



Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420
Law Department

Mitchell S. Ross
Vice President & General Counsel - Nuclear
(561) 691-7126
(561) 691-7135 (Facsimile)
email: mitch.ross@fpl.com

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COMMISSION
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May 19, 2011

VIA HAND DELIVERY

110009-EI

Ms. Ann Cole
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard, Room 110
Tallahassee, FL 32399-0850

Re: Docket No. 070650-EI, Petition to determine need for Turkey Point
Nuclear Units 6 and 7

Docket No. 090009-EI, Nuclear Cost Recovery Clause

Dear Commissioners:

I am writing on behalf of Florida Power & Light Company (FPL) in response to a letter filed by Thomas Saporito relating to the above-referenced dockets dated May 8, 2011. Saporito's letter attempts to raise concerns regarding the validity of the Commission's decision in Docket No. 070650-EI regarding FPL's Petition for a Need Determination on FPL's proposed Turkey Point Nuclear Units 6 and 7 project (Turkey Point 6&7). His letter strings together a series of mischaracterizations, most if not all of which will be obvious to those that participated in Docket No. 070650-EI.¹ Given this fact and the nature of the submission, FPL does not propose to provide a formal point by point response to Saporito's letter. Of course, should the Commission or its staff require any additional information, FPL will be pleased to provide it.

The most significant inaccuracy in the letter deals with the 2008 Congressional hearing referenced by Saporito. In this hearing, the panelists expressed different opinions, some in favor of nuclear generation and some opposed. No detailed economic analyses were presented that compared the costs of new nuclear generation to other resource options, nor was there a presentation of results of any such analyses. One panelist claimed (without foundation) that the cost of producing electricity from wind and new nuclear were approximately 5 cents/kwh and 16 cents/kwh, respectively. These values are almost certainly based on a

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¹ Saporito did not participate in Docket No. 070650-EI

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“screening curve” approach. This fundamentally flawed approach is not one used by the FPSC, or by Florida utilities, in making resource decisions for utility systems because it merely looks at the projected economics of a single resource option by itself while unrealistically assuming that the resource option is completely disconnected from a utility system.

This approach does not account for a number of cost impacts to a utility system as a whole that occur when a resource option is placed on a utility system. For example, this approach does not account for the system fuel savings that occur when a new baseload generating unit is placed on a utility system, thus reducing the operation of less fuel-efficient existing generating units. Nor does it differentiate between resource options that can provide firm capacity (e.g., nuclear) and resource options that cannot provide comparable firm capacity (e.g., wind). There are a number of such system costs and system impacts that need to be accounted for before a complete picture of resource options is obtained, and before a final decision regarding resource options should be made. Accordingly, this fundamentally flawed approach is not utilized in Florida to make resource decisions. FPL also detailed the flaws with the “screening curve” approach in its testimony filed in the Commission’s most recent DSM Goals and Nuclear Cost Recovery dockets.

Therefore, Saporito’s assertion that the referenced Congressional hearing demonstrated that co-generation, renewable, and demand-side management are appreciably less expensive methods to generate electrical power – and that the construction of nuclear power plants is the most expensive method to generate electrical power – has no merit. Saporito has articulated no basis to revisit the Commission’s Need Determination in Docket No. 070650-EI.²

We would note, as we have previously, Saporito’s history in filing repeated, baseless claims against FPL. I’ve provided a short chronology below and would point out that, most recently, the Administrative Review Board (ARB) and an Administrative Law Judge (ALJ) of the Department of Labor (DOL) placed sanctions on Saporito for filing frivolous actions and have warned him of additional potential civil and criminal sanctions.

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1. Saporito’s employment with FPL was terminated for cause *in 1988* for multiple acts of insubordination, and he has been attempting to litigate and re-litigate the termination of his employment in multiple fora ever since. A U.S. Department of Labor (DOL) Administrative Law Judge

² Saporito also asserts in his letter that FPL failed to establish prudence in the construction of Turkey Point 6&7. This is another bald-faced assertion with no evidentiary support. It is even more fanciful since FPL has not commenced construction of Turkey Point 6&7, and Saporito has not participated in any of the annual Commission hearings in which the prudence of prior expenditures involving new nuclear generation is reviewed by the Commission.

(ALJ) ruled in a written decision that FPL's termination of Saporito's employment in 1988 was justified because there was "overwhelming" evidence that Saporito was repeatedly insubordinate, "insolent," "*blatantly lied*" and "*clearly lied*" to management, and engaged in a "mockery of management's role."³

2. In the timeframe following the 1988 termination, Saporito filed four nuclear whistleblower discrimination complaints against FPL – all of which were dismissed. Saporito v. Florida Power & Light Co., 1990-ERA-027, -047 (Sec'y Aug. 8, 1994); Saporito v. Florida Power & Light Co., 1993-ERA-023 (Sec'y Sept. 7, 1995); Saporito v. Florida Power & Light Co., 1994-ERA-035 (ARB Jul. 19, 1996) (complaint dismissed by the ARB as "frivolous"); Saporito v. Florida Power & Light Co., 2006-ERA-008 (ALJ Mar. 24, 2006) (voluntarily dismissed).
3. Most recently, the ARB issued an order consolidating four current discrimination cases filed by Saporito against FPL, held that all of Saporito's pending complaints were "without merit and frivolous," and imposed sanctions in the form of prefiling requirements on Saporito for any future appeal to the ARB of any decision involving FPL because of Saporito's "string of vexatious, harassing, and duplicative complaints against FPL, without a good faith expectation of prevailing, and subsequent appeals to the [ARB] that are wholly without merit." Saporito v. Florida Power & Light Co., 2009-ERA-001, etc. (ARB Apr. 29, 2011).
4. In another recent case, a DOL ALJ imposed additional sanctions on Saporito for filing actions against FPL that are "frivolous, an abuse of legal and judicial process, and fraudulent...[Saporito] has demonstrated a pattern of malicious and frivolous filings involving" FPL. The ALJ placed Saporito on notice that future complaints against FPL may be referred to the U.S. District Court for the Southern District of Florida for sanctions and to a U.S. Attorney for potential felony criminal prosecution for corruption of administrative proceedings and/or perjury. Saporito v. Florida Power & Light Co., 2011-ERA-007 (ALJ Mar. 9, 2011). Saporito did not appeal this decision so it is now a final DOL agency action.

³ Saporito v. Florida Power & Light Co., 1989-ERA-007, 1989-ERA-017 (ALJ Oct. 15, 1997, *aff'd*, DOL Administrative Review Board ("ARB") Case No. 98-008 (Aug. 11, 1998); *aff'd sub nom Saporito v. DOL*, 192 F.3d 130 (11th Cir. 1999) (*per curiam*), *reh'g en banc denied*, 210 F.3d 395 (11th Cir. 2000) (unpublished table decision); see also Saporito v. Florida Power & Light Co., ARB Case No. 04-079 (Dec. 17, 2004); *aff'd sub nom, Saporito v. DOL*, No. 05-10749-DD slip op. (11th Cir. June 2, 2005), *reh'g denied*, slip op. (11th Cir. July 21, 2005), *cert. denied*, slip op. (Jan. 23, 2006). All DOL decisions regarding Saporito's numerous claims of discrimination are available at <http://www.oalj.dol.gov>.

5. Saporito has also filed numerous petitions with the U.S. Nuclear Regulatory Commission seeking enforcement action against FPL. All of these petitions have been denied.
6. In another whistleblower discrimination case in which Saporito appeared as a witness, the ALJ found that Saporito's testimony was "not credible" and that evidence sponsored by Saporito "may have been fabricated entirely." Dysert v Florida Power Corp., 1993-ERA-21 (ALJ June 3, 1994), *aff'd*, (Sec'y Aug. 7, 1995), *aff'd sub nom*, Dysert v. U.S. Secretary of Labor, 105 F.3d 607 (11th Cir. 1997).
7. Saporito has filed numerous other meritless whistleblower discrimination complaints against other respondents. Saporito v. Asplundh Tree Expert Co., 2005-CAA-00013 (ALJ Mar. 15, 2006); Saporito v. GE Medical Systems et al, 2003-CAA-00001/00002 (ALJ Oct. 15, 2004) (ARB issued Final Decision and Order Approving Settlement and Dismissing Complaint May 24, 2005). Saporito v. Publix Super Markets, Inc., 2010-CPS-00001 (ALJ Mar. 5, 2010) (approving award of attorney's fees against Saporito because complaint was filed in "bad faith").

Sincerely yours,



Mitchell S. Ross

cc: Chairman Art Graham
Commissioner Eduardo E. Balbis
Commissioner Ronald A. Brisé
Commissioner Julie Imanuel Brown
Commissioner Lisa Polak Edgar
Counsel for Parties of Record