



FPL

DOCKET NUMBER  
PETITION RULE PRM 2-12  
(64FR59669)

JAN 21 P2:58 JAN 13 2000  
L-2000-014

Ms. Annette Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: Florida Power & Light Company Comments  
Petition for Rulemaking – Enforcement Process for Alleged Violations  
of the Deliberate Misconduct and Employee Protection Rules  
Docket No. PRM-2-12, 64 Fed. Reg. 59669 (November 3, 1999)

Dear Ms. Vietti-Cook:

Florida Power & Light Company (FPL), the owner and operator of the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, hereby submits the following comments in support of the above-referenced Petition for Rulemaking.

In order to ensure due process and fundamental fairness, an individual that is the subject of a potential enforcement action should have, as a minimum, an opportunity at a predecisional enforcement conference to provide information that will assist NRC in determining the appropriate enforcement action, if any.<sup>1</sup> Such a rule, if promulgated, is entirely consistent with the current Enforcement Policy, which states that an opportunity for a predecisional enforcement conference “will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person.” 64 Fed. Reg. 61142, 61148 (Nov. 9, 1999).

Additionally, an individual that is the subject of an NRC enforcement action for which a Notice of Violation has been issued should be afforded an opportunity for a hearing. A hearing opportunity is required for licensed persons by Section 189(a) of the Atomic Energy Act, 42 USC 2239. For unlicensed persons, such a rule is mandated by the due process requirements of the Fifth and Fourteenth Amendments to the United States Constitution. Federal and NRC cases interpreting those amendments recognize a right to a hearing where liberty or property interests may be affected by the proposed agency action.<sup>2</sup> An enforcement action against an individual can result in civil penalties and orders barring that individual from licensed activities clearly resulting in impacts to liberty and property. Even the issuance of a Notice of Violation without further sanction can significantly affect the ability of an individual to obtain employment. Therefore, such sanctions clearly implicate liberty and property interests, and therefore give rise to a right to a hearing. This right should be specifically codified in NRC regulations.

<sup>1</sup> FPL questions whether NRC has the legal authority to pursue enforcement action against unlicensed individuals. In the interests of brevity, FPL will not address this issue at this time.

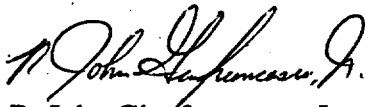
<sup>2</sup> Sequoyah Fuels Corp. (Sequoyah UF6 to UF4 Facility), CLI-86-17, 24 NRC 489, 495 (1986); See City of West Chicago v. NRC, 701 F.2d 632, 645 (7<sup>th</sup> Cir. 1983).

DS10

Ms. Vietti-Cook  
L-2000-014  
Page 2

FPL encourages the NRC to process this Petition for Rulemaking and provide notice of a proposed rulemaking in the Federal Register. We appreciate the opportunity to comment on this Petition for Rulemaking.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. John Gianfrancesco, Jr.", written in a cursive style.

R. John Gianfrancesco, Jr.  
Manager  
Administrative Support and Special Projects