



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 23, 1998

Mr. Thomas J. Saporito, Jr.
Executive Director
National Litigation Consultants
6230 Indiantown Road
No. 7-355
Jupiter, FL 33458

SUBJECT: REQUEST FOR INVESTIGATION OF THE U.S. NUCLEAR REGULATORY
COMMISSION (NRC)

Dear Mr. Saporito:

This letter acknowledges our receipt of a copy of your February 9, 1998, letter to the President's Office of Professional Responsibility in which you requested an investigation of the NRC. The NRC takes its responsibility of protecting, to the extent possible, the identity of individuals who raise safety concerns to us very seriously. In this regard, following notification of the error by the staff, the Office of the Inspector General has initiated an inquiry into the staff's handling of the responses to the Freedom of Information Act (FOIA) requests. In addition, an independent Task Force was chartered by the Executive Director for Operations to review not only the circumstances surrounding the aforementioned events but the NRC's overall process for handling FOIA requests related to allegation materials.

We are responding at this time because the description of the released information provided in your letter is not an accurate reflection of the information released or the parties that received the information. You indicated that the basis for the request was information you received from an employee of Florida Power & Light Company's (FPL) St. Lucie Plant indicating that NRC had publicly released information that the employee provided related to safety concerns at the plant. Specifically, you stated that the St. Lucie employee had advised you that: (1) NRC released confidential safety concerns to the newspaper which identified the employee by name as the source of the safety concerns; and (2) FPL notified the NRC that the employee's concerns were found in the local Public Document Room (PDR) bearing the employee's name.

With regard to the inappropriate release of information described in your February 9, 1998, letter, on February 6, 1998, Anne Boland, Director, Enforcement and Investigations Coordination Staff, Region II, notified the St. Lucie employee you reference of a potential compromise of his identity during the processing of two FOIA requests from the Port St. Lucie News. To clarify the record regarding your characterization of this issue, the employee was advised of the following:

- In processing the first of these FOIA requests, the NRC provided to the newspaper information which included a brief description of the employee's allegations to the NRC. Although the information did not include this employee's name, it was subsequently determined that a knowledgeable individual at the St. Lucie site could possibly determine

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his identity from the specifics of the allegation information provided. Information from this FOIA request was placed in the PDR, the local PDR, and we subsequently learned that the licensee had obtained a copy of the document.

- In processing the second FOIA request, the NRC released information regarding the employee's allegations, and his name was inadvertently included in an index of documents which was provided to the newspaper. Information from this FOIA request was placed in the PDR in Washington, D.C. for a brief period of time; however, it was never placed in the local PDR in the St. Lucie area, and the licensee told the staff that they did not receive a copy of information bearing the employee's name.

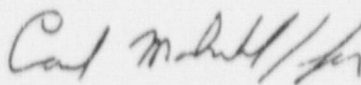
As indicated above, based on our understanding of the information, the document specifically identifying the employee's name was not placed in the local PDR nor was it in the possession of FPL. To our knowledge, the newspaper was the only possessor of the document with the employee's name, and they indicated that it was not their intent to expose any individuals. Following the paper's initial review of the material, the reporter informed the staff that he either did not receive the appendix that included the alleged's name or he did not keep it.

At this time, all of the information from both FOIA requests has been removed from the PDR and the local PDR. In addition, as of February 13, 1998, FPL had returned the documentation that was inappropriately released under the first FOIA request to the NRC. The newspaper also indicated that they will return the pages that contain the inappropriately released material.

In summary, the staff inappropriately released information to the licensee that could have resulted in identifying the individual referred to in your letter. However, the licensee stated they did not receive the document that responded to the second FOIA request that included the individual's name. Nevertheless, in your February 9, 1998 letter, that you indicated was provided to FPL, the individual was identified by name.

If you have any questions regarding the NRC's actions with respect to these issues, you may contact me at 301-415-8529.

Sincerely,



Edward T. Baker
Agency Allegation Advisor

bcc: Mr. Larry Heigel
625 32 Avenue, SW
Vero Beach, FL 32968

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February 09, 1998

Hon. William Jefferson Clinton
President of the United States
President's Office of Professional Responsibility
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

RE: Request for Investigation of the U.S. Nuclear Regulatory Commission

The undersigned and National Litigation Consultants ("NLC"), (hereinafter "Petitioners"), hereby respectfully request that the President's Office of Professional Responsibility initiate actions to cause an investigation of the U.S. Nuclear Regulatory Commission ("NRC") for an apparent breach of conduct and failure to comply with federal regulations under Title 10 of the Code of Federal Regulations and other federal regulations and requirements mandated by the United States Congress for the proper regulation of commercial nuclear power generation stations in the United States of America.

BASIS AND JUSTIFICATION FOR REQUEST

On February 06, 1998, the undersigned was contacted by telephone by Mr. Larry Hiegel, an employee at the St. Lucie Nuclear Power Station owned and operated by the Florida Power & Light Company ("FPL") with corporate offices located at 700 Universe Boulevard, Juno Beach, Florida 33408. Mr. Hiegel stated that Ms. Ann Boland, the NRC's Director of Allegations for Region II in Atlanta, Georgia contacted him at approximately 6:00 p.m. on February 06, 1998 and informed him of the following:

(1) that a representative of the Port St. Lucie Newspaper had filed a Freedom of Information Act ("FOIA") requesting certain information and that the NRC released **CONFIDENTIAL** safety concerns to the newspaper which identified Mr. Hiegel by name as the source of the safety concerns which had been provided to the NRC about operations at the FPL St. Lucie Nuclear Station; and

Post-it* Fax Note	7671	Date	11 of pages
To	Ed Baker	From	Anne Boland
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

(1)

(2) that the licensee FPL notified Ms. Boland that Mr. Hiegel's safety concerns were found at the local Public Document Room ("PDR") bearing Mr. Hiegel's name.

*Not
True.*

Mr. Hiegel is seriously concerned that his future employment at FPL may now be in jeopardy due to the NRC's improper conduct in releasing his identity and his **CONFIDENTIAL** communications "safety concerns" that he gave in trust to the government. Indeed, the U.S. Department of Labor ("DOL") has found FPL to have illegally violated the law under 42 U.S.C. 5851 with respect to other employees who have raised safety concerns to the NRC in the past about operations at FPL's nuclear stations.

Clearly, the statutory and regulatory scheme enacted by Congress was meant to protect the public from the hazards of nuclear contamination and radiation by protecting employees, like Mr. Hiegel, from retaliation for raising safety concerns to the NRC. Moreover, NRC regulations expressly provide that employees and the NRC may communicate **privately** without interference. See, e.g., 10 C.F.R. Part 19.15 which states, in part, relevant hereto that:

(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 private 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 . . .

Furthermore, NRC Form 3 informs employees that they may contact the NRC directly without first reporting safety concerns to their employers. See also, 10 C.F.R. 19.12 (c). The NRC recognizes that employees have a right to communicate directly with the government as follows:

(i) Providing the Commission information about possible violations of requirements imposed under [the Energy Reorganization Act "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.

See, 10 C.F.R. 50.7 (a); and 55 Fed. Reg. 10397, 10402, "Preserving the Flow of Information to the Commission" (March 21, 1990).

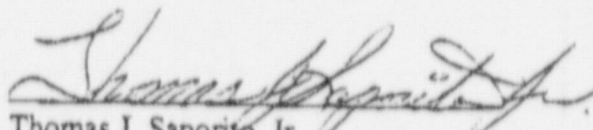
Thus, in order to insure that public health and safety is protected from the adverse affects of an accident caused at a commercial nuclear power station, the President's Office of Professional Responsibility is compelled to investigate the NRC with respect to the circumstances surrounding this incident resulting in the improper release of Mr. Hiegel's identity and safety concerns by the government.

Moreover, the government should initiate actions to insure that the NRC's misconduct has not instilled a "chilling effect" at FPL's nuclear stations dissuading other employees from CONFIDENTIALLY raising safety concerns to the NRC. Finally, the government should put the licensee FPL on notice that no adverse employment actions are to be taken against Mr. Hiegel for his engagement in protected activities at the St. Lucie nuclear station and that the NRC encourages employees, like Mr. Hiegel, to CONFIDENTIALLY communicate safety concerns to the government for resolution.

has
been
done

Petitioners hereby request the aforementioned actions be taken under 10 C.F.R. 2.206 and all other relevant and applicable government regulations and laws available under United States Code. Finally, Petitioners request that a public hearing be held at or near the St. Lucie Nuclear Power Station to allow participation by Petitioners and the public to learn the facts in this matter before the NRC's Atomic Safety and Licensing Board; and that the government conduct NRC Senate Oversight Committee hearings seeking attendance and input from the NRC's Commissioner, the Hon. Shirley Jackson; and grant Petitioners leave to intervene in such matters on behalf of the public's interest.

Respectfully submitted,



Thomas J. Saporito, Jr.
Executive Director
National Litigation Consultants

cc: Hon. Bob Graham
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United States Senate
Washington, D.C. 20510-0903

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