

U.S. NUCLEAR REGULATORY COMMISSIONFLORIDA POWER & LIGHT CO.ST. LUCIE PLANT, UNITS 1 AND 2TURKEY POINT PLANT, UNITS 3 AND 4DOCKET NOS. 50-335, 50-389, 50-250, AND 50-251ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated February 26, and 27 and March 6, 1998, (as supplemented March 15 and 17, 1998) and March 29, and 30, and April 4, 1998, filed by Thomas J. Saporito, Jr., on behalf of himself and the National Litigation Consultants (NLC) (Petitioners), pursuant to Section 2.206 of Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR 2.206). The Petitioners requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to operations at the Florida Power & Light's (FPL's or licensee's) St. Lucie Plant, Units 1 and 2, and Turkey Point Plant, Units 3 and 4.

The Petitioners requested that the Commission take numerous actions, including certain immediate actions, with regard to FPL's St. Lucie and Turkey Point Plants. The Petition requested that the NRC (1) take escalated enforcement action, including modifying, suspending, or revoking FPL's operating licenses until it demonstrates that there is a work environment that encourages employees to raise safety concerns directly to the NRC, and issuing civil penalties for violations of the NRC's requirements; (2) permit the Petitioners to intervene in a public hearing regarding whether FPL has violated the NRC's employee protection regulations and require FPL to allow NLC to assist FPL's employees in understanding and exercising their rights under these regulations; (3) conduct investigations and require FPL to obtain appraisals and third-party oversight in order to determine whether its work environment encourages employees to freely raise nuclear safety concerns; (4) inform all

employees of their rights under the Energy Reorganization Act and NRC's regulations to raise such concerns; and (5) establish a website on the Internet to allow employees to raise concerns directly to the NRC. As grounds for these requests, the Petitioners assert that there is a widespread hostile work environment at FPL's facilities and that certain employees have been subjected to discrimination for raising nuclear safety concerns, and that the NRC's process for handling allegations and responding to concerns of discrimination has been ineffective. In addition, the Petition requested that the NRC immediately investigate concerns that contamination occurred and remains uncorrected because of the flow of water from radiologically controlled area at St. Lucie into an unlined pond, that FPL is improperly grouping work orders in order to reduce the number of open orders, that an excessive number of outside contract laborers remains on site, and that because NRC Resident Inspectors are only assigned to the day shift, many employees do not have access to the Resident Inspectors and they cannot monitor safety-related work functions outside the day shift. As grounds for this request, the Petitioners assert that the storm drains from FPL's radioactive contaminated area flow into the pond and that FPL is aware of the problem but has failed to identify or correct this and directs its Health Physics personnel to survey the pond by sampling only surface water.

As described in the Director's Decision, the NRC has already undertaken certain of the actions that the Petitioners have requested. Specifically, the NRC has conducted numerous inspections evaluating the circumstances of many of the issues that the Petitioners have raised, and has reviewed the settlement agreement referred to by the Petitioners in order to determine whether it contains any restrictive provisions that may "chill" the workforce. Thus, to the extent that Petitioners have requested that the NRC investigate these issues and review the settlement agreement, the Director of the Office of Nuclear Reactor Regulation has granted the Petition. In all other respects, the Petition is denied. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-98-10), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC. A copy of the Decision will be filed with the Secretary of the Commission for the Commission and will be reviewed in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of this Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 21st day of October 1998.

FOR THE NUCLEAR REGULATORY COMMISSION

ORIGINAL SIGNED BY:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

DIRECTOR'S DECISION PURSUANT TO 10 CFR 2.206

I. INTRODUCTION

By Petitions dated February 26 and 27, March 6, 1998 (as supplemented March 15 and 17, 1998), and Petitions dated March 29 and 30, and April 4, 1998, submitted pursuant to Section 2.206 of Title 10 of the CODE OF FEDERAL REGULATIONS (Petition), Mr. Thomas J. Saporito, Jr., and the National Litigation Consultants (NLC) (Petitioners) requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) take numerous actions with regard to operations at Florida Power and Light Company's (FPL's or licensee's) St. Lucie and Turkey Point Plants. Briefly summarized, the Petitioners requested that the Commission: (1) take escalated enforcement action, including modifying, suspending, or revoking FPL's operating licenses until FPL demonstrates that there is a work environment which encourages employees to raise safety concerns directly to the NRC, and issue civil penalties for violations of the NRC's requirements; (2) permit Petitioners to intervene in a public hearing regarding whether FPL has violated the NRC's employee protection regulations and require FPL to allow NLC to assist its employees in understanding and exercising their rights under these regulations; (3) conduct investigations and require FPL to obtain appraisals and third-party oversight of its performance; (4) require the licensee to inform all employees of their rights under the Energy Reorganization Act and NRC's regulations to raise nuclear safety concerns; and (5) establish a website on the Internet to allow employees to raise concerns to the NRC.

On May 4, 1998, I acknowledged receipt of the Petition and informed the Petitioners that the Petition had been assigned to me pursuant to 10 CFR 2.206 of the Commission's regulations. In my acknowledgment letter, the Petitioners were informed that their request for immediate action was denied. I also informed the Petitioners that certain of their requests did not meet the criteria for treatment under 10 CFR 2.206 (in particular, the request that the NRC

establish a website for the raising of nuclear safety concerns and the request to intervene in a public hearing), and that these requests would be addressed in separate correspondence.¹ The Petitioners were further advised that their assertions of inadequate NRC action had been referred to the Office of the Inspector General (OIG), and that action would be taken on the Petitioners' remaining requests within a reasonable time.

On August 6, 1998, the licensee filed its response to the Petition. In its response, the licensee maintained that the Petitioners had not raised any substantial health or safety issues, and that the Petition should therefore be denied.

II. DISCUSSION

The Petitioners have raised numerous issues as bases for their requests for various actions by the NRC. In order to facilitate consideration of the Petitioners' requests, they have been grouped together in the following categories: (1) requests related to assertions of licensee discrimination, "chilling effect" on the raising of nuclear safety concerns, and a hostile work environment; (2) requests related to assertions of licensee failure to establish or implement procedures or meet technical specifications; and (3) requests related to investigation of radioactive contamination and additional safety concerns. The issues raised by the Petitioners in support of each of these requests, and the NRC's evaluation of these issues, are summarized below.

A. Requests Related to Assertions of Licensee Discrimination, "Chilling Effect" on the Raising of Nuclear Safety Concerns, and a Hostile Work Environment

The Petitioners have made numerous and repetitive requests in connection with their claim that the licensee has discriminated against employees and that the work environment at both St. Lucie and Turkey Point discourages the raising of nuclear safety concerns. In their February 26, 1998, submittal, they request that the NRC: (1) take escalated enforcement

¹These requests were addressed in correspondence to Mr. Saporito dated July 15, 1998.

action, including action to modify, suspend or revoke FPL's operating licenses, until the licensee demonstrates that there is a work environment which encourages employees to raise safety concerns directly to the NRC; (2) require the licensee to post and provide notice to employees and ensure through its training program that employees are aware that they may raise safety concerns to the NRC, and provide written documentation to the NRC affirming that the licensee has complied with these requirements; (3) investigate the circumstances surrounding adverse actions taken against a certain named employee and other employees to determine if a hostile work environment or "chilling effect" exists, if FPL's Employee Concerns Program (ECP) is effectively utilized, and whether management needs further training in developing skills to encourage utilization of the ECP; and (4) establish an Augmented Maintenance Inspection Team to investigate Petitioners' concerns regarding asserted deterioration of licensee performance, inadequate work force, and strained resources. As grounds for these requests, Petitioners assert that as a result of the NRC's failure to protect employees, a "chilling effect" has been instilled, that FPL has discriminated against employees including one specifically named employee, and that FPL has engaged in "punitive suspensions" which one can infer are intended to prevent the work force from engaging in protected activity. The Petitioners make similar requests and assertions in their February 27, 1998, submittal. For example, they repeat their request that the NRC initiate an Augmented Maintenance Inspection Team to determine if licensee layoff "restructuring" has resulted in an inadequate work force. In addition, they request that the NRC initiate actions to investigate recent allegedly discriminatory actions taken by the licensee against another named employee. As grounds for these requests, the Petitioners assert that this named employee and other employees are concerned about retaliation against them for raising safety concerns, and that FPL has announced intentions to significantly cut its work force.

With regard to the Petitioners' assertions regarding alleged discrimination against specifically named individuals, the Petitioners have not provided sufficient information to

indicate that these individuals suffered any adverse action for having engaged in protected activity. Therefore, no action by the NRC is warranted based upon these assertions. With regard to the Petitioners' assertions concerning a "chilling effect" at the licensee's facilities, the Petitioners have offered no evidence to substantiate this claim. The results of the two most recent NRC inspections of FPL's ECP, conducted in April - May 1996 and June 1997, indicate that FPL's ECP has been effective in handling and resolving individual concerns. The inspections also determined that the ECP has been readily accessible, and employees are familiar with the various available avenues by which they can express their concerns. The results of these inspections are documented in Inspection Report Nos. 50-250/96-05, 50-251/96-05, 50-335/96-07, and 50-389/96-07, dated May 31, 1996, and Inspection Report Nos. 50-335/97-08 and 50-389/97-08, dated July 16, 1997. Although some weaknesses were noted during the April-May 1996 inspection, the June 1997 inspection determined that improvements had been made. In addition, during this inspection, all of the employees interviewed by the NRC inspectors indicated that they would be willing to raise perceived safety concerns to licensee management. In addition, senior NRC regional management has met with FPL on several occasions to ensure the continued sensitivity to this matter.

In addition, FPL has taken various actions since the weaknesses in its program were identified in 1996, to ensure that employees feel free to raise safety concerns. These actions included conducting specific training for managers and supervisors in handling safety concerns, the inclusion of a discussion on the rights and responsibilities of employees in general employee training; the posting of ECP information in the plants, and the issuance of various site communications on the topic of raising safety concerns. Most recently, in April 1998, the licensee issued a communication to all employees emphasizing their right to raise safety concerns to their supervisors, to the ECP, or to the NRC. The licensee included as an attachment to this communication a copy of the NRC Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation."

With regard to the Petitioners' assertion that the licensee has engaged in "punitive suspensions" to prevent the work force from engaging in protected activity, although the licensee established a more stringent disciplinary action program in mid-1997, including suspensions of employees, this program was established in response to continued non-compliances. Contrary to the Petitioners' assertion, the NRC has not found any indication that FPL has engaged in "punitive suspensions" intended to prevent the work force from engaging in protected activity nor have the Petitioners provided any information in support of this assertion. The NRC's assessment is based on the staff's continued involvement in monitoring licensee performance by way of the Resident Inspector Program and management meetings regarding the effectiveness of FPL's ECP. Based on the above, there is no basis for initiation of any of the actions that the Petitioners have requested in these submittals.

In their March 15 submittal, Petitioners request that the NRC order FPL to: (1) provide, through its training program, and by written communication to employees, information about the Energy Reorganization Act (ERA) and Department of Labor (DOL) process; and (2) permit NLC to address its employees as to their rights under the ERA, assist them in resolving complaints of retaliation, and act as a "conduit" for employees providing concerns confidentially to the NRC. As grounds for these requests, Petitioners have submitted a newspaper article which they assert documents FPL's employees' fear of raising safety concerns to the NRC. In this connection, in their March 17 submittal, Petitioners additionally request that the NRC order FPL to immediately inform a specifically-named employee in writing that FPL encourages him to raise safety concerns directly to the NRC and will not retaliate against him for this conduct. As grounds for this request, the Petitioners assert that this individual fears retaliation as a result of the NRC having released his identity to the licensee with respect to safety concerns that he provided.

As fully explained in Director's Decisions issued on May 11, 1995 (DD-95-7, 41 NRC 339) and September 8, 1997 (DD-97-20, 62 NRC 177) in response to earlier Petitions filed by

Mr. Saporito, the NRC has in place numerous measures that ensure that employees will be aware of their right to raise nuclear safety concerns and of their rights under the ERA. These measures include the requirement in 10 CFR 19.11(c) that all licensees post NRC Form 3, "Notice to Employees," which describes employee rights and protections. In addition, 10 CFR 50.7 and associated regulations were amended in 1990 to prohibit agreements and/or conditions of employment that would restrict, prohibit, or otherwise discourage employees from engaging in protected activity. Finally, in November 1996, the NRC issued a brochure, "Reporting Safety Concerns to the NRC" (NUREG/BR-0240), which provided information to nuclear employees on how to report safety concerns to the NRC, the degree of protection that was afforded the employee's identity, and the NRC process for handling an employee's allegations of discrimination. These measures are sufficient to alert employees in the nuclear industry that they may take their concerns to the NRC, and alert licensees that they shall not take adverse action against an employee who exercises the right to take concerns directly to the NRC.

The newspaper article submitted by the Petitioners in support of their requests ² claims that, because the NRC inadvertently released names of some employees who filed confidential reports of safety concerns about the St. Lucie plant, employees are afraid to continue to raise concerns to the NRC or FPL. By way of background, in January, 1998, the NRC was made aware that, in response to two inquiries under the Freedom of Information Act (FOIA), it had released numerous documents in December 1997 and January 1998 to a local newspaper which inadvertently included the names of employees who had filed allegations with NRC, and information which could be used to identify certain other allegeders. Although, to the NRC's knowledge, the names of these employees were not released by the newspaper, FPL obtained some of the documents which provided sufficient information such that there may have been a

²Neither the source nor date of the article have been provided.

possibility that the employees' identities could have been determined by the licensee.³

In response to this occurrence, NRC Region II staff performed a review of previous responses to FOIA requests, to determine if there had been additional instances in which information may have been inappropriately released to the public. As a result of this review, it was determined that in response to two additional FOIA requests involving the St. Lucie facility, names of alleged and certain information which could be used to identify alleged had been inadvertently released.

The NRC took numerous actions in response to these events. For example, on February 27, 1998, the Regional Administrator, Region II, sent a letter to FPL documenting the inappropriate release of information and stressing the need for FPL and its managers to emphasize awareness of the Commission's Employee Protection regulations and policies so as to maintain an environment where individuals are not subject to retaliatory discrimination for raising safety concerns.⁴ In addition, telephone and written notifications were made to the alleged affected by the release of information, apologizing for the inadvertent release of this information. Furthermore, the NRC initiated extensive corrective actions to ensure that there would not be a recurrence of such an incident.⁵

With regard to the Petitioners' assertions regarding the specifically named employee's fear of retaliation as a result of the release of the individual's identity, the NRC Region II staff contacted this employee orally and in writing soon after the release of this information was

³In its response to the Petition, dated August 6, 1998, FPL maintained that it was not aware of the identities of these employees until the Petitioners themselves identified an alleged by name in a letter to the President of the United States, dated February 9, 1998, and provided a copy of the letter to FPL.

⁴By letter dated April 3, 1998, FPL responded to the NRC Region II Regional Administrator's letter. In its response, FPL emphasized its agreement with the importance of maintaining a safety-conscious work environment, and outlined numerous steps that it has taken to assure that such an environment exists at its facilities.

⁵This matter has also been referred to the NRC OIG.

discovered and apologized for the error. The staff assured the employee that the Regional Administrator had emphasized to the licensee the need for maintaining an environment where employees are free from retaliatory discrimination for raising safety concerns.

As contained in this Decision, the licensee has taken numerous actions to ensure that there is a safety-conscious work environment at its facilities in which employees are encouraged to raise such concerns. These actions have included incorporating into its training program for supervisors instructions regarding the handling of safety concerns, incorporating into its general training of employees information regarding the right of employees to raise such concerns without fear of retaliation, and issuing numerous communications to employees regarding this subject.

The Petitioners have not provided any specific information demonstrating that these measures are inadequate to ensure that employees will continue to raise nuclear safety concerns to the licensee and the NRC. Therefore, there is no need for the NRC to take the additional actions that they have requested.

Finally, as described in this Decision, FPL has incorporated into its training program for supervisors instructions regarding the handling of safety concerns and into its general training of employees information regarding the rights of employees to raise such concerns without fear of retaliation, and has issued numerous communications to employees regarding this subject. The NRC has carefully evaluated each of the issues raised by the Petitioners. However, for reasons discussed previously, the Petitioners have failed to demonstrate that there is any need for NRC to take the additional actions requested.

In their March 29 submittal, the Petitioners repeat their request for an NRC investigation of whether "a violation of NRC requirements occurred" with regard to the individuals already named in their earlier submittals, as well as "seven instrument control specialists" and Mr. Saporito. In addition, Petitioners request that the NRC determine whether FPL's settlement of a complaint filed with DOL pursuant to Section 211 contains a confidentiality provision that

may “chill” the licensee’s workforce and determine what actions by the NRC provided any measure of protection to employees against retaliation for raising safety concerns. The Petitioners’ grounds for these requests can be summarized as follows: (1) there appears to be a hostile work environment at St. Lucie, (2) the confidentiality provision prevents employees from gaining sufficient knowledge about the settlement agreement to determine if they may be afforded a “make-whole” remedy if they elect to exercise their rights under Section 211, and the “secret nature of sealed settlement agreements undermines the effectiveness” of that statute, and (3) the NRC has failed to take enforcement action based upon decisions of DOL Administrative Law Judges in a case involving Mr. Saporito at Turkey Point which was litigated before DOL, and in cases involving other employees and other licensees.

With regard to their assertion that a violation of NRC requirements may have occurred involving “seven instrument control specialists,” as the Petitioners have provided no further information regarding these individuals or the alleged violation that may have occurred, further action on this matter is not warranted. With regard to Petitioners’ assertion that there may have been a violation involving Mr. Saporito and that the NRC failed to take enforcement action for this violation based upon a decision by a DOL Administrative Law Judge (ALJ), this matter was fully addressed in earlier Director’s Decisions responding to Petitions filed by Mr. Saporito (DD-95-7 and DD-97-20). In DD-97-20, which was issued on September 8, 1997, I explained that there had been no final determination by the Secretary of Labor in Mr. Saporito’s DOL case (89-ERA-7/17) that discrimination had occurred. Rather, the Secretary of Labor had remanded the case to the ALJ to submit a new recommendation on whether FPL would have discharged Mr. Saporito absent his engaging in protected activities. I also stated in that Decision that NRC would monitor the DOL proceeding and determine on the basis of further DOL findings and rulings whether enforcement action against the licensee was warranted. In that connection, on October 15, 1997, the ALJ issued a Recommended Decision and Order on Remand finding that FPL had proven that Mr. Saporito’s unprotected conduct would have led to

his termination absent his protected activity. In a Final Decision and Order issued on August 11, 1998, the Administrative Review Board ⁶ issued a final decision affirming the ALJ's Recommended Decision and dismissing Mr. Saporito's complaint. Based upon this final determination by DOL, the NRC has determined that enforcement action against FPL is not warranted in this matter.

As noted above, Petitioners also assert that the NRC should take the action they have requested because the NRC has failed to take enforcement action based upon decisions of DOL ALJs in cases involving other licensees. The Petitioners have not offered any explanation as to why their assertions regarding the NRC's alleged failure to take enforcement action against other licensees should have any bearing upon the disposition of Petitioners' requests regarding this licensee. Nonetheless, Petitioners' assertions of NRC's failure to take appropriate enforcement action have been referred to the OIG.

The Petitioners also assert that a confidentiality provision in a particular settlement agreement may "chill" the work force, and that such provisions in general undermine the effectiveness of Section 211 because employees are unable to ascertain whether they can obtain a sufficient remedy for raising safety concerns. Although Section 211 does not address this matter, settlement agreements may not contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity. *See, e.g.,* 10 CFR 50.7(f). The NRC has reviewed the settlement agreement referred to by the Petitioners and determined that it does not contain any restrictive provisions which would violate the Commission's regulations in this regard. In addition, contrary to the Petitioners' assertion that employees are unable to determine the content of settlement agreements, DOL has made clear that such agreements may be obtained under the Freedom of Information Act, 5 U.S.C. 552 (1988) (FOIA). *See Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection*

⁶The Administrative Review Board (ARB) now reviews decisions of ALJs on behalf of the Secretary of Labor. 63 Fed. Reg. 6614 (February 9, 1998).

Services, ARB Case No. 96-141, Final Order Approving Settlement and Dismissing Complaint, June 24, 1996, slip op. at 2-3. Therefore, Petitioners' assertion that settlement agreements such as the one at issue are "secretive" is without merit. Nonetheless, the Commission emphasizes that all employees have a right to raise nuclear safety concerns to their management and/or the NRC and that such employees may not be retaliated against for doing so.

In their March 30 submittal, Petitioners requested the NRC to immediately issue an order requiring FPL to conduct an independent third-party oversight of FPL's nuclear energy department's resolution of employees' safety concerns. As grounds for this request, Petitioners assert that the licensee does not maintain a comprehensive plan for handling safety concerns raised by employees and for assuring a discrimination-free environment, that FPL has not tolerated dissenting views or been effective in reviewing and addressing safety issues, and that the NRC's process for handling allegations at FPL appears inadequate.

The Petitioners' assertions are without merit. As previously described, the NRC has determined that FPL's ECP has been effective in handling and resolving employees' concerns. The assertion that the NRC's process for handling allegations at FPL appears inadequate has been referred to the OIG.

In sum, for all of the reasons discussed above, the Petitioners have not provided support for their assertions that FPL has discriminated against particular employees for raising nuclear safety concerns, that there has been a "chilling effect" upon the raising of such concerns, or that there is a hostile work environment at the licensees's facilities that would provide a basis for the NRC to take the actions which they have requested. Therefore, no further action by the NRC is warranted based upon these assertions.

B. Requests Related to Assertions of Licensee Failure to Establish or Implement Procedures or Meet Technical Specifications

In their March 6 submittal, the Petitioners request that: (1) the NRC order FPL to submit a plan within 30 days for an independent written appraisal of St. Lucie site and corporate organizations and activities to develop recommendations for improvement in management controls and oversight and assure compliance with required procedures; (2) the licensee implement an oversight program to monitor safety pending completion of NRC review of the appraisal results; (3) the licensee implement and complete the recommendations within six months of NRC approval; and (4) the NRC issue a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$500,000 for repetitive violations at St. Lucie. As grounds for these requests, Petitioners assert that the licensee has failed to establish or implement procedures at St. Lucie to assure configuration control over safety related systems; has repeatedly failed to meet Technical Specifications which has resulted in repetitive NRC enforcement actions; and has been ineffective in assuring lasting improvements as a result of leadership deficiencies. In further support of their requests, Petitioners have included, as attachments to their submittal, newspaper articles documenting similar concerns.

Petitioners are correct that during the 1995-1996 time frame, the NRC identified certain violations involving configuration control for which escalated enforcement action was taken, that certain violations have also been identified since 1996 associated with equipment clearance problems, and that there have been instances in which certain technical specification requirements were not met. However, the licensee has initiated extensive corrective actions in regard to violations of technical specifications and the NRC has concluded that these corrective actions are acceptable. In addition, overall configuration control of safety-related equipment has been adequately implemented, and the licensee's performance in connection with configuration control of safety-related equipment has improved. For example, the SALP report issued in August 1998 for the St. Lucie Plant specifically noted marked improvement in the

identification of equipment deficiencies. For the SALP period of January 1996 to March 1997, the St. Lucie Plant received scores of "Good" for the categories of Operations, Maintenance, Engineering and Plant Support, and "Superior" for Engineering and Maintenance for the period of April 1997 to June 1998.

Furthermore, the newspaper articles provided by the Petitioners do not include any information not already known to the NRC. The information⁷ was previously considered by the NRC. In fact, much of the information was taken from NRC inspection reports and other NRC documents. For these reasons, the Petitioners have not provided a sufficient basis for the NRC to take the actions that they have requested in this submittal. Nonetheless, NRC inspectors continue to monitor the licensee's performance in areas such as equipment clearances.

C. Request for Investigation of Radioactive Contamination and Additional Safety Concerns

In their April 4, 1998, submittal, Petitioners request that the NRC immediately investigate certain additional safety concerns. Briefly summarized, these concerns are that:

(1) a violation

occurred and remains uncorrected involving the flow of water from an area contaminated with radioactivity at the St. Lucie facility into an unlined pond and that the licensee directs personnel to sample only the surface water and not to survey or sample sediment from the pond; (2) the licensee is "discriminating" by not allowing certain employees to be interviewed by evaluators of the Institute of Nuclear Power Operations (INPO) on site conducting investigations; (3) the licensee's "Work It Now" (WIN) team is improperly grouping work orders in order to reduce the number of open orders; (4) an excessive amount of outside contract labor remains on site due to under staffing resulting from restructuring; and (5) NRC Resident Inspectors (RIs) are only assigned to work the day shift, so that many employees do not have access to the NRC on site,

⁷A number of the articles are based upon a Florida Public Service Commission report on the decline in FPL's distribution system (i.e. customer service) and provide no information that would indicate this decline had any impact upon the safety performance of the licensee's facilities.

and the three inspectors on site are insufficient to monitor many safety-related work functions outside the day shift.

Regarding the Petitioners' assertions of radioactive contamination from the flow of water from storm drains, this matter was initially evaluated during an inspection conducted April 26-29, 1977 (Inspection Report No. 50-335/77-6).⁸ The inspection determined that, as a result of an overflow of the refueling water tank on April 6, 1977, water contaminated with radioactivity was released from the radiologically-controlled area to a storm water basin within the site boundary. The layout of the storm water basin was such that, under routine operating conditions, liquids collected in the system could not drain from the site and, after evaluating alternative means of removal, the licensee elected to pump the water from the storm basin to the discharge canal. However, there was no indication that the release of the water to the discharge canal resulted in any violations of the licensee technical specifications or that the limits established in 10 CFR Part 20 had been exceeded.

During an inspection conducted February - March 1996 at the St. Lucie Plant (Inspection Report 50-335/96-04; 389/96-04, dated April 29, 1996), NRC inspectors noticed that the east pond was posted with signs displaying a radiation symbol and the words "Restricted Area Keep Out," and "Radioactive Materials Area." The inspector determined that the posting was due to the east pond having received some contaminated water from the 1977 spill. The inspector learned that the licensee had sampled and evaluated the soil from the pond berm and bottom in 1992 and observed detectable radioactive contamination at various depths of one to six feet, with the activity decreasing with depth. The most significant level of contamination detected was in the first three feet of sediment below the pond. In addition, the inspection determined that the water was free of measurable contamination. No violations or deviations from NRC requirements were identified in connection with this matter. The presence of residual

⁸NRC's May 4, 1998 acknowledgment letter to the Petitioners incorrectly referenced NRC Inspection Report 50-335/93-17 as addressing this issue.

contamination in the sediment of the pond poses no public health or safety hazard because the pond is on the licensee's controlled property and not accessible to the public and because the area is posted. Furthermore, the Petitioners have failed to provide any evidence that personnel were "warned" or "directed" only to survey or sample the water. Finally, given the age of this issue, the fact that there is no danger to public health and safety, and the fact that the NRC is aware of, and has evaluated, the circumstances of this event, this issue does not provide a basis for the actions requested by the Petitioners.

With regard to the Petitioners' concern that certain employees are not allowed to speak to INPO evaluators, the NRC has found no evidence that the licensee is preventing employees from speaking to INPO evaluators in order to prevent them from raising nuclear safety concerns or for any other purpose such as would violate the Commission's Employee Protection regulations. FPL has stated in its July 1998 response to the Petition that, although FPL selects certain employees to speak with INPO evaluators on certain technical issues, those selections are based on the employee having knowledge of the issue under review by INPO. Moreover, INPO evaluators are free to speak with any FPL employee or contractor at any time and INPO evaluators who visit nuclear plant sites are generally badged for unescorted access, which allows them to conduct their evaluations and interviews with employees without first consulting licensee management. The Petitioners have not provided any information that would support their assertion, or contradict these statements by the licensee, and, therefore, the Petitioners' request is denied.

With regard to the Petitioners' assertion that the licensee's WIN team is improperly grouping plant work orders to artificially reduce the number of outstanding requests, the licensee's WIN process was intended as an expedited process to resolve minor maintenance and toolpouch maintenance tasks that are considered within the "skill of the craft." These tasks include replacing light bulbs, painting, and replacing piping insulation. This process and procedures for expediting minor maintenance tasks does not violate any NRC requirements,

nor does it artificially reduce the number of outstanding requests. The Petitioners' concern regarding the grouping of plant work orders was also reviewed during an inspection conducted between February 15 and March 28, 1998. The results of that inspection are documented in NRC Inspection Report 50-335/98-03, 50-389/98-03 dated April 27, 1998. As described in the Inspection Report, the inspectors observed portions of maintenance associated with 15 work orders, most notably the replacement of a reactor coolant pump seal cartridge. The inspectors concluded that the work was adequately performed and procedures were being appropriately used by qualified personnel. After reviewing the plant work order and maintenance programs, the inspectors concluded that the licensee was aggressive in reducing the maintenance backlog and the backlog was being well controlled.

Regarding the Petitioners' concern about the licensee's staffing levels and the use of outside contract labor, NRC requirements on staffing are included in the licensee's technical specification administrative requirements. The technical specifications contain no requirements as to the minimum number of maintenance workers or regarding the use of outside contractors. However, the NRC is continuing to monitor the quality and timeliness of maintenance work at the licensee's facilities on equipment important to safety.

Finally, there is no merit to the Petitioners' assertions that RIs are only assigned to the day shift and that the three inspectors on site are insufficient. The Commission's policy (as established in Inspection Manual Chapter 2515) provides that RIs should spend 10 percent of their total time on site during other than normal working hours. The adequacy of onsite coverage is reviewed on an ongoing basis by Regional management. The number of RIs and the percentage of time spent by RIs during normal working hours at the St. Lucie plant is consistent with Commission policy and that at other U.S. nuclear power plants. The Petitioners have not provided sufficient information to support their assertion that licensee employees do not have reasonable access to the NRC RIs or that there are too few RIs on site to monitor safety-related work.

For all of these reasons, the Petitioners have not set forth a sufficient basis that would warrant the NRC to take any of the actions that they have requested. Therefore, these requests by the Petitioners are denied.

III. CONCLUSION

The NRC has carefully evaluated each of the many issues raised by the Petitioners. As described above, the NRC has undertaken certain of the actions that the Petitioners have requested. Specifically, the NRC has conducted numerous inspections evaluating the circumstances of many of the issues that the Petitioners have raised, and has reviewed the settlement agreement referred to by the Petitioners in order to determine whether it contains any restrictive provisions that may "chill" the workforce. Thus, to the extent that Petitioners have requested that the NRC investigate these issues and review the settlement agreement, the Petition is granted. However, for the reasons discussed previously, no basis exists for taking the additional actions requested in the Petition. Therefore, in all other respects, the Petition is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by that regulation, the Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION

ORIGINAL SIGNED BY:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 21st day of October 1998