Nov. 16, 2005; 72 FR 33386, Jun. 18, 2007; 74 FR 62679, Dec. 1, 2009; 80 FR 74978, Dec. 1, 2015]

PETITIONER REQUESTS THE FOLLOWING ENFORCEMENT ACTION AGAINST THE LICENSEES

- Issuance of a monetary civil penalty in the amount of One-Million Dollars and/or a civil penalty in an amount as applicable under NRC regulation and authority.

BASIS AND JUSTIFICATION

§ 50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

[63 FR 1897, Jan 13, 1998]

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The

protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(e)(1). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days

after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, via email to Forms.Resource@nrc.gov, or by visiting the NRC's online library at <http://www.nrc.gov/reading-rm/doc-collections/forms/>.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

[58 FR 52410, Oct. 8, 1993, as amended at 60 FR 24551, May 9, 1995; 61 FR 6765, Feb. 22, 1996; 68 FR 58809, Oct. 10, 2003; 72 FR 63974, Nov. 14, 2007; 79 FR 66603, Nov. 10, 2014; 83 FR 58465, Dec. 12, 2018]

LICENSEE'S DELIBERATE ACTS OF MISCONDUCT, WILLFULL WRONGDOING, AND DISCRIMINATION

- Petitioner avers here that during his employment at (TPN) as an Instrument and Control Technician in 1988 – he notified the Licensee(s) about numerous nuclear safety concerns observed on the job at TPN. These nuclear safety concerns were made verbally to supervision and documented in Plant Work Orders (PWOs). Notably in 1988 TPN was on the NRC's Watch List of Worst Performing Nuclear Plants. Moreover, the NRC was especially concerned about repetitive procedure violations at TPN. Strict adherence to procedures at TPN was mandated by the NRC through the issuance of operational licenses for the two nuclear reactors at TPN. The Licensee had been the subject of numerous enforcement actions by the NRC for failure to follow procedures at TPN.
- Joe Kappes was the Maintenance Superintendent at TPN and had authority over the Instrument Control Dept. (I&C) where Petitioner worked. In approximately early March of 1988 – Kappes entered the I&C Dept. and stated to all employees that from that day forward “**VERBATIM COMPLIANCE TO PROCEDURES WAS MANDATORY**” and that there would be no exceptions
- Petitioner documented his concerns about procedure violations in his PWOs at TPN but the Licensee failed to engage Petitioner about [h]is nuclear safe concerns – which entailed more than procedure violations.
- Having lost all confidence in the Licensee to address his nuclear safety concerns, Petitioner hand delivered a letter to a representative of the Institute of Nuclear Plant Operators (INPO) outlining his nuclear safety concerns Shortly thereafter the Licensee began a Witch Hunt and Search and Destroy mission to get rid of Petitioner.

- Petitioner observed an NRC Form 3 Notice displayed at TPN and contacted Oscar Demiranda, Region II Senior Allegations Coordinator about his nuclear safety concerns. Demiranda maintained continuous contact with Petitioner via the telephone and regularly called Petitioner at his home in Florida to discuss his nuclear safety concerns and retaliatory actions taken against Petitioner by the Licensee. Notably, Petitioner advised Demiranda that many of his nuclear safety concerns were documented in his PWOs at TPN and that the Licensee was fully aware.
- Petitioner became the focus of retaliatory conduct by the Licensee shortly after raising nuclear safety concerns. Jerry Harley was the I&C Supervisor at TPN in 1988. He singled out Petitioner for a job that required entry in the nuclear reactor containment building – while the nuclear reactor was fully operational at power. Notably – this was a **HIGH RADIATION EXPOSURE** job. Notably, NRC requirements mandate that the Licensee assign such High Radiation Exposure jobs to employees who have the **“least amount of accumulated”** radiation at TPN. In this case, there were many other employees in the I&C Dept. with far lower accumulated radiation exposure than Petitioner. Clearly – this act by the Licensee was a violation of NRC requirements under 10 CFR Part 50 and under other NRC authority and a violation of the two nuclear reactor NRC licenses. Moreover, this was yet another violation of the Licensee's technical specifications to verbatim comply with procedures at TPN. Not only did the licensee violate NRC requirements in this instance – but the Licensee jeopardized Petitioner's very life and well-being – and the **Licensee failed to self-identify this violation to the NRC as required under NRC regulations.**
- The job required protective clothing and a full face respirator. Shortly after completing the job assignment – Petitioner suffered from extreme heat exhaustion and went home sick. Harley – the Licensee manager who singled Petitioner out for this job – held the PWO in his hand - high in the air - and walked around the I&C Dept. laughing and stating **“I got him, I got him, I sent him home sick”**. This conduct by Harley demonstrates a significant animus against the Petitioner following [h]is raising nuclear safety concerns to the Licensee and to INPO and to the NRC. The conduct by the Licensee by a Department Manager is particularly concerning because it develops a **Hostile Work Environment at TPN and a Chilling Effect to other employees at TPN to dissuade them from raising nuclear safety concerns.**
- There were numerous other acts of retaliation taken against Petitioner due to his raising nuclear safety concerns at TPN. For example, Petitioner was assigned demeaning jobs such as arranging books on book shelves. Petitioner was removed from a quality group which was formed by Petitioner to address procedure adherence. The Licensee dissolved the group entirely. Petitioner was banished to work outside the plant in an exterior building to rebuild huge valve actuators –

because other employees were using Petitioner as a conduit to raise nuclear safety concerns to NRC DeMiranda as a **Chilling Effect was in full force at TPN.**

- During a telephone conversation between Petitioner and NRC DeMiranda in the latter part of 1988 – DeMiranda told Petitioner that John Odom, Senior Vice President at TPN called him to inquire about Petitioner's nuclear safety concerns. DeMiranda stated that he told Odom that Petitioner had documented other safety concerns in his PWOs at TPN and that Odom should provide the PWOs to Petitioner for review. DeMiranda instructed Petitioner NOT to disclose his nuclear safety concerns about **“Willful Wrongdoing”** by the Licensee because the NRC Office of Investigation (OI) was conducting an investigation and did not want their investigation compromised.
- The Licensee fired Petitioner in late December 1988 – for three stated reasons of insubordination – all related – to Petitioner's raising nuclear safety concerns. Petitioner filed a discrimination complaint under the Energy Reorganization Act (ERA). A hearing was held in January 1989 before an Administrative Law Judge (ALJ) with the Department of Labor. Judge Iacoba was assigned. Years later the Secretary of Labor issued a Remand Order but found FPL had violated the ERA. Notably – the Secretary of Labor found **Odom's testimony under oath to be disingenuous.**
- During the hearing – witness testimony under oath was taken and affirmed that Harley – the I&C Dept. manager pranced around the I&C Dept. exclaiming “I got him, I got him, I sent him home sick”. **Harley testified in open court that [h]e wished Petitioner had died on that job.**
- Odom testified that Petitioner had been fired for three specific reasons:
 - Failure of Petitioner to tell Odom his nuclear safety concerns
 - Failure of Petitioner to attend a meeting with Odom about his nuclear safety concerns
 - Failure of Petitioner to be examined by the company doctor.
- Odom testified under oath that the NRC was not technically competent to determine what a nuclear safety concern was at TPN.
- Odom admitted that [h]e gave Petitioner a direct order to tell the NRC his nuclear safety concerns and that Petitioner agreed to do so – although NRC had been made fully aware of Petitioner's nuclear safety concerns prior.
- **Odom admitted at the (first of two hearings before the DOL) that a job steward who attended Petitioner's visit to the company doctor – told [h]im Odom – that Petitioner did NOT REFUSE to be examined by the company doctor.**

- At the second hearing – Odom testified that [h]e made the decision to fire Petitioner – **before Petitioner went to the doctor's office**. Therefore – this reason for firing Petitioner by the Licensee was a pretext and simply not true.
- Petitioner did contact NRC DeMiranda again about his nuclear safety concerns as ordered by Odom and Odom was fully aware via his contact with NRC DeMiranda. Moreover, prior to the meeting where Odom ordered Petitioner to tell the NRC his nuclear safety concerns – Petitioner was summoned to a meeting with Joe Kappes where Petitioner fully explained generally about his nuclear safety concerns but needed his PWOs to write a report to give to the NRC. Kappes complemented Petitioner about his general nuclear safety concerns – but told Petitioner – that **“Odom and others just wanted to get rid of you”**. Kappes never provided any PWOs to the Petitioner.
- Petitioner told Kappes in November 1988 that he could not attend a meeting with Odom where Odom again wanted to ask about Petitioner's nuclear safety concerns because he was sick.
- At the second hearing Kappes admitted under oath that Petitioner was paid for his sick leave – and that Petitioner's sick leave was valid. Petitioner provided FPL with a doctor's note excusing his absence from work.
- Moreover, Kappes admitted at the first hearing that he gave another employee numerous direct orders and that the other employee refused to obey the director orders. Kappes further testified that the other employee was NOT fired – but instead – Kappes treated the other employee to lunch.
- **Odom further testified under oath at the second hearing that if Petitioner had NOT raised any nuclear safety concerns – that [h]e Odom would NOT have fired Petitioner.**

SUMMARY

NRC regulations and requirements under 10 CFR Part 50 and under numerous other implementing NRC regulations and authority prohibit wrongdoing, harassment, retaliation, and firing of employees – like Petitioner – who raise nuclear safety concerns.

In this instance – Petitioner avers that the licensee **intentionally** assigned [h]im a job by Jerry Harley the I&C Dept. manager for the sole purpose of retaliation – for which Harley intended to cos a Chilling Effect of other I&C employees by – parading around the I&C Dept. holding in his hand the PWO assigned to Petitioner – and yelling out - **“I got him, I got him, I sent him home sick”** - for which Harley later testified at the DOL hearing under oath that [h]e **Harley wished that Petitioner had died on that job assignment.**

Odom's testified at the second hearing that but for **Petitioner's raising nuclear safety concerns at TPN – [h]e Odom would NOT have fired Petitioner.**

To the extent that the two DOL hearings ultimately resolved in the Licensee's favor is of no import in this 2.206 Enforcement Petition – where the Licensee admitted at two separate DOL hearings under oath – about willful wrongdoing and retaliatory conduct in direct violation of NRC regulations and authority under 10 CFR Part 50 and under various other NRC regulations and authority.

Indeed – NRC licensees are REQUIRED to report violations of NRC regulations under 10 CFR Part 50 and under various other NRC regulations and authority. In the instant action – not only did the licensee fail to report the violations expressed above to the NRC – the licensee **intentionally engaging in such wrongdoing** – resulting in a chilling effect at TPN.

To the extent that the Licensee prevailed before the DOL under the ERA – the DOL Administrative Review Board (ARB) failed to conduct a “Dual Motive Analysis” of the case docketed as 89-ERA-7 & 17 – but merely repeated the Licensee's briefing verbiage – and failed to properly observe the transcript record and numerous exhibits – which prove that Petitioner was fired – **just like Odom testified** – because Petitioner raised nuclear safety concerns at TPN.

To the extent that the NRC is an agency of the U.S. Government – separate and apart from the DOL – which can only provide a make whole remedy – the NRC is mandated by Congress to protect public health and safety by taking significant enforcement actions against licensees – like NextEra Energy and FPL – for intentionally retaliating against an employees who raise nuclear safety concerns.

Furthermore – the specific wrongdoing issues brought in the instant enforcement Petition have NOT previously been addressed by the NRC Petition Review Board (PRB) and are therefore properly brought at this time – as there is NO time limit which prevents the NRC from taking enforcement action against a licensee in such matters.

Respectfully submitted,

Thomas Saporito

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SERVICE SHEET

Administrative Review Board
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW C-2318
Washington, D.C. 20210
Sent via email: executivesecretariat@dol.gov

Director of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Sent via email: NRCExecSec@nrc.gov

Board of Directors
NextEra Energy
700 Universe Boulevard
Juno Beach, FL 33408

NRCExecSec Resource

From: Thomas Saporito <saprodani@gmx.com>
Sent: Tuesday, May 26, 2020 10:12 AM
To: NRCExecSec Resource
Subject: [External_Sender] 2.206 Enforcement Petition - NextEra Energy-FPL
Attachments: 2020.05.23 FPL 2.206 Petition.pdf

Please provide the attached 2.206 Enforcement Petition to the NRC Executive Director for Operations for processing.

Thank You!

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