



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 7, 1999

Florida Power and Light Company  
ATTN: Mr. Thomas F. Plunkett  
President, Nuclear Division  
6351 S. Ocean Drive  
Jensen Beach, FL 34957

Dear Mr. Plunkett:

I am responding to your March 2 and April 15, 1999, letters requesting a review of NRC's denial of Florida Power and Light's (FPL) appeal of the Part 170 fees assessed for the costs of resident inspector training (Invoices RS0062-99 and RS0182-99 for St. Lucie Unit 1 and Invoices RS085-99 and RS0205-99 for Unit 2). We acknowledge receipt of your full payment for each of these invoices.

You disagree with the assessment of the training costs, stating that since the inspector was in training he was not providing direct regulatory support and that the training time should be included in the overhead and general administrative costs under Part 171 annual fees. You further believe that the assessment of fees for time spent in training is arbitrary and capricious and violates the Omnibus Budget Reconciliation Act (OBRA). You also believe we did not adequately address the subject of assessing the cost of training time in the FY 1998 fee rule. You requested that we provide the number of hours G. N. Warnick charged to each specific inspection report billed on the above invoices. Finally, you request that the non-inspection costs for each resident inspector be evenly distributed to the St. Lucie dockets.

For the reasons which follow, I am denying your appeal of the fees assessed for the resident inspector's time in training.

Basis for Assessing Full Costs for Resident Inspectors

NRC believes that full cost recovery under Part 170 for resident inspectors is consistent with Title V of the Independent Offices Appropriation Act of 1952 (IOAA), interpretations of that legislation by the Federal Courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of the required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations or the Commission's regulations. Resident inspector activities are services which the NRC provides to specific, identifiable recipients. Ongoing training is an integral part of the resident inspector position. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the services of the resident inspector rather than through annual fees assessed to all of the licensees in that class. Therefore, we disagree with your claim that

the assessment of fees for a resident inspector's training time is arbitrary and capricious and violates OBRA. Because of the necessity to have resident inspectors at the sites, it is appropriate to charge the licensee for costs associated with ongoing training received by the resident inspector.

#### Discussion in FY 1998 Fee Rule

The proposed FY 1998 fee rule discussed the rationale for full-cost recovery under Part 170 for resident inspectors:

Currently, resident inspectors' time is billed to the site to which they are assigned only if the time is reported to a specific inspection report number. The remaining costs related to the resident inspector are recovered in the annual fees assessed to all licensees in the class. Because the assignment of a resident inspector to a site is an identifiable service to a specific licensee, the NRC is proposing that all of the resident inspectors' official duty time (i.e., excluding leave) be billed to the specific licensee under Part 170. This change would be applicable to all classes of licensees having resident inspectors.

Following are excerpts of comments received on the proposed FY 1998 fee rule from NEI, TVA and FPL:

NEI and FPL indicated that NRC should increase the percentage of costs recovered through Part 170 fees. FPL claimed that there is no exemption authority from the provision that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." FPL concluded that NRC has not adequately allocated costs to the beneficiaries of services. NEI and TVA supported NRC's proposed full-cost provision for resident inspectors; however, TVA indicated that time for resident inspectors assigned to special inspections at other plants should be charged to those specific inspections.

The final FY 1998 fee rule stated, "Because the assignment of resident inspectors to a site is an identifiable service to a specific licensee, the NRC will bill the specific licensee for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site."

While we agree the statement of considerations did not specifically say we were charging for time spent in training, we stated we would charge for all official duty time of resident inspectors excluding leave. This means that, except leave time, all resident inspector time, including time spent in training, is billable under Part 170.

#### Billing for Resident Inspector's Time in Training

With regard to your continued claim that FPL should not be billed for the time a resident inspector is in training, we believe we adequately addressed your concerns in our previous correspondence. Nonetheless, we will reiterate that Mr. Warnick was a resident inspector when he reported to the St. Lucie Unit 1 site in March of 1998. He therefore provides the regulatory services of a resident inspector to the St. Lucie Unit 1 site.

NRC's practice to select and hire employees is based on an individual being the best qualified to carry out the duties of their assigned position. It appears your concern is based on an employee meeting the certification process described in Inspection Manual Chapter (IMC) 1245. IMC 1245 defines training and qualification requirements for staff performing inspections in the Nuclear Reactor Regulation (NRR) inspection program, provides the opportunity for post-qualification training that will enhance the effectiveness of experienced staff in identified specialty areas, and defines refresher training requirements designed to update and maintain an inspector's qualification.

During the certification process, staff undergoing this training may perform inspections under the direction of a certified inspector. When certified, the staff is then allowed to conduct independent inspections in specified areas based on their certification. As with any job within the NRC, staff may be qualified to perform their assigned duties based on related training and other experience, but may not be formally "certified" for certain inspections and functions. This does not imply that these individuals are not "qualified" to perform their assigned duties, but rather that during this process more oversight of the employee is needed. We assess Part 170 fees for staff that actively participate in inspections and provide technical expertise as needed, although they may not be "certified" in accordance with the requirements of IMC 1245.

With regard to your request for the number of hours Mr. Warnick charged to the inspections billed on the four invoices noted above, Mr. Warnick did not charge any time to those specific inspections. However, as previously stated, he did provide the services of a resident inspector. The invoices are correct as issued.

In summary, Mr. Warnick was assigned to the site in March 1998 as a resident inspector. He served as a resident inspector, performed the duties of a resident inspector, and conducted inspections under the direction of a "certified" inspector until he himself became "certified" under the aegis of IMC 1245 in December 1998.

#### Resident Inspectors Non-inspection Activity Costs at Multi-Unit Sites

At the time we programmed the billing system to implement the FY 1998 fee rule, including full cost for resident inspectors, we did not take into consideration the possibility of multiple ownership of units at a site. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. However, a senior resident inspector may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, the NRC is not able at this time to provide separate billings for each unit for the senior resident inspector time not related to specific inspections. We will pursue modification of the billing system in the future to allocate this senior resident inspector time to each docket on a prorated basis, e.g., if there are two dockets and one senior resident inspector at the site, each docket will be billed for one-half of the senior resident inspector's time that is not related to a specific inspection.

If you have any questions about our fee policy, please contact Glenda Jackson, Assistant for Fee Policy and Rules at 301-415-6057. If you have any questions about the invoices for Florida Power and Light Company, please contact Doug Weiss, Team Leader, Reactor and Fuel Cycle Team at 301-415-7348.

Sincerely,

*Handwritten signature of Jesse L. Funches*

Jesse L. Funches  
Chief Financial Officer

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- PDR
- Invoice Files RS0062-99 and RS0182-99
- RS0085-99 and RS0205-99
- Docket File 50-335 and 50-389
- DCFO RF
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\*Previously concurred.

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**DAF ACTION ITEM TRACKING**

Date Rec'd: 4/30/99

DAF Action: ~~99-176~~ DAF 9098

OC Action: ~~DAF 9-098~~ OC 99-176

DAF Due Date: 5/10/99

Branch: LFARB

Action Item: FPL appeal of fees

Description: Letter from Thomas Plunkett, President, Nuclear Division, FPL, appealing the assessment of fees assessed in November 1998 invoices.

Date to DIR:

Ext. Date:

Date Closed:

Signature:

Subject File:

OCFO TICKET

30-Apr-99

Assigned

Item No

Priority

From

Office

To

Date

Due Date

Ticket No

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OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-99-0401

LOGGING DATE: Apr 28 99

ACTION OFFICE: CFO

AUTHOR: THOMAS PLUNKETT  
AFFILIATION: FLORIDA

ADDRESSEE: SECRETARY

LETTER DATE: Apr 15 99 FILE CODE: ID&R 3 ST. LUCIE

SUBJECT: ST LUCIE UNITS 1 AND 2, DOCKKET NOS. 50-335 AND  
50-389

ACTION: Direct Reply

DISTRIBUTION: CHAIRMAN, COMRS, T. ROTHSCHILD

SPECIAL HANDLING: SECY TO ACK

CONSTITUENT:

NOTES:

DATE DUE: May 14 99

SIGNATURE:  
AFFILIATION:

DATE SIGNED:



March 2, 1999

L-99-44  
10 CFR 50.4  
10 CFR 15.31  
10 CFR 170.51

License Fee and Debt Collection Branch  
Office of Controller  
U. S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, D. C. 20555

RE: St. Lucie Units 1 and 2  
Docket Nos. 50-335 and 50-389  
Request for Review and  
Appeal of Fees Invoice No. RS0182-99

Pursuant to 10 CFR 170.51 and 10 CFR 15.31, Florida Power & Light Company (FPL) has reviewed and appeals the fees assessed by Invoice No. RS0182-99 for St. Lucie Unit 1 dated February 16, 1999. FPL disagrees with the fee for resident inspector regular hours not billed to a specific inspection report for inspector G. N. Warnick on the invoice. FPL considers the fee for 461.5 hours totaling \$57,226.00 inappropriate because the inspector was in training status during the billing period. Based upon conversations with other licensees, FPL understands that the training hours of other inspectors in such status have not traditionally been billed to licensees. FPL makes the following observations:

- The inspector was in training status and therefore was not providing any direct regulatory service to FPL.
- The time Mr. Warnick spent at St. Lucie site that was not assigned to a specific inspection report should be included in the NRC overhead, general, and administrative costs defined under 10 CFR 171.5.
- Licensees are not billed for the training and qualification time of regional based inspectors that are not directly related to inspection reports; therefore, the NRC should not bill for resident inspectors in training until they become qualified and provide regulatory service to the utility.

FPL requests the NRC to provide the number of hours inspector in training G. N. Warnick charged to each specific inspection report listed on invoice numbers RS0062-99 and RS0182-99 for St. Lucie Unit 1 and RS0085-99 and RS0205-99 for St. Lucie Unit 2.



St. Lucie Units 1 and 2  
Docket Nos. 50-335 and 50-389  
L-98-44 Page 2

In addition, all of the non-inspection hours for the two qualified resident inspectors and this appealed fee were assessed to the St. Lucie Unit 1 docket no. 50-335. FPL is not the sole owner of both units. While Unit 1 is fully owned by FPL, Unit 2 is owned in part by FPL and the ownership partners share the cost of the regulatory fees for that unit. The fees for non-inspection hours for each resident inspector should be split evenly between the St. Lucie dockets on the site and not billed to a single docket.

Accordingly, FPL requests that NRC revise the invoice for the incorrectly billed hours attributed to the resident-in-training and set the fees such that the non-inspection hours for each resident inspector are evenly distributed between the St. Lucie dockets.

By FPL letter L-98-316 dated December 18, 1998 (NRC reference LF-99-18), FPL appealed similar fees on Invoice RS0062-99 dated November 7, 1998. This letter continues that appeal and supplements those arguments. Please contact us if there are any questions about this request for review.

Very truly yours,



J. A. Stall  
Vice President  
St. Lucie Plant

JAS/GRM

cc: Regional Administrator, Region II, USNRC  
Senior Resident Inspector, USNRC, St. Lucie Plant



APR 15 1999  
L-99-082  
10 CFR 15.31  
10 CFR 170.51

REC'D BY SECY

Secretary  
U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555

3 APR 99 1:20

RE: St. Lucie Units 1 and 2  
Docket Nos. 50-335 and 50-389  
Appeal of Fees - Invoice Nos. RS0062-99 and RS0182-99

Pursuant to 10 CFR 170.51 and 10 CFR 15.31, Florida Power & Light Company (FPL) requests the Nuclear Regulatory Commission's review of the denial of FPL's appeal from the assessment of fees assessed in the November 1, 1998, Invoice No. RS0062-99 for St. Lucie Unit 1. FPL's initial appeal of this invoice (L-98-316, December 18, 1998, Attachment 1 hereto) was denied in part by the Office of the Chief Financial Officer (NRC CFO) by letter dated March 5, 1999 (Attachment 2 hereto). FPL also appeals the assessment of fees in Invoice No. RS0182-99 that was also denied in the Attachment 2 letter. FPL had appealed this invoice by letter L-99-44, March 2, 1999 (Attachment 3 hereto).

In summary, FPL was improperly billed for fees for 232 hours totaling \$28,768.00 for NRC inspector G. G. Warnick who was in training status during the billing period covered by Invoice RS0062-99. Additionally, FPL was improperly billed for fees for 461.5 hours totaling \$57,226.00 for the same inspector who was in training status during the billing period covered by Invoice RS0182-99.

In support of its appeals, FPL stated that (1) the inspector was in training status for the periods in question and was not providing direct regulatory services to FPL; (2) the time that the inspector spent at St. Lucie in training that was not assigned to a specific inspection report should be included in the NRC overhead, general, and administrative costs defined under 10 CFR 171.5; and (3) FPL should not be billed for resident inspectors until they become qualified and provide regulatory services to the licensee.

The NRC CFO's letter denying FPL's appeal (Attachment 2) fails to address FPL's arguments. The letter merely asserts that 10 CFR 170.12(g)(1), amended in June 1998, requires full cost recovery for resident inspector's time, and that Part 170 fees are now assessed for all resident inspector time, excluding leave and time spent at another site to which they are not assigned. The letter further asserts, without explanation or basis, that "[t]he costs associated with resident inspectors, including time in training, are an identifiable service to specific licensees in providing regulatory oversight of their assigned plant or facility." [emphasis added]

With respect to the user fees in 10 CFR Part 170, Congress instructed in the Omnibus Budget Reconciliation Act of 1990 (OBRA) that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." 42 USC 2214(b). Congress instructed the Commission to allocate the aggregate amount "fairly and equitably" among licensees. 42 USC 2214(c)(3). In enacting OBRA, the Conference Committee made clear that the annual fee provision was intended to require NRC to recover "administrative costs not inuring directly to the benefit of regulated parties." 136 Cong. Rec. at H12692. The conferees instructed the Commission to recover the costs of "individually identifiable services to applicants and holders of NRC licenses" through Part 170, "so that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives." *Id.* The remainder of NRC's budget, less appropriations from the Nuclear Waste Fund, is to be covered by annual fees under Part 171.

The assessment of fees for time spent in training under Part 170 is arbitrary and capricious and violates OBRA. The training and qualification of a resident inspector simply enables that inspector to provide regulatory services to a licensee at some later time. During the training process, the inspector is not providing regulatory services to a specific beneficiary.

The June 1998 amendment to 10 CFR 170.12(g)(1) does not end the inquiry. Until a resident inspector is fully trained and qualified, that inspector cannot be considered to be "assigned to a particular plant." It is also inappropriate to consider "all of the resident inspector's time" as including his time before he was qualified to serve as an inspector. Training to qualify an inspector to inspect is simply not a "service" to the entity being inspected. Further, the statement of considerations accompanying the June 1998 amendments do not indicate that the costs of training and qualification will be recovered under Part 170.

Additionally, all resident inspectors are transferred to other facilities after a period of time at one facility. The next licensee that receives the services of that resident inspector is not assessed for the previous training and qualification of that inspector. In this case, when inspector Warnick is assigned to another licensee, FPL will have shouldered the entire burden to pay for the training of that inspector. Since the benefit of this training is spread to other licensees, the burden should also be spread, "fairly and equitably," through the annual Part 171 fee.

St. Lucie Units 1 and 2  
Docket Nos. 50-335 and 50-389  
L-99-082 Page 3

In summary, NRC should issue a credit to FPL in the amounts of \$28,768.00 for improperly billed time in Invoice RS0062-99 and \$57,226.00 for improperly billed time in Invoice RS0182-99 for the reasons set forth above.

Please contact us should you have any questions about this appeal.

Very truly yours,



Thomas F. Plunkett  
President  
Nuclear Division

Attachments (3)

cc: Regional Administrator, Region II, USNRC  
Senior Resident Inspector, USNRC, St. Lucie Plant