

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 5, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan, 48161.

Dated at Rockville, Maryland, this 9th day of September 1997.

For the Nuclear Regulatory Commission.

**Andrew J. Kugler,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-24379 Filed 9-11-97; 8:45 am]

BILLING CODE 7590-01-U

## NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-250, 50-251, 50-335, and 50-389]

### Florida Power & Light Co.; St. Lucie Plant, Units 1 and 2; Turkey Point Station, Units 3 and 4; Issuance 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 April 23, 1997, as supplemented on May 11 and May 17, 1997, filed by Thomas J. Saporito, Jr., on behalf of himself and the National Litigation Consultants (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 Company's (FPL's or licensee's) Turkey Point Station, Units 3 and 4, and St. Lucie Plant, Units 1 and 2.

The Petitioners requested that the Commission (1) take enforcement action to modify, suspend, or revoke FPL's operating licenses for these facilities until FPL can sufficiently demonstrate that employees at FPL nuclear facilities are exposed to a work environment that encourages employees to freely raise safety concerns directly to the NRC without being required to first identify their safety concerns to the licensee; (2) take escalated enforcement action in accordance with 10 CFR 2.202 because of discriminatory practices of the licensee in violation of NRC regulations in 10 CFR 50.7 and/or other NRC regulations and that the enforcement action be retroactive to the initial occurrence of the violation by the licensee; (3) conduct a public hearing through the Atomic Safety and Licensing Board and permit Petitioners leave to intervene to perfect an evidentiary record in consideration of whether the licensee has violated NRC requirements and/or regulations; (4) require the licensee to post a written notice alongside each NRC Form 3 currently posted at the licensee's nuclear facilities that alerts employees that they can directly contact the NRC about nuclear safety concerns without first identifying the safety concerns to the licensee; (5) require the licensee to provide a copy of the posted communication to all employees and ensure that all employees are made aware of those communications through the licensee's General Employee Training Program; and (6) require the licensee to provide the NRC with written documents authored by licensee officers under affirmation that the requirements described in items (4) and (5) have been fully complied with.

In the supplement of May 11, 1997, the Petitioners requested the imposition of a civil penalty in the amount of \$100,000 against each of three former FPL managers and that the NRC refer the matter of the conduct of these managers to the U.S. Department of Justice (DOJ) for consideration of invoking criminal proceedings.

In the supplement of May 17, 1997, the Petitioners requested imposition of a civil penalty in the amount of \$100,000 against each of six FPL employees and restriction of the

licensed activities of these employees and revocation of their unescorted access to nuclear facilities; the imposition of a civil penalty in the amount of \$100,000 against the International Brotherhood of Electrical Workers (IBEW) and that the IBEW be required to inform its members in writing that they have the right to report safety concerns directly to the NRC without fear of retribution and that the IBEW encourages and supports such action at the discretion of its members; and the imposition of a civil penalty in the amount of \$100,000 against two "agents" or "representatives" of the licensee. The Petitioners also requested investigations of "willful falsification" of a company business record and the cause of "transcripts found missing" in a Department of Labor proceeding, and the referral of the matter of the conduct of the individuals and entities to the DOJ so that it can consider invoking criminal proceedings. Finally, it was requested that the NRC conduct an interview with the Petitioners regarding the substance of their 10 CFR 2.206 Petition.

The Director of the Office of Nuclear Reactor Regulation has granted the Petitioners' request for an interview in that, on July 14, 1997, the NRC held a public meeting with Mr. Saporito to provide Petitioners with the opportunity to provide additional information regarding the substance of their Petition. The Petitioners' additional requests have been denied for reasons that are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-97-20), 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's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 8th day of September 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

### Director's Decision Under 10 CFR 2.206

#### I. Introduction

By Petition dated April 23, 1997, (as supplemented May 11 and May 17,

1997), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), Thomas J. Saporito, Jr., on behalf of himself and the National Litigation Consultants (Petitioners), requested that the Nuclear Regulatory Commission (Commission or NRC) take action with regard to operations at the Florida Power & Light Company's (FPL's or licensee's) Turkey Point Station, Units 3 and 4, and St. Lucie Plant, Units 1 and 2. Specifically, the Petitioners requested that the Commission: (1) Take enforcement action to modify, suspend, or revoke FPL's operating licenses for these facilities until FPL can sufficiently demonstrate that employees at FPL nuclear facilities are exposed to a work environment that encourages employees to freely raise safety concerns directly to the NRC without being required to first identify their safety concerns to the licensee; (2) take escalated enforcement action in accordance with 10 CFR 2.202, because of discriminatory practices of the licensee in violation of 10 CFR 50.7 and/or other NRC regulations, and that the enforcement action be retroactive to the initial occurrence of the violation by the licensee; (3) conduct a public hearing through the Atomic Safety and Licensing Board and permit Petitioners leave to intervene to perfect an evidentiary record in consideration of whether the licensee has violated NRC requirements and/or regulations; (4) require the licensee to post a written notice alongside each NRC Form 3 currently posted at the licensee's nuclear facilities that alerts employees that they can directly contact the NRC about nuclear safety concerns without first identifying the safety concerns to the licensee; (5) require the licensee to provide a copy of the posted communication to all employees and ensure that all employees are made aware of those communications through the licensee's General Employee Training Program; and (6) require the licensee to provide the NRC with written documents authored by licensee officers under affirmation that the requirements described in items (4) and (5) have been fully complied with.

In the supplement of May 11, 1997, the Petitioners requested the imposition of a civil penalty in the amount of \$100,000 against each of three former FPL managers and that the NRC refer the matter of the conduct of these managers to the U.S. Department of Justice (DOJ) for consideration of invoking criminal proceedings.

In the supplement of May 17, 1997, the Petitioners requested imposition of a civil penalty in the amount of \$100,000 against each of six FPL employees and restriction of the

licensed activities of these employees and revocation of their unescorted access to nuclear facilities; the imposition of a civil penalty in the amount of \$100,000 against the International Brotherhood of Electrical Workers (IBEW), and that the IBEW be required to inform its members in writing that they have the right to report safety concerns directly to the NRC without fear of retribution and that the IBEW encourages and supports such action at the discretion of its members; and the imposition of a civil penalty in the amount of \$100,000 against two named individuals characterized in the Petition as licensee agents or representatives of the licensee. The Petitioners also requested investigations of "willful falsification" of a company business record and the cause of "transcripts found missing" in a Department of Labor (DOL) proceeding, and the referral of the matter of the conduct of the individuals and "entities" to the DOJ so that it can consider invoking criminal proceedings. Finally, it was requested that the NRC conduct an interview with the Petitioners regarding the substance of their 10 CFR 2.206 Petition.

By letter dated June 14, 1997, I informed the Petitioners that, pursuant to 10 CFR 2.206 of the Commission's regulations, the Petition, as supplemented, had been referred to me and that action on their requests would be taken in a reasonable amount of time. I further informed the Petitioners that with regard to their request for a meeting with the NRC staff, they could call to arrange a suitable day and time for such a meeting.

On May 27, 1997, FPL responded to the Petition. In its response, the licensee maintained that it was strongly committed to maintaining a work environment in which employees are free to raise nuclear safety concerns directly to the NRC and that the Petition lacked any factual basis and should be denied.

In response to the Petitioners' request for an "interview" regarding their Petition, the NRC staff held a public meeting with Mr. Saporito on July 14, 1997. During the meeting, Mr. Saporito elaborated upon the bases for the Petition and stated his concerns about reporting nuclear safety issues at the St. Lucie plant should the DOL Administrative Law Judge (ALJ) order his reinstatement as an employee of FPL.<sup>1</sup> During the meeting, Mr. Saporito

<sup>1</sup> In response to this concern, the staff referred Mr. Saporito to 10 CFR 50.7 and various NRC policy statements and other documents that describe the protection to individuals who raise nuclear safety

also raised what he asserted were certain improprieties which occurred during the DOL hearing and specifically requested that the NRC investigate an additional concern that the licensee or its attorneys may have "whited out" a page of a document he had requested during the DOL proceeding. Mr. Saporito stated that he was adding this request to the Petition.

On August 13, 1997, FPL submitted an additional response to the Petition. In this response, FPL stated that it was responding in opposition to the supplemental petitions filed by the Petitioners dated May 11 and May 17, 1997, and to assertions made by Mr. Saporito during the July 14, 1997, public meeting.

## II. Background

As a basis for the requests described above, the Petitioners asserted in their Petition of April 23, 1997, that the NRC's failure to take enforcement action against the licensee on the basis of the Secretary of Labor's finding that FPL violated the Energy Reorganization Act (ERA) when it discharged an employee (i.e., Mr. Saporito) for raising safety concerns has resulted in a "chilling effect" at FPL and continued discrimination against employees by FPL in violation of 10 CFR 50.7.<sup>2</sup> In

concerns to the NRC or to their employers, and offered to provide Mr. Saporito copies of relevant documents. The staff provided Mr. Saporito these documents by letter dated July 28, 1997.

<sup>2</sup> This proceeding, DOL Case 89-ERA-7 and 89-ERA-17 (hereafter 89-ERA-7/17), involved two complaints by Mr. Saporito in which he alleged, respectively, that he was disciplined and harassed in retaliation for engaging in protected activity and that he was discharged for engaging in protected activity. On June 30, 1989, a DOL ALJ issued a Recommended Decision and Order Denying Complaint, which dismissed both cases. Among other things, the ALJ found that FPL had legitimately terminated Mr. Saporito for acts of insubordination, which included Mr. Saporito's refusal to reveal safety concerns to the licensee and his insistence that he raise them to the NRC instead. In a Decision and Remand Order issued June 3, 1994, the Secretary held that an employee who refuses to reveal his safety concerns to management and asserts his right to bypass the "chain of command" to speak directly with the NRC is engaging in protected activity and remanded the case to the ALJ to review the record in light of this decision and submit a new recommendation to the Secretary as to whether FPL would have discharged Mr. Saporito for unprotected aspects of his conduct. By letter to the Secretary of Labor from then NRC Chairman Ivan Selin, the NRC expressed concern about the Secretary's broad statement, noting that licensees, not the NRC, are in the best position to deal effectively with safety concerns. In a subsequent Order issued February 16, 1995, denying reconsideration of his June 3 decision, the Secretary clarified his June 3 decision by stating that it would not be accurate to interpret the decision as providing an employee an "absolute right" to refuse to report safety concerns to the plant operator. Rather, the Secretary stated that the right of an employee to protection for bringing

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addition, in the Petitioners' supplement of May 11, 1997, to their Petition, they asserted that Mr. Saporito's "Damages Brief" in the DOL proceeding mentioned above established that the licensee and its managers are liable for creating a hostile work environment at Turkey Point and have failed to stop harassment and discrimination against Mr. Saporito. The Petitioners further stated that the record in this case contains evidence showing direct participation of Mr. Saporito's "chain of command" in the retaliatory actions taken against Mr. Saporito.

In their supplement of May 17, 1997, to the Petition, the Petitioners asserted that certain pleadings and transcripts in this DOL proceeding set out a chronology of events surrounding missing record transcripts and the falsification of a licensee company business record and establish that licensee employees and union members played a role in discriminating against Mr. Saporito. The Petitioners further stated that additional evidence exists that necessitated a meeting between the NRC and the Petitioners.

### III. Discussion

Because of the numerous requests and interrelated nature of the issues raised and the bases provided by the Petitioners, the requests in the Petition and supplements previously described have been considered together and are categorized as follows: (1) NRC should take escalated enforcement action against the licensee and certain individuals employed by the licensee and refer this matter to the DOJ; (2) NRC should take escalated enforcement and other action against the IBEW; (3) NRC should initiate investigations into matters regarding the DOL proceeding, including willful falsification of a company business record, willful falsification of the DOL transcript, and alleged "whiting out" of a page of a document by the licensee's attorneys; and (4) miscellaneous requests.

#### 1. Petitioners' Request for Enforcement Action Against the Licensee and Certain Employees of the Licensee

As previously stated, the Petitioners request that the NRC take enforcement

information directly to the NRC and his duty to inform management of safety concerns are independent and do not conflict but that the employer's motivation should be reviewed on a case-by-case basis, pursuant to a "dual motive" analysis, to ensure that the employer would have taken the same action regardless of whether an employee insisted on his right to speak first to the NRC. The Secretary specifically noted that his June 3 Order had not decided the ultimate question regarding the appropriate outcome of the dual motive analysis to the facts of this case.

action to modify, suspend, or revoke FPL's operating licenses until FPL can sufficiently demonstrate that employees at FPL's nuclear facilities are "exposed to a work environment" that encourages these employees to freely raise safety concerns directly to the NRC without being required to first identify their safety concerns to the licensee. In addition, the Petitioners request that the NRC take escalated enforcement action against the licensee because of the licensee's discriminatory practices in violation of 10 CFR 50.7 and that this enforcement action be retroactive to the initial occurrence of the violation by the licensee.

As a basis for this request, the Petitioners assert that the Secretary of Labor found in 89-ERA-7/17 that FPL violated the ERA when it discharged Mr. Saporito but that the NRC failed to take any enforcement action against the licensee for this violation, and that as a direct result of the NRC's failure to take such action, a "chilling effect" was instilled at the licensee's facilities that continues to dissuade employees from raising safety concerns. The Petitioners cite numerous cases in support of their assertion that the licensee has continued to discriminate against employees who engage in protected activity.

This request is similar to a request made by Mr. Saporito in an earlier Petition, which was addressed in a Director's Decision issued on May 11, 1995 (DD-95-7, 41 NRC 339). As previously described herein, and as explained in DD-95-7, contrary to the Petitioners' assertion, the Secretary of Labor has not yet made a finding on the merits in 89-ERA-7/17 as to whether the licensee violated the ERA in discharging Mr. Saporito. Rather, in an Order issued on June 3, 1994, the Secretary directed the ALJ to submit a new recommendation on whether FPL would have discharged Mr. Saporito absent his engaging in protected activities. Therefore, the Order of June 3, 1994, does not constitute a final decision by the Secretary of Labor, and because there is no DOL finding of discrimination, there is no basis to justify enforcement action by the NRC at this time.<sup>3</sup> As further explained in that Director's Decision, the NRC will monitor the DOL proceeding and determine on the basis of further DOL findings and rulings whether enforcement action against the licensee is warranted.

With regard to the Petitioners' assertion that the NRC's failure to take enforcement action has resulted in a

<sup>3</sup> As of this date, the ALJ has not issued a new Recommended Decision.

"chilling effect" at the licensee's facilities, the Petitioners have offered no evidence to substantiate this claim. Over the past two years (July 1995-June 1997), 89 allegations from FPL employees or contractors have been submitted to the NRC, of which six have been allegations related to discrimination. Of these allegations, the staff was unable to evaluate two allegations because the alleged would not reveal his or her identity. With regard to the remaining allegations, in two cases, discrimination was not substantiated. The remaining two allegations are still being evaluated. Should these allegations be substantiated, the NRC will determine at that time whether enforcement action against the licensee is warranted. Nonetheless, even if these allegations are substantiated, there is presently no indication that there has been a "chilling effect" at the licensee's facilities. The NRC staff has conducted inspections of FPL's Nuclear Safety Speakout Program (Employees Concerns Program) and has examined the safety-conscious work environment at FPL's nuclear facilities. The results of the last two inspections, conducted in April-May 1996 and June 1997,<sup>4</sup> indicate that the Speakout Program has been effective in handling and resolving individuals' concerns. The Speakout Program has been readily accessible, and employees are familiar with the various avenues available by which to express their concerns.

The Petitioners have relied upon 89-ERA-7/17 and eight additional cases to demonstrate both widespread discrimination by FPL against its employees and a lack of NRC enforcement action to deal with this alleged discrimination.<sup>5</sup> With regard to

<sup>4</sup> NRC Inspection Reports 50-250/96-05, 50-251/96-05, 50-335/96-07, and 50-389/96-07, dated May 31, 1996, and 50-335/97-08 and 50-389/97-08, dated July 16, 1997.

<sup>5</sup> The other eight cases and their disposition are as follows:

(1) *Pillow v. Bechtel*, 87-ERA-35: The Secretary found that discrimination by Bechtel had occurred and ordered compensation for damages. The NRC issued Notices of Violation on February 11, 1994 to FPL and Bechtel, for violations that occurred in 1987 and that were based on both 87-ERA-35 and 87-ERA-44 (EA 93-199 and EA 93-200).

(2) *Diaz-Robinas v. FPL*, 92-ERA-10: Although the Secretary of Labor found that discrimination occurred, he remanded the case to the ALJ for a determination of the appropriate remedy, so that the Secretary's decision was not a final decision by DOL. The case settled before the ALJ issued his decision. The NRC issued a Notice of Violation and Proposed Civil Penalty of \$100,000 against FPL for the violation, which occurred in 1992 (EA 96-051). The licensee paid the civil penalty on December 3, 1996.

(3) *Phippis v. FPL*, 95-ERA-53: The DOL Wage and Hour Assistant Area Director concluded that

89-ERA-7/17, as previously stated, no final determination that discrimination occurred has yet been made by DOL. A close examination of the remaining cases does not support Petitioners' assertion that the NRC's "lax attitude" caused a pattern and practice of discrimination at FPL's nuclear facilities. All of the cases cited by the Petitioners, except for two cases (*Pillow v. Bechtel*, 87-ERA-35, and *Diaz-Robainas v. FPL*, 92-ERA-10), were either settled, voluntarily dismissed at the request of the Complainant, or otherwise dismissed by DOL before a final determination was made by the Secretary of Labor. Two of the cases relied upon by the Petitioners did not involve FPL, but other companies (and one of these cases did not involve matters under NRC jurisdiction). With regard to *Pillow*, the discrimination that was the subject of this case occurred before the case involving Mr. Saporito. Therefore, such discrimination is neither indicative of FPL's current performance nor could have resulted from the lack of NRC's enforcement action in the present case.<sup>6</sup> The only

Mr. Phipps' engaging in protected activities was a factor in FPL's decision to prohibit him from working during plant outages. FPL appealed the decision, and a hearing was scheduled before a DOL ALJ. Before the hearing, the parties entered into a settlement agreement. A final DOL Order, dated February 21, 1996, dismissed the case with prejudice on the basis of a voluntary stipulation by the parties. There was no finding for discrimination by DOL.

(4) *Dysert v. FPL*, 92-ERA-26: The DOL Wage and Hour Area Director determined that there was no discrimination. The complainant appealed, but then requested that the case be dismissed prior to a determination by an ALJ as to whether discrimination occurred. A final Order affirming the dismissal of the complaint was issued by the Secretary on June 28, 1993.

(5) *Kleiman v. FPL*, 91-ERA-50: The DOL Wage and Hour Area Director determined that there was no discrimination. The complainant appealed, but then requested that the case be dismissed prior to a determination by an ALJ as to whether discrimination occurred. A final Order affirming the dismissal of the complaint was issued by the Secretary on February 21, 1992.

(6) *Young v. FPL*, 93-ERA-30: The DOL Wage and Hour Area Director determined that there was no discrimination. The complainant appealed, but then requested that the case be dismissed prior to a determination by an ALJ as to whether discrimination occurred. A final Order affirming the dismissal of the complaint was issued by the Secretary on July 13, 1995.

(7) *Fry v. Atlantic Construction Fabrics, Inc.*, 96-STA-7: This case did not involve FPL or any NRC licensee, did not involve the raising of nuclear safety concerns or any other matters under NRC jurisdiction, and did not arise under the Energy Reorganization Act, but under the Surface Transportation Act.

(8) *Collins v. FPL*, 91-ERA-47 (actually *Collins v. FPC*): The Secretary of Labor issued an Order on May 15, 1995, finding that no discrimination occurred. In addition, the respondent in this case was actually Florida Power Corporation, not FPL.

<sup>6</sup>In addition, the NRC has taken enforcement action in the *Pillow* case. See footnote 5.

additional cases cited by the Petitioners in which any finding was made by DOL that discrimination occurred were *Phipps v. FPL*, 95-ERA-53, and *Diaz-Robainas*. In *Phipps*, the DOL Wage and Hour Assistant Area Director concluded that Mr. Phipps' engaging in protected activities was a factor in FPL's decision to prohibit him from working during plant outages. FPL appealed the decision; however the case was dismissed on the basis of a voluntary stipulation by the parties prior to a hearing before an ALJ. The NRC Office of Investigations investigated this case and did not substantiate that discrimination had occurred. In the *Diaz-Robainas* case, the Secretary of Labor did determine that discrimination had occurred. This one example, however, for which the NRC took appropriate enforcement action,<sup>7</sup> does not support the Petitioners' assertion that the NRC has a "lax attitude" which has caused a pattern or practice of discrimination at FPL's facilities.

For all of these reasons, the Petitioners have not set forth a sufficient basis that would warrant the NRC to take escalated enforcement action against the licensee at this time. Therefore, this request by the Petitioners is denied.

The Petitioners also request that the NRC impose a civil penalty in the amount of \$100,000 against each of three former FPL managers; a civil penalty in the amount of \$100,000 against six current FPL employees and restriction of the licensed activities of these employees and revocation of their unescorted access to nuclear facilities; and a civil penalty in the amount of \$100,000 against two named individuals characterized in the Petition as licensee "agents" or "representatives." As a basis for this request, the Petitioners allege that these individuals were involved in the discrimination against Mr. Saporito, which is the subject of DOL Case 89-ERA-7/17. Because a final determination has not been made by DOL or NRC that discrimination occurred against Mr. Saporito, the requested enforcement action against these individuals is not warranted at this time.

In addition, the Petitioners request that the NRC refer the matter of the conduct of various FPL managers and other individuals and "entities" (i.e., the licensee and the IBEW) to the DOJ so that it can consider invoking criminal proceedings against these persons and

entities.<sup>8</sup> As discussed in this section, DOL has not made a final determination in this case as to whether discrimination occurred. Therefore, the Petitioners' request is denied pending a final decision by DOL as to whether discrimination occurred in DOL Case 89-ERA-7/17. The NRC will monitor the DOL proceeding on remand to the ALJ and determine on the basis of further DOL findings and rulings in this case whether a violation of NRC requirements has occurred, whether enforcement action against the licensee or its employees is warranted, and whether this matter warrants referral to the DOJ.

## 2. Petitioners' Request for Action Against the IBEW

The Petitioners request that the NRC impose a civil penalty in the amount of \$100,000 against the IBEW and that the IBEW be required to inform its members in writing that they have the right to report safety concerns directly to the NRC without fear of retribution and that the IBEW encourages and supports such action at the discretion of its members.

The Petitioners request that the NRC take such action because they allege that IBEW officials conspired with FPL management to have Mr. Saporito's site access revoked at Turkey Point Station. The basis for this request was clarified at the meeting between Mr. Saporito and the NRC staff on July 14, 1997. During that meeting, Mr. Saporito stated that two licensee officials testified during the DOL hearing that a comment was made by union officials to licensee management that Mr. Saporito could potentially sabotage the plant, and that, as a result of that comment, his access to the site was revoked.

The testimony of these licensee officials is a part of the record that is currently before the DOL ALJ. As previously stated, the NRC will monitor the DOL proceeding on remand to the ALJ and determine on the basis of further DOL findings and rulings in this case whether any violation of NRC requirements has occurred that would warrant enforcement action by the NRC. For this reason, this request by the Petitioners is denied.

<sup>8</sup>The Petitioners assert as a basis for their request that enforcement action be taken against licensee employees and union officials that certain pleadings they have filed in the DOL case, as well as transcript records, provide evidence of retaliation by these individuals. It should be noted that the pleadings and transcripts in a DOL proceeding are not, by themselves, conclusive that discrimination occurred.

<sup>7</sup>As noted in footnote 5, the NRC issued a Notice of Violation and Proposed Civil Penalty of \$100,000 to FPL for this violation.

### 3. Petitioners' Request for Initiation of NRC Investigations

The Petitioners request that the NRC investigate the "willful falsification" of a company business record and the cause of "transcripts found missing" in the DOL proceeding.<sup>9</sup> During the meeting held with the NRC on July 14, 1997, Mr. Saporito also raised what he asserted were certain improprieties which occurred during the DOL hearing and specifically requested that the NRC investigate an additional concern that the licensee or its attorneys may have "whited out" a page of a document he had requested during the DOL proceeding. Mr. Saporito stated that he was adding this request to his Petition.

This matter relates solely to the conduct of a DOL proceeding. The NRC staff has, therefore, referred these issues to DOL. The Petitioners' request that the NRC investigate these matters is denied.

### 4. Other Petition Issues

The Petitioners request that the NRC require the licensee to post a written notice alongside each NRC Form 3 currently posted at the licensee's nuclear facilities that alerts employees that they can directly contact the NRC about nuclear safety concerns without first identifying the safety concerns to the licensee. In addition, the Petitioners request that the NRC require the licensee to provide a copy of this posted communication to all employees and ensure that all employees are made aware of those communications through the licensee's General Employee Training Program. Finally, the Petitioners request that the NRC require the licensee to provide the Commission with documents authored by an officer of the licensee under affirmation affirming that the licensee has complied with these requests.

This request is similar to a request made by Mr. Saporito in a Petition filed on March 8, 1995, and responded to in a Director's Decision issued on May 25, 1995 (DD-95-8, 41 NRC 346 (1995)). In that Petition, Mr. Saporito requested that each licensee be required to report to the Commission under oath or

affirmation that it had completed a review of its station operating procedures to determine whether those procedures included restrictions that would prevent an employee from bringing safety concerns directly to the NRC and that it had communicated to its employees that they were free to bring concerns directly to the NRC without following the normal chain of command. As explained in that Director's Decision, the Secretary of Labor did not hold in his decision of June 3, 1994, that employees have an "absolute right" to refuse to inform licensee management of public health and safety concerns and to bypass the licensee's management in order to bring safety concerns directly to the NRC. Although an employee may not be discriminated against by the employer for coming directly to the NRC with safety concerns, an employee may also be required by the employer to bring these same concerns to the employee's management. Whether an employee must bring issues to licensee management is dependent on the facts of each specific case.

As further explained in DD-95-8, the NRC requires in 10 CFR 19.11(c) that all licensees and applicants for a specific license 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 workers on how to report safety concerns to the NRC, the degree of protection that was afforded the worker's identity, and the NRC process for handling a worker's allegations of discrimination. These measures are sufficient to (1) alert employees in the nuclear industry that they may take their concerns to the NRC and (2) alert licensees that they shall not take adverse action against an employee who exercises the right to take concerns directly to the NRC.

The NRC staff believes that these existing requirements for posting and making other information available to workers are adequate. The Petitioners have not provided a sufficient basis for requiring their suggested additional measures. Therefore, Petitioners' requests related to a supplemental posting are denied.

As previously stated, a public meeting was held with Mr. Saporito enabling

him to fully present information regarding the issues raised in the Petition. In addition, the NRC will monitor the DOL proceeding referenced in the Petition to determine whether there has been a violation of NRC regulations. In view of these facts, there is no basis to hold any hearing at this time. Therefore, the Petitioners' requests related to a public hearing are denied.

### III. Conclusion

For the reasons discussed above, no basis exists for taking the enforcement actions requested in the Petition and its supplements. Nonetheless, as previously described, on July 14, 1997, a public meeting was held between Mr. Saporito and representatives of the NRC staff, the purpose of which was to provide Mr. Saporito with the opportunity to provide additional information regarding the substance of this Petition. Therefore, to the extent that the Petitioners have requested that the NRC conduct an interview with the Petitioners regarding the substance of their 10 CFR 2.206 Petition, the Petition has been granted. With regard to all other aspects of the Petition, the Petition has been 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.

Dated at Rockville, Maryland, this 8th day of September 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

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[FR Doc. 97-24220 Filed 9-11-97; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Appointments to Performance Review Boards for Senior Executive Service

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Appointment to Performance Review Boards for Senior Executive Service.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards. The appointments were recently published

<sup>9</sup>Mr. Saporito elaborated on these alleged falsifications at the meeting held on July 14, 1997. Specifically, Mr. Saporito asserted, with regard to the missing transcript pages, that 20 pages containing testimony by the licensee's vice president were missing from the initial copy of the transcript that he was provided (although the record was eventually amended to contain these pages). With regard to the falsification of a business record, he asserted that minutes of a meeting held between him and licensee officials did not accurately reflect the real reason that his site access was being revoked; that is, that union officials had told licensee management officials that he might sabotage the plant.