EDO Principal Correspondence Control

FROM: DUE: / / EDO CONTROL: G20090231
DOC DT: 04/11/09
FINAL REPLY:

Thomas Saporito
Saporito Energy Consultants, Inc.

TO:

Borchardt, EDO

FOR SIGNATURE OF : ** GRN ** CRC NO:

DESC:

Documents Needed in Relation to the January 11, 2009 2.206 Petition Related to the Florida Power and Light Company's Turkey Point Nuclear Units 3 and 4 (EDATS: OEDO-2009-0222)

DATE: 04/20/09

ASSIGNED TO: CONTACT:

NRR Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action. Ref. G20090107.

ROUTING:

Borchardt
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Reyes, RII
Cyr, OGC
Mensah, NRR
Marco, OGC
Paige, NRR
Trocine, OEDO

Template: EDO-001 E-RIDS: EDO-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: OEDO-2009-0222 **Source:** OEDO

General Information

Assigned To: NRR **OEDO Due Date:** NONE

Other Assignees: **SECY Due Date:** NONE

Subject: Documents Needed in Relation to the January 11, 2009 2.206 Related to the Florida Power and Light Company's Turkey Point Nuclear Units 3 and 4

Description:

CC Routing: Region II; OGC

ADAMS Accession Numbers - Incoming: NONE **Response/Package:** NONE

Other Information

Cross Reference Number: G20090107 **Staff Initiated:** NO

Related Task: **Recurring Item:** NO

File Routing: EDATS **Agency Lesson Learned:** NO

Roadmap Item: NO

Process Information

Action Type: Appropriate Action **Priority:** Low

Sensitivity: None

Signature Level: No Signature Required **Urgency:** NO

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: For Appropriate Action. Ref. G20090107.

Copies sent to: T. Mensah, NRR/J. Paige, NRR and C. Marco, OGC.

Document Information

Originator Name: Thomas Saporito **Date of Incoming:** 4/11/2009

Originating Organization: Saporito Energy Consultants, Inc. **Document Received by OEDO Date:** 4/17/2009

Addressee: R. W. Borchardt, EDO **Date Response Requested by Originator:** NONE

Incoming Task Received: Letter

Saporito Energy Consultants, Inc.

Post Office Box 8413, Jupiter, Florida 33468-8413
Voice: (561) 283-0613 Fax: (561) 952-4810
Email: Support@SaporitoEnergyConsultants.com
Website: SaporitoEnergyConsultants.com

April 11, 2009

R. William Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

In re: 10 C.F.R. 2.206 Petition Dated January 11, 2009 as Supplemented on March 21, 2009 Seeking Enforcement Action Against the Florida Power and Light Company

Dear Mr. Borchardt,

This serves as a response by Saporito Energy Consultants, Inc. ("SEC") through its president, Thomas Saporito, to a request by Jason Paige, Project Manager, Plant Licensing Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission for a copy of certain and specific documents which were identified in SEC's March 21, 2009 Supplement to SEC's January 11, 2009 Petition.[1]

Accordingly, an additional copy of the following documents is being provided to the NRC:

- SEC-000001 – Request for Enforcement Action and Confirmatory Order Under 10 C.F.R. 2.206 Against Florida Power and Light Company, dated January 11, 2009 (5-pages)
- SEC-000002 – State of Florida, Office of Public Counsel (Citizens' Brief On Issue 13C) Before the Florida Public Service Commission, dated November 24, 2008 (19-pages)
- SEC-000003 – FPLTurkey Point Employee Concerns Program Self-Assessment, dated January 14-17, 2008 (59-pages)
- SEC-000004 – Miami Herald news article entitled "Court papers reveal nuclear feud at Turkey Point", dated March 12, 2009 (2-pages)
- SEC-000005 – Miami Herald news article entitled "Silence clause aims to keep Turkey Point workers quiet", dated March 12, 2009 (2-pages)
- SEC-000006 – Miami Herald news article entitled "Amid nuclear worker shortage. FPL says it's following rules", dated March 12, 2009 (3-pages)
- SEC-000007 - Miami Herald news article entitled "At heart of Turkey Plant workers' unrest: overtime", dated March 12, 2009 (3-pages)
- SEC-000008 - Associated Press news article entitled "Ex-worker: Florida power company put safety second", dated March 14, 2009 (1-page)
- SEC-000009 – Miami Herald news article entitled "Turkey Point nuclear operator responds to Miami Herald article", dated March 14, 2009 (3-pages)
- SEC-000010 – Miami Herald news article entitled "FPL's response to Turkey Point story", dated March 14, 2009 (2-pages)

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[1] This request is being honored at the expense of SEC despite the fact that the U.S. Nuclear Regulatory Commission ("NRC") was provided with a copy of the requested documents via Mr. Paige prior to the NRC's assembly of the Petition Review Board ("PRB") on March 19, 2009 where a transcribed public teleconference took place with SEC's president, Thomas Saporito, regarding the specifics of the January 11, 2009 Petition related to the Florida Power and Light Company's ("FPL's") Turkey Point Nuclear Units 3 and 4. SEC expenses these duplicative associated costs in **once again providing the NRC** with documents already in the agency's possession, custody and control in the interest of protecting public health and safety as it relates to FPL's operation of the Turkey Point Nuclear Units 3 and 4.

- SEC-000011 – FPL Lawsuit filed against David Hoffman, Case No. 50 2008 CA 040307 XXXXMB, In the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, dated February 9, 2009, with attachments (22-pages)
- SEC-000012 – Memorandum of Understanding PTN Staffing and Attrition Mitigation Pilot, dated February 2, 2009 (4-pages)
- SEC-000013 – Plaintiff's First Amended Complaint, Case No. 08-22887-CIV-HOEVELER/GARBER, dated October 29, 2008 (14-pages)
- SEC-000014 – Memorandum of Understanding PTN Mobility Incumbent Operators, dated February 2, 2009 (2-pages)
- SEC-000015 – Defendant Florida Power & Light Company's Motion to Dismiss Plaintiffs' First Amended Complaint With Incorporated Memorandum of Law, dated February 2, 2009 (11-pages)
- SEC-000016 – Letter from Saporito Energy Consultants to Lewis Hay III, FPL Chief Executive Officer, dated January 17, 2009 (2-pages)

In an email dated April 6, 2009, Mr. Paige stated, in relevant part, that:

> ". . . You will have 45 minutes to address the PRB . . . If you believe that you will need more than 45 minutes to address the PRB, please advise in writing of the time that you require with the PRB members and provide your basis for requesting additional time. . ."

Id at 1. SEC respectfully requests an amount of time (1-hour and 30-minutes) to address the NRC's PRB regarding the aforementioned documents. SEC's basis for requesting this amount of time is due to the voluminous amount of information contained in the referenced documents which must be appropriately conveyed to the NRC's PRB in a manner consistent with SEC's nuclear safety concerns identified in SEC's January 11, 2009 Petition 2.206 related to the licensee's Turkey Point Nuclear Units 3 and 4. Notably, the very basis for the NRC's 2.206 petition process is to enable the public to participate in the agency's regulation of commercial nuclear power plants in the United States of America. Thus, SEC's request for an amount of time (1-hour and 30-minutes) to address the NRC's PRB is a matter of ***"due process"*** in providing SEC and the public a fair opportunity to participate in the 2.206 petition process.

Respectfully submitted,

Thomas Saporito, President

SEC-000004 – Miami Herald news article entitled "Court papers reveal nuclear feud at Turkey Point", dated March 12, 2009 (2-pages)

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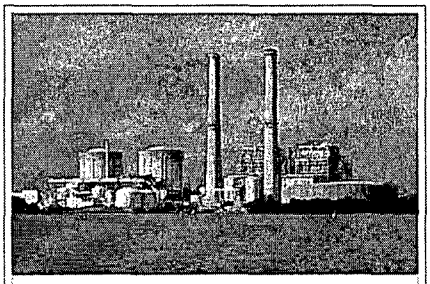
Court papers reveal nuclear feud at Turkey Point

The top nuclear operator at Turkey Point resigned after a huge outage because he felt his bosses were demanding an unsafe restart.



Turkey Point Nuclear Power Plant in South Miami-Dade County in a 2001 file photo. TIM CHAPMAN / MIAMI HERALD FILE PHOTO

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- Amended complaint by 20 Turkey Point nuclear operators that the company is cheating them on overtime pay
- FPL's response to nuclear workers complaint about overtime
- Bonus program for turkey point operators
- Another bonus program for nuclear operators at Turkey Point

BY JOHN DORSCHNER
JDORSCHNER@MIAMIHERALD.COM

At 1:09 one afternoon last year, 90 metal rods slid into the cores of the two nuclear reactors at Turkey Point, part of an automatic shutdown that had been triggered by a utility worker's blunder moments earlier at a substation miles away. A million customers lost power.

Florida Power & Light executives ordered that the reactors be back online within 12 hours, according to court documents. The plant's top nuclear operator, David Hoffman, said that would be dangerous. When FPL executives disagreed with him, he walked out at 8 p.m., refusing to participate in actions he felt were unsafe.

At 11:49 that night, Feb. 26, 2008, he submitted a heated resignation letter, blasting FPL for constantly putting cost savings ahead of safety and creating a horrible morale problem. "People are not valued and are treated like equipment and numbers," Hoffman wrote.

Hoffman's charge offers a rare insight into safety complaints made by nuclear workers, who are often forbidden by contract from saying anything negative about their bosses. The information came to light because FPL is suing him for the return of a bonus, and he's charging in a countersuit that the utility is improperly trying to silence his complaints about safety.

The information is being revealed at a crucial time as FPL is planning to build two new reactors at Turkey Point, part of a national resurgence of more than 20 new

plants planned to reduce dependence on foreign oil and the greenhouse gases that cause global warming.

The utility insists that Turkey Point is operated safely and that the company is working hard to retain employees.

"Taking into account the fact that Turkey Point's restart process was conducted according to well-established safety guidelines and under the strict oversight of federal nuclear regulators, it's clear that Mr. Hoffman's claims are made out of self-interest, not the public interest," FPL spokesman Tom Veenstra said in an e-mail.

``Without exception, the safety of our customers, communities and employees is always FPL's top priority at Turkey Point and all of our facilities. The facts clearly show that this case is totally without merit, having nothing to do with safety, but rather, one individual's attempt to improperly keep a retention payment that he chose to forfeit."

The company is suing Hoffman, insisting that he return a bonus of $50,000 he was given on condition he work at FPL until 2010.

The retention bonuses exist because there has long been a scarcity of nuclear operators, and Turkey Point, like other nuclear plants, has a hard time keeping employees. Some FPL nuclear operators get $50,000 a year in bonuses, on top of $125,000 to $150,000 in salaries that include lots of overtime.

SAFETY CONCERNS

But the pay has not made many operators feel good about FPL. A survey of Turkey Point employees last year about the process for reporting safety issues, the Employee Concerns Program, found that more than one in four -- 29.2 percent -- disagreed with the following statement: ``I am confident that nuclear safety and quality issues reported through the ECP are thoroughly investigated and appropriately resolved."

More than one in three disagreed with this following statement: ``I can use the ECP without fear of retaliation."

The FPL report concluded: ``There is a perception problem with ECP in the areas of confidentiality and potential retribution. No actual cases involving breach of confidentiality or retribution for filing a concern could be identified. However, the perception remains as evidenced by surveys, interviews and the high percentage of anonymous concerns."

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Tiger Woods ready for Doral

SEC-000005 – Miami Herald news article entitled "Silence clause aims to keep Turkey Point workers quiet", dated March 12, 2009 (2-pages)

Silence clause aims to keep Turkey Point workers quiet

BY JOHN DORSCHNER
JDORSCHNER@MIAMIHERALD.COM

Licensed nuclear operators at Turkey Point sit at control panels staring at meters that generally don't do much. For this, they can earn up to $150,000 a year, including plentiful overtime, plus another $50,000 or so in bonuses. So why complain about their bosses at Florida Power & Light?

"The work atmosphere there is horrible," says Thomas Saporito, a Turkey Point worker who was fired in 1988 but has stayed in touch with many workers since then. ``No one wants to work at the plant because of the retaliatory atmosphere there. People are afraid to make complaints about safety."

Nuclear operator complaints generally are made public only in public documents, such as lawsuits involving overtime or bonuses. Virtually all operators are reluctant to talk to journalists.

One reason is that many signed bonus agreements in which they promise not to say anything bad: "The employee shall not, at any time in the future and in any way . . . make any statements that may be derogatory or detrimental to the company's good name," was the way it was phrased in the contract of David Hoffman.

Saporito has become an anti-FPL gadfly. He has been suing the utility for 20 years claiming he was fired because of his persistent complaints about safety, but FPL has repeatedly won in court.

FPL spokesman Tom Veenstra says the utility ``vigorously encourages anyone working at any of our nuclear power plants or our other facilities to identify any safety concerns without fearing reprisal of any kind."

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leland75 wrote on 03/12/2009 11:08:59 AM:
I am a former FPL Turkey Point Nuclear Plant worker. I left the company more than 10 years ago. Doesn't look like much has changed.

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SEC-000006 – Miami Herald news article entitled "Amid nuclear worker shortage, FPL says it's following rules", dated March 12, 2009 (3-pages)

Amid nuclear worker shortage, FPL says it's following rules

BY JOHN DORSCHNER
JDORSCHNER@MIAMIHERALD.COM

Five times since 2000, operators of U.S. nuclear power plants have been found slumped over their controls asleep, according to federal documents.

The suspected reason each time: exhaustion from long stretches of overtime. The problem is that there's a shortage of nuclear operators -- in Florida and across the country. A lawsuit filed recently by 20 nuclear operators at Turkey Point complained that on average most of them work "60 to 70 hours or more" a week.

In the first six weeks of of 2008, the Nuclear Regulatory Commission found that Florida Power & Light's nuclear plants had 21 overtime "deviations" in which 17 plant operators had worked more than 72 hours a week, the maximum now allowed. Two of those workers were involved in a spill of 200 gallons of boric acid used to control the nuclear reaction in the core, but there was no indication from the NRC on whether fatigue could have caused the error.

FPL says it complies with all federal requirements concerning overtime and is working hard to develop more nuclear operators. "At each of our nuclear sites, FPL carefully tracks the hours worked by our operators to ensure compliance with NRC work hour requirements," says FPL spokesman Tom Veenstra.

"In fact, in December 2008, the Nuclear Regulatory Commission concluded a three-month comprehensive inspection of licensed operator work hours at Turkey Point and identified no findings," Veenstra wrote in an e-mail to The Miami Herald.

Overtime rules are about to change. Starting in October, complex requirements from the Nuclear Regulatory Commission rules will take effect that will limit nuclear operators to an average of 54 hours a week over the long run.

That requirement comes after lengthy discussions that started 10 years ago when three Congressmen told the NRC they were worried that low staffing levels and excessive overtime ``may present a serious safety hazard."

The nuclear industry opposed strict overtime standards. The industry and the NRC spent a decade of hearings and position papers before arriving at its present position.

The result: Operators can work no more than 16 hours out of any 24-hour period or 72 hours in any seven-day period. But requiring certain periods for time off, "the goal is an average 54-hour work week over time," said Russell Smith of the Nuclear Energy Institute.

"It could have been done in a lot simpler," said John Butler of the NEI, but it was worked out as a compromise between the desires of regulators and the industry. ``We have some remaining issues on how that rule is implemented."

Last year, NRC chairman Dale Klein visited Turkey Point and then complained to journalists that the plant was seriously understaffed, with operators often working more than 72 hours a week.

"This is the first time I've delivered a message of this magnitude" on a plant's human performance issues, Klein told The Miami Herald. "A lot of operators are complaining about the overtime they do." He said FPL was "way behind" in filling openings and its training programs weren't sufficient.

Veenstra said FPL is working hard to add more staff to reduce overtime. ``All licensed nuclear plant operators undergo a stringent 18-month training, testing and qualification program before taking an exam administered by the Nuclear Regulatory Commission and obtaining a license to operate our facility.

``At all times, FPL has complied with all federal training and licensing requirements and has had sufficient licensed control room operators to safely operate Turkey Point.

``Over the past several years, attrition at Turkey Point has been significantly reduced, and, in fact, has declined by half from 2006. In addition to reducing attrition, we continue to recruit and train new operators.

``In fact, four new operator classes are currently under way (three licensed and one nonlicensed), and by late 2009, FPL expects to have 25 additional licensed operators and 25 additional nonlicensed operators working at Turkey Point. A similar number is expected in 2010. . . .

``FPL has complied, and continues to comply, with all federal regulations governing work hour limits for operators. FPL will also comply with the new NRC overtime standards that take effect on Oct. 1, 2009. To this end, we began implementing various changes in our programs, processes and procedures in 2008, and we will be in full compliance with all aspects of the new NRC standards by the Oct. 1, 2009, deadline."

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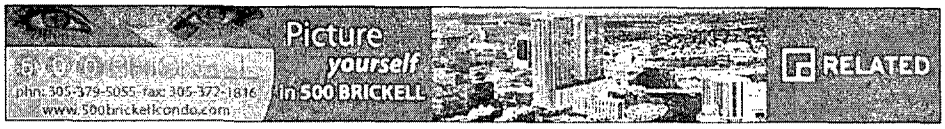
SEC-000007 - Miami Herald news article entitled "At heart of Turkey Plant workers' unrest: overtime", dated March 12, 2009 (3-pages)



At heart of Turkey Plant workers' unrest: overtime

BY JOHN DORSCHNER
JDORSCHNER@MIAMIHERALD.COM

In Miami federal court, 20 nuclear operators are suing Florida Power & Light, claiming that the company is improperly calculating their overtime.

FPL says the claims are "without merit," and on the surface the legal issues may seem arcane. But the underlying situation explains a lot about what has been happening with the workforce at the Turkey Point nuclear power plant.

The core issue involves bonuses in which operators can get $40,000 or $50,000 a year in addition to their regular salaries, which can easily run over $100,000 with overtime.

Overtime is important at Turkey Point because there is so much of it. The lawsuit says that for most operators ``an average work week is 60 or 70 hours or more."

Huge amounts of overtime is an industry-wide issue, because of a long-time shortage of nuclear operators that companies are still struggling to address, although if the lawsuit's numbers are correct, FPL appears to have more overtime than most nuclear utilities.

If the operators work an average of 60 hours a week with two weeks of vacation a year, that works out to 1,000 hours of overtime a year.

A Nuclear Regulatory Commission report says the average operator does about 375 hours of overtime a year. Assuming two weeks of vacation, that means the average operator works about 47.5 hours a week.

FPL says it is working hard to train new operators and retain present ones by use of bonuses. Here again, FPL seems to stand out. At the website for the Professional Reactor Operator Society, a discussion board about "Golden Handcuffs" mentioned that a senior operator at Turkey Point could get $100,000 over two years in bonuses.

Several anonymous responses said that those bonuses were much larger than what their companies were offering, if they offered them at all. "$100K. . . . WOW. . . . What are they doing wrong that they cannot retain their people?" asked one writer.

FPL says it's paying bonuses because it wants to retain skilled operators, which are in short supply.

In the lawsuit, the workers maintain that FPL should calculate their overtime by including the bonuses as part of their base pay. They say this has been FPL policy since 1993 in figuring nuclear workers' bonus.

In its court response, FPL said that demand was wrong for several reasons, including the fact that bonuses are intended to keep employees working until 2010, and if they leave before then, they must return the bonus money. So therefore the bonuses haven't really been earned yet and shouldn't be counted.

In a court filing by Noah Scott Warman, an attorney for the workers, Warman pointed to a U.S. Department of Labor regulation that he said demands bonuses be included in overtime calculations.

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SaporitoEnergyConsultants wrote on 03/12/2009 02:18:39 PM:
The U.S. Nuclear Regulatory Commission (NRC) allows FPL to operate the Turkey Point Nuclear Plants under a permissive license so long as FPL complies with federal safety regulations. Here, FPL over the last 20-years has a dubious record of retaliating against its own nuclear workers who raise safety concerns. It is time for the NRC to ORDER FPL to shut-down the Turkey Point Nuclear Plants until FPL can reverse the "chilling effect" at that nuclear plant which prevents the nuclear workers from freely raising safety complaints.

Thomas Saporito, President
http://saporitoenergyconsultants.com

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SEC-000008 - Associated Press news article entitled "Ex-worker: Florida power company put safety second", dated March 14, 2009 (1-page)

Associated Press

Ex-worker: Florida power company put safety second

By ILEANA MORALES , 03.13.09, 10:46 AM EDT

A former top operator for Florida Power & Light resigned because he believed the company put production before safety in the aftermath of a massive power outage in South Florida, according to court documents and the man's resignation letter.

David Hoffman said executives at Florida's largest utility company wanted to restart two nuclear reactors on Feb. 26, 2008 within 12 hours of them shutting down. Hoffman said doing so would be dangerous. The outage left a million customers without power before backup power sources kicked in.

Hoffman wrote of FPL's "horrible management" of its operators in his resignation letter sent later that night.

Cheryl Hoffman, David's wife, said he was out of the country Thursday and unavailable for comment. She declined to comment because of the ongoing litigation involving a bonus Hoffman received from the company.

Hoffman's attorney, Joe Hackney, said his client's case was the "tip of the iceberg."

FPL disputed Hoffman's account, saying safety is one of its top priorities.

"The facts clearly show that this case is totally without merit, having nothing to do with safety, but rather, one individual's attempt to improperly keep a retention payment that he chose to forfeit," Tom Veenstra said Thursday in an e-mail, referring to a $50,000 bonus that the company has asked Hoffman to return because he left before 2010.

Hoffman responded in court documents that he received about $39,000 of the $50,000 bonus. He also said that the company "intentionally failed to provide resources and support" needed for him to comply with the contract, thus breaking the agreement.

Florida Power & Light is a subsidiary of Juno Beach, Fla.-based FPL Group.

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SEC-000009 – Miami Herald news article entitled "Turkey Point nuclear operator responds to Miami Herald article", dated March 14, 2009 (3-pages)

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Business Breaking News

Turkey Point nuclear operator responds to Miami Herald article

BY JOHN DORSCHNER
JDORSCHNER@MIAMIHERALD.COM

David Hoffman, the Turkey Point nuclear operator who quit abruptly last year because he was concerned Florida Power & Light wasn't following proper safety precautions, submitted a letter Friday to The Miami Herald commenting on an article about his case that appeared on Thursday:

``I would like to ensure everyone that I fully support nuclear power in the United States. The technology used today is safe and extremely reliable for the production of electricity. The amount of energy produced by commercial nuclear power plants is simply awesome. It is truly hard to put in words how much energy is contained in these reactors.

``I had a shift manager that worked for me that informed the operators prior to every reactor start up that the operators controlled more power than the space shuttle has during a launch. The shear amount of energy being controlled demands oversight, which is one of the reasons the Nuclear Regulatory Commission exists today.

``The issues identified in The Miami Herald regarding the pending lawsuits between FPL and myself should not deter anyone from believing in the use of nuclear power as a reliable means of electricity production today or as a partial solution to our nation's energy crisis. I worked at Turkey Point in the operations department for about 10 years, and I still work in the industry today while my family lives in Miami.

``FPL has chosen to continue to neglect the environment created at Turkey Point regarding the retaliatory nature of the management team in place, multiple examples of this inappropriate behavior will continue to be presented as the law suits move forward. While the behavior of FPL regarding retaliation is truly disturbing on many levels, the ability of the operators controlling the reactors and the supervisors and managers in the control room still allow me to sleep soundly while I am home and while I am away and my family remains in Miami.

``Owning and operating a nuclear power plant is a unique privilege and not a right. The plants have millions of parts that must all operate in harmony and be monitored continuously by highly skilled and trained personnel. The challenge comes from failing to maintain the equipment in a condition that supports this harmonious operation. The balance between electricity production and maintaining the equipment in a condition that supports continued safe operation is a challenge for all nuclear sites. The balance is easily swung in toward production to support producing mass quantities of electricity at a fraction of the cost of burning fossil fuels.

``The issues FPL and I have do not center on the continued use of nuclear power in the United States. I was employed by FPL as the senior licensed operator with the NRC who was charted to safely operate the nuclear power plants while ensuring the health and safety of the public. I left FPL when I was no longer allowed to satisfy these requirements."

DAVID HOFFMAN

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Comments (7)

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SaporitoEnergyConsultants wrote on 03/14/2009 08:18:23 AM:
Mr. Hoffman is certainly correct with respect to the retaliatory management culture at the FPL Turkey Point Nuclear Plant. Over the last 20-years, FPL has amply demonstrated its retaliation taken against nuclear workers who raise safety complaints at Turkey Point. Clearly the management problem apparently begins at the very top at FPL with the company's CEO Lewis Hay who has failed to ensure for public health and safety regarding operations at the Turkey Point facility by not correcting the ongoing apparent "hostile work environment" at that nuclear power plant. What is the Nuclear Regulatory Commission doing about this, if anything?

Thomas Saporito, President
Saporito Energy Consultants
http://saporitoenergyconsultants.com

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hoopdreamz wrote on 03/13/2009 11:41:40 PM:
Mr. Hoffman demonstrated how a man of character and integrity handles adversity - with class and honesty. I appreciated the effort he made to clarify his personal issue with FPL does not necessarily mean "the sky is falling."

I hope FPL resolves this matter quickly,and makes Mr. Hoffman whole. Unfortunately, I expect they'll pull out a multi-thousand dollar P.R. firm, publish some glossy brochure full of fairy tales, and continue to dance around the fact that their actions could have seriously endangered our community.

Like most large corporations, they rarely let the truth get in the way of a good cover-up.

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big_house wrote on 03/13/2009 09:23:42 PM:
Dave's comments are absolutely correct. I really do miss working with him. There are still many good and dedicated employees that work at Turkey Point. The general public should not worry about another Chernobyl here in South Florida. But until the culture of the management significantly changes out there, they will continue to challenge the "good guys". I promise that I will continue to do my part to make Turkey Point a safe place to work and to live around. It is just a shame that I have to hide behind a stupid (and I hope untraceable) user id to comment on this article. I should change my id to anti-big_house.

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maquito wrote on 03/13/2009 07:24:29 PM:
If we have a Chernobyl type incident at Turkey Point,the "completely doomed nuclear power for generations" will be the LEAST of our problems,I fear...

Reply to this Comment Recommend (1) Report abuse

coppolarco2 wrote on 03/13/2009 05:01:43 PM:

I am for nuclear energy. It does not take a rocket scientist to see a competing provider (FPL) defending their point of view...Motive?...MONEY
Soon, if not already, because of increasing needs or politically, sources for revenue from Federal Government new regulations..i. e. carbon tax (?), Utilities, Gasoline etc., Any fees and costs, will be passed on to the tax payers. Competition is healthy...It is simply a Power Play.

Reply to this Comment Recommend (0) Report abuse

AlonzoQuijana wrote on 03/13/2009 01:30:08 PM:
I too support nuclear power, but FP&L's behavior does NOT inspire confidence. My concern is that another accident like Chernobyl, or 3 Miles Island, will completely doom nuclear power for generations. A lot has been entrusted to operators like FP&L. I hope they appreciate their responsibilities.

Reply to this Comment Recommend (2) Report abuse

PaPabear wrote on 03/13/2009 01:03:15 PM:
Another concern is contracted security for nuclear facilitities. Audits have indicated vulnerability to access. This makes these facilities vulnerable to terrorism. Public utlities in general such as our water supply require much more over sight to ensure the public's safety. Periodic education for employees as to what to look for and not discuss outside the work place are essential. Lack of over sight has been a shorcoming of our country in many aspects and indeed could lead to something even worse than 9-11.

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SEC-000010 – Miami Herald news article entitled "FPL's response to Turkey Point story", dated March 14, 2009 (2-pages)

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Business Breaking News

FPL's response to Turkey Point story

Florida Power & Light's top official at the Turkey Point nuclear power plant responded Friday afternoon to a story about safety issues at the facility:

"You published an article yesterday *[Court papers reveal nuclear feud at Turkey Point,* March 12, 2009] regarding the details of a lawsuit in which it was alleged that Florida Power & Light Company would have allowed the Turkey Point nuclear facility to be restarted in an unsafe fashion.

"Your readers should know that this allegation is completely and utterly without merit. The restart process that formed the basis of the false allegation was, in fact, conducted according to well-established safety guidelines and all operations at Turkey Point and every nuclear facility are conducted under the strict oversight of federal nuclear regulators. The restart was, notably, accomplished properly, without any question as to safety. At the root of the allegation is an employment dispute in which the claims of the individual involved represent his self-interest in attempting to avoid rightful repayment of compensation rather than the public interest in safety.

"More broadly, your readers should also know that Florida Power & Light Company has operated the Turkey Point nuclear facility in a safe and responsible fashion for more than 30 years and we will continue to do so for as long as this facility is in operation. This is our non-negotiable commitment to our employees, our community and our customers."

Sincerely,

Bill Jefferson

Turkey Point site vice president

Join the discussion

The Miami Herald is pleased to provide this opportunity to share information, experiences and observations about what's in the news. Some of the comments may be reprinted elsewhere in the site or in the newspaper. We encourage lively, open debate on the issues of the day, and ask that you refrain from profanity, hate speech, personal comments and remarks that are off point. In order to post comments, you must be a registered user of MiamiHerald.com. Your username will show along with the comments you post. Thank you for taking the time to offer your thoughts.

Comments (2)

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Comments: 2 Showing: Newest first

SaporitoEnergyConsultants wrote on 03/14/2009 07:43:15 AM:

Mr. Bill Jefferson is obviously part of the problem at the plagued Turkey Point Nuclear Plant. As a senior manager at that facility, [h]e has apparently failed to maintain a work environment which encourages nuclear workers to freely raise safety complaints. In so doing, Mr. Jefferson along with other top FPL managers, have created a "chilling effect" at the Turkey Point Nuclear Plant where nuclear workers fear retaliation in raising safety complaints. The health and safety of the public is *clearly in grave danger*!

Thomas Saporito, President
Saporito Energy Consultants
http://saporitoenergyconsultants.com

Reply to this Comment Recommend (0) Report abuse

StopTheFraud wrote on 03/14/2009 03:51:01 AM:
No other facility is as frequently cited for problems with sabotage, employees/contractors sleeping, overwork issues... over years and years. The new Vice President of Turkey Point defends his facility for his own self-interest as well. The last one was replaced nearly by force from regulators. Turkey Point has been shut down before: 30 years of success is absolutely false. Every time there is a problem at FPL, in general, a worker is cited and torn to shreds. Compare FPL and its discontents against the industry. FPL fails. Stockholders, ratepayers and legislators should take a better look: The same sort of high-level management greed and corruption that is crippling our economy today from financial abuse could turn out lights in half of Florida.

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SEC-000011 – FPL Lawsuit filed against David Hoffman, Case No. 50 2008 CA 040307 XXXXMB, In the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, dated February 9, 2009, with attachments (22-pages)

David Hoffman
02/26/2008 11:49 PM

To: Bill Jefferson/Juno/Nuclear/FplNuc@FPLNuc, Michael W. Kiley/Ptn/Nuclear/FplNuc@FPLNUC, Richard V Wright/Ptn/Nuclear/FplNuc@FPLNUC
cc: David Hoffman/Ptn/Nuclear/FplNuc@FplNuc
Subject: Resignation

I have a challenge in my ability to continue to be the senior license holder at Turkey Point. I previously informed you of some challenges regarding my ability to perform my job. Since that notification on 02/04 I have observed the following:

- The EDG overhaul scope was reduced without any input from myself or the Juno System Engineers for the EDG's - this included some corrective maintenance for the silencers and radiators
- The Outage valve scope was reduced without any feedback on the list of concerns I provided for the scope deferrals. These deferrals include items that are directed by commitments and corrective actions.
- The RPI failures continue to occur at an unacceptable rate and the cause is not fully understood - this resulted in an RPI not indicating correctly today during the trip.
- Overtime management ($$$) is becoming more of a concern than doing the right thing for the plant again.
- An inaccurate pay code (deliberate action) was not corrected when challenged for an employee even when requested of HR
- The Operations continuing Training lunch has been removed from my interaction time with the crew to allow others time to meet with the crew without my knowledge or consent.
- Direction was given to allow work on a protected train piece of equipment without the Shift Managers or my permission.
- I have not heard the SVP acknowledge my previous letter for issues challenging my ability to perform my job as the senior license holder of PTN
- The additional equipment issues identified by the Operating crews today after the trip was not valued as input to improve equipment reliability and reduce the burden on the Operators; it was instead seen as an impediment to returning the unit to service
- The moral in the Operations department (PGM identified as the focus area as well as staffing) was devastated with the horrible management of the local agreement which was fully understood by some to be based on not using AREVA for fuel moving.

equipment reliability and reduce the burden on the Operators; it was instead seen as an impediment to returning the unit to service
The moral in the Operations department (PGM identified as the focus area as well as staffing) was devastated with the horrible management of the local agreement which was fully understood by some to be based on not using AREVA for fuel moving.
This issue took 5 days to actually agree to comply with what was negotiated.

- There is more focus on attempting to justify why the Steam Dump to Atmosphere valves are acceptable than to perform an inspection and validate why the valves did not operate as designed.

The dual unit trip today provided me with an opportunity to see how the entire organization functioned. I was basically told to step out of my oversight role in the Control Room on a few occasions to address CNO and COO questions that should not have been requested at that time since the units were not fully stabilized. I then saw additional resources arrive from Juno and begin to establish a Command and Control structure at the site. This structure does not allow for the Shift Manager to maintain oversight and provide guidance to the site for required repairs. This structure is more concerned about schedule adherence and development than actually fixing the plant and allowing deliberate actions to occur. The direction became very clear today when I was told when we were going to start up Unit 4 Reactor at 02:00. This was challenged but the challenge fell on deaf ears. When the challenge came to inquiring how the 02:00 time was determined for the Reactor Start up the answer was 12 hours is adequate time to recover a tripped Reactor. The problem with this mindset is the actual required scope of work was not understood when this time was established. The direction then became clear again to get everything fixed prior to 02:00 to support this time. The other significant challenge with a start up 12 hours after a trip is the status of Xenon. The Operating crews should never be placed in a position to get the reactor start up completed under a time pressure condition which exists to meet the 1/M plotting requirements for the third doubling with the rapidly changing Xenon conditions. This lack of desire to listen and act on input continues to force written correspondence and is the major contributor to why we have a SCWE issue at the station. People are not valued and are treated like equipment and numbers.

These issues show a clear bias to production over safety and a lack of desire for doing the correct repairs to return a Nuclear Unit to service. These items as well as the previous correspondence make it so I can no longer be the senior license holder for the station. I have enjoyed the majority of my time at the site and have learned a tremendous amount while working for FPL, for that I thank you. I am terminating my role as defined in Technical Specifications and the CFR immediately as well as my employment with FPL. I wish you all well. I do not have a job but I am sure my wife and I will enjoy getting to know each other again after the last 5 years of getting run hard and then harder.

Respectfully,

David Hoffman

Exhibit A

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 040307 XXXXMB
FLORIDA BAR NO.: 0253901

FLORIDA POWER AND LIGHT COMPANY,
A Florida corporation,
Plaintiff/Counter Defendant

vs.

DAVID HOFFMAN, an individual,

Defendant /Counter Plaintiff.

_____/

09 JAN 21 PM 2:38
CIRCUIT CIVIL

VENUE CHALLENGE, ANSWER,AFFIRMATIVE DEFENSES AND COUNTER CLAIM

COMES NOW the Defendant/Counter Plaintiff, David Hoffman, by and through his undersigned attorney, and files this response/counterclaim to Plaintiff's Complaint, and alleges as follows:

VENUE CHALLENGE

1. That Venue lies in Miami-Dade County

2. That Defendant resides in Miami Dade County and received process of service in Miami-Dade County

3. That allegations of actions giving rise to the Plaintiff's Complaint took place in Miami-Dade County, Florida.

4. That if any property is owed, it exists in Miami-Dade County.

5. That all actions of the Counter Claim arose in Miami-Dade County.

6. That all terms of the Promissory Note and Retention Bonus Agreement are invalid , including Venue , due to fraud, failure of the Plaintiff to comply with the terms of the agreement, and failure to have a valid notary seal. In addition the Retention Bonus Agreement was never signed and returned to the Defendant/Counter Plaintiff until the filing of the Complaint and that too is invalid.

7. That the Plaintiff's Venue allegation of "monies due in Palm Beach County" is not a recognized basis for Venue under F.S. 47.011, and Venue does not lie in Palm Beach County.

8. That this action should be transferred to the correct Venue in Miami-Dade County

ANSWER TO COMPLAINT

Comes now the Defendant, David Hoffman, by and through the Undersigned Counsel and files this response to Plaintiff's Complaint, and States as follows:

Breach of Express Agreement

1. Admitted
2. Admitted_
3. Denied
4. Denied
5. Denied
6. Denied
7. Denied
8. Admitted
9. Denied
10. Denied
11. Denied
12. Denied

AFFIRMATIVE DEFENSES

As an Affirmative Defense, Defendant Hoffman would state as Follows:

1. That the Promissory Note upon which the Plaintiff relies was notarized in violation of F.S.117 and is therefore an invalid document.

2. That the Defendant's signature on the Promissory note was obtained by false promises to correct the total document to reflect that the payment was to make the Defendant whole due to lost salary because of Defendant's promotion, as stated by the Human Resource Manager, and therefore the Defendant did not initial the last page of the document.

3. That the Plaintiff failed to comply with the terms of the retention agreement in that they intentionally failed to provide resources and support to allow the Defendant to properly comply with all his required terms of the agreement;

4. That the Plaintiff constructively discharged the Defendant in that the Plaintiff intentionally directed the Defendant to violate Nuclear Regulatory Agency Directives, which could have resulted in severe and dangerous damage to a nuclear reactor and thereby subject the Defendant to loss of his Nuclear License and/or jail, if he had complied.

5. That the allegation that the Defendant was paid $50,000.00 is incorrect in that the Defendant only received approximately $39,000.00.

COUNTERCLAIM

COUNT I - RETALIATION

Comes now the Defendant/Counter Plaintiff Hoffman and would state:

1. This is a claim for damages which exceed $15,000.00 excluding interest, attorneys' fees and costs.

2. That in December, 2007, and again in January 2008, the Defendant/ Counter Plaintiff refused to sign false payroll information , in spite of the insistence of supervisory administrative personnel.

3. That this false payroll was designed to improperly shift the burden of payment on to the rate payer and apparently avoid questions by the Public Service Commission in Tallahassee related to overtime costs due to failure to have enough trained personnel.

4. That the administrative supervisory personnel then started to interfere with the proper maintenance of the nuclear reactor at Turkey Point, which was the direct responsibility of the Defendant/Counter Plaintiff as the Senior License Holder at Turkey Point Nuclear Facility, and for which he held direct responsibility to the Federal Government's Nuclear Regulatory Commission.

5. That in February of 2008, Defendant/Counter Plaintiff Hoffman filed a complaint with the Nuclear Regulatory Commission as was required of his position.

6. That in March of 2008, due to a problem outside of Turkey Point, the Nuclear reactor shut down.

7. That as a result of the shut down, the Nuclear Reactors required a review of numerous systems, particularly in light of the interference of administrative supervisors with the normal maintenance of the nuclear reactor over the past several months.

8. That the premature start up of the nuclear reactor could cause severe damage to the reactor, as well as being dangerous to personnel.

9. That the Defendant/Counter Plaintiff was well aware of the fact that he ultimately would

be held responsible for any problems , and could lose his license to work in the nuclear field, as well as being subject to possible jail under the Federal laws if severe problems developed under his watch.

10. That the administrative personnel at Florida Power and Light also knew or should have known of the potential ramifications to the Defendant/Counter Plaintiff.

11. That in spite of this knowledge, the plant manager insisted that the Defendant/Counter Plaintiff prematurely start the nuclear reactor..

12. That as a result, Defendant/Counter Plaintiff Hoffman was placed in a position of being constructively fired from Florida Power and Light Co., and was forced to resign rather than prematurely restart the nuclear reactor. (Exhibit A).

13. That as a result of the retaliatory actions of the Plaintiff/ Counter Defendants, the Defendant/Counter Plaintiff has suffered damages far in excess of the jurisdictional limits of this Court($15,000.00).

14. That Defendant/Counter Plaintiff requests that this Honorable Court award costs and attorney's fees.

15. That the Defendant/Counter Plaintiff demands trial by jury on all issues triable as a matter of right by jury.

COUNT II - ABUSE OF PROCESS

16. The Defendant/Counter Plaintiff readopts and realleges all allegations contained in paragraph 1 through 15 in this counterclaim, as if fully set forth herein.

17. That the filing of the complaint for breech of express agreement by Plaintiffs is designed to create a false appearance of motive for the multiple pending complaints filed by Defendant against Florida Power and Light Co. with both the U.S. Nuclear Regulatory Agency and the U.S. Department of Labor, i.e.: FP&L is attempting to create a "red herring" for the regulatory agencies.

18. That the Plaintiff/Counter Defendant, Florida Power and Light Co., as a matter of policy, had installed administrative personnel who lack adequate technical knowledge and had the power and ability to override technical decisions by the Defendant/Counter Plaintiff.

19. That by previously overriding Defendant/Counter Plaintiff Hoffman's technical decisions, there now are problems at the Turkey Point which the administrative personnel are attempting to shift to Hoffman with the United States regulatory agencies, this in spite of the fact that the Defendant/Counter Plaintiff continually cautioned then that the administrative policies would cause these problems.

20. That the actions of the Plaintiff/Counter Defendant in filing this complaint for recovery of monies which they are aware are not owed , is a continued attempt to intimidate the Defendant/Counter Plaintiff, and is clearly designed to use as a bargaining tool in the pending complaint filed with the U.S. Department of Labor.

21. That the filing of the improper complaint by Plaintiff/Counter Defendant's is designed to force the Defendant/Counter Plaintiff to incur costs for attorney fees, litigation costs, and interfere with his current work schedule and thereby incur lost wages.

22. That the filing of the initial complaint in an inconvenient venue is further designed to increase the costs to the Defendant/Plaintiff for his attorney fees.

23. That it is requested that this Court award compensatory damages.

24. That it is requested that this Court award litigation costs and attorney fees.

25. That Defendant/Counter Plaintiff demands trial by jury on all issues triable as a matter of right by jury.

WHEREFORE the Defendant/Counter Plaintiff demands judgment against the Defendant, costs and attorney fees, and trial by jury of all issues so triable as a matter or right.

DATED this 21st day of January, 2009.

BY: Joseph Hackney Jr.
Joseph Hackney, Jr., Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been mailed by U.S. Mail this 21st day of January, 2009 to: David D. Austin, Esquire, FP&L Law Department,

700 Universe Boulevard, Juno Beach, FL 33408.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

FLORIDA POWER & LIGHT COMPANY, a Florida corporation,

Plaintiff,

v.

DAVID S. HOFFMAN, an individual,

Defendant.

CASE NO.: 50 2008CA040307XXXXMB AD

FILED
09 FEB 11 AM 11:15
CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY, FL

MOTION TO DISMISS COUNTERCLAIM

Comes now, Plaintiff, Florida Power & Light Company, (FPL), and files this Motion pursuant to Fla. R. Civ. P. 1.140(b)(6), dismissing both counts of Defendant's Counterclaim for failure to state a cause upon the following grounds:

COUNT I – RETALIATION

1. Defendant fails to state a cause of action. Defendant appears to allege that he was constructively discharged by FPL in retaliation for certain alleged action or inaction taken by Defendant while employed by FPL.

2. Defendant was at all times an "at-will employee" of FPL. Defendant does not allege and will be unable to allege and ultimately prove that he had any contract of employment for a definite term.

3. The law in Florida is well settled that in the absence of a specific statute granting a property interest, a contract of employment (express or implied) which is indefinite as to term of employment is terminable at the will of either party without cause, and an action for wrongful discharge will not lie. Liff v. City of Cocoa, 745 So. 2d 441 (Fla. 5th DCA 1999); Martin v. Golden Corral Corporation, 601 So. 2d 1316, 1317 (Fla. 2d DCA 1992) (holding in part that an

employment agreement is terminable at will where there is no agreed upon definite term of employment).

4. It is also the law in Florida that no common law cause of action exists for retaliatory discharge of an at-will employee even where the employee alleges that he was terminated for refusing to participate in the employer's alleged violation of federal and state environmental statutes and regulations.[1] Hartley v. Ocean Reef Club, Inc., 476 So. 2d 1327, 1328-1330 (Fla. 3d DCA 1985). To bring a non-contract claim for wrongful discharge in Florida, an employee must rely on statutory causes of action created by the legislature. Bruley v. Village Green Management Company, et al, 2008 WL 5158285 (M.D. Fla. 2008).

5. Clearly, Defendant has not alleged, and will be unable to allege a valid cause of action in Count I of the Counterclaim. Consequently, Count I of the Counterclaim should be dismissed with prejudice.

COUNT II – ABUSE OF PROCESS

6. Defendant fails to state a cause of action. To state a valid cause of action for abuse of process a party must allege and ultimately prove that: 1) the defendant made an illegal, improper, or perverted use of process; 2) the defendant has ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and 3) as a result of the defendant's actions, the plaintiff suffered damages. Dell-Donna v. Nova University, Inc. et al, 512 So. 2d 1051, 1055 (Fla. 4th DCA 1987). Failure to allege and establish all three elements, precludes a cause of action for abuse of process. Id. Also, since the tort of abuse of process is concerned with the misuse of process after it is issued, a plaintiff needs to allege and then prove an act which constitutes a misuse of process after it is issued. Id., at 1056, citing, Marty v.

[1] FPL vehemently denies that it ever asked Mr. Hoffman to do anything in violation of any law or regulation. Mr. Hoffman's allegations have no merit.

Gresh, 501 So. 2d 87 (Fla. 1st DCA 1987). Even the filing of a lawsuit with the ulterior motive of harassment does not constitute abuse of process. Id.

7. In the instant matter, FPL has sued Mr. Hoffman in breach of express contract to simply recover the money that was paid to him as a retention bonus pursuant to the terms of the agreement. The process in this case has been issued to accomplish this single purpose and no other. There is no abuse of process when the process is issued to accomplish the result for which it was created, regardless of an incidental or concurrent motive of spite or ulterior purpose.[2] Bothman v. Harrington et al, 458 So. 2d 1163, 1169 (Fla. 3d DCA 1984).

8. Clearly, Defendant has not alleged, and will be unable to allege a valid cause of action in Count II of the Counterclaim. Consequently, Count II of the Counterclaim should be dismissed with prejudice.

WHEREFORE, Plaintiff, Florida Power & Light Company, respectfully requests that Defendant's Counterclaim be dismissed with prejudice, together with such other relief which this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: Joseph Hackney, Jr., Esq., 13200 S.W. 71st Avenue, Miami, Florida 33156 on this 9th day of February, 2009.

DAVID D. AUSTIN, ESQUIRE
FPL Law Department
Attorney for Plaintiff
700 Universe Boulevard
Juno Beach, FL 33408
(561) 691-7351
Fax: (561) 691-7103
Florida Bar Number: 0489921

[2] FPL merely states the law on abuse of process and does not imply that process was issued in this matter for any other reason than to recover the money owed by Defendant under the agreement.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

FLORIDA POWER & LIGHT COMPANY, a Florida corporation,

Plaintiff,

v.

DAVID S. HOFFMAN, an individual,

Defendant.

CASE NO.: 50 2008 CA 040307 XXXXNB

FILED
08 DEC 22 PM 3:02
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 3

COMPLAINT

Plaintiff, FLORIDA POWER & LIGHT COMPANY ("FPL"), a Florida corporation, sues Defendant, DAVID S. HOFFMAN, and alleges as follows:

Breach of Express Agreement

1. This is an action for damages which exceeds $15,000.00 excluding interest, attorneys' fees and costs.

2. Plaintiff is a Florida corporation duly authorized to conduct business in the State of Florida and its main offices are located at 700 Universe Blvd., Juno Beach, Palm Beach County, Florida.

3. This is an action for money due and owing to Plaintiff at its main offices located at 700 Universe Blvd., Juno Beach, Palm Beach County, Florida.

4. Defendant was an employee of Plaintiff until he voluntarily terminated his employment on February 27, 2008.

5. On or about August 1, 2007, Plaintiff offered to Defendant and Defendant

accepted a retention bonus payment in the amount of $50,000.00 pursuant to the Retention Bonus Agreement and Promissory Note (The Agreement) signed by Defendant on August 1, 2007. A copy of this Agreement is annexed hereto and marked as Exhibit "A."

6. The Agreement provides in relevant part that if Defendant terminates his employment before August 1, 2010, Defendant shall immediately owe and repay to Plaintiff the amount received.

7. Upon Defendant's voluntary resignation on February 27, 2008, he was immediately obligated to repay the $50,000.00 to Plaintiff.

8. Plaintiff has demanded that Defendant repay said amount of the retention bonus but Defendant has refused and/or failed to make payment.

9. By virtue of Defendant's refusal and/or failure to repay said amount, Defendant has breached the Agreement.

10. As a result of Defendant's breach of the Agreement, Plaintiff has sustained damages in the amount of $50,000.00 together with reasonable attorney's fees and costs.

11. The Agreement expressly provides for an award of attorney's fees to the prevailing party.

12. Plaintiff has satisfied all conditions precedent for the bringing of this action.

WHEREFORE, Plaintiff demands judgment against Defendant in the principal amount of $50,000.00, together with reasonable attorney's fees, interest, and costs.

DAVID D. AUSTIN, ESQUIRE
FPL Law Department
Attorney for Plaintiff
700 Universe Boulevard
Juno Beach, FL 33408
(561) 691-7351 Fax: (561) 691-7103
Florida Bar Number: 489921

RETENTION BONUS AGREEMENT

This Retention Bonus Agreement ("Agreement"), made as of this 1st day of August , 2007 (the "Effective Date"), is entered into by and between David S. Hoffman, Personnel No. 19994 ("Employee"), and Florida Power & Light Company ("Company"). Employee and Company are collectively referred to herein as the "Parties."

THEREFORE, in consideration of all mutual promises contained herein and for other good and valuable consideration the receipt and sufficiency of which is acknowledged by the Parties, it is agreed by and between Employee and Company as follows:

1. **Retention Bonus**

a. Subject to the terms of this Agreement, Company will advance to Employee a Retention Bonus ("Bonus") totaling $50,000.00, minus applicable withholding deductions, provided Employee remains an employee of Company in the Nuclear Fleet in good standing from the Effective Date continuously through August 1st, 2010(the "Accrual Date"). The Bonus described herein is subject to Employee's repayment obligations and Company's rights under the remaining paragraphs of this Agreement and the Promissory Note ("Note") executed contemporaneously with this Agreement.

b. It is understood and agreed that the Retention Bonus is designed and intended to encourage Employee to remain employed with Company in the Nuclear Fleet through at least the Accrual Date. It is the express intent of the Parties that the Bonus shall not accrue on a pro-rata basis but shall instead vest in its entirety on the Accrual Date, provided the Employee remains continuously employed in good standing with Company in the Nuclear Fleet through that date.

c. Except as otherwise provided in Section 2, below, Employee's failure to remain employed with Company in the Nuclear Fleet through the Accrual Date shall subject Employee to the repayment obligations set forth in this Agreement and in the Note, executed contemporaneously herewith. Any repayment amounts that Employee owes Company under this Agreement and the Promissory Note will be immediately due and payable in cash, as more fully set forth in Section 1.d, below.

d. Employee hereby agrees that Company may deduct, and expressly authorizes Company or any other Related Entities, as defined below in Section 2.c, to deduct, any and all such amounts due under this Agreement and the Note, to the maximum extent permitted by applicable law, from

EMPLOYEE

COMPANY

EXHIBIT A

Employee's wages or any other amounts due Employee (including, but not limited to vacation pay and expense account reimbursement). Employee shall remain obligated to repay to Company any additional unpaid amounts due and owing to Company in excess of any such deduction(s), plus any accrued interest, pursuant to the terms of the Promissory Note executed contemporaneously with this Agreement.

2. **Conditions for Payment of Bonus**

a. **Continued Employment**

In order to receive the Retention Bonus, Employee must remain in the Nuclear Fleet with Company through the Accrual Date. Notwithstanding the foregoing, the requirement for continued employment will be waived if:

(1) the CNO / Sr. VP Nuclear Fleet, in his sole discretion, approves in writing the Employee's transfer to another business unit of the Company or to a Related Entity (as defined below); or

(2) the Employee's employment with Company is terminated by Company for any reason other than for Cause, as defined below, prior to the Accrual Date.

b. **Cause Defined**

As used in this Agreement, "Cause" to involuntarily terminate Employee's employment shall exist if Employee: (a) engages in one or more acts constituting a felony or involving fraud or serious moral turpitude, thefts, unethical business conduct or conduct that seriously impairs the reputation of Company; (b) willfully and repeatedly refuses (except by reason of incapacity due to accident or illness) to substantially perform his or her duties; (c) misappropriates assets of Company; (d) engages in gross or willful misconduct that is materially injurious to Company; (e) violates FPL Group, Inc.'s Code of Business Conduct & Ethics; (f) knowingly or grossly negligently engages in any misconduct, or knowingly or grossly negligently fails to prevent any misconduct, in each case that leads to the material noncompliance of Company with any financial reporting requirement under the Federal securities laws or causes Company to be required to prepare a material accounting restatement; (g) engages in one or more acts constituting a material violation of the Sarbanes-Oxley Act of 2002, as amended; (h) violates any policy or procedure of Company; (i) violates any federal, state, or local law applicable to Company; or (j) engages in conduct or activities that constitute disloyalty to Company.

c. **Related Entity Defined**

As used in this Agreement, "Related Entity" or "Related Entities" means FPL Group, Inc., Florida Power & Light Company, FPL Energy, LLC., FPL Energy Services, Inc., FPL FiberNet, LLC., FPL Group Capital, Inc., and any and all related companies and/or subsidiaries, and any of their parents, subsidiaries, affiliates, successors and assigns.

3. **Protective Covenants**

In consideration of the Retention Bonus granted under this Agreement, the Employee covenants and agrees as follows (such covenants, the "Protective Covenants"):

a. During the period of the Employee's employment with the Company, and for a two-year period thereafter (such periods, together, the "Restricted Period"), the Employee agrees not to (other than in the Employee's capacity as an employee of the Company): (i) compete or attempt to compete for, or act as a broker or otherwise participate in, any projects in which the Company has [during the period of the Employee's employment with the Company] done any work or undertaken any development efforts; (ii) directly or indirectly solicit any of the Company's customers, vendors, contractors, agents, or any other parties with which the Company has an existing or prospective business relationship, for the benefit of the Employee or for the benefit of any third party; (iii) accept consideration or negotiate or enter into agreements with parties described in the preceding clause (ii) for the benefit of the Employee or any third party; or (iv) assist any person in any way to do, or attempt to do, anything prohibited by the foregoing clauses (i), (ii) and (iii). Notwithstanding anything to the contrary contained in this Agreement, the Employee's passive ownership of less than an aggregate of 5% of any class of stock of a person engaged, directly or indirectly, in activities prohibited by the foregoing clauses (i) through (iv) will not result in a breach of this Section 3.a, provided that such stock is listed on a national securities exchange or is quoted on the National Market System of NASDAQ.

b. During the Restricted Period, the Employee shall not, directly or indirectly, on behalf of the Employee or for any other business, person or entity: (i) solicit, recruit or hire, any person (as an employee, consultant or otherwise) who is at such time, or who at any time during the six-month period prior to such solicitation or hiring had been, an employee of, or exclusive consultant then under contract with, the Company; (ii) solicit, entice, induce or encourage, or attempt to solicit, entice, induce or encourage, any employee of the Company to leave the employment of the Company; or (iii) intentionally interfere with the relationship of the Company with any person or entity who or which is employed by or otherwise engaged to perform services for, the Company.

c. The Restricted Period shall be deemed automatically extended for a period equal to any period during which the Employee is in violation of the provisions of this Section 3.

d. The Employee shall not, at any time in the future and in any way, disparage the Company, its Related Entities, or its current or former officers, directors, and employees, orally or in writing, or make any statements that may be derogatory or detrimental to the Company's good name or business reputation or that of its Related Entities.

e. The Employee acknowledges that the Company would not have an adequate remedy at law for monetary damages if the Employee breaches these Protective Covenants. Therefore, in addition to all remedies to which the Company may be entitled for a breach or threatened breach of these Protective Covenants, including but not limited to monetary damages, the Company will be entitled to specific enforcement of these Protective Covenants and to injunctive or other equitable relief as a remedy for a breach or threatened breach.

f. Both Employee and the Company acknowledge and agree that the covenants and agreements contained in this Agreement are reasonable and are not more restrictive or broader than necessary to protect the interests of the Parties hereto, and would not achieve their intended purpose if they were on different terms or for periods of time shorter than the periods of time provided herein or applied in more restrictive geographical areas than are provided herein. If a final and non-appealable judicial determination is made that any of the provisions of this Section 3 constitutes an unreasonable or otherwise unenforceable restriction against the Employee, the provisions of this Section 3 will not be rendered void but will be deemed to be modified to the minimum extent necessary to remain in force and effect for the greatest period and to the greatest extent that such court determines constitutes a reasonable restriction under the circumstances. Moreover, notwithstanding the fact that any provision of this Section 3 is determined not to be specifically enforceable, the Company will nevertheless be entitled to recover monetary damages as a result of the Employee's breach of such provision.

g. The term "Company," as used in this Section 3, shall include the Company and all Related Entities.

h. Notwithstanding anything to the contrary contained in this Agreement, the terms of these Protective Covenants shall survive the termination of this Agreement and shall remain in effect.

4. **Effect Upon Employment**

This Agreement shall not be construed as providing any right to the Employee for continued employment with or by Company or any Related Entity and does not change the at-will nature of Employee's employment. Company retains the right to terminate Employee at any time with or without cause and with or without notice.

5. **Miscellaneous Provisions**

a. This Agreement and all of Employee's rights, duties and obligations under this Agreement and the Note are personal in nature and shall not be assigned, delegated or otherwise disposed of by Employee.

b. This Agreement is confidential. The Employee agrees that he will not disclose, publicize, or discuss any of the terms or conditions of this Agreement with anyone, except his spouse, attorney, accountant, and/or the Company's Human Resources designee. In the event the Employee discloses this Agreement or any of its terms or conditions to his spouse, attorney, and/or accountant, it shall be the Employee's duty to advise said individual(s) of the confidential nature of this Agreement; and direct them not to disclose, publicize, or discuss any of the terms or conditions of this Agreement with anyone else. If the Employee discloses, publicizes, or discusses any of the terms or conditions of this Agreement with anyone, except Employee's spouse, attorney, accountant, manager or supervisor, and/or the Company's Human Resources designee, this Agreement will be deemed null and void and the Employee will forfeit the right to payment of the Bonus.

c. This Agreement and the Note embody the entire agreement and understanding of the Parties hereto with regard to the matters described herein and supersedes any and all prior and/or contemporaneous agreements and understandings, oral or written, between said parties solely with regard to the subject matter of this Agreement. No person has any authority to make any representation or promise on behalf of any Party that is not set forth in this Agreement, and the Parties acknowledge that this Agreement has not been executed in reliance upon any representation or promise except those contained herein. However, this Agreement is in addition to any other agreements between the Parties not related to the matters discussed herein.

d. This Agreement and the Note may only be modified or amended in a writing signed by both Parties. Any Party's failure to enforce this Agreement in the event of a violation of one or more of the terms of this Agreement shall not constitute a waiver of any right to enforce this Agreement against subsequent violations.

e. This Agreement, and the Promissory Note executed contemporaneously herewith, shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of law provisions. In the event of any litigation, proceeding, or controversy (whether based on statute, common law, contract or tort) arising out of or relating to this Agreement, such litigation, proceeding, or controversy shall be brought only in the state courts of Palm Beach County, Florida, or the federal district courts in the Southern District of Florida, and each Party hereby submits to the jurisdiction of such courts for all purposes hereof. The Parties agree that any such litigation, proceeding, or controversy shall be heard by a judge and not a jury, and the Parties hereby expressly waive their right to a jury trial on any such litigation or proceeding. The Parties further agree that in the event of any litigation, proceeding, or controversy arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover all costs and expenses incurred in such action or proceeding, including, without limitation, reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the day and year first specified above.

DAVID S. HOFFMAN

FLORIDA POWER & LIGHT COMPANY

By: James W. Bynell

Title: VP HR FPL

EMPLOYEE

COMPANY

PROMISSORY NOTE

$50,000.00 Dated: As of August 1st, 2007

WHEREAS, David S. Hoffman, Personnel No. 19994 (the "Employee"), and Florida Power & Light Co., a Florida corporation, together with its affiliates, successors and assigns (the "Company"), have entered into a Retention Bonus Agreement dated August 1st, 2007 (the "Agreement"), pursuant to which the Company has agreed, as a retention incentive, to make certain payment(s) to Employee (the "Bonus") on the condition that the Employee remain in the continuous employment of the Company on the terms more fully set forth in the Agreement; and

WHEREAS, it is the intent and agreement of the Company and the Employee that the Bonus, as referenced in the Agreement, is and shall be present compensation to the Employee and not an extension of credit or personal loan to the Employee. However, it is in the interest of the Company and its shareholders that the Employee be obligated to repay the Bonus in the event that the Employee fails to remain employed by the Company pursuant to the provisions of the Agreement for a period of at least three (3) years following the date hereof for any reason other than as provided for in Section 2 of the Agreement; and

WHEREAS, to evidence the obligation to repay the Company the Bonus in the event that the Employee fails to remain employed by the Company pursuant to the provisions of the Agreement for a period of at least three (3) years following the date hereof for any reason other than as provided in Section 2 of the Agreement, the Employee has agreed to execute and deliver to the Company this Promissory Note ("Note");

NOW, THEREFORE, in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Employee hereby promises to pay to the order of the Company, at the office of the Company at 700 Universe Boulevard, Juno Beach, Florida 33408, the principal sum of [Fifty Thousand Dollars] ($50,000.00), in lawful money of the United States of America, on the date, if any, prior to the 3rd anniversary date hereof, on which the Employee ceases to be employed by the Company for any reason other than as provided for in Section 2 of the Agreement (the "Payment Date"), and to pay interest on the unpaid principal balance hereof in like money at such office from the Payment Date until the principal hereof shall have been paid in full on a per annum rate equal to the "Prime Rate" on the first day of each calendar quarter or the maximum rate of interest permitted by applicable law plus legal fees incurred by Company in its attempt to collect such unpaid amounts. At any time during a given calendar quarter, "Prime Rate" means the interest rate described as the prime rate and published in the Wall Street Journal on the first business day

Employee Company

of such calendar quarter; provided that nothing herein shall be deemed or construed to in any manner affect, impair or diminish the obligation of the Employee to pay this Note in full on the Payment Date.

The Employee hereby agrees to pay all costs incurred by any holder hereof, including, without limitation reasonable attorneys' fees and disbursements (including those for appellate proceedings), incurred in connection with the collection or attempted collection or enforcement hereof, whether or not legal proceedings may have been instituted.

All parties to this Note, including the Employee and any sureties, endorsers or guarantors, hereby waive presentment for payment, demand, protest, notice of dishonor, notice of acceleration of maturity, and all defenses on the ground of extension of time for payment hereof, and agree to continue and remain bound for the payment of principal, interest and all other sums payable hereunder, notwithstanding any change or changes by way of release, surrender, exchange or substitution of any security for this Note or by way of any extension or extensions of time for payment of principal or interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice to or consent of any of them. The rights and remedies of the holder as provided herein shall be cumulative and concurrent and may be pursued singularly, successively or together at the sole discretion of the holder, and may be exercised as often as occasion therefore shall occur, and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

Notwithstanding anything herein to the contrary, the obligations of the Employee under this Note shall be subject to the limitation that payments of interest to the Company shall not be required to the extent that receipt of any such payment by the Company would be contrary to provisions of law applicable to the Company (if any) which limit the maximum rate of interest which may be charged or collected by the Company. In the event that the Employee makes any payment of interest, fees or other charges, however denominated, pursuant to this Note, which payment results in the interest paid to the Company to exceed the maximum rate of interest permitted by applicable law, any excess over such maximum shall be applied in reduction of the principal balance owed to the Company as of the date of such payment, or if such excess exceeds the amount of principal owed to the Company as of the date of such payment, the difference shall be paid by the Company to the Employee.

No delay or omission on the part of the Company in exercising any right hereunder shall operate as a waiver of such right or of any right under this Note. No waiver shall be binding upon the Company, unless in writing signed by an authorized officer of the Company.

Employee

Company

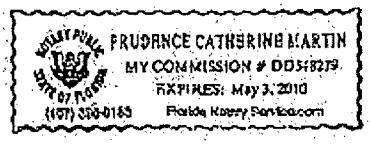
This Note shall be governed by and construed in accordance with the laws of the State of

Printed name: Prudence Catherine Martin

Commission #: DD548279

Expiration: May 3, 2010

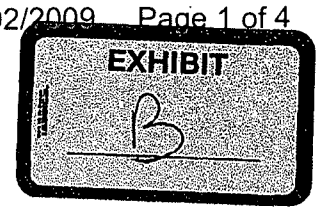
[SEAL]



Employee

Company

SEC-000012 – Memorandum of Understanding PTN Staffing and Attrition Mitigation Pilot, dated February 2, 2009 (4-pages)



MEMORANDUM OF UNDERSTANDING

PTN STAFFING AND ATTRITION MITIGATION PILOT

Recognizing activity to date has failed to adequately address the staffing and attrition issues at the Turkey Point Nuclear Plant (PTN), the Company and Union agree to the following actions:

OPERATORS

1. All qualified Licensed Operators will be eligible to receive a Lump Sum payment of $40,000 in the years 2007, 2008, 2009, and 2010. The initial payment will be made within two pay periods of the signing of this agreement or of the employee signing a legally binding repayment obligation form. Such form to be mutually agreed to by Company and Union and provided to employee within two pay periods of the signing of this agreement. Payments in subsequent years will be made in the anniversary pay period of the initial payment upon signing an employee repayment obligation form. Employees accepting each Lump Sum payment will be obligated to remain in the Operations Department at PTN for three full years following the *receipt of each payment. An employee leaving the Operations Department at PTN, except as described in Paragraph 3 below, will be responsible for immediate repayment of any, and all, payment(s) made within the preceding three years (see example 1).

   Should a Licensed Operator fail to maintain qualifications and becomes a Non-Licensed Operator, he or she will fall under the Non-Licensed Operator provisions of this agreement for any subsequent payment

   Example 1; if not meeting the three year obligation.

Employee	2007	2008	2009	2010
A	$40,000			
B	$40,000	$40,000		
C	$40,000	$40,000	$40,000	$40,000

   Employee A's repayment obligation expires on the date of the payment anniversary in 2010 or must pay back $40,000
   Employee B's repayment obligation expires on the date of the payment anniversary in 2010 or must pay back $80,000
   Employee B's repayment obligation expires on the date of the payment anniversary in 2011 or must pay back $40,000
   Employee C's repayment obligation expires on the date of the payment anniversary in 2011 or must pay back $120,000
   Employee C's repayment obligation expires on the date of the payment anniversary in 2012 or must pay back $80,000

Employee C's repayment obligation expires on the date of the payment anniversary in 2013 or must pay back $40,000

2. All qualified Non-Licensed Operators will be eligible to receive a Lump Sum payment of $20,000 in the years 2007, 2008, 2009, and 2010. The initial payment will be made within two pay periods of the signing of this agreement or of the employee signing a legally binding repayment obligation form. Such form to be mutually agreed to by Company and Union and provided to the employee within two pay periods of the signing of this agreement. Payments in subsequent years will be made in the anniversary pay period of the initial payment upon signing an employee repayment obligation form. Employees accepting each Lump Sum payment will be obligated to remain in the Operations Department at PTN for three full years following the *receipt of each payment. An employee leaving the Operations Department at PTN, except as described in Paragraph 3 below, will be responsible for immediate repayment of any, and all, payment(s) made within the preceding three years (see example 2).

   Should a Non-Licensed Operator attain an NRC license, he or she will be eligible for the provisions of the Licensed Operator provisions of this agreement for any subsequent payments (no pro-ration). Employee currently training in the NLO class NSO-18, will receive the $20,000 within two pay periods after qualifying, upon signing the employee repayment obligation form.

   Example 2; if not meeting the three year obligation.

Employee	2007	2008	2009	2010
A	$20,000			
B	$20,000	$20,000		
C	$20,000	$20,000	$20,000	$20,000

   Employee A's repayment obligation expires on the date of the payment anniversary in 2010 or must pay back $20,000
   Employee B's repayment obligation expires on the date of the payment anniversary in 2010 or must pay back $40,000
   Employee B's repayment obligation expires on the date of the payment anniversary in 2011 or must pay back $20,000
   Employee C's repayment obligation expires on the date of the payment anniversary in 2011 or must pay back $60,000
   Employee C's repayment obligation expires on the date of the payment anniversary in 2012 or must pay back $40,000

3. Employee C's repayment obligation expires on the date of the payment anniversary in 2013 or must pay back $20,000. An Operator, either Licensed or Non-Licensed, who vacates his or her position due to medical reasons (to include the benefits provided by in Par. 7 together with whatever other benefits to which

an injured employee may be qualified in the M.O.A.), disability, LTD, roll, death, or who leaves the position due to a promotion or transfer at the Company's request, shall not forfeit any previously received payment.

RADIATION PROTECTION TECHNOLOGIST

1. All qualified Radiation Protection Technologist (RPT) assigned full time to PTN, will be eligible to receive a Lump Sum payment of $20,000. This payment shall be made within two pay periods of the signing of this agreement or of the employee signing a legally binding repayment obligation form. Such form to be mutually agreed up by Company and Union and provided to the employee within two pay periods of the signing of this agreement.. An employee receiving such payment, who leaves the Radiation Protection Department at PTN within (2) two full years of *receiving such payment, except as described in Paragraph 3 below, will be responsible for immediate repayment of the Lump Sum.

2. Any employee, who becomes a qualified Radiation Protection Technologist (RPT) assigned full time to PTN, will be eligible to receive a Lump Sum payment of $20,000. This payment shall be made within two pay periods of the date the qualification is documented and the employee signing a legally binding repayment obligation form (such form to be mutually agreed up by Company and Union). An employee receiving such payment who leaves the Radiation Protection Department at PTN within (2) two full years of *receiving such payment, except as described in Paragraph 3 below, will be responsible for immediate repayment of the Lump Sum.

3. If the Company delays the training of an RPT employee, such that the delay would prevent the employee from receiving their lump sum payment, the employee will automatically receive the lump sum payment within two pay periods of the original date the employee would have become qualified.

4. An Radiation Protection Technologist who vacates his or her position due to medical reasons (to include the benefits provided by in Par. 7 together with whatever other benefits to which an injured employee may be qualified in the M.O.A.), disability, LTD, roll, death, or who leaves the position due to a promotion or transfer at the Company's request, shall not forfeit any previously received payment.

SITE BARGAINING UNIT EMPLOYEES

1. With the exception of PTN Licensed Operators, all full time Bargaining Unit employees assigned to PTN on the date this agreement is signed will be eligible for the option to receive a SITE DIFFERENTIAL equal to 10% of the employee's base hourly wage for each hour paid. Employees new to FPL and hired directly

into PTN will be eligible for the same option. In return for the SITE DIFFERENTIAL and the provisions detailed under the OPERATORS and RADIATION PROTECTION TECHNOLOGIST section of the agreement, the Company and Union agree that:

a. Each PTN Bargaining Unit employee, as defined immediately above, will be eligible for the opportunity to elect the 10% Site Differential. Any employee electing to receive the Site Differential agrees to forfeit any bidding rights out of PTN for the term of this agreement (through the last pay period in 2010).

2. PTN Licensed Operators will become eligible to participate in this program effective 11/1/2008 through the duration of this agreement.

PTN STAFFING

The Company agrees to continue to hire/train and maintain adequate staffing in all disciplines at Turkey Point Plant to ensure quality of life for their most valuable resource.

The provisions of this agreement shall remain in effect through and including the last day of the last pay period in 2010, with the exception of repayment obligations associated with Lump Sum Payments. These obligations remain in effect for three years following the date of each payment.

Once the time period for the last Lump Sum Payment repayment obligation period expires, this agreement shall become a matter of record.

Gary J. Aleknavich 7-11-07
Business Manager
IBEW, System Council U-4

M. D. Bryce
Director of Human Resources
FPL 7-11-07

SEC-000013 – Plaintiff's First Amended Complaint, Case No. 08-22887-CIV-HOEVELER/GARBER, dated October 29, 2008 (14-pages)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
Case No. 08-22887-CIV-HOEVELER/GARBER

MICHAEL KOHL, VICTOR BALMASEDA,
GERALD BROMLEY, HARLOW CAMERON,
BOBBY CARSON, ENRIQUE ECHEVARRIA,
JAMES GOODRICH, CHRISTOPHER LAUGHLIN,
JOSEPH PATTERSON, JOHN PORTER,
DANIEL RICARDO, ROGER SABLONE,
WIGBERTO SANTIAGO, HAROLD SINGH,
GABRIEL WOODWARD, DAVID W. BROOKINS,
DONALD DUPREY, JOEL FOBB, JOHN
HARRIGAN, AND MIKE PEDRIANES,

Plaintiffs,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.
_____/

PLAINTIFFS' FIRST AMENDED COMPLAINT

Introduction

1. Plaintiffs, licensed and non-licensed operators working at Defendant Florida Power & Light Company's Turkey Point nuclear power plant in Miami-Dade County, Florida, bring this cause of action against their employer to secure overtime wages owed them pursuant to the federal Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA").

Parties

2. Plaintiffs Michael Kohl, Victor Balmaseda, Gerald Bromley, Harlow Cameron, Bobby Carson, Enrique Echevarria, James Goodrich, Christopher Laughlin, Joseph Patterson, John Porter, Daniel Ricardo, Roger Sablone, Wigberto Santiago, Harold Singh, Gabriel Woodward, David W. Brookins, Donald Duprey, Joel Fobb, John Harrigan, and Mike Pedrianes

are residents of Florida and employees working as licensed and non-licensed operators at the Turkey Point nuclear power plant located in Miami-Dade County, Florida. Each of the Plaintiffs is an employee within the meaning of the FLSA, 29 U.S.C. § 203(e)(1). Each Plaintiff's signed consent to be a party plaintiff to this action is attached hereto as Exhibit 1.

3. Defendant Florida Power & Light Company ("FPL") is a Florida corporation engaged in the generation and transmission of electrical power to residential and commercial consumers throughout most of Florida. FPL is a subsidiary of the FPL Group and the largest utility company in Florida. It is an "employer" as that term is defined by 29 U.S.C. § 203(d).

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this lawsuit pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

5. This Court is the appropriate venue pursuant to 28 U.S.C. § 1391, as the events underlying this action occurred in Miami Dade County, Florida.

Statement of Facts

6. Plaintiffs are members of, and are represented for the purposes of collective bargaining by, International Brotherhood of Electrical Workers ("IBEW") Local 359.

7. IBEW Local 359, in conjunction with several other IBEW local unions, created IBEW System Council U-4 to collectively bargain with FPL. The System Council negotiates and executes the collective bargaining agreement with FPL and is responsible for processing and arbitrating grievances.

8. The operators' wages are established by a collective bargaining agreement between the System Council and FPL that took effect in September 2005 and expires October 31, 2008. The collective bargaining agreement makes no reference to the Fair Labor Standards Act.

9. Plaintiffs are paid on an hourly basis by FPL. When Plaintiffs work in excess of forty hours in a work week, FPL has customarily paid them overtime wages at the rate of one and one-half times their regular hourly rate.

10. Operators may be licensed or unlicensed. The position is a highly-skilled position that requires years of training and certification.

11. FPL has experienced difficulties in retaining operators to work at its Turkey Point nuclear facility.

12. The operators working at Turkey Point routinely work in excess of forty hours a week. For most operators an average work week is 60 to 70 hours or more.

13. Because of the stressful nature of the operators' jobs, the hours required of them, and the difficulties FPL has experienced in retaining operators at that facility, FPL has agreed to several bonuses as incentive for the operators to agree to remain at that plant and in its employ.

14. The collective bargaining agreement provides for four types of bonuses to be paid to Operators.

The License Retention Compensation Program

15. One bonus is issued solely to licensed operators. This bonus has been labeled the "License Retention Compensation Program."

16. The bonus varies by the type of license and the date on which an operator qualifies or requalifies for that license.

17. FPL has paid a license retention bonus to operators since at least 1993.

18. When FPL pays the license retention bonus, it also calculates overtime wages. FPL agreed with the System Council in 1993 to pay overtime in accord with United States

Department of Labor ("DOL") FLSA Interpretive Bulletin 778. A copy of that agreement is attached hereto as Exhibit 2.

19. At all times relevant to this lawsuit, to the knowledge of those Plaintiffs who are licensed operators, FPL has paid overtime in connection with the license retention bonus. FPL has calculated the actual hours worked in the period for which the bonus is paid, and then has paid the appropriate overtime rate for that portion of those hours that were worked in excess of forty in a work week. As demonstrated by the 1993 agreement, FPL is aware of the DOL's bulletin, its obligation under the FLSA to pay overtime wages for retention bonuses, and acceptable methodology for calculating those bonuses.

Contract Ratification Bonus

20. The second bonus received by operators was the contract ratification bonus.

21. The System Council's members, which include the operators both licensed and unlicensed, ratified the collective bargaining agreement in August 2005.

22. The collective bargaining agreement provides that non-licensed operators were to receive two bonuses for ratifying the contract.

23. The collective bargaining agreement, in a provision captioned "PTN Non-Licensed Operator Agreement," states that

> *Incumbent Non-Licensed Operators at PTN will receive a lump sum payment of $4,000.00 within two (2) pay periods following the ratification of the collective bargaining agreement. A second and final payment of $4,000.00 will be made in the pay period of the first anniversary of the initial payment. The Company, at the sole discretion of the PTN Site Vice President, may increase the second payment by up to 100% in recognition of excellence in operations. Any such increase would apply equally to all employees covered by this agreement.*
>
> *Employees receiving any of the above payments must remain an operator at PTN for one year following the payment or he or she will be required to repay the full amount to the Company. Exceptions due to promotions, transfers for company*

need, medical issues, retirement or others may be made upon joint agreement between the PTN Site Vice President and the President of Local Union # 359.

24. As for licensed contract operators, the collective bargaining agreement provides that they were to receive three bonuses for ratifying the contract.

25. The "PTN Licensed Operator Agreement" article in the collective bargaining agreements states that

> *Incumbent Licensed Operators at PTN will receive a lump sum payment of $6,000.00 within two (2) pay periods following ratification of the collective bargaining agreement. A second payment of $6,000.00 will be made in the pay period of the first anniversary of the initial payment. A third and final payment of $9,000.00 will be made in the pay period of the 2nd anniversary of the initial payment. The Company, at the sole discretion of the PTN Site Vice President, may increase the second payment by up to 100% in recognition of excellence in operations. Any such increase would apply equally to all employees covered by this agreement.*
>
> *These payments will be in addition to the existing License Retention Compensation Program payments. Employees receiving any of the above payments must remain a licensed operator at PTN for one year following the payment or he or she will be required to repay the full amount to the Company. Exceptions due to promotions, transfers for company need, medical issues, etc. may be made upon joint agreement between the PTN Site Vice President and the President of Local Union # 359.*

26. FPL paid the bonuses as provided by the contract. Non-licensed operators were paid in late August 2005 and September 2006. Licensed operators were paid in late August 2005; September 2006, and September 2007.

27. In the year following each of the payments for the ratification bonuses FPL issued checks to some of the operators that it claimed represented overtime payments in conjunction with the contract ratification bonuses. However, it is the operators' understanding that FPL calculated those payments based on the overtime, if any, worked by the employee in the week in which the payment issued, not overtime hours in the year prior to the payment.

28. The FLSA obligated FPL to pay employees overtime based on the full year preceding the payments. Accordingly, FPL failed to properly pay its operators overtime for the bonuses tied to contract ratification.

The PTN Mobility Bonus

29. The third of the four bonuses is a bonus connected to the operator's agreement to remain at the Turkey Point plant rather than to bid to transfer to another facility or to quit his employment with FPL. This bonus is labeled the "PTN Mobility" program bonus.

30. The collective bargaining agreement provides that "[t]o be eligible for the above-described payments, operators must execute the Election Agreement within thirty (30) days of the ratification date of the MOA, and remain in the Operations Department at PTN."

31. All operators receive the bonus, but the timing and amount of the bonus is different for licensed and non-licensed operators.

32. Non-licensed operators have received three bonus payments in all, in January 2006, January 2007, and January 2008. Each of those bonuses equaled $3,000.00. Licensed operators have received one bonus payment to date, in January 2008, equal to $5,000.00

33. As a condition precedent to receiving the bonus each of the operators agreed in writing that he would not leave employment as an operator at the Turkey Point plant.

34. FPL has failed to pay the employees overtime in connection with any of the payments received by the operators.

The Attrition Bonus

35. The fourth bonus is a second longevity bonus, referenced in the collective bargaining agreement as the attrition bonus. In exchange for agreeing not to leave their positions with FPL at the Turkey Point nuclear power plant prior to January 2010, the operators received

lump-sum cash bonuses. Non-licensed operators received $20,000.00. Licensed operators received $40,000.00.

36. FPL has not paid the operators any overtime in connection with these attrition program payments.

Violations of the FLSA

37. The FLSA provides for overtime at the rate of one and one half times the employee's regular rate of pay for each hour of work in excess of forty in a work week:

> *no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.*

See 29 U.S.C. § 207(a)(1).

38. The FLSA defines the "regular rate" of pay as presumptively including all remuneration from an employer to an employee, unless a payment falls into a statutorily-defined exception:

> *the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include –*
>
> *(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;*
>
> *(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;*

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section, where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

> *(8) any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) ...*

See 29 U.S.C. § 207(e).

39. The contract ratification bonuses and the retention bonuses do not fall into any of the eight statutory exceptions to the "regular rate"; accordingly they must be included in the operators' regular rate of pay for calculating overtime.

40. The US DOL has issued regulations interpreting and applying the FLSA. With respect to bonuses,

> *Section 7(e) of the Act [29 U.S.C. § 207(e)] requires the inclusion in the regular rate of all remuneration for employment except [eight] specified types of payments. ... Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based. Bonus payments are payments made in addition to the regular earnings of an employee.*

29 CFR 778.208.

41. The DOL by regulation also has addressed the method of calculating overtime when employees receive a bonus covering a period in excess of one week:

> *When the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.*

29 CFR 778.209(a).

While purely discretionary bonuses may be excluded from calculating the "regular rate" of pay, bonuses that are contractually-guaranteed are not discretionary:

> *The bonus, to be excluded under section 7(e)(3)(a), must not be paid "pursuant to any prior contract, agreement, or promise." For example, any bonus which is promised to employees upon hiring or which is the result of collective bargaining would not be excluded from the regular rate under this provision of the Act. Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing in employment until the time the payment is to be made and the like are in this category. They must be included in the regular rate of pay.*

29 CFR 778.211(c), emphasis supplied.

42. FPL has failed to pay overtime properly, if at all, on three of the four contractually-guaranteed bonuses – the contract ratification bonus, the PTN mobility bonus, and the attrition bonus.

43. Plaintiffs are not required to exhaust any remedies that they may have under the collective bargaining agreement in bringing this action, as their claim is statutory in nature and not contractual. *See, e.g., Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728 (1981).

44. Ordinarily claims under the FLSA are subject to a two-year statute of limitations. 29 U.S.C. § 255.

45. FPL, as demonstrated by its 1993 agreement with respect to the license retention program and by its subsequent use of the proper formula to pay overtime wages in accord with license retention program bonuses, is aware of the FLSA and aware of the FLSA's obligations with respect to paying overtime for bonuses.

46. FPL's failure to pay overtime for other bonuses owed the operators is inexplicable and should be deemed "willful."

47. Because FPL's violations of the FLSA are willful, Plaintiffs request that the Court extend the statute of limitations in this action to the full three years allowed by 29 U.S.C. § 255(a).

Count I – Failure to Pay Overtime for the Contract Ratification Bonus

48. By failing to pay overtime properly for the contract ratification bonuses, FPL has violated the FLSA.

WHEREFORE Plaintiffs request an order finding FPL to have violated the FLSA with respect to its failure to pay overtime properly based on their contract ratification bonuses, directing FPL to pay them their overtime properly, awarding them an amount equal to their unpaid overtime as liquidated damages, pre-judgment interest, costs, and attorneys' fees.

Count II – Failure to Pay Overtime for the PTN Mobility Program Retention Bonus

49. By failing to pay overtime properly for the PTN Mobility program retention bonuses, FPL has violated the FLSA.

WHEREFORE Plaintiffs request an order finding FPL to have violated the FLSA with respect to its failure to pay overtime properly based on their PTN Mobility Program retention bonuses, directing FPL to pay them their overtime properly, awarding them an amount equal to their unpaid overtime as liquidated damages, pre-judgment interest, costs, and attorneys' fees.

Count III – Failure to Pay Overtime for the Attrition Program Retention Bonuses

50. By failing to pay overtime properly for the attrition program retention bonuses, FPL has violated the FLSA.

WHEREFORE Plaintiffs request an order finding FPL to have violated the FLSA with respect to its failure to pay overtime properly based on their Attrition Program retention bonuses, directing FPL to pay them their overtime properly, awarding them an amount equal to their unpaid overtime as liquidated damages, pre-judgment interest, costs, and attorneys' fees.

Respectfully submitted this 29th day of October, 2008.

s/Noah Scott Warman
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CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, October 29, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified; either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Noah Scott Warman

SERVICE LIST

Case No. 08-22887-CIV-HOEVELER/GARBER

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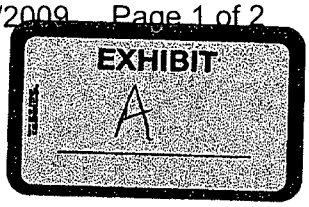
SEC-000014 – Memorandum of Understanding PTN Mobility Incumbent Operators, dated February 2, 2009 (2-pages)



Memorandum of Understanding
PTN Mobility
Incumbent Operators

1. This Memorandum of Understanding (MOU) is being entered into in conjunction with the ratification and execution of the Memorandum of Agreement (MOA) of 2005.

2. The purpose of this MOU is to provide for payments to those incumbent PTN operators whose names appear on the attached list (Exhibit A) who voluntarily elect to waive their right to bid out of the Operations Department at PTN.

3. The payments will be made in the first pay period of the following years as follows:

Non-Licensed Operators	Licensed Operators
January 2006 - $ 3,000	January 2008 - $ 5,000
January 2007 - $ 3,000	January 2010 - $7,500
January 2008 - $ 3,000	January 2013 - $ 7,500
January 2010 - $2,500	January 2015 - $15,000
January 2013 - $ 2,500	
January 2015 - $11,000	
TOTAL - $25,000	TOTAL - $35,000

4. Operators who voluntarily waive their bidding rights shall do so by executing the Election Agreement appearing at the end of this MOU. To be eligible for the above-described payments, operators must execute the Election Agreement within thirty (30) days of the ratification date of the MOA, and remain in the Operations Department at PTN.

5. If a non-licensed operator receives an NRC license prior to any payment date, he/she shall receive the licensed operator payment.

6. An eligible operator who accepts any of the lump sum payments prior to the 2010 payment must remain in the Operations Department at PTN through 01/01/2010 or he/she will be required to repay to the Company any previously received payments except as provided in the following paragraph.

7. An eligible Non-Licensed Operator who executes the Election Agreement but is required to vacate his/her operations position due to medical reasons, disability, roll, death, or who leaves the position due to a promotion or transfer at the Company's request prior to the 2010 payment date, or who retires after December 31, 2007, shall not forfeit any previously received payments.

8. An eligible Licensed Operator who executes the Election Agreement but is required to vacate his/her operations position due to medical reasons, disability, roll, death, or who leaves the position due to a promotion or transfer at the Company's request prior to the 2008 payment date, shall receive a pro rata payment. Amounts shall be pro rated as follows:
   - An employee leaving on or after July 1, 2006 but before July 1, 2007 will receive 1/3 of the January 2008 payment.
   - An employee leaving on or after July 1, 2007 will receive 2/3 of the January 2008 payment.
   - An employee leaving or retiring on or after January 2008 shall not forfeit any previously received payment.

9. Operators who execute the Election Agreement will not be eligible to bid out of the PTN Operations Department prior to January 1, 2010.

10. Should the above provisions not provide adequate stability by obtaining a minimum of 50% of the current NLOs <u>and</u> a minimum of 50% of the LOs electing to waive their bidding rights, management reserves the right to delay the assignment dates, up to 18 months, for those operators who are awarded jobs at PSL. If 50% or greater of the

NLOs and 50% or greater of the LOs elect to waive their bidding rights out of PTN Operations Department, the Company shall have no right to delay such assignments.

AGREED this 3rd day of August, 2005.

/s/ G.J. Aleknavich
Business Manager
Systems Council U-4

/s/ J.L. Martinez
Director of Labor Relations
Florida Power & Light Company

Election Agreement

The undersigned employee voluntarily agrees to waive any right to bid out of the PTN Operations Department at least until January 1, 2010, pursuant to the above Memorandum of Understanding and agree to abide by the terms and conditions described in the MOU, including the obligation to repay monies previously received as set forth in paragraph 6.

Employee Printed Name

Employee Signature/Date

Supervisor Name

Supervisor Signature/Date

SEC-000015 – Defendant Florida Power & Light Company's Motion to Dismiss Plaintiffs' First Amended Complaint With Incorporated Memorandum of Law, dated February 2, 2009 (11-pages)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 08-2287-CIV-HOEVLER/GARBER

MICHAEL KOHL, et al.,

Plaintiffs,

vs.

FLORIDA POWER & LIGHT COMPANY,

Defendant.
_____/

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT WITH INCORPORATED MEMORANDUM OF LAW

COMES NOW the Defendant, Florida Power & Light Company ("FPL"), by and through undersigned counsel, and files this Motion to Dismiss Plaintiffs' First Amended Complaint for failure to state a cause of action pursuant to Rule 12(b)(6), Fed. R. Civ. P. and for lack of subject matter jurisdiction pursuant to Rules 12(b)(1) and 12(h), Fed. R. Civ. P., and in support thereof would show:

1. Plaintiffs filed their initial Complaint on October 17, 2008, which was served on FPL on October 20, 2008. Plaintiffs filed their First Amended Complaint on October 29, 2008.[1] The Amended Complaint added five additional Plaintiffs to the lawsuit.

2. Plaintiffs' First Amended Complaint (DE 5) alleges violations of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA"). Specifically, in the purported three count First

[1] Before the time for FPL to respond to the original Complaint filed by Plaintiffs, Plaintiffs filed an Amended Complaint which added five additional Plaintiffs.

Amended Complaint, Plaintiffs allege that FPL "failed to properly pay overtime, if at all," on three contractually based bonuses. (DE 5 at ¶ 42).

3. Plaintiffs allege that the three bonuses arise under the "Contract Ratification Bonus" (DE 5 at ¶¶ 20 – 25), the "PTN Mobility Bonus" (DE 5 at ¶¶29 -33), and the "Attrition Bonus" (DE 5 at ¶ 35). While Plaintiffs provide some limited excerpt language from some of the bonus agreements, they have not attached full copies of any of the agreements.

4. Plaintiffs have failed to state a cause of action as the First Amended Complaint simply states in Count I -paragraph 48, that "By failing to pay overtime properly for the contract ratification bonus, FPL has violated the FLSA." Plaintiffs have not set forth the elements of any claim for violation of the FLSA in Count I.

5. Plaintiffs have failed to state a cause of action as the First Amended Complaint simply states in Count II – paragraph 49, that "By failing to pay overtime properly for the PTN Mobility program retention bonuses, FPL has violated the FLSA." Plaintiffs have not set forth the elements of any claim for violation of the FLSA in Count II.

6. Plaintiffs have failed to state a cause of action as the First Amended Complaint simply states in Count III – paragraph 50, that "By failing to pay overtime properly for the attrition program retention bonuses, FPL has violated the FLSA."

7. Plaintiffs have failed to comply with the pleading requirements of Rules 8(a)(2), 8(e), and 10 of the Federal Rules of Civil Procedure. Specifically, Plaintiffs have filed, in the exact type of "shotgun" fashion frowned upon by the Eleventh Circuit, a 12-page First Amended Complaint containing 50 numbered paragraphs (and several numbered subparts, not including the "Wherefore" clauses). This lengthy and convoluted diatribe fails to set forth, in separate counts, the distinct claims upon which Plaintiffs are purportedly seeking relief and the factual

basis for each of those claims. Such shotgun pleadings are subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure and Eleventh Circuit precedent.

8. To the extent that Plaintiffs purport to set forth causes of action under the "PTN Mobility Bonus" and "Attrition Bonus", Plaintiffs' claims in Counts II and III are not ripe as Plaintiffs' are well aware that the "PTN Mobility Bonus" and "Attrition Bonus" are incumbent upon Plaintiffs remaining employed at the Turkey Point power plant until at least 2010 before they have a clear claim to any bonus monies.[2] True and correct copies of the "PTN Mobility Bonus" and the "Attrition Bonus" are attached hereto as Exhibits "A" and "B", respectively. Accordingly, this Court lacks subject matter jurisdiction over these claims.

9. To the extent that Plaintiffs purport to set forth causes of action under the "Contract Ratification Bonus" for alleged payments made in August and September 2006, such claims are barred by the two year statute of limitations contained in 29 U.S.C.A. § 255(a) as Plaintiffs did not commence this action until more than two years from August 2006, to wit: October 17, 2008.

MEMORANDUM OF LAW

A. Failure to State a Claim for Which Relief May be Granted

In this case, Plaintiffs' First Amended Complaint is subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure because Plaintiffs have failed to comply with the basic pleading requirements set forth in the procedural rules and, hence, have not properly stated any claim upon which relief can be granted. Here, Plaintiffs' First Amended Complaint is

[2] It is curious that Plaintiffs failed to either provide the full terms of these bonus agreements in the First Amended Complaint or attachment them as exhibits to their First Amended Complaint.

the "quintessential 'shotgun' pleading" of the type the Eleventh Circuit has repeatedly condemned. See Magluta v. Samples, 256 F.3d 1282, 1284 (11th Cir. 2001). Specifically, Plaintiffs' First Amended Complaint is "framed in complete disregard of the principle that separate, distinct causes of action should be plead in separate counts." Cesnik v. Edgewood Baptist Church, 88 F.3d 902, 905 (11th Cir. 1996). Indeed, the First Amended Complaint purports to plead at least three (and possibly more) discrete theories of recovery in one continuous recitation of allegations, none of which are tied to any specific Count of the First Amended Complaint, thereby violating the "one claim per count" rule mandated by Rule 10. Further, it does not provide, in any manner, the "short and plain statement of the claim[s]" required by Rule 8(a)(2). Finally, it does not set forth which factual allegations are intended to support which of Plaintiffs' multifarious claims. As such, the complaint also violates Rule 8(e), which requires that "[e]ach averment of a pleading shall be simple, concise and direct." As a result, each of Plaintiffs' purported claims "is replete with factual allegations that could not possibly be material to [each] specific [claim]," and "any allegations that are material are buried beneath innumerable pages of rambling irrelevancies." Magluta, 256 F.3d at 1284.

The Eleventh Circuit has, time and again, warned that shotgun-styled pleadings (such as Plaintiffs' herein) are not to be tolerated. In Johnson v. City of Fort Lauderdale, 126 F.3d. 1372, 1376 n. 4 (11th Cir. 1997), the court criticized the plaintiff's "shotgun" styled complaint, noting that "[i]t is difficult to figure out from the complaint what discrete claims [plaintiff] asserts and impossible to determine the factual bases for the discrete claims since each of the complaint's nine counts incorporate all the factual allegations of the earlier counts." See also Ebrahimi v. City of Huntsville Bd. Of Educ., 114 F.3d 162, 165 (11th Cir. 1997) (noting the importance "for district courts to undertake the difficult, but essential, task of attempting to narrow and define the

issues from the earliest stages of the litigation" and stating that "[a]bsent such efforts, shotgun notice pleadings of the sort filed by [plaintiff] would impede the orderly, efficient, and economic disposition of disputes."). In Anderson v. District Bd. of Trustees, 77 F.3d 364, 366 (11th Cir. 1996), the Eleventh Circuit ruled that, where a plaintiff files a "shotgun pleading" – i.e., a pleading from which it is "virtually impossible to know which allegations of fact are intended to support which claims for relief" – the defendant "is not expected to frame a responsive pleading." The court reasoned that:

> Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to do justice.

Id. at 367.

Similarly, other courts within this District have dismissed shotgun-style complaints, following the reasoning in Anderson. See, e.g., Ferdinand v. Caribbean Air Mail, Inc., 2002 WL 1907158, *1 (S.D. Fla. May 24, 2001) (dismissing shotgun complaint for violation of Fed. R. Civ. P. 10(b)); (McKenzie v. E.A.P. Management Corp., 1998 WL 657524, *1 (S.D. Fla. July 27, 1998) (granting motion to dismiss amended complaint, reasoning that, "This court shares [Anderson's] experience, particularly in employment discrimination actions where myriad factual allegations and legal theories are often consolidated into a single count, or into one set of 'general allegations' which, in turn, is incorporated by reference wholesale into every count of the complaint. Such 'shotgun' pleading imperils fundamental principles of due process."); Benoit v. Ocwen Financial Corp., 960 F. Supp. 287, 289-90 (S.D. Fla. 1997) (dismissing complaint that was convoluted and confusing as to what claims were being pled and the factual basis for each claim such that it was "virtually impossible to determine whether plaintiffs have stated a claim for relief.").

When faced with a woefully deficient shotgun-style pleading such as the one in the case *sub judice*, the district court is required by the Federal Rules of Civil Procedure and controlling Eleventh Circuit precedent to, either upon motion or *sua sponte*, dismiss or strike the complaint.[3] In fact, in Magluta, the Eleventh Circuit held that:

> In the past when faced with [shotgun] complaints like this one, we have vacated judgments and remanded with instructions that the district court require plaintiffs to replead their claims. That is the appropriate disposition here. . . . [T]he toleration of complaints such as this one 'does great disservice to the administration of civil justice.'

256 F.3d at 1284 (internal citations omitted). See also Chapman v. AI Transport, 229 F.3d 1012, 1027 (11th Cir. 2000) (holding that, "We have frequently railed about the evils of shotgun pleadings and urged district courts to take a firm hand and whittle cases down to the few triable claims, casting aside the many non-triable ones through dismissals where there is a failure to state a claim...."); Cesnik v. Edgewood Baptist Church, 88 F.3d 902, 907, 910 (11th Cir. 1996) (requiring, on remand, that the district court require plaintiffs to replead two counts of their complaint, finding that the counts were "so disorganized"); Morro v. City of Birmingham, 117 F.3d 508, 515 (11th Cir. 1997) (stating that, "The use of shotgun pleadings in civil cases is a ubiquitous problem. Given the seriousness of that problem, it is 'particularly important for district courts to undertake the difficult, but essential, task of attempting to narrow and define the issues' before trial. (internal citations omitted)).

Here, the length of the First Amended Complaint alone makes it laborious to comprehend and manage. Further, it is so convoluted that Defendant (and, presumably, the Court) cannot tell whether a valid claim is alleged, what that claim is, and the factual basis upon which the claim

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[3] District courts have the inherent authority, when confronted with shotgun pleadings, to demand repleader *sua sponte*. Magluta, 256 F.3d at n3. See also Cesnik, 88 F.3d at n.13 (noting that the district court "clearly had the discretion to strike, on its own initiative, the Cesnik's complaint, and to require the Cesniks to file a more definite statement).

rests. Because the First Amended Complaint fails to comport with Rules 8(a)(2), 8(e), and 10 of the Federal Rules of Civil Procedure, it is "fatally defective" as a matter of law as it fails to state any claim upon which relief can be granted. See Benoit, 960 F. Supp. at 290. Hence, the First Amended Complaint must be immediately dismissed.

B. Lack of Subject Matter Jurisdiction

I. Plaintiffs' Claims Are Not Ripe

The jurisdiction of federal courts is limited. The constitution dictates that the power of the federal courts is constrained by the requirement that they consider only "cases" and "controversies". National Advertising Co. v. City of Miami, 401 F.3d 1335, 1338 (11th Cir. 2005) (citing U.S. Const. art. III, § 2). The court must also weigh the prudential aspect by asking whether "it is appropriate for this case to be litigated in a federal court by these parties at this time." Id. at 1339; (citations omitted).

In some cases, although a claim may satisfy constitutional requirements, prudential concerns "counsel judicial restraint." Id. at 1339 (citations omitted). The court's inquiry focuses on whether the claim presented is "of sufficient concreteness to evidence a ripeness for review. Id. at 1339. **Strict application of the ripeness doctrine prevents federal courts from rendering impermissible advisory opinions and wasting resources through review of potential or abstract disputes.** Id. at 1339. (emphasis added). The central concern of the ripeness doctrine is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all. Elend v. Sun Dome, Inc., 370 F.Supp.2d 1206, 1210 (M.D. Fla. 2005) citing 13A Wright, Miller & Cooper, *Federal Practice and Procedure*; Jurisdiction 2d § 3532, p. 112; aff'd 471 F.3d 1199 (11th Cir. 2006)

A Rule 12(b)(1) motion to dismiss may be a factual attack that challenges the existence of subject-matter jurisdiction irrespective of the pleadings. Forum Architects LLC v. Candela, 2008 WL 2685676, *3 (N.D. Fla. June 27, 2008). When there is a factual attack the court may consider matters outside of the pleadings, such as testimony and affidavits. Id. As noted by the district court in Forum Architects, when a court considers matters outside the pleading when ruling on a 12(b)(1) motion, this does not convert the motion into a motion for summary judgment. Id. at foot note 2, (citations omitted).

In the instant case, the "PTN Mobility Bonus", attached hereto as Exhibit "A", provides at paragraph 6:

> An eligible operator who accepts any of the lump sum payments prior to the 2010 payment must remain in the Operations Department at PTN, through 01/01/2010 or he/she will be required to **repay** to the Company any previously received payments except as provided in the following paragraph.

(emphasis added). It is clear from the language of the document that if, for reason other than those listed in paragraph 7. of the "PTN Mobility Bonus", an individual leaves the Operations Department *before* January 1, 2010, they forfeit their right to any of the monies received and must repay to the company all such sums. Accordingly, Plaintiffs' claims in this lawsuit are premature as there is no way to know or predict which Plaintiffs will be employed and fulfill the terms of the "PTN Mobility Bonus" as of January 1, 2010.

The same analysis holds for the "Attrition Bonus" that Plaintiffs have made an issue in Count III of their First Amended Complaint. The "Attrition Bonus", attached hereto as Exhibit "B", in paragraph 1. provides in pertinent part:

> * * * Employees accepting each Lump Sum payment will be obligated to remain in the Operations Department at PTN three full years following the receipt

> of each payment. An employee leaving the Operations Department at PTN, except as described in Paragraph 3 below, will be responsible for **immediate repayment** of any, and all, payment(s) made within the preceding three years (see example 1).

(emphasis added). As can be gleaned from the plain language of the document, which also calls for each employee covered by the "Attrition Bonus" to sign a "legally binding repayment obligation form", unless an individual is employed as required under the terms of the bonus agreement, any and all monies they may have received are forfeited and subject to immediate repayment to the company. Since the first payment called for under the "Attrition Bonus" was made in 2007, the earliest period of time in which someone would not be subject to repayment of any monies received would be in the year 2010. Again, Plaintiffs' claims are premature as there is no way for anyone, especially this Court, to know which of the Plaintiffs will have fulfilled their obligations under the "Attrition Bonus" in the year 2010.

At best, Plaintiffs are seeking an advisory opinion from the Court, which is improper, and, as can be seen from the documents at issue, any claims are premature as the monies which the Plaintiffs have received are subject to forfeiture and immediate return to the company. Since Plaintiffs' claims are not ripe, the Court lacks subject matter jurisdiction and must dismiss the claims.

II. Plaintiffs' Claims Are Barred By the Statute of Limitations

A claim for overtime wages under the FLSA must be brought within two years from when the cause of action accrued, unless the cause of action arises out of "willful" violation on the part of the employer, in which case it must be brought within three years from when the cause of action accrued. 29 U.S.C. § 255(a). The showing needed for a finding of "willful" is demanding in that even if an employer acted unreasonably, if the employer's action was not

reckless in determining its legal obligations under the FLSA, such action is not "willful". Powell v. Carey International, Inc., 483 F.Supp.2d 1168, 1175 (S.D. Fla. 2007) (citing Duncan v. Brockway Standard, Inc., 1992 WL 51026, 1992 U.S. Dist. LEXIS 21165 (N.D. Ga. 1992)).

In the case *sub judice* Plaintiffs state in paragraph 26. of the First Amended Complaint [DE # 5] "FPL paid the bonuses as provided by contract. Non-licensed operators were paid in late August 2005 and September 2006. Licensed operators were paid in late August 2005; September 2006, and September 2007." Since Plaintiffs' claims involve alleged payments made in August 2005 and September 2006, said claims are barred by the applicable statute of limitations in 29 U.S.C. § 255(a), as they have been brought more than two years from the alleged payments, to wit: Plaintiffs' original Complaint was filed October 17, 2008.[4] Accordingly, based upon the operable statute of limitations and the four corners of Plaintiffs' First Amended Complaint, any claims arising out of any alleged payments made in August 2005 or September 2006 are barred.

CONCLUSION

Based upon the foregoing, Defendant, FPL, respectfully requests that this Court dismiss Plaintiffs' First Amended Complaint, and provide for such further relief as this Court may deem proper.

[4] To the extent that Plaintiffs have tried to establish a claim for a "willful" violation by FPL, they reference in paragraph 18. of the First Amended Complaint an agreement attached as Exhibit "2" to their filing. However, neither FPL's copy of the First Amended Complaint, nor the copy filed with this Court contains an Exhibit"2". Moreover, since Plaintiffs have filed a "shotgun pleading", it is impossible to tell for which counts Plaintiffs are trying to establish a "willful" violation, if any.

Respectfully submitted,

s/Ellen S. Malasky
Ellen S. Malasky, Esq.
Florida Bar No. 724599
ellen_malasky@fpl.com
700 Universe Boulevard
Juno Beach, FL 33408
Tel: (561) 691-7833
Fax: (561) 691-7103
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed via CM/ECF in accordance with Southern District of the United States Court policy, with a Notice of Electronic Filing to Howard Susskind and Noah Scott Warman, 100 Miracle Mile, Ste. 300, Coral Gables, Florida 33134 this 2nd day of February, 2009, which suffices as notice of service.

s/Ellen S. Malasky, Esq.
Ellen S. Malasky, Esq.

SEC-000016 – Letter from Saporito Energy Consultants to Lewis Hay III, FPL Chief Executive Officer, dated January 17, 2009 (2-pages)

Saporito Energy Consultants

January 17, 2009

Lewis Hay III
Chief Executive Officer
Florida Power and Light Company
700 Universe Blvd.
Juno Beach, Florida 33408

In re: Turkey Point Nuclear Plant and St. Lucie Nuclear Power Plant – Independent Contract Services

Dear Mr. Hay:

As you are aware, I am a former employee of the Florida Power and Light Company ("FPL") and worked at the FPL Turkey Point Nuclear Plant as an Instrument and Control Specialist. My employment was terminated by John Odom, Senior Vice President Nuclear following my raising safety concerns to FPL management and to the U.S. Nuclear Regulatory Commission ("NRC"). Over the last 20-years I have gained exceptional experience in litigating causes of action brought under the Employee Protection Provisions of the Energy Reorganization Act of 1974 as amended 42 U.S.C.A. §5851 ("ERA"). Although I am not an attorney at law, I am authorized to represent individuals under the U.S. Department of Labor ("DOL") regulations. In this regard, I have represented employees who were retaliated against after they raised safety concerns to management at one or more nuclear power plants other than those operated by FPL. Moreover, over the last 20-years I have gained exceptional experience in bringing actions before the U.S. Nuclear Regulatory Commission ("NRC") regarding matters related to the work environment at nuclear power plants regarding the ability of employees to raise safety concerns without fear of retaliation from management.

With respect to FPL's nuclear operations at the Turkey Point Nuclear Plant ("TPN") and the St. Lucie Nuclear Plant ("SNP"), it appears that employees working at those facilities are afraid to raise safety concerns to either FPL management or directly to the NRC. Notably, the recent employee survey conducted by FPL at TPN clearly illustrates that the work environment at TPN does not permit employees to freely raise safety concerns either FPL management or directly to the NRC. Moreover, based on information and belief, it appears that FPL management at TPN has conducted **"other"** employee surveys dating back several years regarding the work environment at TPN and employees attitudes regarding the Employee Concerns Program ("ECP") at TPN (formerly known as Speak-Out). Notably, based on information and belief, it appears that FPL management has not volunteered past employee survey results to the NRC and this is of great concern to me. To this extent, I request that you immediately provide any past employee surveys conducted at TPN to the NRC for proper evaluation of the work environment at TPN as it relates to the ECP in effect at that facility.

As the president of Saporito Energy Consultants ("SEC"), I desire employment with FPL as an "Independent Contractor" for the sole purpose of conducting an assessment of the work environment at TPN and at SNP as it relates to the FPL ECP in effect at those facilities. In addition, I can extend any employment contract to include development of a training program to enhance the awareness of management and all employees at those facilities regarding the ERA. This would certainly lessen FPL's exposure to claims brought under the ERA by eliminating what is believed to be ongoing retaliatory

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Email: saporito3@gmail.com • Website: http://saporitoenergyconsultants.com

responses by FPL management taken against FPL employees who raise safety concerns at those facilities. As a U.S. citizen and as a stockholder of FPL, I am gravely concerned that the work environment at TPN and at SNP is not conductive to allow employees to freely raise safety concerns to anyone without fear of retaliation by FPL management.

Please let SEC assist FPL in meeting their obligations under NRC regulations at 10 C.F.R. 50.7 and under the ERA to make positive changes to the work environment at TPN and at SNP in the interest of public health and safety and to enhance public confidence in the building of new nuclear power plants in the United States.

In closing, I look forward to your timely response to this request for employment as an Independent Contractor for FPL regarding employee training and employee surveys related to the FPL ECP at TPN and SNP.

Best regards,

Thomas Saporito, President
Saporito Energy Consultants
Post Office Box 8413
Jupiter, Florida 33468-8413
Phone: (561) 283-0613
Email: saporito3@gmail.com
Website: http://saporitoenergyconsultants.com

cc: Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20500

Director of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20500

Inspector General
U.S. Nuclear Regulatory Commission
Washington, D.C. 20500

Hon. George W. Bush
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Hon. Barack Obama
President-elect of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Thomas Saporito

From: Jason Paige [Jason.Paige@nrc.gov]
Sent: March 20, 2009 11:03 AM
To: saporito3@gmail.com; SaporitoEnergyConsultants@gmail.com
Cc: Tanya Mensah; Tom Boyce (NRR)
Subject: FW: <<< NRC-PRB TELECONFERENCE - FPL TURKEY POINT 2.206 PETITION

Mr. Saporito,

This is email two of two with additional information that you sent me to forward to the PRB for their review. These documents were also forwarded by me to the PRB for their review.

Jason Paige, Project Manager
Plant Licensing Branch II-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation
US Nuclear Regulatory Commission
Phone: (301) 415-5888

From: Saporito Energy Consultants [mailto:saporitoenergyconsultants@gmail.com]
Sent: Tuesday, March 17, 2009 2:31 PM
To: Jason Paige
Cc: R2ORA_EICSMailCenter Resource; Tracy Orf; Melanie Checkle; Oscar DeMiranda
Subject: <<< NRC-PRB TELECONFERENCE - FPL TURKEY POINT 2.206 PETITION

Mr. Paige

Attached hereto, please find 2-additional documents that you are requested to provide to the NRC-PRB ahead of the scheduled 19-MAR-2009 teleconference. Should you have any questions regarding the foregoing, please feel free to contact me.

Best regards,

Thomas Saporito, President
Saporito Energy Consultants
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Thomas Saporito

From: Jason Paige [Jason.Paige@nrc.gov]
Sent: March 20, 2009 10:56 AM
To: saporito3@gmail.com; SaporitoEnergyConsultants@gmail.com
Cc: Tanya Mensah; Tom Boyce (NRR)
Subject: FW: <<< FPL - NRC- PRB MEETING DOCUMENTS - 2.206 PETITION >>>

Mr. Saporito,

This is one of two emails (I will also forward you the second email you sent me) with additional information that you sent me to forward to the petition review board (PRB) to prepare for the PRB meeting on Thursday, March 19, 2009. All of the attached documents were forwarded to the PRB for review.

Also, as a result of the March 19th meeting, you agreed to provide additional information to the PRB for review. Please submit the additional documents to the OEDO, as 10 CFR 2.206 requires (state in your letter that the additional information is supplemental information to your January 11, 2009 2.206 request). This will allow for proper processing of your documents. Please notify me when you have sent the documents.

If you have any questions, feel free to contact me.

Jason Paige, Project Manager
Plant Licensing Branch II-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation
US Nuclear Regulatory Commission
Phone: (301) 415-5888

From: Saporito Energy Consultants [mailto:saporitoenergyconsultants@gmail.com]
Sent: Monday, March 16, 2009 5:19 PM
To: Jason Paige
Cc: Tracy Orf; Melanie Checkle; Oscar DeMiranda; R2ORA_EICSMailCenter Resource; Kugler, Clarence - OSHA
Subject: <<< FPL - NRC- PRB MEETING DOCUMENTS - 2.206 PETITION >>>

Dear Mr. Paige,

Attached, please find documents which you are requested to provide to the NRC-PRB ahead of the scheduled conference call on Thursday, March 19th, 2009.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Best regards,

Thomas Saporito, President

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From: Saporito Energy Consultants [SaporitoEnergyConsultants@gmail.com] Sent: Mon 03-16-2009 5:19 PM
To: Jason Paige
Cc: Tracy Orf; Melanie Checkle; Oscar.DeMiranda@nrc.gov; R2ORA_EICSMailCenter.Resource@nrc.gov; Kugler, Clarence - OSHA
Subject: <<< FPL - NRC-PRB MEETING DOCUMENTS - 2.206 PETITION >>>
Attachments: 2009-03-12 Operators Sue FPL - Overtime.pdf (173 KB); 2009-03-12 Silence Clause Keeps Turkey Point Workers Quiet.pdf (164 KB); 2009-03-13 Florida Power Company Put Safety Second.pdf (33 KB); 2009-03-13 FPL's Response to Turkey Point Story.pdf (168 KB); 2009-03-13 Hoffman's Resonse to Miami Herald Article.pdf (115 KB); 2008-10-29 Civil Case Against FPL.pdf (151 KB); 2009-01-21 Hoffman Law Suite.pdf (2 MB); 2009-02-02 Bonus Pay Agreement IBEW.pdf (118 KB); 2009-02-02 Bonus Pay Doc-2.pdf (272 KB); 2009-02-02 FPL Response to Civil Claim FSLA.pdf (578 KB);

Dear Mr. Paige,

Attached, please find documents which you are requested to provide to the NRC-PRB ahead of the scheduled conference call on Thursday, March 19th, 2009.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Best regards,

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To: Jason Paige
Cc: Tracy Orf; Melanie Checkle; Oscar.DeMiranda@nrc.gov; R2ORA:EICSMailCenter.Resource@nrc.gov; Kugler, Clarence - OSHA
Subject: <<< FPL - NRC-PRB MEETING DOCUMENTS - 2.206 PETITION >>>
Attachments: 2009-03-13 Florida Power Company Put Safety Second.pdf (33 KB); 2009-03-13 FPL's Response to Turkey Point Story.pdf (168 KB); 2009-03-13 Hoffman's Resonse to Miami Herald Article.pdf (115 KB); 2008-10-29 Civil Case Against FPL.pdf (151 KB); 2009-01-21 Hoffman Law Suite.pdf (2 MB); 2009-02-02 Bonus Pay Agreement IBEW.pdf (118 KB); 2009-02-02 Bonus Pay Doc-2.pdf (272 KB); 2009-02-02 FPL Response to Civil Claim FSLA.pdf (578 KB); 2009-03-12 FPL Nuclear Worker Shortage.pdf (175 KB); 2009-03-12 FPL-Turkey Point-Hoffman.pdf (195 KB); 2008-11-24 Citizen's Brief - FPL Hole.pdf (910 KB)

Dear Mr. Paige,

Attached, please find documents which you are requested to provide to the NRC-PRB ahead of the scheduled conference call on Thursday, March 19th, 2009.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Best regards,

Thomas Saporito, President
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From: Saporito Energy Consultants [SaporitoEnergyConsultants@gmail.com] Sent: Tue 03-17-2009 2:31 PM
To: Jason Paige
Cc: R2ORA_EICSMailCenter.Resource@nrc.gov; Tracy Orf; Melanie Checkle; Oscar.DeMiranda@nrc.gov
Subject: <<< NRC-PRB TELECONFERENCE - FPL TURKEY POINT 2.206 PETITION
Attachments: 2008-01-17 Final ECP SA 2007-37715 REPORT.PDF (1 MB); 2009-01-17 Letter Saporito to Hay.pdf (36 KB)

Mr. Paige

Attached hereto, please find 2-additional documents that you are requested to provide to the NRC-PRB ahead of the scheduled 19-MAR-2009 teleconference. Should you have any questions regarding the foregoing, please feel free to contact me.

Best regards,

Thomas Saporito, President
Saporito Energy Consultants
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SEC-000001 – Request for Enforcement Action and Confirmatory Order Under 10 C.F.R. 2.206 Against Florida Power and Light Company, dated January 11, 2009 (5-pages)

Saporito Energy Consultants

January 11, 2009

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20500

In re: Request for Enforcement Action and Confirmatory Order Under 10 C.F.R. §2.206 Against Florida Power and Light Company

Saporito Energy Consultants by and through and with its undersigned President, Thomas Saporito, ("Petitioners"), hereby submit a request for enforcement action and a request for a confirmatory order under 10 C.F.R. §2.206 against the Florida Power and Light Company ("FPL") of which said company FPL is a licensee of the U.S. Nuclear Regulatory Commission ("NRC") and subject to NRC regulations and requirements under 10 C.F.R. Part 50.

Specific Request:
Petitioners request that the NRC take enforcement action against FPL by issuing a "Notice of Violation and Imposition of Civil Penalty" in the amount of $1,000,000 and further issue a "Confirmatory Order" modifying FPL's operating licenses DPR-31 and DPR-41 for the Turkey Point Nuclear Plants ("TPN") Docket Nos. 50-250 and 50-251 as delineated below:

Confirmatory Order:
In accordance with sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations under 10 C.F.R. §2.202 and 10 C.F.R. Part 50, Petitioners request that the NRC issue a Confirmatory Order modifying FPL License Nos. DPR-31 and DPR-41 as follows:

1. Effective February 1, 2009, FPL will integrate into is overall program for enhancing the work environment and safety culture at TPN a "Cultural Assessment" conducted by an independent contractor. The Cultural Assessment shall include both a written survey of employees, including supervision and management, and baseline contractors, and confidential interviews of selected individuals. The first assessment shall be completed no later than the second quarter of 2009 and will be performed at least three more times at intervals of 18 to 24 months. In addition, annual surveys will be conducted and shall include, but not be limited to, annual surveys through at least the year 2020. Prior to conducting each annual survey, the Licensee shall identify to the NRC Regional Administrator the departments and divisions to be surveyed. The Licensee shall submit to the NRC for review all Cultural Assessment results, including all intermediate annual surveys. In addition, within 60-days of receipt of any survey results, the Licensee shall provide to the NRC Regional Administrator any plans to address issues raised by the survey results.

2. FPL shall conduct annual ratings of supervisors and managers by employees through a written assessment tool and provide the same to the NRC through the year 2020.

3. FPL shall conduct a mandatory continuing training program for all supervisors and managers which shall include:

    a. Scheduled training on building positive relationships. The training program shall incorporate the objective of reinforcing the importance of maintaining a safety-conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of a safely-conscious

work environment. The training program shall also include a course entitled "Safely Talking to Each Other" which shall explain how to properly deal with safety concerns raised at TPN.

b. Annual training on the requirements of 10 C.F.R. §50.7 and 42 U.S.C.A. §5851, through the year 2020, including, but not limited to, what constitutes "protected activity" and what constitutes "discrimination" within the meaning of 10 C.F.R. §50.7 and 42 U.S.C.A. §5851, and appropriate responses to the raising of safety concerns by employees. Moreover, the training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

4. The Licensee shall issue a site-wide publication informing all employees and contractor employees of this Confirmatory Order as well as [t]heir rights to raise safety concerns to the NRC and to [t]heir management without fear of retaliation.

Basis and Justification:
On or about January 17, 2008, the Licensee completed a "Self-Assessment" of the TPN facility and specifically an assessment of the TPN Employee Concerns Program "ECP" in order for the Licensee to understand and address weaknesses in the ECP. The assessment identified 8-weaknesses as summarized below:

1. Management attention to the ECP did not meet expectations and management's awareness of the ECP was superficial and program values had not been emphasized with employees.

2. The ECP facility was of low quality and did not give the impression of being important to management.

3. There is a perception problem with the ECP in the areas of confidentiality and potential retribution. The perception remains as evidenced by surveys, interviews and the high percentage of anonymous concerns. Previous surveys and assessments identified this perception, but little or no progress has been made in reversing this perception.

4. The ECP was most frequently thought to be a mechanism to use in addition to discussing concerns with the NRC and not as the first alternative to the Correction Action Program "CAP".

5. While meeting most of the program requirements and having a technically qualified individual in t he ECP coordinator position, the overall effectiveness of the program was marginal.

6. The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities.

7. The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to non-anonymous individuals is impersonal and lack feedback mechanisms for the ECP coordinator to judge the program's effectiveness.

8. The ECP process also does not provide assurance that conditions adverse to quality identified in the ECP review process would get entered into CAP, creating potential to miss correction and trending opportunities.

Please refer to the Licensee's related documents identified as:

CR 2008-8142, CR 2008-8145, CR 2008-8146, CR 2008-8148, CR 2008-8150, CR 2008-8151, and CR 2008-8153. See also, CR 2008-8164 used as a tracking mechanism.

On July 6, 2007, the NRC issued the NRC Problem Identification and Resolution Inspection Report which stated that inspectors noted reluctance by several departments to utilize the ECP because Licensee employees felt that the program only represented management's interest. NRC inspectors also noted a declining confidence in the Licensee's ECP.

On January 7, 2009, the Florida Public Service Commission "FPSC" issued Order No. PSC-09-0024-FOF-EI which stated, in relevant part, that:

> ". . . The OAG also states that there is evidence in the record that FPL failed to comply with its own security policies. The OAG points out that witness Jones testified that to gain unescorted access to the plant, a person is subjected to a screening that includes: (1) a detailed background investigation, including verification of employment history, credit check, and a character verification, including reference checks, and where applicable, education and military checks, (2) each individual is required to pass a rigorous psychological examination consisting of nearly 600 questions, with responses screened for psychological stability and other characteristics, and may be subject to further psychological review as required, (3) an FBI criminal history verification, including fingerprints, with no disqualifying criminal background, and (4) a drug and alcohol screening with additional random drug and alcohol testing during the period of unescorted access. The OAG contends that the testimony of witness Jones is that failure to successfully complete any of these steps will result in the individual being denied unescorted access to FPL's nuclear facilities. And yet, according to the OAG, the FOIA response indicates that the person of interest had six arrests, failed a written psychological test, and had admitted to drug use. The OAG asserts that FPL approved the person of interest for unescorted access in violation of its own policy. The OAG concludes that the drilled hole incident was preventable. According to the OAG, not only did FPL fail to carry is burden of proof, but the evidence shows that the company acted imprudently in this circumstance.
>
> . . . Additionally, we note that 10 CFR §73.56(4) states:
> The licensee may accept an access authorization program used by its contractors or vendors for their employees provided it meets the requirements of this section. The licensee may accept part of an access authorization program used by its contractors, vendors, or other affected organizations and substitute, supplement, or duplicate any portion of the program as necessary to meet the requirements of this section. <u>In any case, the licensee is responsible for granting, denying, or revoking unescorted</u>

> access authorization to any contractor, vendor, or other affected organization employee.
>
> (emphasis added) The licensee is FPL. Unescorted access refers to individuals FPL allows to enter a specific protected area of the power plant without accompaniment of another individual, supervisor, or security personnel.
>
> Regarding the NRC AIT report, witness Jones opined that the NRC found FPL prudent and reasonable, although he acknowledges that those specific statements are not within the NRC AIT report. Based on the NRC's review, witness Jones believes the person of interest had been properly authorized to have unescorted access to the area where the pressurizer piping is located. . . FPL did not offer any internal records regarding access screening or other FPL data in support of witness Jones' testimony. We reviewed the NRC AIT report to determine its contents regarding FPL's management and oversight of temporary contract personnel. . . Consequently, we find that the NRC AIT report is insufficient or not dispositive in addressing the prudence of FPL in management and oversight of its temporary contract personnel. We performed similar reviews of Exhibit 9, FPL's Corporate Security Investigative Report, and the NRC's notification letter with the same results.
>
> We find that FPL had reasonable opportunity to carry it's burden, but failed to provide evidence that would show it prudently managed and exercised proper oversight of temporary contract personnel during the spring outage of 2006. FPL failed to show the replacement fuel cost of $6,130,000 was prudently incurred, and therefore FPL shall be required to implement a customer refund, with interest. . ."

Petitioners specifically cite to the above-PSC document because the FBI report referenced in that document is believed to contain additional information which indicates that at least one other FPL contractor employee was aware of the "hole drilling" incident at TPN but failed to timely report the incident. Petitioners contend that the witness to this incident feared retaliation in reporting the incident to FPL and therefore remained silent.

On June 5, 2003, the NRC issue a Notice of Violation (U.S. Department of Labor ALJ Case No. 2000-ERA-5, ARB Case No. 00-0070) to FPL for retaliating against one of its employees for raising safety concerns at TPN. The NRC noted that, ". . . it is clear that both the ALJ and ARB concluded that complainant's demotion was motivated, in part, by the illegitimate reason of complainant's protected activity, and these findings form the bases for the NRC's conclusion that a violation of its Employee Protection regulation occurred. . . and involves a violation of 10 C.F.R. 50.7, Employee Protection.. . "

On July 16, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - $100,000 (Department of Labor Case No. 92-ERA-010) to FPL for retaliating against one of its employees for raising safety concerns at TPN. The NRC noted that, ". . . Based on the information developed by the Secretary of Labor, the information provided in your April 24, 1996 letter, and the information you presented at the conference, the NRC has determined that a violation of NRC requirements occurred . . . and involves the failure of FP&L to adhere to the requirements of 10 CFR 50.7, Employee Protection, which prohibits discrimination against employees for engaging in protected activities.

Petitioners aver here that FPL has continually engaged in retaliatory actions against its own employees who raise safety concerns at TPN over the last 20-years and that the enforcement actions sought by the Petitioners, including the confirmatory order, will act to dissuade FPL from further violations of NRC regulation and requirements under 10 C.F.R. 50.7 and will protect public health and safety by eliminating the "chilling effect" which currently exists at TPN and fostering a work environment where employees can freely raise safety concern directly to the NRC to FPL management without fear of retaliation.
Notably, Petitioners are aware of at least 3-employees of FPL who allege that they have been retaliated against for having raised safety concerns at one or more of FPL's nuclear power plants in the last 12-month period.

WHEREFORE, in the interest of public health and safety, the NRC should GRANT Petitioners' 10 C.F.R. §2.206 petition in its entirety.

Respectfully submitted,

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SEC-000002 – State of Florida, Office of Public Counsel (Citizens' Brief On Issue 13C) Before the Florida Public Service Commission, dated November 24, 2008 (19-pages)

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RAY SANSOM
Speaker of the House of Representatives

REDACTED

November 24, 2008

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COMMISSION CLERK

Anne Cole, Commission Clerk
And Administrative Services
Room 100, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 080001-EI

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Brief on Issue 13C (Public Version). A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Stephen C. Burgess
Associate Public Counsel

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ECR ___
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OPC ___
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor	))))	Docket No. 080001-EI FILED: November 24, 2008

CITIZENS' BRIEF ON ISSUE 13C

I. Basic Facts

Florida Power and Light Company ("FPL," or "the Utility") granted unescorted nuclear plant access to an individual who, within one month of being hired, intentionally vandalized the nuclear plant to which he had been granted access. This individual vandal ("the Individual" or "the Vandal") has been identified, but has not been arrested or charged with a crime, or sued by Florida Power and Light. FPL argues that its customers should be held financially accountable for the vandalism because the Utility had in place a rigorous screening process that was designed to prevent this type of occurrence. In sworn testimony, FPL assured the Commission that prior to his being granted unescorted nuclear plant access, the Individual "was subject to and successfully completed FPL's rigorous access and fitness for duty screening processes." [T. 543] The sworn testimony described the several steps of the screening process and concluded that "[f]ailure to successfully complete any of these steps will result in the individual being denied unescorted access to FPL's nuclear facilities." [T.542] The sworn testimony did not even hint that the Vandal's application may have shown any red flags for potential problems. FPL contended that nothing possible could have been foreseen.

The Friday before the hearing, however, FPL produced a document that the Utility had received approximately one month earlier. [T. 568; Exhibit 54, p. 11] The document included field notes written by the FBI agent investigating the case. The field notes contained information that the

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agent had found on the vandal's Turkey Point security questionnaire. That questionnaire was completed as part of the vandal's screening process, and has been in the possession of FPL since February, 2006. [T. 571] FPL, however, chose not to present the questionnaire to the Commission.

The field notes paint a strikingly different picture of the relevant information about the Vandal, which FPL had in its possession when it granted unescorted nuclear plant access. Florida citizens would be shocked by a juxtaposition of FPL's sworn testimony alongside the FBI agent's field notes (the actual source document – the questionnaire, itself – has never been produced by FPL, so the agent's notes are the closest rendition available).

While assuring the Commission that the Individual had been rigorously screened, FPL's sworn testimony never even mentioned that there existed ANYTHING on the questionnaire that could possibly call the Individual's background into question. Instead, FPL cited all of the areas in which the vandal had been screened and had passed. FPL's sworn testimony stated that the screening process required the Individual "to successfully complete an FBI criminal history verification ... with no disqualifying criminal background" and "to successfully complete drug and alcohol screening...." As we now know, however, the Vandal had been arrested for: 1990 Criminal Recklessness and Criminal Mischief (charges dismissed in 1994); 1990 Driving under the Influence (guilty); 1991 Discharging a fire arm in public (dismissed); 1989 Public Intoxication (Dismissed); 1989 Reckless Driving (Dismissed). Further, the Vandal responded "yes" to the question "Have you ever used/sold illegal drugs?" and did not answer questions relative to participation in substance/alcohol abuse programs. Finally FPL's sworn testimony assured the Commission that the Vandal "passed a rigorous psychological examination consisting of nearly 600 questions, with the responses screened for psychological stability and other characteristics. As required, individuals may be subject to further

psychological review, including interviews by a licensed psychologist." [T. 542] The FBI field notes, however, indicated that the individual "failed his psychological test," but "received clearance from a physician in order to gain plant access." [Exhibit 54; p. 11]

OPC is troubled by the version of the facts that the Commission initially received from FPL before the notes of the FBI agent became available. If one were actually trying to communicate to the Commission an accurate picture of how the Vandal fared in FPL's screening process, one would have at least brought attention to the obvious red flags that appear on his security questionnaire. One would certainly not have used the description in Mr. Jones' sworn testimony, which implied a totally clean application. As Mr. Larkin stated:

> Now up until we got the, what has been called the FBI report, which is really portions of, of individual reports, the company had represented to the Public Counsel, to everybody in this room that we had this super-duper system that we applied and it would have identified everything that was out of, out character or, or we should have paid attention to and this individual past it. Not only did he pass it, he passed it with flying colors.
>
> So on last Friday, due to the vigilance of your staff, we got some more information. And what that information indicated is that not only did this individual that perpetrated this vandalism should have been flagged, it indicated that, that this was almost a siren, that this guy had several prior run-ins with the law, that he responded yes to the use and selling of drugs, that he failed to answer the question about substance abuse and he filed the company's initial psychological test. [T. 987; 988]

Mr. Jones explained that he never actually looked at the Vandal's questionnaire [T. 572], but instead he based his sworn testimony on assurances from a Mr. Bonthron. [T. 641] The problem facing the Commission is that Mr. Jones has not examined the Vandal's questionnaire to this day, but continues to base his representations to the Commission on representations of the same Mr. Bonthron who apparently led Mr. Jones to believe that there was no reason to disclose to the Commission all of

the red flags appearing on the Vandal's security questionnaire.

II. **The Commission must determine whether customers should be held financially responsible for damages that were intentionally caused by an individual who had been granted unescorted nuclear plant access by FPL.**

This case centers on FPL's specific decision to grant unescorted nuclear plant access to the specific individual who drilled the hole. This case is NOT about the general condition of FPL's screening process, or even about the NRC's opinion of that process. Since the customers are being asked to pay for damage caused by a single act of a single individual, any question about access should focus on the access granted to the specific individual who caused the damage. Thus, the Commission should ask itself: "Have we seen all the information that we need to be absolutely certain that FPL's decision to allow unescorted access to this particular individual was a prudent decision? Can we tell the public that we support FPL's decision to grant unescorted nuclear plant access to the individual who committed the vandalism?"

Suppose a high quality automobile manufacturer is known for its stellar production process. Further suppose that manufacturer's production process had received the highest possible accolades from every existing industry oversight group and publication. Now finally suppose that, in spite of all of this, one automobile is produced that is abominably defective. Would that auto maker say: "Well, we don't need to bother trying to find out what went wrong in this particular case. We don't need to look at any of the specific circumstances of how that particular vehicle turned out so obviously defective. No, we don't need to bother with any of that because we have faith in the overall process and our process has received accolades from industry experts."? Of course no

reasonable business would ever take that approach – it would be sheer lunacy. The very first thing the auto maker would do is scrutinize the defective vehicle in painstaking detail to find out exactly what went wrong for that specific car. Without a detailed examination of the specific defect, the manufacturer would have no way of understanding what went wrong.

Yet that is exactly what FPL is asking the Commission to do. FPL wants the Commission to assure Florida's citizens that FPL appropriately allowed unescorted access to the Individual who vandalized the plant, while withholding from the Commission the Individual's security questionnaire results -- information that is vital to making an informed decision. Thanks to the FBI field notes, the record is now clear that, among many other problems, the vandal had been arrested and charged with criminal mischief and the charges were dropped four years later.

Florida Statutes define "criminal mischief" as:

> A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or <u>other acts of vandalism thereto</u>.
> [EMPHASIS ADDED] Section 806.13(1)(a), Florida Statutes

In addition, the Individual was arrested for criminal recklessness, discharging a firearm in public, driving under the influence, public intoxication, and reckless driving.

Yet, in spite of all of that "smoke," FPL is now asking the Commission to vouch for the Company and assure the public that FPL acted appropriately in granting the Individual unescorted access to the nuclear plant. If we were to select virtually any Florida citizen to evaluate whether this Individual who had been arrested for such serious crimes should have been granted unescorted access

to a nuclear plant, the citizen surely would either conclude that access clearly should not have been granted or at least pursue an entire battery of questions about the arrests, such as the following:

> "What does the police arrest report say about the criminal mischief charge?"
> "What was the nature and seriousness of the vandalism that led to the charges of criminal mischief?"
> "Was the vandalism in the nature of corporate sabotage?"
> "What was the monetary value of the vandalism?"
> "Was the vandalism committed on the job?"
> "Was the vandalism committed at an electric power plant? … a nuclear power plant?"
> "What did the police report say about the charge of criminal recklessness?"
> "How badly was the victim hurt?"
> "What was the extent of the 'great bodily harm'?"
> "Was the great bodily harm caused by the act of vandalism?"
> "Was a plea bargain entered?"
> "Were the charges dropped as part of a plea bargain or an expunction process?"
> "Did the individual serve a jail sentence as part of an agreement?"
> "Why did it take four year for the charges to be dropped?"
> "What kind of firearm was discharged publicly?"
> "What kind of public setting was it?"
> "How many people were around?"
> "Was anyone hit, or nearly so?"
> "Why were the charges dismissed?"
> "What was the blood alcohol level while driving?"
> "What were the circumstances of the reckless driving?"
> "Was anyone hit? … Hurt?"
> "Etc."

If our imaginary Florida citizen were told that Florida Power and Light chose not to provide him with any of the answers because the Utility does not think he needs to know, there can be little doubt about what the citizen would say: "This is an easy decision. No one can possibly conclude that FPL was prudent to grant this individual access, without knowing the information I was asking for. Since FPL has chosen not to give me this critical information, there is only one possible conclusion. FPL has NOT proven that it acted prudently in granting unescorted nuclear plant access to an

individual with this kind of background."

Of course, we do not select individual Florida citizens to make such evaluations. Instead we select Public Service Commissioners to make those evaluations on the citizens' behalf. The Commission tried mightily to get specific answers to questions about the Individual's arrests and other red flags in the individual's background [See T. 564-628], but was prevented from obtaining the necessary information because FPL chose not to make it available. Florida Power and Light possesses the information, and there is no legal impediment to presenting the information with the name redacted. [T. 573; T. 624] Mr. Terry Jones had oversight responsibility in that area. In that capacity, Mr. Jones presented testimony purportedly to assure the Commission that FPL had acted prudently in granting this specific Individual unescorted access to a nuclear power plant. Incredibly, however, even as of the hearing, Mr. Jones had never bothered to look at the background of the specific Individual because he believed that he "did not need to know." [T. 578]

Mr. Jones apparently felt comfortable in making his unqualified assurance that FPL had no reason at all to be concerned about granting the Individual unescorted nuclear plant access, based on his faith in the corporate security manager and in the Nuclear Regulatory Commission (NRC) report. [T. 641-643] The Florida Public Service Commission, however, has specific obligations that it owes to Florida's citizens. Among those is the obligation to make an independent finding on the facts brought before the Commission in hearings conducted by the Commission. The Commission cannot give a public assurance based on Mr. Jones' faith in Mr. Bonthron (particularly when it was Mr. Bonthron whose initial representations led to Mr. Jones' sworn testimony implying that no red flags had been raised). The Commission must make an independent finding, based on the record of evidence brought before the Commission. In this case, FPL chose not to bring the Commission any

verifiable evidence about the Vandal's background. Without such evidence, it is impossible for the Commission to vouch for the prudence of FPL's decision to grant unescorted nuclear plant access to the Individual that we now know is a very dangerous vandal.

III. **Florida Power and Light has failed to carry its burden of proof.**

The burden of proof is a fundamentally important principle in the overall concept of due process, and it has particular relevance to this case. The party which has the burden of proof is responsible for presenting the Commission with all the evidence necessary for a ruling. If the party with the burden of proof fails to present the Commission with material evidence that the Commission believes is necessary to reach a ruling, then quite simply, that party loses. That was the result in Aloha Utilities, Inc., wherein the Commission ruled:

> However, it is the utility's burden to prove that its costs are reasonable. See Florida Power Corp. v. Cresse, 413 So.2d 1187, 1191 (Fla. 1982). We are persuaded by Ms. Merchant's testimony that the utility has not taken advantage of the opportunity it was provided in this case to show that the costs incurred for the new building were prudent. There is insufficient evidence to determine that the purchase of the building was the most cost effective alternative. As such, we find that the utility has not presented sufficient evidence in this case to show that these costs are prudent. Therefore, none of the requested costs associated with the purchase of the building shall not be considered in this rate proceeding.
> Docket No. 991643-SU; Order No. PSC-01-0326-FOF-SU
> 01 FPSC 2:163, 182

In every respect, the Aloha case is precisely on point with the current case. Just as Aloha failed to avail itself of its opportunity to bring a cost benefit analysis to the Commission, so FPL failed to avail itself of its opportunity to bring details of the Individual's background. Just as the Commission concluded that a cost benefit analysis was crucial to proving that the cost of Aloha's office building was prudent, so the details of the Vandal's background are crucial to evaluate whether

granting unescorted access to that Individual was prudent. Just as the Commission ruled that Aloha failed to carry its burden of proof, so FPL failed to carry its burden of proving that it was prudent to grant unescorted access to the Individual who committed the vandalism.

In this case, the Commissioners asked FPL many questions to try to obtain details about the background of the specific Individual who committed the act of vandalism. Those questions needed to be answered because the information was directly relevant to the issue of whether FPL was justified in allowing unescorted access to that particular Individual. Nevertheless, Florida Power and Light Company consciously chose to withhold the source documents from the Commission, and FPL's witness never looked at the documents to be able to answer the Commissioners' questions. Since FPL has the burden of proving that it is entitled to the money in question, it was incumbent on the Utility to present the necessary proof. FPL failed to carry its burden of proving that it acted prudently in granting unescorted nuclear plant access to the Individual who committed the act of vandalism.

IV. FPL's screening process is directly a management function, and the losses resulting from errors in this function should not be the financial responsibility of customers.

FPL witness Korel Dubin testified that in Order No. 23232, issued in Docket No. 900001, the Commission established precedent that is applicable to the current case. [T. 1217, 1218] OPC agrees that Order No. 23232 established precedent that is applicable to the current case, but Ms. Dubin erred in the principle that is applicable.

Just as in the current case, in Docket No. 900001 the Commission considered the issue of replacement fuel costs that were incurred by FPL due to an unexpected outage at Turkey Point Unit 3. In Order No. 23232, the Commission denied the replacement fuel costs that were incurred as a result

of FPL's nuclear operators' failure to pass the NRC requalification exam. In denying the costs, the Commission stated:

> The Turkey Point 3 outage commencing March 29, 1989, was attributed to FPL's nuclear operators' failure to pass NRC requalification exam. Because operator training is directly a management function, we find that this outage was the responsibility of FPL's management.
> 90 FPSC 7:361, 364

The sole and exclusive reason the Commission cited for disallowance was that "operator training is directly a management function...." Because the training process was considered a management function, the Commission found that the "outage was the responsibility of FPL's management," and that customers should not be held responsible. It was the training process that produced a failure, and because that training process is a management function, FPL – not its customers – was responsible for the resulting loss.

The issue in Docket No. 900001 is conceptually identical to the current case. In 1990, FPL had an operator education program that was generally successful, met industry standards and was approved by the NRC. Notwithstanding the general success of the operator education program, it failed to produce the intended result on one specific occasion. In the current case, FPL has a worker screening program that is generally successful, meets industry standards and has been approved by the NRC. Notwithstanding the general success of the screening program, it failed to produce the intended result on one specific occasion.

It is important to recognize all of the factors that the Commission did NOT consider relevant in reaching its decision in Order No. 23232. The Commission was not concerned with any of the issues that FPL is trying to bring into the current case. In the current case FPL argues that it should not be held responsible because the overall screening process is normally effective; but in Order No.

23232, the Commission did not consider whether the overall operator education process was normally effective because its concern was the specific failure that caused the loss. In the current case FPL argues that it should not be held responsible because its screening process follows a protocol that meets or exceeds the NRC and the industry standard; but in Order No. 23232, the Commission did not consider whether the operator education process met the NRC or the industry standard because the program's failure in a specific instance resulted in a loss. In the current case FPL argues it should not be held responsible because the NRC did not identify a specific error in FPL's screening of the Individual who drilled the hole; but in Order No. 23232, the Commission did not consider whether the NRC found any error in FPL's training of the specific operators who failed because the Commission considered the training to be a management function and therefore held the Utility responsible.

Likewise, FPL's screening program for nuclear plant access is directly a management function, as is the training program for nuclear plant operators. The Citizens urge the current Commission to hold FPL to the standard used by the Commission in its 1990 decision to hold FPL responsible for direct management functions.

V. Beside the failure of its nuclear plant screening process, the failure of FPL's worker training program was also a contributing cause of the Turkey Point 3 outage.

At the hearing, Commissioner Skop pursued a concern that had not been identified by any of the parties. Exhibit 54 revealed that the Individual who drilled the hole had divulged his act of vandalism to a co-worker prior to the hole being discovered by FPL. That co-worker, however, did not report this conversation until after the vandalism had been discovered by FPL. Had the co-worker

immediately reported the incident, the drilled hole could have been discovered and repaired during the planned outage. The timely repair of the hole would have circumvented the additional outage and the need for replacement fuel to be burned.

This revelation raises the issue of the adequacy of FPL's training of the workers with access to the nuclear power plants. Workers with this access must be thoroughly trained in the importance of reporting anything that could possibly be a concern. The failure of the co-worker to report this incident reflects a failure in FPL's training process. Just as the failure of the screening process called for a full investigation, so also this failure of the training process calls for an in-depth examination.

Commissioner Skop raised questions about FPL's training and whether it included adequate emphasis on how critical it is for workers to report any sign of problems. Unfortunately, FPL was unable to respond to the Commissioner's questions except in the most general terms. Much like the circumstances surrounding the Vandal himself, the co-worker also remains a mystery. The Commission is again left without answers to critical areas of inquiry.

FPL gained access to the FBI notes approximately one month before the hearing. Had FPL taken this new revelation more seriously, it could have investigated the matter and perhaps presented the Commission with more complete answers to Commissioner Skop's questions.

Even granting some leeway to FPL, however, there remain two reasons to hold the Utility responsible for this failure in its training process. First, this failure arose in the training process, just as in Docket No. 900001. Accordingly, the Commission's precedent has direct application to the current case. In Order No. 23232, the Commission held that training is a direct management function and therefore a failure in the training program is the responsibility of FPL's management, not its customers.

The second reason FPL should be held accountable is that, as discussed earlier, FPL had the burden of proof in this case. Along with that burden comes the responsibility to bring forward all the evidence the Commission needs to make an informed finding. FPL's failure to provide complete answers to Commissioner Skop's questions amounts to a failure to carry its burden of proof, leaving the Commission no option but to rule against the Utility.

VI. The actual language contained in the confidential NRC Augmented Inspection Team's report directly contradicts the public claims that FPL made about the NRC's findings.

OPC continues to be troubled by the game of hide-and-seek that FPL played with the findings of the NRC's Augmented Inspection Team (AIT). The report of the AIT was contained in confidential Exhibit No. 3; Document No. 06271-08. Its confidential status prevented OPC and other parties from citing excerpts from the AIT report for cross-examination. Nevertheless, FPL witnesses took liberties to make several public representations which purported to characterize the AIT's findings. The actual language of the confidential report, however, directly contradicts the public representations that FPL made about the AIT's findings.

The Utility's witnesses claimed that the NRC's confidential findings exonerated FPL. In fact, Mr. Jones stated:

> And in addition, the NRC's Augmented Inspection Team found that our access authorization personnel programs, processes, and procedures were in full compliance with the requirements of the NRC, and that our physical security plan was in compliance with the NRC. . . . [T.566]

Mr. Jones' claims, however, are directly contradicted by the report itself. In direct contradiction to Mr. Jones, the NRC report states:

BEGIN CONFIDENTIAL

[redacted]

END CONFIDENTIAL

The clear and unambiguous language of the AIT report itself directly contradicts Mr. Jones' claim that the AIT found FPL's programs, processes and procedures "in full compliance with the NRC." OPC has been unable to find any other document in the record in which the NRC recedes from the statement quoted above. Accordingly, the public representations of FPL are directly contrary to the AIT findings, and it is entirely disingenuous and self serving for FPL to publicly claim that the confidential report exonerates the Utility.

VII. Conclusion

The question before the Commission was whether the Utility should be held responsible for its decision to allow a specific Individual unescorted nuclear plant access, in spite of red flags surrounding the Individual's application. Initially, FPL never mentioned any red flags, but rather led the Commission to understand that the Individual's application was clean. Just days before the hearing, it was revealed that the Individual's security questionnaire (which FPL has possessed since 2006) showed a number of red flags that should have concerned FPL. At the hearing, however, FPL could not answer questions about the specific background of the Individual because FPL's witness considered that both he and the Commission "did not need to know" that information. Accordingly,

FPL has failed to carry its burden of proving why it should not be held as the financially responsible party for granting access to the Individual who drilled the hole.

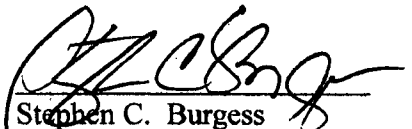
Further, FPL's screening process is directly a management function, and pursuant to Commission precedent, the losses resulting therefrom are the responsibility of the Utility.

Moreover, the Vandal had confided to a co-worker that he had drilled the hole. Had the co-worker reported this very serious admission in a timely fashion, the hole could have been discovered and repaired without any additional outage. Requiring workers to report incidents of such magnitude is the responsibility of FPL's program for training nuclear plant workers. As the Commission held in Order No. 23232, training is directly a management function, and the losses resulting therefrom are the responsibility of FPL.

Finally, contrary to the public claims of FPL witnesses, the AIT report explicitly does NOT determine that FPL's processes were in compliance with NRC requirements.

For all of the foregoing reason, the Commission should require Florida Power and Light to refund the $6.1 million in replacement fuel cost, along with applicable interest.

J.R. Kelly
Public Counsel



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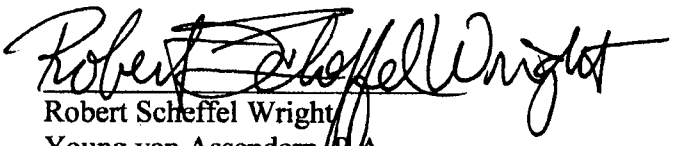

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Attorney for the Florida Retail Federation

DOCKET NO. 080001-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **CITIZENS' BRIEF ON ISSUE 13C** has been furnished by U.S. Mail and electronic mail to the following parties on this 24th day of November, 2008.

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SEC-000003 – FPLTurkey Point Employee Concerns Program Self-Assessment, dated January 14-17, 2008 (59-pages)

FPL

PTN – (Employee Concerns Program)
FPL NUCLEAR DIVISION
SELF-ASSESSMENT REPORT

Turkey Point Employee Concerns Program Self-Assessment

Turkey Point Nuclear Plant
Employee Concerns Program

CR 2007-37715
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TABLE OF CONTENTS

EXECUTIVE SUMMARY 3
MAIN BODY 5
Introduction and Purpose 5
Conduct of Self Assessment 5
Objectives and Scope 6
Performance Standards 6
Performance Criteria 7
Methodology 7
ECP EVALUATION 9
ECP Evaluation Results 35
Strengths 42
Weaknesses or Areas for Improvement 42
Recommendations: 44
Key Personnel Contacted 47
References 48

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DO NOT TYPE IN THE TABLE OF CONTENTS!!!!

If you would like to UPDATE the table, place your cursor anywhere within the table of contents and RIGHT click. Select Update Field, then select Update Entire Table, and then select OK. The headings and page numbers will now be updated with your current document. Follow these same steps each time you want to UPDATE the table.

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EXECUTIVE SUMMARY

NRC's Problem Identification and Resolution Inspection report, dated July 6, 2007 included an observation/assessment regarding the ECP program. The report stated that through the review of ECP files and interviews, the inspectors noted reluctance by several departments to utilize the ECP because they felt that the program only represented management's interest. Furthermore, the inspectors noted that the 2007 SCWE survey results revealed a declining confidence in ECP.

In response to the PI&R inspection findings and observations, station management met with the NRC on October 24, 2007, and discussed the status of the site's corrective action program improvements. The improvement plan included an action to perform an ECP Self-Assessment, which was previously identified as a corrective action in the 2007 SCWE-Plan Road to Excellence Gap Analysis to address the declining confidence in ECP.

The purpose of this Self Assessment is to conduct an evaluation of the Turkey Point Employee Concerns Program (ECP) in order to understand and address program weaknesses. The evaluation mainly focuses on three Performance Objectives: ECP Perception, ECP Capability and ECP Effectiveness.

The ECP program met most of the program requirements. However, the assessment identified eight weaknesses and had numerous recommendations to improve areas for attention. The weaknesses can be summarized into several areas:

Management attention to the ECP program did not meet expectations. Management awareness of the ECP program was superficial and program values had not been emphasized with their employees. The ECP facility was of low quality and did not give the impression of being important to management.

There is a perception problem with ECP in the areas of confidentiality and potential retribution. No actual cases involving breach of confidentiality or retribution for filing a concern could be identified. However, the perception remains as evidenced by surveys, interviews and the high percentage of anonymous concerns. Previous surveys and assessments have identified this perception, but little or no progress has been made in reversing this perception. ECP was most frequently thought to be a mechanism to use in addition to discussing concerns with the NRC and not as the first alternative to the Corrective Action Program (CAP).

While meeting most of the program requirements and having a technically qualified individual in the ECP coordinator position, the overall effectiveness of the program was marginal. The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities. The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to non-anonymous individuals is impersonal and lacks feedback mechanisms for the ECP coordinator to judge the program's effectiveness. The ECP process also does not provide assurance that conditions adverse to quality identified in the ECP review process would get entered into CAP, creating potential to miss correction and trending opportunities.

The following condition reports have been generated for the identified Self-Assessment Weaknesses:
Weakness 1: CR 2008-8142
Weakness 2: CR 2008-8145
Weakness 3: CR 2008-8146
Weakness 4: N/A
Weakness 5: CR 2008-8148
Weakness 6: CR 2008-8150
Weakness 7: CR 2008-8151
Weakness 8: CR 2008-8153

The identified Areas for Attention have also been entered in the CAP. CR 2008-8164 has been generated to track these program enhancements.

MAIN BODY

Introduction and Purpose

NRC's Problem Identification and Resolution Inspection report, dated July 6, 2007 included an observation/assessment regarding the ECP program. The report stated that through the review of ECP files and interviews, the inspectors noted reluctance by several departments to utilize the ECP because they felt that the program only represented management's interest. Furthermore, the inspectors noted that the 2007 SCWE survey results revealed a declining confidence in ECP.

In response to the PI&R inspection findings and observations, station management met with the NRC on October 24, 2007, and discussed the status of the site's corrective action program improvements. The improvement plan included an action to perform an ECP Self-Assessment, which was previously identified as a corrective action in the 2007 SCWE-Plan Road to Excellence Gap Analysis to address the declining confidence in ECP.

The purpose of this Self Assessment is to conduct an evaluation of the Turkey Point Employee Concerns Program (ECP) in order to understand and address program weaknesses.

Conduct of Self Assessment

The evaluation is performed in accordance with FPL's nuclear administrative procedure,NAP-204, Self Assessments. Consideration was given to the unique, confidential and sensitive nature of the information in the ECP case files and other confidential information of the ECP program. During the conduct of the self assessment, procedures and practices of confidentiality were closely followed to ensure concerned individual's identity protection.

The self assessment team consisted of Nuclear Industry personnel with ECP expertise, individuals from the station's Licensing and Operations Departments, and an individual from the Corporate Law organization. The Team Composition is presented in Attachment 1.

Inherently, the assessment program provides a meaningful and quantifiable measure of the degree to which the plant is meeting the performance objectives. The ECP forum self assessment module was used to model the ECP Self-Assessment. The module, *Self-Assessment Subject and Performance Measure Matrix,* is found in Appendix M of NEI Guidance 97-05, Rev 2, December 2003, *Employee Concerns Program Process Tools in Safety Conscious Work Environment.* It provides a cross-reference between the various assessment areas and possible performance measures.

The evaluation has as its scope to review the ECP program and determine if there are any weaknesses/areas for improvement and any areas for attention. The evaluation mainly focuses on three areas: ECP Perception, ECP capability and ECP effectiveness. It is expected that the ECP Manager and Turkey Point ECP Coordinator, and Plant Management will utilize the information gathered to refine specific processes to improve the overall program performance. Corrective actions will be identified for any weaknesses/areas for improvement and areas for attention. Conditions Reports will be generated by the Self-Assessment Lead and will be entered into the Turkey Point Corrective Action Program for tracking all weaknesses identified by the Self-Assessment. These actions will be tracked to completion in SITRIS CAP database.

Objectives and Scope

The scope of this Self-Assessment is to review the Turkey Point Employee Concerns Program to determine program strengths, program weaknesses/areas for improvement, and areas for attention.

The evaluation mainly focuses on three Performance Objectives: ECP Perception, ECP Capability and ECP Effectiveness. The assessment areas listed under each performance objectives are similar to those suggested in the ECP Forum's module for performing ECP Self-Assessments, Ref 12.

The ECP plays an important role in a SCWE. The self assessment module uses industry good practices in determining the areas of assessment under each objective. The team's assessment activities are detailed in Attachment 2.

Performance Objective 1: Evaluate the ECP Perception
Assessment Areas:

- Communications
- Status Reports
- Performance Indicators
- External Departmental Interfaces
- Surveys

Performance Objective 2: Evaluate ECP Capability
Assessment Areas:

- Procedures
- Policies
- Facilities
- Training

Performance Objective 3: Evaluate ECP Effectiveness
Assessment Areas:

- Processing Concerns
- Employee Exit Process
- ECP Effectiveness for Preventing Retaliation
- ECP Confidentiality

Performance Standards

The team reviewed and used in the course of the assessment the following performance standards, which provided the Fleet and site specific program characteristics and references to NRC policy statements, ECP industry tools, and industry good practices for having a successful ECP program:

- NP-800, Employee Concerns Program
- NP-809, Safety Conscious Work Environment
- NAP 424, Employee Concerns Program
- ECP Departmental Instruction,
- Benchmark data
- Previous Self Assessments
- NEI Guidance NEI 97-05, Rev. 2, 2003,
- ECP Forum Subcommittee Self Assessment model; Self-Assessment Subject and Performance Measure Matrix
- NRC Inspection Manual 40001, Resolution of Employee Concerns
- NRC Inspection Manual 71152, Identification and Resolution of Problems
- NRC RIS 2005-18, Guidance for Establishing and Maintaining a Safety Conscious Work Environment
- NRC RIS 2006-13, Information on the Changes Made to the ROP to More Fully Address Safety Culture

- Regulatory Requirements
  10CFR50.7, 10CFR71.9, 10CFR72.10

Performance Criteria

The performance measures used to evaluate the Turkey Point program are similar to those suggested in the ECP Forum's module for performing ECP Self-Assessments, Reference 12.

The following performance criteria are used to assess the performance of the program under each Performance Objectives:

Strength(S):
A process, program or activity which is exceeding industry expectations and has resulted in improved safety quality or reliability.
Positive Aspect (PA):
A process, program or activity, which has resulted improved safety, quality or reliability but does not meet the threshold of strength.
Expected Performance (EP):
Meets expected industry standards of performance.
Area for Attention (AA) or Enhancement:
A process, program, activity or condition, which requires management's reinforcement and attention but which it does not meet the threshold of an area for improvement.
Area for Improvement (AI) or Weakness:
A process, program, activity, or condition, which is not meeting industry standard or station expectations. Areas for improvement require timely attention to correct and preclude recurrence.
Not applicable (NA):
Not Applicable or observed.

Methodology

The Self-Assessment team conducted a site survey that used the SCWE-ECP survey questions. The survey questions are listed in Attachment 4. The intent of this survey was to assess if the results are consistent with the 2007 SCWE survey. There are limitations regarding the interpretation of the survey results since the survey was not performed in a controlled manner and it is not considered a random survey. The data is not stratified or statistically analyzed to understand if corrective actions placed through the previous gap analysis SCWE-plan have been effective.

The team performed extensive interview with the ECP program manager and Turkey Point's ECP site coordinator.
The team also performed interviews with 27 site personnel focusing on their knowledge and understanding of the ECP capability, perception and effectiveness. The Interview Questions are listed in Attachment 3. The number of personnel interviewed per department is listed below:
Radiation Protection-2, Road to Excellence-2, Engineering-4, Operations-4, Safety-2, Chemistry-2, Maintenance-2, Security 1, Security Supervisors-3, Maintenance Manager – 1, Maintenance Supervisor -1, Engineering Manager – 1, Engineering Supervisor – 1, Emergency Planning Manager – 1,

Team members reviewed various documents including Fleet Administrative ECP Procedure and Nuclear Policies for ECP and SCWE, ECP Status reports, Performance indicators, ECP program pamphlet, ECP concern forms, ECP program confidentiality forms, and site communications published at the Turkey Point Nuclear News. The team performed a walk-down the ECP Coordinator's office to evaluate ECP facilities, location and access, drop-off box, and ECP posters. The team reviewed previous ECP self assessments and benchmarks and discussed with ECP coordinator the ECP program, the SCWE-ECP survey results and actions, NRC inspection observations/assessments or findings in the site's program, and Road to Excellence improvement plans. Additionally, a sample record review was performed on past concerns, and corrective action were reviewed to determine tie with CAP and corrective action effectiveness.

The team's evaluation and conclusions for each objective are discussed in detail in the ECP Evaluation Section.

ECP EVALUATION

Performance Objective 1: Evaluate the ECP Perception

Communications

1. Conduct a survey of plant personnel to determine effectiveness from their perspective.

The 2008 Self-Assessment survey was conducted at Turkey Point site during the course of the Self-Assessment and on January 14-16, 2008. The survey utilized the 5 SCWE-ECP questions. The Self-Assessment team placed copies of the surveys in different site locations as well as distributed a total of 500 surveys to Turkey Point site employees and contractors and received 229 completed surveys in boxes which were placed in different locations around the site. Explanatory comments and demographics of the survey were not solicited. The distribution and collection of the 2008 Self-Assessment survey was not as comprehensive as the 2007 SCWE survey. This survey is not considered random as it was based on a voluntary participation. Voluntary participation introduces bias in the survey results and as such, it can not be assumed that this survey is a true cross section of the plant.

The survey was done as voluntary survey (not randomly) and no measures were taken to assure all personnel received or completed surveys. Previous surveys did make these efforts. Because of these differences, the current survey can not be compared to previous surveys without some qualification. The surveys had smaller sample size, was not random, and people with stronger opinions were more likely to respond

The Self-Assessment 2008 Survey results are as follows:

2008 Self Assessment Survey Questions and % of strongly or somewhat disagree vs. 2007SCWE-ECP%

1. I am familiar with the Employee Concerns Program (ECP) (formerly SPEAKOUT). **(16.8% vs. 7%)**
   - Strongly Disagree, 18
   - Somewhat Disagree, 20
   - Somewhat agree ,71
   - Strongly agree,117

2. I am confident that nuclear safety and quality issues reported through the ECP are thoroughly investigated and appropriately resolved. **(29.2% vs. 25%**
   - Strongly Disagree, 26
   - Somewhat Disagree, 40
   - Somewhat agree 93
   - Strongly agree,67

3. I believe that upper management supports ECP.(**31.2% vs. 21%)**
   - Strongly Disagree, 25
   - Somewhat Disagree, 45
   - Somewhat agree ,77
   - Strongly agree,77

4. I can use the ECP without fear of retaliation. **(35.8% vs. 22%)**
   - Strongly Disagree, 28
   - Somewhat Disagree, 49
   - Somewhat agree ,77
   - Strongly agree,61

5. Confidentiality of my concern will be maintained by the ECP program at my request. **(31.8% vs. 22%)**
   - Strongly Disagree, 26

- Somewhat Disagree, 47
- Somewhat agree ,89
- Strongly agree,67

Conclusions:

The survey results were compared to the 2007 SCWE-ECP (See Figure 1) and showed consistency between questions, which provides some confidence that the survey provides a reasonable estimate of current trends.

The results of this survey are consistent with the results of the 2007 SCWE survey. Employees are familiar with ECP. However, results indicate that employees continue to have a negative perception that ECP will address and investigate concerns properly, that the level of upper management support is sufficient, that the program can not be used without fear of retaliation and that the confidentiality of the concern will not be maintained. As discussed previously, the results of the survey are not compared with the 2007 SCWE survey results. FPL management has already committed to perform another SCWE- ECP survey as part of the SCWE-plan gap analysis improvement plan.

Weaknesses:

- The survey identifies a continuing negative trend in the perception of the ECP program and a concern that ECP is unable to maintain confidentiality and to prevent retaliation.

Recommendations:

- PID/ECP will perform a 2008-SCWE-ECP survey and evaluate results to continue monitoring ECP's Perception and effectiveness of corrective actions.

- ECP Coordinator and the site Turkey Point Communications Supervisor to ensure that Senior Management addresses in Staff meetings, Safety Meetings, All Hands Meetings and other forums of communication the reoccurring concern expressed by station personnel that ECP is either unable to maintain confidentiality or prevent retaliation.

- The ECP Coordinator can address the ECP's process limitations regarding confidentiality and to provide employees assurance of confidentiality in new hire orientation, during an interview, and during walk-arounds, thus communicating the goal of changing the site's perception.

2. Interview plant personnel to determine their awareness of the ECP

The team interviewed approximately 27 employees including contractors. The interview contained questions from the NEI toolbox for ECP self assessments and additional questions that the ECP Peers suggested. Assessment Limitation: The team members did not identify the number of employees answering the questions favorably. The following observations were noted under each interview question:

2008 Self Assessment Interview Questions

1. How would you preferably raise a safety or regulatory issue? Why?

   Most all mentioned that they would use the corrective action program. Some individuals said that they would go to their supervision/management, their Ops SRO, they would write a work order, sometimes they would go to plant management, and very few said that they use ECP. One individual in management said that he had no need to reach out to ECP since coming to the site. One individual said they would consider the ECP. When asked why they would not consider ECP, they answered: (1) It's a management tool, (2) knows someone who went to ECP and was not pleased, (3) Doubts the confidentiality of ECP.

2. Are you aware of the ECP program?

   All were aware of the ECP. One individual said that the program is not so obvious, it is not very visible.

3. Can you tell me the purpose of the ECP program?

   One individual was not sure that ECP was "alive" and "well." Mixed results, some did not show understanding of purpose, some thought it is for industrial safety purposes. One individual said that if concerns are submitted anonymously, only then there will be no repercussions.

4. Can you tell who the site ECP coordinator is? Where could you go to find out?

   Few knew the name of the ECP site coordinator at Turkey Point. However, some knew what he looked like. Some individuals were aware of the ECP trailer, but many did not know where the trailer was located, and in two cases they did not know, even though they were routinely smoking a few feet away from the trailer. Although the ECP coordinator has not been seen at the shops, or the plan of the day meetings, most said that they could locate him if they needed to visit him. Some individuals were still confused about the name "Speakout" vs. ECP. A relatively new management member said that he did not know the ECP coordinator's name. He had met him at the NRC PI&R exit seven months after his arrival at the site. He is unaware of new leader orientation being conducted by the ECP management.

5. Are you aware of any specific instance in which another employee submitted an issue to the corrective action program or ECP and considered the response incomplete or issue to the corrective action program or ECP and considered the response incomplete or unacceptable? Are they aware of any retaliation for having raised concerns in this manner?

   Some individuals felt there had been retaliation in the past for CRs and were concerned that it would be the same now. Most knew ECP was intended to be confidential if requested. Some said that condition reports are ineffective when they are closed to trending with no action. A lot said that there is retaliation for using ECP.

6. Are you aware of any events which would encourage or discourage employees from raising safety concerns internally or externally?

Most said there were not aware of any events that discourage employees from raising safety concerns. One individual said that during certain site Management Meetings, management encourages employees to raise safety concerns. Another said that PTN style is reactive and the level of frustration with organization is high, which factors in the generation of more concerns.

7. Have you been trained on SCWE expectations and /or ECP program access methods? Was this training considered effective?

   Some said that SCWE training was "Ok.", but not memorable. Some said that they had heard of ECP in SCWE training as part of the Operations Requal and initial training but not much else. The majority of interviewees indicated they have participated in SCWE training or briefings. None of the interviewees could recall attending any ECP specific training.

8. Do you consider the ECP as an effective method of reconciling safety concerns at this facility?

   Most answered yes, couple with No's and some others " I guess". One individual responded, "It is good to have it available if other means are not effective. He said that he would use ECP before going to NRC. However, some others said that "No one is going to do anything", that "concerns remain with management." One individual said that the NRC process will be faster. ECP is not confidential, it is a management tool, and he questioned if ECP is really independent. Another individual knew someone who used ECP and said that they were not pleased with outcome. One employee had the ECP response posted on his wall, because he felt it did not address his concern.

9. Do you believe site management supports ECP?

   Some said yes, some thought not. Others had no specific knowledge, but thought the program is here and management would address the concerns. Visibility is the main key. The majority of the interviewees could not recall managers/supervisors voice support for ECP or recommending to employees to use ECP. Some others said that they will go to NRC and ECP at the same time (shotgun approach).

Conclusions:
All employees interviewed were familiar with the ECP program. They were mixed results on understanding the purpose of the ECP. The majority of the employees did not know the ECP coordinator or his name, but they knew where to go if they had to raise a concern. They expressed that there is no discouragement to raise concerns, but some could not recall managers or supervisors voice support for ECP or recommending the use of ECP. Some remembered ECP mentioned in the SCWE training but they knew that there was no ECP specific training. Although employees expressed that they would ECP, going to NRC might be faster to address the concerns, or that they use the ECP and the NRC at the same time.

Weakness:
- There is low percentage of name recognition of the Turkey Point ECP coordinator.

Areas for Attention:
- There is a perception that managers and supervisors are not supporting ECP
- There is no specific ECP training for employees' managers or first line supervisors.

Recommendations:
- ECP coordinator needs to improve on communications at the site, for example to add name and photo in the poster, improve participation at the site meetings, perform shop walk arounds, attend departmental and staff meetings, and at Safety meetings.
- ECP Coordinator and PID Manager need to coordinate with Safety Department to review in monthly meetings ECP and SCWE principles to reinforce support for raising concerns.

3. **Walk throughout the plant and identify various communication tools used by the ECP and indicated preference.**

The following observations were made:

ECP posters are placed in key entry and exit locations. A plastic holder near the poster contains envelopes with the ECP pamphlet and two forms: 1) ECP filing report form, and 2) the ECP disclosure form. The pamphlet provides ECP information including phone numbers and Q&As provide an overview of the principles and purpose of the established program. It also explains the importance of the program with respect to safety culture and Safety Conscious Work Environment and the use of other means to address a concern, including the CAP and NRC. The ECP disclosure form provides guidance on how confidentiality applies to a concern and provides space for processing a waiver of confidentiality.

Conclusions:
Various communications tools used by the ECP at the site meet program and best practices expectations. However, the team identified that the drop-off box by the ECP facility was not secured in any way (normal mail box). The lack of security could affect the confidentiality and integrity of the concerned individual (CI). This weakness was addressed immediately, and currently the drop-off box has a key lock.

Weakness:

- The drop-off box by the ECP facility was not secured in any way (normal mail box). The lack of security could affect the confidentiality and integrity of the concerned individual (CI).

Area for Attention:

- There is only one drop-off box, outside of the ECP office and there are no additional boxes on the site for dropping off concerns.

Recommendations:

- Replace drop-off box and with one that has a key lock. (Complete. No further action is needed)
- ECP Coordinator to create additional ways for employees to submit concerns, i.e., to add lock-box stations strategically located around the site. This station also should contain concern submittal forms, brochures, exit questionnaires.

4. **Review benchmark (SCWE) survey results that focus on awareness of ECP.**

The 2007 SCWE-ECP survey results indicate that there is a high percentage of employees aware of the ECP program. (93%).

Conclusion:
Program meets expectations.

5. **Evaluate the level of ECP Staff attendance/participation in site meeting (e.g. Plan of the Day) and Departmental Staff meetings**

The team members discussed the ECP Coordinator's participation at various site meetings. The ECP coordinator has maintained a low visibility at
•Staff/Departmental Meetings
•Management Meetings
•Plant and Shops
The ECP coordinator attends meetings only on the as needed basis for managing his time to perform thorough evaluations. ECP Peers stated that they are very active in plant meetings, but for a more than one plant on site, there is additional staff available to perform investigations which allow time for the ECP coordinator to participate in site meetings. ECP coordinators are in employee's orientation meetings and often seek out new employees to have one to one introductions.

Conclusion:
The level of ECP Staff attendance/participation in site meetings is low. This is identified as a weakness and it impacts one of the key elements of a successful ECP, i.e., ECP Visibility.

Weakness:
- ECP Coordinator has low visibility at the site. There is no regular attendance of ECP at various site informational meetings

Recommendation:
- ECP Coordinator must improve his visibility by attending and participating in site meetings, visiting plant (walk-arounds), visiting shops, new hire orientation including Security for ECP indoctrination.
- ECP Manager to determine need for additional resources to support program visibility.

6. **Evaluate organizational and site geographic coverage of communications efforts.**

- The ECP posters are in various key entrance and exits key locations, such as security entrance, administrative building entrance, shops, and various bulletin boards.
- Electronically, there are various communications about the ECP program
- Although not frequently, there have been articles in the site's Nuclear News regarding the ECP and ECP Coordinator

Conclusion:
The organizational and site geographic coverage of communications meet program expectations.

7. **Evaluate effectiveness of outage communications efforts i.e., to seasonal employees, contractors, etc.**

Discussions were held with ECP coordinator regarding any ECP communication efforts for seasonal employees and contractors. He said that the contractor employees receive the basic Plant Access Training (PAT) that contains communications on the safety culture, FPL policies regarding SCWE and ECP. The coordinator was not certain as to how does plant management monitor contractor environment and performance and confidence on ECP.

Conclusion:
There are no additional outage communications efforts. The contractor employees receive the basic Plant access training that contains communications of the safety culture and SCWE-ECP principles.

Area for Attention:
- ECP Coordinator and PID manager to understand and monitor the contractor environment with respect to safety culture.

Recommendation:

- PID manager to develop means to evaluate and monitor contractor environment to detect any issues with respect to Safety Culture.

Status Reports

1. **Recipient's feedback on content, distribution, frequency, etc.**

   The team did not interview the recipients. This area was discussed with the ECP coordinator. He said that there is a monthly report with limited distribution to CNO, ECP Manager and Quality Assurance Director.
   ECP fleet manager discusses report with senior management. The report identifies the concerns open/closed. This info is similar to the indicators provided in the Performance indicator for the CNO status meeting. Additional information is about NRC allegations, recommendations, CRs and time frame of corrective actions.

   Conclusion:
   The team did not interview recipients; however, if there were issues in this area, the ECP manager would address any request regarding content, distribution and frequency. There are no identified weaknesses and or peer recommendations regarding the status reports.

2. **Recipient's knowledge level of ECP Status.**

   This information is provided to ECP and senior management, but the ECP Coordinator does not have regular meetings with the site VP to provide status updates on investigations.

   Conclusion:
   The ECP coordinator does not have regular meeting with VP.
   Area for Attention:
   - The Site VP's knowledge level of ECP status is uncertain.

   Recommendation:
   - ECP Coordinator to debrief Site VP on all employee concerns.

Performance Indicators

1. **Evaluate consistency of indicators to: Safety Culture survey results, Corrective action Indicators, NRC allegation data.**

   The following are the ECP Indicators:
   NO. OF EMPLOYEE CONCERNS RECEIVED: This indicator reports the number of Nuclear Safety EMPLOYEE Concerns received monthly at St. Lucie, Turkey Point, FPL Energy Seabrook, and FPL Energy Duane Arnold.
   AGE OF OPEN EMPLOYEE CONCERNS: This indicator shows the age (in days) of open Nuclear Safety EMPLOYEE concerns at the end of the reporting month for Turkey Point, St. Lucie, FPL Energy Seabrook and FPL Energy Duane Arnold.
   FIVE OLDEST OPEN EMPLOYEE CONCERNS: This indicator reports the five oldest open Nuclear Safety EMPLOYEE Concerns at Turkey Point, St. Lucie, FPL Energy Seabrook and FPL Energy Duane Arnold indicating the concern number, date received, date due, and the department assigned the investigation.

   The indicators are consistent with CR indictors with regards to timeliness. They are not correlated with the SCWE results, or NRC allegation data. The fleet ECP Manager issues a monthly report to the Fleet Senior management team that compares the site's allegations versus industry NRC allegations,. In discussions with the ECP Coordinator, he said that it is not unusual for the coordinator to evaluate

statistical trends over a period of 3 year of such parameters as number of CRs, number of anonymous CRs, number of employee concerns. He mentioned that he had performed such an analysis as part of an investigation and it was shown that anonymous CRs and employee concerns along with NRC allegations had similar/proportional trends. It was mentioned that there was no correlation between total CRs to the number of employee concerns. Additionally, he mentioned that he also analyzes data to determine if a particular department is more vulnerable to having concerns.

Conclusion:
The ECP PIs are consistent with the CAP timeliness indicator only. There are no other indicators to relate the PIs to SCWE survey results, or other CAP indicators such as effectively addressing issues, or trending concerns to identify vulnerabilities, to understand the relationship between concerns and NRC allegations data and to understand the trends of the anonymous concerns for develop sensitivity on safety culture and for addressing the program's performance.

Area for Attention:

- The Performance indicators are not consistent with indicators to SCWE survey results, corrective action program indicators and NRC allegations.

Recommendations:

- ECP Manager to Benchmark other ECP programs and develop Performance Indicators consistent with the SCWE survey results (i.e., identify lack of confidence, and fear of retaliation for raising concerns), and similarly consistent with CAP indicators and NRC allegations.

2. Compare performance indicator results to key ECP performance goals to ensure proper alignment

The indicators monitor only the timeliness of processing concerns. The indicator contains data for the past 12 months and the average time for addressing concerns is currently over the ECP performance goal of 30 days.

Conclusion:
The average time to address a concern exceeds program performance goal and industry standard of 30 days.

Area for Attention

- Performance Indicators results are not aligned to ECP performance goal for timeliness.

Recommendation:

- The ECP manager must evaluate need for additional resources to meet program's performance goal.

3. Evaluate effectiveness of trending and communication of trends to management or senior management.

As mentioned previously, Industry peers suggested that the ECP coordinator should benchmark with other plants to gain an insight as to what indicators the industry uses to monitor not only timeliness but additional PI to monitor SCWE results elements that directly pertain to the perception of the ECP program such as lack of confidence and fear of retaliation. The ECP Manager from Palo Verde, explained her personal philosophy regarding confidentiality. She established an indicator for detecting fear of retaliation, i.e., number of anonymous concerns to number of employee concerns. The limit was established as 7% and it was based on a 5 year average at Palo Verde. Her personal goal is to be less than 2%. It should be noted that she does not include NRC allegations in the number of concerns received.

Conclusion:

The ECP indicators are communicated to management and senior management. However, indicators focus on the timeliness to address the concerns. The trending and communication of trends to management appear ineffective.

Area for Attention:

- Inadequate PI trending is not providing appropriate information to assess and communicate effectively the ECP performance to site and senior management.

Recommendation:

- ECP Manager to Benchmark other ECP programs and develop Performance Indicators consistent with the SCWE survey results (i.e., identify lack of confidence, and fear of retaliation for raising concerns), and similarly consistent with CAP indicators and NRC allegations and communicate trends to management and senior management.

External Departmental Interfaces

1. **Evaluate the level of ECP staff interface and participation in industry initiatives.**

Based on discussions with ECP Staff, it was identified that the Turkey Point ECP coordinator has never attended ECP forums and has never participated in industry initiatives. The ECP manager has attended the ECP forums and participated in various ECP industry initiatives.

Conclusion:
The ECP Coordinator neither interfaces nor participates in industry initiatives. He periodically visits other FPL Fleet ECP coordinator and assists in investigations.

Area for Attention:

- The ECP Coordinator neither interfaces nor participates in industry initiatives.

Recommendation:

- The site coordinator should attend ECP Forums and benchmark other sites programs on some periodicity.

2. **Evaluate the level of ECP staff interface with regulatory agencies.**

ECP site coordinator meets with the NRC resident on an as needed basis. He has previously supported PI&R Inspections. Licensing is not normally involved with NRC Allegation submittals. Team recommends that ECP coordinator engages the site Vice President in concern submittals and NRC Allegations (Quarterly report).

Conclusion:
The level of ECP staff interface with regulatory agencies meets expectations:

3. **Benchmark PTN ECP against other utility programs and NEI's 97-05 toolbox to identify areas for improvement.**

This activity was not performed. The Team requested the ECP manager to provide previous ECP programs and to discuss the results with the team.

The ECP manager provided the most recent benchmark against other utilities. The benchmark focused on large fleet organizational practices and on what SCWE survey methods others used, on what company administered the surveys at different plants and on periodicity of performing survey, it did not

benchmark the PTN ECP against other utility programs to identify any areas for improvement, or any process changes.

Conclusion:
This activity was not performed. However, the team reviewed the most recent benchmark and determined that it did not identified areas for improvement.

Weakness:
- Previous benchmarks and corrective actions have not adequately identified ECP weaknesses, or addressed the previously identified weakness of perception of the EC program.

Recommendation:
- ECP Coordinator or ECP Manager to continue to benchmark against other utility ECPs for identifying program weaknesses on a periodic basis.

4. Evaluate the process and appropriateness of interdepartmental handoffs for concern resolution.

ECP Coordinator refers all the out of scope concerns to department heads. He emphasizes confidentiality and follows up with dept heads for closure. He ensures that when appropriate, department heads write CRs to capture issue in the CAP.

Conclusion:
Based on the discussions with ECP coordinator, the process and appropriateness of interdepartmental handoffs for concern resolution meets program expectations.

Surveys

1. Evaluate effectiveness of ECP staff or contractor in analyzing SCWE-ECP survey results.

SCWE surveys were conducted at PTN in 2005 and 2007. These SCWE surveys have been conducted by a vendor and the survey results were analyzed by Performance Improvement and Licensing departments not ECP.

Conclusion:
The ECP staff did not perform the analysis of the SCWE survey results. The team reviewed the SCWE-Plan Performance Improvement Gap Analysis performed by Licensing and Performance Improvement and determined that the analysis of the SCWE survey results were effective and met expectations.

2. Evaluate appropriateness of any follow up actions.

The conduct of the ECP self assessment is part of addressing the results of the 2007 SCWE survey regarding the station's confidence on ECP. Other departments have specific corrective actions to address and correct the stations perception of ECP. The team reviewed the CR that is tracking all actions and identified that not all corrective actions are complete.

Conclusion:
The team did not perform a complete review of the appropriateness of the follow up actions to address the SCWE-ECP survey results except the action which resulted in the need to perform an independent ECP Self –Assessment.

Weaknesses:

- ECP Staff has not been an integral part of the development and completion of the PTN Improvement Action plan resulting from the 2007 SCWE-Survey.

Recommendation:

- ECP Coordinator must accept and engage in resolving concerns identified from the SCWE-ECP survey results.

3. **Compare anticipated results with actual survey response.**

The Self assessment Team conducted another smaller scale SCWE-ECP survey to understand the negative trend about ECP's perception. Although, this survey was not conducted in a statistically consistent manner, the results were used to determine any change in the previously identified negative trend. The present Self Assessment identifies areas for attention and areas for improvement/weaknesses.

Conclusion:
The smaller scale Self-Assessment SCWE-ECP survey results indicate that the negative trends continue to exist.

4. **Does survey determine plant's personnel comfort level of using the ECP? Confidence in the Quality of ECP reviews? Satisfaction with ECP responsiveness?**

The team reviewed the SCWE-ECP results.

Conclusion:
The SCWE-ECP questions address awareness, confidence of ECP. The PTN SCWE-ECP survey meets industry standards.

5. **Determine if survey results were disseminated to plant personnel.**

Performance Improvement Department and site management disseminated survey results to plant personnel in staff meetings.

Conclusion:
The results were properly disseminated to in departmental meetings. Performance met expectations.

6. **Determine if survey results are compared to previous survey results and evaluate conclusions reached.**

According to the SCWE Plan-Road to Excellence Gap Analysis report the 2007 SCWE results to the 2005 results. The team reviewed the graphical representation of the interval plot of answer score by question for PTN.

Conclusion:
Comparisons were performed. Performance met expectations.

Performance Objective 2: Evaluate ECP Capability

Procedures and Policies

1. **Determine level of adherence to key areas of NRC Policy Statement, and industry guidance such as NEI 97-05 Tool Box.**

   Key areas of the NRC Policy Statement and NEI guidance tool box were reviewed to determine if site and fleet procedures and process adhere to these elements.

   Conclusion:
   Both the Employee Concerns Program requirements outlined in the nuclear administrative procedure, NAP-424, *Employee Concerns Program* and the Nuclear Policy NP-800, Employee Concerns Program, adhere to several key areas of the NRC policy statements and the NEI 97-05 Tool box.

2. **Determine level of adherence to ECP policies and governing procedural requirements.**

   The members discussed with ECP coordinator and Manager ECP policies.

   Conclusion:
   The discussions and document review of the programs policies and governing procedures lead the team to believe that ECP adheres to ECP Policies and governing procedural requirements.

3. **Determine level of adherence to ECP implementing procedural requirements**

   The team member of the FPL legal department conducted a review of recent ECP investigations to determine if the investigative activities and resulting reports adhered to ECP policy and procedural requirements. The review included examples of concerns received anonymously, non-anonymously, and from NRC referrals submitted during each of the last two years (2006 and 2007).

   Conclusion:
   It was concluded that the cases reviewed during this self assessment followed the ECP process as described in the governing ECP corporate and site administrative procedures and policies. Performance met expectations.

ECP Facility

1. **Evaluate Turkey Point ECP Facility:**

   ECP Peers evaluated the ECP facilities. They observed that the office of the ECP coordinator was very small and not adequate for more than one person.

   Conclusion:
   The ECP facilities do not create a welcoming environment to conduct investigations/interviews. Office accessibility was also discussed. The location of the trailer is in an area with heavy traffic, which could compromise the concerned individual's confidentiality.

   Weakness:
   - Quality of Turkey Point ECP office is neither adequate for concern submittals nor does it give the appearance of being important to the site management.

Recommendation:

- ECP Manager to improve ECP office quality and create a welcoming environment for employees to submit concerns i.e., improve both, office accessibility and office accommodations.

2. Evaluate submittal of concern

The Peers noticed that there is only one drop-off box on site that is outside of the door of the ECP facility. The process for responding to anonymous concerns was discussed extensively and peers provided examples of different mechanism used by the industry to provide results of investigation to anonymous CI.

Areas for Attention:

- There is only one drop off-box on site outside the door of the ECP trailer.
- The ECP does not have a process for providing feedback to anonymous CIs.

Recommendations:

- ECP Staff to provide additional ways for employees to submit concerns, i.e., lock box stations strategically located around the site. (This is mentioned in the communications section under Performance Objective 1)
- ECP Manager/Coordinator to improve ECP intake submittal by adding a sequence number. This provides a way for the CI to call the ECP coordinator, provide a number, then get the response ot their concern anonymously.

<u>Training</u>

1. Conduct random interviews with Supervisors/Managers to determine their knowledge of 10 CFR 50.7 (HIRD) and associated company policies.

The team did not conduct any interviews with site supervisors/managers; however, the team discussed with ECP coordinator and ECP manager training on Harassment, Intimidation, Retaliation or Discrimination (HIRD) and associated ECP company policies. Both, the Plant Access Training (PAT) and SCWE training contain guidance on ECP.

Conclusion:
Employees are not trained on HIRD effectively.
Area for Attention:

- There is no specific ECP-HIRD training for supervisors and managers.

Recommendations:

- Provide station supervisors and managers training for maintaining an environment free of HIRD, and encourages Open communications.

2. Determine the extent of industry plant events incorporated into training programs.

There is no formal training and no Operating Experience (OE) incorporated.
The ECP Manager said that he incorporates in-house OE in the program and to ECP policy and procedures as necessary.

Conclusion:

Team was unable to determine extend of industry and plant events incorporated into training programs.

3. **Determine if training programs are appropriately revised based upon post training feedback/comments**

   Conclusion:
   There is no formal ECP training this is not applicable.

4. **Evaluate the depth and appropriateness of ECP Staff.**

   Conclusion:
   The team determined that the ECP Coordinator's technical experience provides a good foundation for performing evaluations of employee concerns.

   Strength:
   - This is considered Strength by the ECP Peers.

5. **ECP Staff observe the individual (utility or contractor) conducting a training session and evaluate their presentation skills and effectiveness in meeting training objectives.**

   There are no ECP training objectives, modules, or trainer conducting a training session.

   Conclusion:
   This is not applicable.

Performance Objective 3: Evaluate ECP Effectiveness

Processing concerns

1. **Determine level of adherence to key areas of NRC Policy Statement, and industry guidance such as NEI 97-05 Tool Box.**

   Key areas of the NRC Policy Statement and NEI guidance were used in the development of the FPL Fleet Nuclear Administrative procedure, NAP -424, Employee Concerns Program.

   Conclusion:
   This performance measure was addressed under the ECP capability and it was determined that meets program expectations.

2. **Determine level of adherence to ECP policies and governing procedural requirements**

   The team conducted a review of recent ECP investigations to determine if the investigative activities and resulting reports adhered to ECP policy and procedural requirements. The review included examples of concerns received anonymously, non-anonymously, and from NRC referrals submitted during each of the last two years (2006 and 2007). Because of the sensitive and confidential nature of these documents, this review was performed by an attorney from the FPL General Counsel organization with extensive nuclear power experience (including experience in evaluating and responding to NRC allegations).

   Conclusion:
   There were no observed deficiencies found in the adherence to established ECP standards.

3. **Determine level of adherence to ECP implementing procedural requirements**

   The review of the ECP procedures was assessed by the Peer Employee Concerns Representative from Progress Energy Crystal River Unit 3. The Employee Concerns Program requirements and process from Procedures NP-800, *Employee Concerns Program*, and NAP-424, *Employee Concerns Program* as implemented at the Florida Power & Light Turkey Point Facility, are effective.

   Conclusion:
   This performance measure has been evaluated and discussed under ECP capabilities. It was found that it met expectations.

4. **Review any survey SCWE results and identify appropriate process changes.**

   The latest 2007 SCWE survey results were documented in the Corrective Action Program. Corrective actions are being tracked in CR 2007-11428. Each site organization has specific actions to address the survey results with regards to ECP. However certain ECP actions for the results of the SCWE survey from early 2007 still remain incomplete. The Turkey Point ECP Coordinator was not involved in the development of the corrective actions that are directly related to SCWE-ECP improvement actions. CR action 18 is assigned to Licensing to perform an independent self assessment to address the concerns of the SCWE-ECP related survey results in 2007. This ECP self assessment is being documented in CR 2007-37715 and will have CRs generated to address program weaknesses improvements, and areas of enhancement.

   CR 2006-21068, Action Plan for the 2005-SCWE survey results regarding the ECP program, had an action for the site's ECP coordinator to periodically attend station meetings to observe safety culture practices by supervision. The ECP Coordinator, due to increased work activity was unable to complete the planned observations. Benchmarking of large ECP programs for identifying best practices for running an ECP for large fleet was performed. However, this activity did not result in any process changes.

Another enhancement to improve front and back end communications with concerned individuals, i.e., improving the understanding of what ECP can and can not guarantee with regards to confidentiality, improving the understanding of the results of investigations and the meaning of not substantiating the concern did not result in any process changes.

Conclusion:

Previous SCWE survey ECP actions were not addressed adequately.

Weakness:

- Previous corrective actions have not addressed identified program weaknesses.

Recommendations:

- ECP Coordinator must address/complete all previously identified SCWE survey results recommendations.

5. **Review any Concerned Individual (CI) feedback data and identify appropriate process changes.**

The current ECP process is to send a brief written response to non anonymous CIs. The letter offers an option for additional feedback verbal or face to face. No process exists to get feedback to the anonymous CIs. All three industry Peers felt verbal feedback was preferable to written. One reason is that verbal feedback is far more personal. Part of the ECP purpose is to ensure CIs believe their concern was give all due consideration. Second reason is that verbal feedback allows additional questions from the CI so that ECP can provide more details about areas of particular concern. Verbal feedback also allows the ECP representative to get a perception of effectiveness and satisfaction from the CI.

Some sites also used a numbering system on EC Forms that permitted anonymous CIs to get feedback. By calling ECP and giving the form code number, the ECP coordinator can give the feedback to the anonymous caller. The ECP peers noted that this might be useful at Turkey Point due to the large number of anonymous CIs. The ECP peers recommend to verbally debrief concerned individuals to ensure the concern was adequately resolved and give the CI an opportunity to provide feedback on the EC program. The feedback mechanism used to communicate the results of investigations conducted in response to non-anonymous concerned individuals does not appear to be consistent with industry practices.

Conclusion:
The ECP peers concluded that FPL ECP does not have a feedback mechanism to communicate results of investigations in response to reports by non-anonymous concerned individuals does not appear to be consistent with industry practices.

Weakness:

- The feedback mechanism used to communicate the results of investigations conducted in response to reports by non-anonymous concerned individuals does not appear to be consistent with industry practices.

Recommendations:

- ECP Coordinator to verbally debrief concerned individuals to ensure the concerns were adequately resolved.
- ECP Coordinator to set target for a high number of responses to verbally conduct debriefing concerned individuals to ensure the concern was addressed.

6. **Observe Peers conducting an interview (with CI or during an investigation and evaluate technique and performance.**

This activity was not performed.

Conclusion:
Performance could not be assessed.

7. Review closed concern files for appropriate level of Documentation and Timeliness.

The team representative from the FPL legal department reviewed approximately 20% of closed ECP investigations performed during the previous two years, with the sample pool comprising an approximately equal number of concerns received anonymously, non-anonymously, and from NRC referrals. The purpose of the review was to independently evaluate the scope and quality of the investigations to determine their compliance with programmatic guidance and industry practice. Further, the title/subject matter of every concern received during this period was reviewed to determine if there were any discernable trends or recurrences.

The reviewed investigations were thoroughly researched in terms of the number of personnel interviews conducted and the examination of available computer/written records. The resulting reports were well-written, easy to follow, and adequately addressed the specific issue/topic raised by the concern. In short, there were no observed deficiencies in the adherence to established minimum standards. However, there were three examples of missed opportunities to evaluate and/or understand the potential generic implications of issues either directly raised by the nature of the stated concern or which were uncovered during the course of the investigation.

One example of a missed opportunity is contained in the investigation of a concern related to the handling of an equipment failure event. The premise of the concern was that station response to the event was not in accordance with the approved procedure. The investigation delved deeply into the technical aspects of the component malfunction, equipment status, and difficulties encountered with strict procedural adherence—and there is no suggestion here that this scope was not appropriate. However, interviews with senior station leadership conducted by ECP during their investigation resulted in express acknowledgements that the personnel involved in the event had exhibited an unacceptable "bias for production." The investigation noted that the identified individuals had been counseled, but no attempt was made to evaluate whether or not this bias was a cultural issue. In other words, the *event* involved equipment malfunction but the *concern* was the arguably unsafe bias. The shortcoming of the investigation is that it addressed the event rather than the concern.

Another example of an event-based investigative focus is contained in the report of a substantiated concern involving the chilling behavior of a supervisor. The investigation was comprehensive and detailed in its documentation of the inappropriate behavior of the supervisor. It also described the response of the company in addressing *the individual supervisor's* behavior. Notably absent from the investigation, however, was any attempt to determine whether or not the substantiated concern was the result of an individual performance issue or whether there were potential further-reaching concerns. Importantly, the report noted that some of the interviewees had mentioned that the performance of this supervisor had been called into question before. This information, if true, should arguably have raised a question as to whether there should have been earlier recognition of the unacceptable behavior.

A final example of the missed recognition of possible generic implications of information discovered during the course of an ECP investigation is contained in an investigation into an NRC allegation of retaliation. However, it should first be stated that the ECP investigation did an excellent job of addressing the essential issue—whether or not retaliation occurred (the investigation concluded that it

hadn't). Furthermore, when, as here, the allegation also contains purported examples of unsafe operation of the facility, those specific allegations must also be addressed and the report also does an outstanding job of this. However, there appears to have been a missed opportunity to add additional "value" to the investigation in not recognizing or addressing discovered failures by station personnel to adhere to established expectations—that personnel who perform safety-related functions must have current, fully documented qualifications regardless of their unquestioned knowledge or expertise.

A recurring concern expressed by station personnel in various forums is the perception that the ECP is either unwilling or unable to maintain confidentiality. This issue is evidenced not only from a number of interviews described previously in this report, but has been extensively documented in previous inspections and surveys including the 2005 SCWE Survey, the 2006 NRC Problem Identification and Resolution ("PI&R") inspection, the January 2007 SCWE Survey, and the July 2007 NRC PI&R. While the confidence issue is fully documented elsewhere and the team is not aware of significant efforts underway to address the problem, a related, underlying issue appears to have gone unnoticed: the ineffectiveness of previous corrective actions.

Another concern is that conditions discovered during the ECP investigation may not be appropriately tracked in the CAP. For example, one investigation revealed that a trainee performed duties independently. It was not stated that a CR was initiated. This is potential for conditions adverse to quality to be identified in the ECP review process without getting entered into the CAP for correction and trending.

The confidence issue is clearly a significant challenge which must be addressed before the PTN ECP can fully meet its stated objectives, but that is not the finding of this portion of the assessment. In reviewing the investigation and corrective actions taken in response to the July 6, 2007 PI&R Inspection Report (CR 2007-11428), it was discovered that he *only* proposed a corrective action for the subject perception issue—which obviously had not been adequately addressed by previous actions—was the publication of an article in the site newsletter. CR 2007-20978 stemming from the July 2007 SCWE survey identifies several actions taken to address negative perceptions of ECP beyond the site communications. These actions according to ECP manager, will take time to show results. The use of site-wide communication tools is certainly a useful component in successful corrective action programs. However, this exact approach had been tried earlier to affect the underlying perception issue without success. A similar article was distributed on December 18, 2006 in response to a similar finding in the 2006 PI&R inspection report. Then an e-mail containing essentially the same message was distributed to all station personnel on January 4, 2007. Yet, as documented in the January 2007 SCWE survey, and again in the July 6, 2007 PI&R inspection report, these actions had not worked. Why, then, was this corrective action not recognized as ineffective when it was the only recommended response to the subject CR?

The final finding of the assessment team, as documented in other sections of this report, is that the feedback mechanism used to communicate the results of investigations conducted in response to reports by non-anonymous concerned individuals does not appear to be consistent with industry practice. That discussion is more fully detailed in the previous section and so is not repeated here.

The team discussed response timeliness with the Turkey Point ECP coordinator and the Fleet ECP Manager. Management expectations and program goal is a target of 30 days to address a concern. This goal is not always met. There is a Turkey Point CNO indicator that monitors the age of open employee concerns. The ECP site coordinator emphasized that timeliness depends on the number of investigations being conducted at the same time frame as well as the priority and the complexity of the issues. ECP program shares resources among fleet sites. Turkey Point's current 12 month average is 52 days. The ECP peers concurred that 30 days is the industry norm.

Conclusion:
The record review determined that the level of documentation is appropriate. However, there are issues with previous corrective actions such as:

- *Conditions discovered during the ECP investigation may not be appropriately tracked in the CAP.* For example one investigation revealed that a trainee performed duties independently. It was not stated that a CR was initiated. This is potential for conditions adverse to quality to be identified in the ECP review process without getting entered into the CAP for correction and trending.

Weakness:

- Conditions discovered during the ECP investigation may not be appropriately tracked in the CAP

Recommendations:

- ECP Coordinator to enter conditions adverse to quality in the Corrective action program

Areas of Attention:

- There are three examples of missed opportunities to evaluate and understand potential generic implications of issues directly raised by the nature of the stated concern or which were uncovered during the course of the investigation.
- Response timelines is above the program's goal of 30 days

Recommendations:

- ECP Coordinator to evaluate and understand the potential generic implications of issues rose by the nature of the concern or uncovered during the investigation and found during the ECP Self-Assessment.

8. Evaluate the timeliness, adequacy and effectiveness of previous concern corrective actions.

The reviewed investigations were thoroughly researched in terms of the number of personnel interviews conducted and the examination of available computer/written records.

Conclusion:
The resulting reports were well-written, easy to follow, and adequately addressed the specific issue/topic raised by the concern. The record review documents certain corrective actions did not address generic implications, examples are discussed in other sections of this report and a recommendation has be made by the team to address the generic implications.

9. Verify implemented actions.

This action was not performed.

Conclusion:
This is not applicable.

10. Determine if previous actions prevented recurrence.
This action was not performed.

Conclusion:
This is not applicable.

11. Evaluate the adequacy and effectiveness of previously identified self assessment corrective actions.

The ECP manager provided the last ECP self assessment documented in CR 2006-5503, titled "Foster a culture that embraces the highest standards of nuclear and radiological safety". The assessment focused on: Implementing and institutionalizing the SCWE survey. The self-assessment documented in 2006-5503 did not perform an ECP evaluation and there aren't any specific ECP Process changes made.

Conclusions:
It appears that, previous self-assessments, and related corrective actions taken have not adequately addressed ECP weaknesses. It appears that any corrective actions taken to address long-standing unfavorable perceptions of the ECP have been ineffective.

Weakness:
- Previous Self-Assessments and corrective actions have not adequately addressed identified weaknesses of unfavorable perception of the ECP.

Recommendations:
- ECP Coordinator to continue to perform self-assessments and effectiveness review to determine the adequacy of previously identified corrective actions.

12. Conduct anonymous surveys of past concerned individuals to determine ECP effectiveness from their perspective and to identify areas for improvement. (Self Assessment Limitation.)

This activity was not performed by the team.

Conclusion:
This is not applicable

13. Interview past CIs to determine if they were the objects of HIRD as a result of using ECP. (Self Assessment Limitation)

This activity was not performed by the team.

Conclusion:
This is not applicable

14. Determine if deficiencies identified during NRC Inspections are adequately addressed in the ECP.

The ECP Coordinator mentioned that the Corporate ECP Manager addresses NRC inspection findings and implements program changes and policy revisions for all fleet site programs. The team did not review any NRC identified inspection findings. However, the ECP Coordinator provided a copy of procedural changes as a result of a PI&R inspection at PSL.

Conclusion:
This area was not evaluated adequately by the team. Inspection findings are usually reviewed and tracked by licensing.

15. *Compare the ratio of internally received concerns to allegations received by the NRC.*

Based on the ECP coordinator the ratio varies from year to year. In 2006, it seemed 1:1, in 2007 roughly 1:6 allegations to concerns. ECP peers observed that this ration is higher than the industry norm.

Conclusion:
The ECP coordinator does not monitor this ratio. As recommended previously, ECP coordinator to benchmark and develop performance indicators.

Area for Attention:
- ECP coordinator does not monitor the ECP internal concerns vs. NRC allegations to understand impact on employee's fear of retaliation and employees reluctance for using ECP.

Recommendation:
- ECP Coordinator/Manager will benchmark industry ECP programs for establishing Performance Indicators to identify trends of low confidence in ECP and fear of retaliation for raising concerns.

Employee Exit Process

1. **Compare percentage of personnel completing an ECP exit interview to established goal.**

   Human Resources department informs terminating employees of the availability of the availability of ECP for an exit interview prior to departure. Turkey Point does not have an established goal and believes that an exit interview is done on a voluntary basis. Industry peers were more aggressive in soliciting exit interviews and felt that they were a valuable part of the program.

   Conclusion:
   The ECP Coordinator does not have a program goal for conducting exit interviews and does not have the data of personnel completing an ECP exit interview.

   Area for Attention:
   - ECP Coordinator does not have a program goal for conducting exit interviews and does not track how many employees complete ECP exit interviews.

   Recommendation:
   - ECP coordinator to Benchmark the process for exiting, determine a program goal for personnel completing an exit interview and a process to monitor personnel completing Exit interviews

2. **Evaluate time spent and manner of conducting exit interviews with benefit (number of concerns raised)**

   In the case of an exit interview, Turkey Point ECP Coordinator documents concerns like he would with any other CI and the program does not track exit interviews with benefit.

   Conclusion:
   The ECP Coordinator does not track exit interviews with benefit.

   Area for Attention:
   - ECP does not have an employee exit process which track exit interviews with benefit

Recommendation:

- ECP Coordinator to Benchmark the process for exiting personnel for tracking exit interviews with benefit.

3. **Determine adequacy of exit documentation.**

Conclusion:
Turkey Point ECP does not have a proceduralized process to document an exit interview.

Area for Attention:
- ECP does not have a proceduralized process for the exit interview.

Recommendations:
- Employee Concerns Coordinator needs to be added to distribution list for badge termination from Plant Access Authorization to capture any employees terminated and contact them by mail or phone for an exit interview
- ECP Coordinator/ECP Manager should conduct benchmarking to see what other plant ECPs do for exits.
- ECP Coordinator to create and proceduralize an Employee Concerns Exit Questionnaire. (Examples have been provided to ECP Coordinator from Crystal River and Pallisades)

4. **Determine if concerns identified in the exit process are resolved and feedback provided.**

The team did not review any records as a result of an exit interview. According to the ECP coordinator any resulting concerns are addressed in accordance to ECP administrative procedures for processing a concern.

Conclusion:
Addressing concerns identified in the exit process are processed like other internal concerns. Approach meets the expectations to process concern.

Area for Attention:
- ECP does not have a process to provide feedback from exiting employees.

Recommendations:
- Provide the CI with a feedback card to communicate satisfaction with ECP processes.

5. **Review Appeal Process**

Conclusion:
The appeal Process has not been implemented.

Area for Attention:
- ECP does not have a process for appealing.

Recommendation:

- ECP management to develop an appeal process in the event the CI is dissatisfied with the results of the investigation.

Confidentiality

1. **Determine if ECP literature discusses availability and limits of confidentiality.**

   ECP Policy, and implementing procedures as well as ECP pamphlets and concern forms discuss confidentiality.

   Conclusion:
   The ECP literature discusses availability and limits of confidentiality. It meets program expectations.

2. **Determine if confidentiality is being maintained through the report process**

   Records reviewed and input to the assessment concludes the following:

   Conclusion:
   Records mainly referred to concerned individual, and managers or supervisors are referred as such, names are not provided unless is necessary. Additional info that could reveal the identity of an individual is not part of the report. Different techniques to keep confidentiality are practiced during the investigation. While there were some confidentiality concerns in interviews and surveys, it appears that the ECP coordinator had proper focus on confidentiality and there was no indication that there was any problem maintaining confidentiality when requested. Performance meets expectations.

3. **Determine the understanding of confidentiality by ECP staff, whether temporary or permanent. Review methods that reinforce this understanding such as the use of confidentiality agreements.**

   ECP Peers determined that the ECP Coordinator and ECP Manager have understood confidentiality with regards to conducting CI investigations. They are also very sensitive when they discuss concerns with others. They ensure that documents with CI names are kept in locked cabinets, they do not leave documents unattended on their desks, and they lock doors when they are leaving the ECP facilities.

   Conclusion:
   Peers determined that the ECP Staff understand confidentiality policies and practices are in accordance with program guidance. Performance meets expectations.

4. **Determine the effectiveness of measures to protect ECP information stored on electronic media.**

   ECP coordinator has a separate computer database not connected to the Turkey Point server or the corporate server. The electronic media are password protected. The ECP coordinator has dedicated fax machines. Minimum Emails sent and are marked confidential with protection features. Emails received are downloaded and then deleted.

   Conclusion:
   Measures to protect ECP information stored on electronic media appear to be effective. Performance meets expectations

5. **Determine the effectiveness of the measures to limit access to ECP files and voice messaging services**

   There is limited access to the files. Only FPL Florida ECP Coordinators and ECP Manager have access to the files. Hard copies are locked with keys in a fire proof cabinet. Voice messaging is password protected system.

   Conclusion:
   Measures to limit access to ECP files and voice messaging services have been effective. Performance meets expectations.

6. **From survey information, determine if plant personnel trust in ECP to protect identity.**

   Previously reviewed and evaluated results indicate that plant personnel do not have trust in ECP to protect identity. Legacy issues with confidentiality is one of the underlying causes of the lack of trust.

   Conclusion:
   The survey results have shown that plant personnel do not trust ECP to protect identity. This appears to be a perception issue.

   Area for Attention:
   - Plant personnel do not have the trust in ECP to protect CI identity.

   Recommendation:
   - The ECP Coordinator can address the ECP's process limitations regarding confidentiality and to provide employees assurance of confidentiality in new hire orientation, during and interview, and during walk- arounds, thus communicating the goal of changing site's perception.

<u>ECP Effectiveness for Preventing Retaliation</u>

1. **Evaluate ECP efforts for Preventing Retaliation**

   The SA Team discussed with the ECP coordinator policies that provide the company's position on retaliation. The ECP coordinator mentioned the following sources:
   - The Plant Access training material discusses company's position
   - CNO video
   - NAP-424 and Nuclear Policy
   - The ECP pamphlet in the Q&A section

   Conclusion:
   While no example of retaliation could be identified, ECP's efforts to prevent the perception of retaliation have not been effective.

   Weakness:

   - Some station personnel express concern that the ECP is unable to prevent retaliation

   Recommendation:

- The ECP Peers recommend implementing a process designed to evaluate disciplinary actions to detect and mitigate retaliation and chilling effect.

2. **Evaluate anonymous concern process.**

According to ECP Coordinator, concerns are processed the same way.
Conclusion:
ECP is currently unable to provide feedback to the concerned individual or to ask additional questions to complete investigation.

Area for Attention
- ECP Program does not have a process to provide feedback to anonymous CI or ask additional questions.

Recommendation:
- ECP Peers recommended establishing a process to address anonymous concerns and to relate the feedback to concerned individual.

3. **Evaluate ECP concerns / NRC allegations**:

This is previously addressed in this report.

Conclusion:
The ECP coordinator does not monitor this ratio. As recommended previously, ECP coordinator to benchmark and develop performance indicators.

Area for Attention:
- ECP coordinator does not monitor the ECP internal concerns vs. NRC allegations to understand impact on employee's fear of retaliation and employees reluctance for using ECP.

Recommendation:
- ECP Coordinator/Manager will benchmark industry ECP programs for establishing Performance Indicators to identify trends of low confidence in ECP and fear of retaliation for raising concerns.

ECP Evaluation Results

Performance Objective 1: Evaluate ECP Perception

Communications

Performance Measures	S	PA	EP	AA	W	NA
1. Conduct a random survey of plant personnel to determine effectiveness from their perspective.					x	
2. Interview plant personnel to determine their awareness of the ECP.				x	x	
3. Walk throughout the plant and identify various communication tools used by the ECP and indicated preference.					x	
4. Review benchmark (SCWE) survey results that focus on awareness of ECP.			x			
5. Evaluate the level of ECP Staff attendance/participation in site meeting (e.g. Plan of the Day) and Departmental Staff meetings					x	
6. Evaluate organizational and site geographic coverage of communications efforts.			x			
7. Evaluate effectiveness of outage communications efforts i.e., to seasonal employees, contractors, etc.				x		

Status Reports

Performance Measures	S	PA	EP	AA	W	N/A
1. Recipient's feedback on content, distribution, frequency, etc.			x			
2. Recipient's knowledge level of ECP Status.				x		

Performance Indicators

Performance Measures	S	PA	EP	AA	W	N/A
1. Evaluate consistency of indicators to: Safety Culture survey results, Corrective action Indicators, NRC allegation data.				x		
2. Compare performance indicator results to key ECP performance goals to ensure proper alignment				x		
3. Evaluate effectiveness of trending and communication of trends to management or senior				x		

management.						

External Departmental Interfaces

Performance Measures	S	PA	EP	AA	W	NA
1. Evaluate the level of ECP staff interface and participation in industry initiatives.				x		
2. Evaluate the level of ECP staff interface with regulatory agencies.			x			
3. Benchmark PTN ECP against other utility programs to identify areas for improvement and NEI's 97-05 toolbox.					x	
4. Evaluate the process and appropriateness of interdepartmental handoffs for concern resolution.			x			

Surveys

Performance Measures	S	PA	EP	AA	W	N/A
1. Evaluate effectiveness of ECP staff or contractor in analyzing survey results.			x			
2. Evaluate appropriateness of any follow up actions.					x	
3. Compare anticipated results with actual survey response.			x			
4. Does survey determine plant personnel's comfort level in using the ECP? Confidence in the quality of ECP reviews? Satisfaction with ECP responsiveness?			x			
5. Determine if survey results were disseminated to plant personnel (what personnel and how distributed)			x			
6. Determine if survey results are compared to previous survey results and evaluate conclusions reached.			x			

Performance Objective 2: Evaluate ECP Capability

Procedures and Policies

Performance Measures	S	PA	EP	AA	W	N/A
1. Determine level of adherence to key areas of NRC Policy Statement, and industry guidance such as NEI 97-05 Tool Box.			x			
2. Determine level of adherence to ECP policies and governing procedural requirements			x			
3. Determine level of adherence to ECP implementing procedural requirements			x			

ECP Facility

Performance Measures	S	PA	EP	AA	W	N/A
1. Evaluate Turkey Point ECP Facility					x	
2. Evaluate submittal of concern				x		

Training

Performance Measures	S	PA	EP	AA	W	N/A
1. Conduct random interviews with Supervisors/Managers to determine their knowledge of 10. CFR 50.7 (HIRD) and associated company policies.				x		
2. Determine the extent of industry plant events incorporated into training programs.						x
3. Determine if training programs are appropriately revised based upon post training feedback/comments						x
4. Evaluate the depth and appropriateness of ECP Staff.	x					
5. ECP Staff observe the individual (utility or contractor) conducting a training session and evaluate their presentation skills and effectiveness in meeting training objectives.						x

Performance Objective 3: Evaluate ECP Effectiveness

Processing concerns

Performance Measures	S	PA	EP	AA	W	N/A
1. Determine level of adherence to key areas of NRC Policy Statement, and industry guidance such as NEI 97-05 Tool Box. (Self Assessment Limitation)			x			
2. Determine level of adherence to ECP policies and governing procedural requirements			x			
3. Determine level of adherence to ECP implementing procedural requirements			x			
4. Review any survey SCWE results and identify appropriate process changes.					x	
5. Review any Concerned Individual (CI) feedback data and identify appropriate process changes.					x	
6. Observe Peers conducting an interview (with CI or during an investigation and evaluate technique and performance. (Self Assessment Limitation						x
7. Review closed concern files for appropriate level of Documentation and Timeliness.			x	x		
8. Evaluate the timeliness, adequacy and effectiveness of previous concern corrective actions.			x			
9. Verify implemented actions. (Self Assessment Limitation)						x
10. Determine if previous actions prevented recurrence.						x
11. Evaluate the adequacy and effectiveness of previously identified self assessment corrective actions.					x	
12. Conduct anonymous surveys of past concerned individuals to determine ECP effectiveness from their perspective and to identify areas for improvement.						x
13. Interview past CIs to determine if they were the objects of HIRD as a result of using ECP.						x
14. Determine if deficiencies identified during NRC Inspections are adequately addressed in the ECP.			x			
15. Compare the ratio of internally received concerns to allegations				x		

received by the NRC.						

Employee Exit process

Performance Measures	S	PA	EP	AA	W	N/A
1. Compare percentage of personnel completing an ECP exit interview to established goal.				x		
2. Evaluate time spent and manner of conducting exit interviews with benefit (number of concerns raised)				x		
3. Determine adequacy of exit documentation.				x		
4. Determine if concerns identified in the exit process are resolved and feedback provided.				x		
5. Review Appeal Process				x		

Confidentiality

Performance Measure	S	PA	EP	AA	W	N/A
1. Determine if ECP literature discusses availability and limits of confidentiality.			x			
2. Determine if confidentiality is being maintained through the report process			x			
3. Determine the understanding of confidentiality by ECP staff, whether temporary or permanent. Review methods that reinforce this understanding such as the use of confidentiality agreements.			x			
4. Determine the effectiveness of measures to protect ECP information stored on electronic media.			x			
5. Determine the effectiveness of the measures to limit access to ECP files and voice messaging services			x			
6. From survey information, determine if plant personnel trust in ECP to protect identity.				x		

ECP Effectiveness for Preventing Retaliation

Performance Measure	S	PA	EP	AA	W	N/A
1. Evaluate ECP efforts for Preventing Retaliation					x	
2. Evaluate anonymous concern process.				x		

3. Evaluate ECP / NRC allegations:				x		

Overall Conclusion

The ECP Program at Turkey Point meets the core attributes of an effective nuclear industry ECP as described in the Enclosure 1. However the following three program attributes have not been addressed effectively:

Self-assessments
ECP visibility
Performance Indicators trends to identify lack of confidence and fear of retaliation for raising concerns.
ECP Training for supervisors and managers

The assessment identified eight weaknesses and had numerous recommendations to improve areas for attention. The weaknesses can be summarized into several areas:

Management attention to the ECP program did not meet expectations. Management awareness of the ECP program was superficial and program values had not been emphasized with their employees. The ECP facility was of low quality and did not give the impression of being important to management.

There is a perception problem with ECP in the areas of confidentiality and potential retribution. No actual cases involving breach of confidentiality or retribution for filing a concern could be identified. However, the perception remains as evidenced by surveys, interviews and the high percentage of anonymous concerns. Previous surveys and assessments have identified this perception, but little or no progress has been made in reversing this perception. ECP was most frequently thought to be a mechanism to use in addition to discussing concerns with the NRC and not as the first alternative to the Corrective Action Program (CAP).

While meeting most of the program requirements and having a technically qualified individual in the ECP coordinator position, the overall effectiveness of the program was marginal. The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities. The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to non-anonymous individuals is impersonal and lacks feedback mechanisms for the ECP coordinator to judge the program's effectiveness. The ECP process also does not provide assurance that conditions adverse to quality identified in the ECP review process would get entered into CAP, creating potential to miss correction and trending opportunities.

Strengths

Objective 2: ECP Capability

Strength 1: The Employee Concerns Representative's technical experience provides excellent foundation for performing evaluations of employee concerns.

Weaknesses or Areas for Improvement

Performance Objective 1: Perception of ECP

Weakness 1: CR 2008-8142

ECP Coordinator has low visibility at plant site.

- Low percentage of name recognition for the ECP Coordinator
- No regular attendance at various site informational meetings
- Low visibility at the plant and at the shops.

Weakness 2: CR 2008-8145

The results of the Survey and Interviews for the ECP Self-Assessment identified a continuing negative trend in the perception of the ECP. Some station personnel expressed concern that the ECP is unable to maintain confidentiality and to prevent retaliation.

Performance Objective 2: ECP Capability

Weakness 3: CR 2008-8146

Quality of the Employee Concerns office is neither adequate for concern submittals nor does it give the appearance of being important to site management.

Weakness 4: N/A

The ECP Concern Receipt drop-box is not secure: No CR is needed this weakness has been addressed by the ECP department

Performance Objective 3: ECP Effectiveness

Weakness 5: CR 2008-8148

Previous Benchmarks and self-assessments corrective actions have not adequately addressed identified weaknesses of unfavorable perception in the EC Program.

Weakness 6: CR 2008-8150

Employee Concern Department has not been an integral part of the development and completion of the PTN action plan resulting from the 2007 SCWE survey (CR 2007-11428).

Weakness 7: CR 2008-8151

The feedback mechanism used to communicate the results of investigations conducted in response to reports by non-anonymous concerned individuals does not appear to be consistent with industry practices.

Weakness 8:CR 2008-8153

Conditions discovered during ECP investigations may not be appropriately tracked in the Corrective Action Program.

Recommendations:

The following is a list of recommendations for addressing the self-assessment weaknesses and areas of attention.

Performance Objective 1: Perception of ECP

1. PID/ECP will perform a 2008-SCWE-ECP survey and evaluate results to continue monitoring ECP's Perception and effectiveness of corrective actions.

2. ECP Coordinator and the site Turkey Point Communications Supervisor to ensure that Senior Management addresses in Staff meetings, Safety Meetings, All Hands Meetings and other forums of communication the reoccurring concern expressed by station personnel that ECP is either unable to maintain confidentiality or prevent retaliation.

3. The ECP Coordinator can address the ECP's process limitations regarding confidentiality and to provide employees assurance of confidentiality in new hire orientation, during an interview, and during walk-arounds, thus communicating the goal of changing the site's perception.

4. ECP coordinator needs to improve on communications at the site, for example to add name and photo in the poster, improve participation at the site meetings, perform shop walk arounds, attend departmental and staff meetings, and at Safety meetings.

5. ECP Coordinator and PID Manager need to coordinate with Safety Department to review in monthly meetings ECP and SCWE principles to reinforce support for raising concerns.

6. ECP Coordinator to create additional ways for employees to submit concerns, i.e., to add lock-box stations strategically located around the site. This station also should contain concern submittal forms, brochures, exit questionnaires.

7. PID manager to develop means to evaluate and monitor contractor environment to detect any issues with respect to Safety Culture.

8. ECP Coordinator to debrief Site VP on employee concerns. Engage management in resolving concerns by interaction with the ECP Coordinator on a regular basis and areas that are in need of additional oversight.

9. The ECP manager must evaluate need for additional resources to meet program's performance goal and engage management support.

10. ECP Manager to Benchmark other ECP programs and develop Performance Indicators consistent with the SCWE survey results (i.e., identify lack of confidence, and fear of retaliation for raising concerns), and similarly consistent with CAP indicators and NRC allegations and communicate trends to management and senior management.

11. The site coordinator should attend ECP Forums and participate in self-assessment and benchmarks.

12. ECP Coordinator or ECP Manager to continue to benchmark against other utility ECPs for identifying program weaknesses on a periodic basis.

13. ECP Coordinator must accept and engage in resolving concerns identified from the SCWE-ECP survey results.

Performance Objective 2: ECP Capability

1. ECP Manager to improve ECP office quality and create a welcoming environment for employees to submit concerns i.e., improve both, office accessibility and office accommodations.
2. ECP Manager/Coordinator to improve ECP intake submittal by adding a sequence number. This provides a way for the CI to call the ECP coordinator, provide a number, then get the response to their concern anonymously.
3. ECP Coordinator must address/complete all previously identified SCWE survey results recommendations.
4. Accept any concern that does not duplicate resolution efforts to build confidence in the program. . Do not limit the scope of concerns received into the Employee Concerns program to HIRD and Nuclear Safety & Quality.
5. ECP Coordinator to verbally debrief concerned individuals to ensure the concerns were adequately resolved.
6. ECP Coordinator to set target for a high number of responses to verbally conduct debriefing concerned individuals to ensure the concern was addressed.
7. Provide station supervisors and managers training for maintaining an environment free of HIRD that encourages open communications.
8. ECP Coordinator to receive continuing high quality ECP training.

Performance Objective 3: ECP Effectiveness

1. ECP Coordinator to enter conditions adverse to quality in the Corrective action program
2. ECP Coordinator to evaluate and understand the potential generic implications of issues rose by the nature of the concern or uncovered during the investigation and found during the ECP Self-Assessment.
3. Ensure appropriate management and Licensing department reviews NRC Allegation responses.
4. The ECP Coordinator should consistently review the CR's and investigate any anonymous concerns per management's request.
5. Provide appeal process in the event the CI is dissatisfied with results of the investigation.
6. ECP coordinator to Benchmark the process for exiting, determine a program goal for personnel completing an exit interview and a process to monitor personnel completing Exit interviews
7. ECP Coordinator to Benchmark the process for exiting personnel for tracking exit interviews with benefit.
8. Employee Concerns Coordinator needs to be added to distribution list for badge termination from Plant Access Authorization to capture any employees terminated and contact them by mail or phone for an exit interview

9. ECP Coordinator to create and proceduralize an Employee Concerns Exit Questionnaire. (Examples have been provided to ECP Coordinator from Crystal River and Pallisades).

10. Provide the CI with a feedback card to communicate satisfaction with ECP processes

11. ECP management to develop an appeal process in the event the CI is dissatisfied with the results of the investigation.

12. The ECP Coordinator can address the ECP's process limitations regarding confidentiality and to provide employees assurance of confidentiality in new hire orientation, during and interview, and during walk-arounds, thus communicating the goal of changing site's perception.

13. ECP Peers recommended establishing a process to address anonymous concerns and to relate the feedback to concerned individual.

14. ECP Coordinator to continue to perform self-assessments and effectiveness review to determine the adequacy of previously identified corrective actions.

15. The ECP Peers recommend implementing a process designed to evaluate disciplinary actions to detect and mitigate retaliation and chilling effect.

Key Personnel Contacted

Interviews Conducted:
DEPT:
Road to Excellence,2
Engineering-4,
Operations-4,
Security-2,
Chemistry-2,
Maintenance-2
Security 4
Supervisors-3,
Maint Manager – 2,
Maint Supv -1,
Engineering Manager – 1,
Engineering Supv – 1,
Emergency Planning Manager - 1
Radiation Protection-2,

Key Personnel Contacted for program interview:
Michael Downs, ECP Coordinator
Richard Leckey, ECP Fleet Manager
Jose Alvarez, SCWE Survey analysis
David Bezanilla, HR Manager
Mitch Guth, Design Engineering Supervisor
Jack Hamm, Engineering Manager
Kevin Remington, Engineering Capco Coordinator
Gary Warriner, EP Manager
Kevin O'Hare, PID Manager
Mike Pedrianis, Union Stewart
Grover Hettel, Acting Plant Manager

References

The following references were reviewed and used in the conduct of the Self Assessment:

1. NRC IP 40001, Resolution of Employee Concerns
2. NRC IP 40002, Inspections to Review Allegations
3. NRC Directive 8.8, Management of Allegations
4. NRC IP 2800 , Allegations
5. NRC IP 0305, Substantive Cross Cutting Issue in SCWE
6. NRC Policy Statement, Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation-
7. NRC Policy Issue, Recommended Staff Actions Regarding Agency ,Guidance in the Areas of SCWE and safety culture
8. FPL Comments on Best Practices to Establish and Maintain a Safety Work Environment ,L-2004-069
9. NRC RIS 2005-18, Guidance for Establishing and Maintaining a Safety Conscious Work Environment
10. NRC RIS 2006-13, Information on the Changes Made to the ROP to More Fully Address Safety Culture
11. 10 CFR 50.7, Employee Protection
12. NEI 97-05, Nuclear Power Plant Personnel-Employee, Concerns Program-Process Tools in a SCWE, Appendix M, Self Assessments
13. INPO, Principles for a Strong Nuclear Safety Culture
14. INPO SOER 02-4 Rev 1, RPVH Degradation at Davis Besse Nuclear Station
15. INPO Speech John Herron Entergy 11/3/05, Industry Perspective on Safety Culture
16. NAP-424, Employee Concerns Program
17. ECP-1, Desk-Top Instruction: PTN Employee Concern Program Guidance
18. NP-800, Employee Concerns Program
19. NP-809, Safety Conscious Work Environment
20. SOER 02-04, Rev 2 ,PTN Self-Assessment: Turkey Point Safety Culture
21. SCWE , REPORT: SCWE Review of Top 5 Questions for Disagreement Road to Excellence Gap Analysis: (CR 2007-11428)
22. SCWE Survey,Survey Questions (20)
23. List of CRs referencing Employee Concerns Program, PSL, Juno and PTN list of CRs
24. CR 2007-20978 ,PI&R Inspection Report finding CR analysis (Parent Record 2007-11428)
25. CR 2006-21068, SCWE Action Plan Tracking
26. PTN PI&R Inspection Report, Inspection Finding, July 2007

Attachment 1
ECP Self Assessment
Team Composition

Team Members:

Team Leader:

Paul Infanger, Turkey Point Licensing Manager

Outside Counsel- ECP Industry Peers

Chuck Scott, ECP Manager Entergy – Palisades

Jeannie Copsey, ECP Manager, Arizona Public Service – Palo Verde Nuclear Station

Natalie Harness, Senior Employee Concerns Representative, Progress Energy – Crystal River Unit 3

FPL Corporate

Bill Blair, FPL Corporate-Legal

FPL Turkey Point Station

Stavroula Mihalakea, PTN Licensing Engineer

Joe Patterson, PTN Operations, FIN Team

Attachment 2
Performance Objectives and Assessment Activities

Performance Objective 1: Evaluate Employees Perception of ECP

A. Conduct a site survey regarding Turkey Point ECP
B. Perform interviews with Turkey Point staff
    1. Management
    2. HR Manager
    3. Supervisors
    4. Contractors
    5. Operations
    6. Chemistry
    7. Maintenance
    8. Radiological Protection
    9. Physical Security
    10. Engineering
    11. QA
    12. FIN team
C. Review ECP Site communications
    1. ECP brochure
    2. Posters
    3. Closed concern feedback to individual and site personnel
    4. Departmental Rollouts
    5. Review and distribution of utility and industry events
D. Review of ECP status reports
    1. Format
    2. Development process
    3. Content
    4. Distribution
E. Review of ECP Performance Indicators
    1. Items tracked
    2. Quality of Data
    3. Follow up actions
    4. Performance Measures
F. Regulatory Interface
    1. Resident Inspector
    2. Regional NRC inspectors
    3. Legal
    4. HR
G. Participation in ECP Staff in Peer Assessments
    1. Fleet
    2. Outside FPL
H. Participation in ECP Manager Industry Forum
    1. ECP Coordinator
    2. ECP Fleet Manager
I. Review SCWE-ECP Survey Results
    1. Conclusions
    2. CR actions
    3. ECP CR action

Attachment 2
Performance Objectives and Assessment Areas

Performance Objective 2: Evaluate ECP Capability

A. Review ECP Procedures
   a. ECP Policy
   b. ECP Fleet Administrative Procedure
   c. ECP Turkey Point Desk Top Instructions
   d. Regulatory Requirements and Industry Guidance
B. Evaluate ECP Training
   a. ECP Staff training-Qualifications
   b. ECP-Training Interface with SCWE training
   c. Training for supervisors and managers
   d. Training for station employees/contractors
   e. Continuing Training
C. Review previous ECP Surveys, Benchmarks
   a. Surveys
   b. Benchmarks
   c. Self assessments
D. Evaluate ECP Facilities
   a. Location
   b. Access
E. Evaluate means for employees to file an employee concern
   a. Drop Box
   b. Anonimous Condition Reports

Attachment 2
Performance Objectives
Assessment Areas
Team Assessment Activities

Performance Objective 3: Evaluate ECP Effectiveness

A. Review Processing concerns:
   1. Review process
   2. Review Records/files
   3. Review Database
   4. Review Closure
   5. Review Follow up
   6. Review Corrective actions
   7. Appeal Process
B. Review Exit Process
   1. Method of conduct
   2. Target groups
   3. Documentation of events
C. Review non-proprietary employee concerns
   1. Corrective actions
   2. Resolutions
D. Review feedback process to the individual and the station on ECP results
   1. Client feedback
   2. Management Feedback
   3. Regulatory Feedback
E. Review Effectiveness of Previous ECP Self assessment
   1. Previously identified corrective actions
   2. Frequency
F. Review response to any NRC Inspections Results
   1. Findings
   2. Violations
   3. Industry Events
G. Review process for Maintaining Confidentiality
   1. Agreements
   2. Reports
   3. Records
   4. Hotline Requests
H. Review Process for Preventing Retaliation
   1. Management Directives
   2. Anonymous Process
   3. NRC allegations Process
   4. ECP/management Feedback
   5. Organization Review Boards.

Attachment 3
Turkey Point Nuclear Plant
Self-Assessment: Employee Concerns Program
January 14-17, 2008

Interview Questions

DEPT_____

1. How would you preferably raise a safety or regulatory issue? Why?

2. Are you aware of the ECP program?

3. Can you tell me the purpose of the ECP program?

4. Can you tell who the site ECP coordinator is? Where could you go to find out?

5. Are you aware of any specific instance in which another employee submitted an issue to the corrective action program or ECP and considered the response incomplete or issue to the corrective action program or ECP and considered the response incomplete or unacceptable? Are they aware of any retaliation for having raised concerns in this manner?

6. Are you aware of any events which would encourage or discourage employees from raising safety concerns internally or externally?

7. Have you been trained on SCWE expectations and /or ECP program access methods? Was this training considered effective?

8. Do you consider the ECP as an effective method of reconciling safety concerns at this facility?

9. Do you believe site management supports ECP?

Attachment 4

Turkey Point Nuclear Plant
Self-Assessment: Employee Concerns Program
January 14-17, 2008

Survey Questions

Please check the appropriate level of agreement with the following statements:

1. I am familiar with the Employee Concerns Program (ECP) (formerly SPEAKOUT).

   - o Strongly Disagree
   - o Somewhat Disagree
   - o Somewhat Agree
   - o Strongly Agree

2. I am confident that nuclear safety and quality issues reported through the ECP are thoroughly investigated and appropriately resolved.

   - o Strongly Disagree
   - o Somewhat Disagree
   - o Somewhat Agree
   - o Strongly Agree

3. I believe that upper management supports ECP.
   - o Strongly Disagree
   - o Somewhat Disagree
   - o Somewhat Agree
   - o Strongly Agree

4. I can use the ECP without fear of retaliation.
   - o Strongly Disagree
   - o Somewhat Disagree
   - o Somewhat Agree
   - o Strongly Agree

5. Confidentiality of my concern will be maintained by the ECP program at my request.
   - o Strongly Disagree
   - o Somewhat Disagree
   - o Somewhat Agree
   - o Strongly Agree

Enclosure 1

ECP Program Elements

Core Attributes of an Effective ECP

Separate from Other Programs/Processes
ECP provides an alternative avenue to identify conditions potentially adverse to safety.

Independent from Line Management
ECP administrator has authority, responsibility and opportunity to report to senior management.

Administered by Competent Personnel
Expertise of personnel responsible for ECP is established through education, training or experience, or combination thereof.

Appropriate Levels of Confidentiality
ECP includes measures t treat certain information as confidential, to the extent practical under the circumstances (confidential treatment may have limitations if, for example, the concern requires investigation of a harassment, intimidation, retaliation, or discrimination allegation or, if in performing the investigation, the identity of the individual must be revealed or necessarily will be revealed because of the nature of the inquiry.)

Defined scope
ECP is designed to include/address safety, technical and compliance issues and allegations of discrimination for engaging in protected activity. ECP nevertheless is receptive to concerns from all personnel, respectfully directing individuals who express concerns not within the ECP's scope to the appropriate individual or discipline for resolution of the concern.

Empowered to Assign Priority to and to Facilitate Resolution of Issues
ECP screens issues for safety or other significance; takes other action as is necessary to facilitate resolution (e.g. initiating an investigation and providing a mechanism for feedback to the individual.)

Empowered to Initiate or Conduct Investigations/Reviews
Investigations or reviews are initiated, conducted and completed on a timely basis and are sufficiently thorough to permit management to make an informed decision regarding action to address the concern.

Responsible for Providing Feedback
Feedback should include updates to concerned individual and, if concern involves a harassment/retaliation claim, a final communication to individual sufficient to notify individual of the basis for conclusions regarding the concern.

Subject to Self Assessment or Independent Review
Evaluations are performed periodically to gauge overall effectiveness of ECP and possible areas of improvement.

Responsible for Identifying and Reporting Trends
ECP has formal (e.g., use of detailed written performance indicators) or informal (evaluation by ECP administrator) mechanism to identify trends; conclusions from trending review are reported to management.

Required to document Issues
ECP employs a formal or informal method to record concerns and their disposition.

Receptive to Concerns from All Personnel
Individuals who express concerns not within ECP's scope are respectfully treated and directed to appropriate individual or department to facilitate resolution of concern.

Enclosure 1 (Cont'd)

ECP Program Elements

Core Attributes of an Effective ECP

Visible
Employees are aware of the program's existence; licensee notifies workforce of or advertises ways to contact ECP, senior management action designed to enhance ECP visibility and credibility.

Accountable
Management expectations are well understood by ECP personnel and incorporated in program /process implementation.

Training-All Employees
All employees receive initial and periodic training on the fundamentals of an SCWE, the role of ECP and its availability as an alternative reporting method.

Training-Management
Management receives additional training on their responsibility to maintain an environment that encourages free and open communication of concerns to management.

Exiting Employees Process
Conduct survey/interview of exiting employees to ensure there are no unresolved safety concerns

Appeal Process
Provides an appeals process in the event the CI is dissatisfied with the results of the investigation.

Provides Guidance on how to Raise a Concern
ECP staff provides guidance to managers faced with addressing concerns brought to them by subordinates and employees who are unsure how to raise a concern or to whom to raise it.

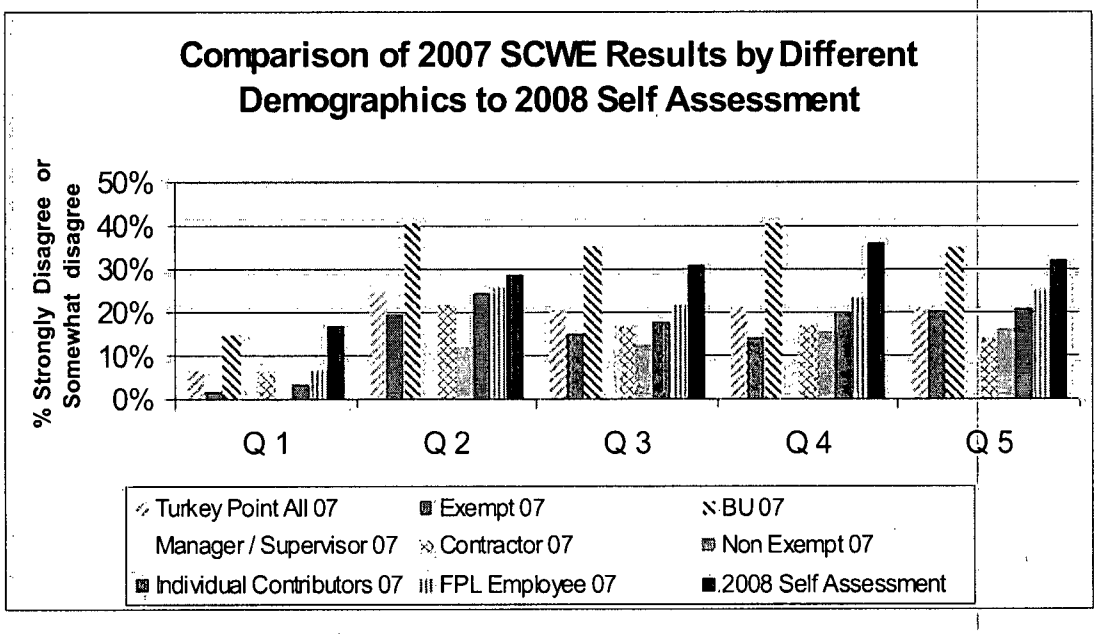
Attachment 5

Self Assessment Plan

Performance Objective 1, Evaluate the ECP Perception
A. Perform interviews w/ Turkey Point staff
B. Distribute and collect surveys.
C. Review Safety Culture Work Environment (SCWE) survey comments

Performance Objective 2, Evaluate ECP Capability,
A. Review ECP procedures and discuss ECP Program with ECP Manager and Turkey Point ECP Coordinator
B. Evaluate ECP location, facilities, access
C. Evaluate means for employees to file an employee concern

Performance Objective 3: Evaluate ECP Effectiveness
A. Review processing of NRC Allegations
B. Review employee concerns resolutions
C. Review feedback process to the individual and the station on ECP results

Figure 1

Self Assessment