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Michael T. Lesar
Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
Mail Stop: T-6D59
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001

10/14/04
69FR61049
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Re: Florida Power & Light Company and FPL Energy Seabrook, LLC Comments
Proposed Generic Communication:
Establishing and Maintaining a Safety Conscious Work Environment
(69 Fed. Reg. 61049, October 14, 2004)

Florida Power & Light Company (FPL), the owner and operator of the St. Lucie Nuclear Plant, Units 1 and 2, the Turkey Point Nuclear Plant, Units 3 and 4, and FPL Energy Seabrook, LLC, the owner of a controlling interest in and the operator of Seabrook Station (collectively FPL), hereby submits the following comments on the above-referenced draft Regulatory Information Summary (RIS).

In its comments of March 19, 2004 to the Nuclear Regulatory Commission (NRC), FPL stated its belief that specific guidance on the development and maintenance of a safety conscious work environment (SCWE) should come from the industry, not the NRC. Moreover, FPL expressed concern that a guidance document – such as this proposed RIS – may be treated as a de facto regulation, contrary to the explicit rejection of a SCWE regulation by the Commission. In particular, given the prescriptive nature of the proposed RIS, and the frequent use therein of the injunctive “should,” FPL is concerned that this document will be used as a “checklist” for inspections. Such a checklist would be inappropriate and impractical, since SCWE practices are unique and should be tailored to the circumstances of each particular site.

These objections to the issuance of the proposed RIS notwithstanding, FPL respectfully submits the following comments to the NRC’s proposed RIS for establishing and maintaining a SCWE:

- (1) The Background section of the draft RIS should reflect the fact that in its March 26, 2003 Staff Requirements Memo, the Commission disapproved the staff recommendation to pursue rulemaking for oversight of a SCWE. This is a significant fact that should inform the development and application of the RIS.
- (2) In Section A, “Employees are Encouraged to Raise Safety Concerns,” the draft RIS provides several definitions of the term “protected activity,” including “assisting or participating in, or being about to assist or participate in, these activities” (emphasis added). It is clear that assistance and participation in testimony before the Commission, or before Congress, or at any Federal or State proceeding regarding a provision of the Atomic Energy Act or the Energy Reorganization Act, constitutes protected activity. However, the language of the proposed RIS should be changed to reflect the law -- the fact that a mere intent to engage in protected activity, without more, is not protected by

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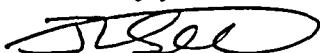
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NRC regulations or by Section 211 of the Energy Reorganization Act of 1974, as amended.

- (3) In Section A, "Employees are Encouraged to Raise Safety Concerns," the draft RIS proposes the conduct of "annual or more frequent" SCWE refresher training courses for licensee employees and managers. For a large licensee to provide such frequent training may require a significant expenditure of time and resources that is not warranted, particularly since SCWE values are otherwise reiterated and promoted via various media on a near-constant basis. The RIS should be revised to recognize these considerations and specifically acknowledge that licensees should use their discretion in determining when such refresher courses would be most beneficial.
- (4) In Section A, "Employees are Encouraged to Raise Safety Concerns," the proposed RIS suggests that licensees develop incentive programs "to provide recognition and rewards for individual and team efforts in identifying and/or resolving safety issues." FPL believes that the use of incentive awards in this context may be inappropriate and that this language should be deleted from the final RIS. Indeed, the NRC acknowledged that the use of Incentive Programs may foster problems in its Draft Best Practices to Establish and Maintain a SCWE, where it warned: "licensees should ensure that incentive programs don't inadvertently discourage raising concerns; examples: some employees don't want public recognition, identification of safety concerns may impact bonuses by virtue of impact on licensee performance."
- (5) FPL understands that not only licensees, but contractors, subcontractors, and other employees in the nuclear industry are responsible for maintaining a SCWE. To that end, FPL requires its contractors to enforce sound internal SCWE procedures and policy. However, the establishment and enforcement of a SCWE should be the responsibility of the employer. As such, FPL is concerned that certain language in the proposed RIS encourages licensees to encroach on this area of responsibility. For example, in Section C, "Licensee Management Involvement in Contractor Cases of Alleged Discrimination," it suggests that "contractor changes to employment conditions that are alleged to be or are likely to be perceived as retaliatory should be reviewed to ensure that changes are not retaliatory or would otherwise effect the SCWE adversely." Likewise, the proposed RIS suggests that licensees "evaluat[e] contractor processes for making changes to employment conditions, such as...reduction-in-force plans." In effect, these best practices as suggested in the draft RIS could be an inappropriate encroachment on a contractor's ability to manage its own employees and could expose licensees to liability as a co-employer. Accordingly, this language should be deleted from the final RIS.

We appreciate the opportunity to comment on this important issue.

Sincerely yours,



J.A. Stall
Senior Vice President – Nuclear and Chief Nuclear Officer