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L-2004-069

MAR 18 2004 11:20 AM

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69 FR 7025
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Rules and Directives
Branch
USNRC

Chief, Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001

**Re: Florida Power & Light Company and FPL Energy Seabrook, LLC
Comments, Draft Best Practices to Establish and Maintain a Safety
Conscious Work Environment – 69 FR 7025**

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 document. For the reasons set forth below, and for the reasons set forth in the comments of the Nuclear Energy Institute (NEI) on this matter, we do not support adoption of a best practices document by the Nuclear Regulatory Commission.

FPL believes that safety conscious work environment (SCWE) best practices guidance should come from the industry, not the NRC. Indeed, the industry has recognized the importance of a SCWE and has already taken the initiative to share best practices. NEI has issued guidance on establishing and maintaining SCWE (NEI 97-05), revised December 2003. The Institute of Nuclear Power Operations (INPO) document titled "Principles for a Strong Nuclear Safety Culture" also provides high-level guidance that may be employed in concert with NEI 97-05. SCWE best practices are therefore available to licensees, and are being reviewed and incorporated into individual licensee programs as appropriate.

FPL is concerned that a best practices document issued by the NRC would become a de facto regulation, contrary to the explicit rejection of a SCWE regulation by the Commission. FPL is likewise concerned that such a document would be used by the NRC as a de facto "checklist" for inspections. Such a checklist would be inappropriate and impractical, because SCWE practices are unique and should be tailored to the circumstances of each particular site.

Notwithstanding its objections to the issuance of such a document by the NRC, FPL respectfully submits the following comments to the NRC's Draft Best Practices to Establish and Maintain a Safety Conscious Work Environment (Draft Best Practices document):

- (1) The Draft Best Practices document suggests that licensees conduct self assessments of SCWE, by periodically evaluating and assessing information from areas/organizations that may contribute or negatively effect the SCWE, including from legal counsel. Any such assessment that seeks information contained in attorney's files could compromise the attorney-client privilege. FPL suggests that this facet of any such final guidance be deleted. The Draft Best

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Practices document suggests that licensees provide continuous training for employees, managers, and supervisors. Such training, according to the Draft Best Practices document, should include "lessons learned/case studies." However, in the past the NRC has expressed concern that training involving case studies might compromise the confidentiality of complainants who made allegations or engaged in litigation at that facility. The NRC should clarify its expectations with respect to the use of case studies.

- (2) The Draft Best Practices document suggests that SCWE be reinforced by demonstrated management behavior that promotes employee confidence in raising and resolving concerns, including Incentive Programs. FPL believes that the use of incentive awards may be inappropriate in a SCWE toolbox and this tool needs to be left to individual licensees. Indeed, NRC seems to recognize such dangers in noting that "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."
- (3) The Draft Best Practices document suggests that the volume and trend of such statistics as NRC allegations, NRC retaliation allegations, anonymous concerns, and of internally raised concerns be used as performance indicators. FPL is concerned that reliance upon such statistics may be misleading. As NRC has previously recognized, allegations bring concerns to the NRC for various reasons, including self-serving reasons and reasons unrelated to the work environment at a nuclear plant.
- (4) FPL believes that the use of regular surveys and interviews is not beneficial to the development of a SCWE. Surveys and interviews should be used as needed, but a requirement that they be performed on a regular basis would provide very little benefit, while demanding a substantial use of licensee resources.
- (5) FPL agrees that a licensee's contractors/subcontractors must comply with federal and state laws and regulations prohibiting discrimination against an employee who raises a nuclear safety concern or engaged in any form of protected activity. As such, licensees should require their contractors and subcontractors to enforce sound internal SCWE procedures and policy. However, the establishment and enforcement of a SCWE should be the responsibility of the contractor/subcontractor. As such, FPL is concerned that certain language in the Draft Best Practices document encourages licensees to encroach on this area of responsibility. For example, it suggests that a licensee should oversee contractor SCWE-related matters, including contractor SCWE-related programs, procedures, and training. In addition, the Draft Best Practices document suggests that licensee management should be involved in contractor proposed changes to employment conditions, in effect suggesting co-employment as a SCWE best practices measure. Such actions could be an inappropriate encroachment on a contractor's ability to manage its own employees and could expose licensees to liability. NRC should clarify that contractors, and not licensees, are responsible for the content and effectiveness of the SCWE program within the contractor's organization.

- (6) The Draft Best Practices document suggests that senior management review proposed employee actions (above oral reprimand) before they are taken to confirm that there are no elements of retaliation involved. FPL believes that senior management should be involved in termination decisions and other severe disciplinary actions short of termination prior to their implementation, and that review by a supervisor or the human resources department may be warranted in situations of lesser disciplinary action. However, requiring senior management to review every disciplinary action, beginning with written warnings to an employee's file, would pose an unnecessary burden upon management.

We appreciate the opportunity to comment on this important issue.

Sincerely yours,



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