



RECEIVED

TXU Electric  
Comanche Peak  
Steam Electric Station  
P.O. Box 1002  
Glen Rose, TX 76043  
Tel: 254 897 8920  
Fax: 254 897 6652  
lterry1@txu.com

C. Lance Terry  
Senior Vice President & Principal Nuclear Officer

200 JUN -7 PM 9: 51  
RULES & DIR. BRANCH  
US NRC

Ref. # 10CFR50.7  
10CFR50.9

65FR# 25368  
1 May 2000  
①

CPSES-200001335  
Log # TXX-00115  
File #883

May 31, 2000

David L. Meyer  
Chief, Rules and Directives Branch  
Division of Administrative Services  
Office of Administration  
Mail Stop: T6D59  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)  
TXU ELECTRIC COMMENTS ON NRC'S REVISED  
ENFORCEMENT POLICY (65 FEDERAL REGISTER 25368-25395  
DATED MAY 1, 2000)

REF: 1) 65 Fed. Reg. 25368-25395 dated May 1, 2000

Dear Mr. Meyer:

This letter is in response to the request for comment (Reference 1) on the subject petition for rulemaking regarding the complete revision of the General Statement of Policy and Procedure for NRC Enforcement Actions.

TXU Electric endorses the NEI comments on this petition for rulemaking and offers the following additional comments:

Template: ADM-013

E-RIDS = ADM-03  
Add: René Pedersen  
(RMP)

In most areas, the new policy is well-aligned with the new oversight and inspection process, which is risk-informed and relies to a greater extent upon pre-established thresholds and objective measures of performance. As a result, for many violations, enforcement under the new policy should be more commensurate with the risk presented by the violation, more objective and predictable, and more consistent with other NRC regulatory actions.

Nonetheless, there are some areas in which the policy remains subjective and is not aligned with the actual safety or risk significance of the underlying violation. For example, violations associated with record keeping, 10CFR50.7 and 10CFR50.9 all still will be subject to the previous enforcement process and sanctions. In the past, licensees have been subject to escalated enforcement actions in these areas even in cases in which the underlying allegation, error, or inaccuracy was of little or no actual risk or safety significance.

In other instances, the revised enforcement policy continues to use undefined or subjective terms as a basis for assigning severity levels, or provides the NRC Staff with broad discretion to prevent licensees and individuals from having a meaningful opportunity to contest escalated enforcement prior to issuance of an Notice of Violation and Proposed Civil Penalty. Key examples of these concerns include:

1. The policy explicitly notes that Severity Levels assigned to violations in different areas are not comparable from a risk or public health and safety perspective. Section IV.B. of the revised policy states that: "Comparisons of significance between activity areas is not appropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction." This can produce anomalous results that the public is unlikely to understand. For example, violations in the area of "Miscellaneous Matters" (Supplement VII, covering 50.7, 50.9, and other areas) may be assigned Severity Level I or II even if there is no demonstrable consequence or risk to the public, whereas these severity levels are reserved for actual consequences or significant risks in the area of Reactor Operations.
2. In retaining traditional enforcement approaches for some areas, there has been no attempt to make enforcement proportionate to the risk and safety impact of the violation. For example, violations of 10CFR50.9 are assigned severity levels without consideration as to whether the NRC actually relied upon the misstatement or the safety significance of the matter. Similarly, violations of 10CFR50.7 may be assigned Severity Levels I or II even if the underlying safety allegation has no risk significance or is demonstrated to be untrue. NRC should revise the policy to make enforcement commensurate with risk and safety significance, as has been done for violations of 10CFR50.59 and errors in reporting performance indicator data. Severity Levels I and II should be reserved

for circumstances in which an actual consequence or demonstrable risk to the public occurred.

3. The limits placed on the opportunity for individuals to participate in an enforcement conference before the NRC takes enforcement action are too narrow and subjective and to some extent do not include enough safeguards to preserve due process. See Section V, "Predecisional Enforcement Conferences." For example, NRC may decline to provide an opportunity for an enforcement conference depending on "the severity of the issue, the significance of the action the NRC is contemplating, and whether the individual has already had the opportunity to address the issue (e.g., an Office of Investigation or Department of Labor hearing)." The NRC and the individual may have widely different views of the severity of the issue and significance of NRC action (even an NRC letter to an individual can damage a career). Furthermore, DOL hearings and OI investigations do not provide a meaningful opportunity for an individual to address an issue. The individuals are not normally parties to DOL hearings, and DOL does not determine the culpability of individual managers. OI investigations provide essentially no meaningful opportunity -- the individual generally is not notified of the issues and has no chance to refute adverse evidence or present favorable evidence, either during the investigation or after the OI report is written. These limits on enforcement conferences for individuals should be eliminated.
4. Section V of the revised policy also implies that OI reports are sometimes made available to the licensee or individual prior to an enforcement conference. This is not NRC's actual practice, and the revised policy is misleading in this regard. The NRC practice should be reformed so that participants in enforcement conferences are provided an opportunity to review the relevant OI report prior to the conference so that they can meaningfully challenge the facts and conclusions presented in the report. Otherwise the enforcement conference provides no real forum for meaningful discussion of the report upon which the conference is based. If this practice is not changed, the revised policy should be amended to eliminate statements that suggest that licensees and individuals have a meaningful chance to discuss these reports during the conference.
5. In Section VII, "Exercise of Discretion," the revised policy provides that the NRC may exercise discretion not to take enforcement action with respect to a violation of 10CFR50.7 if a case brought before the DOL is settled, provided that the licensee also has addressed the overall work environment and (in cases where DOL has made a finding of discrimination but the case is settled prior to an evidentiary hearing) has publicized that the complaint has been settled to the satisfaction of the employee. However, the NRC has not been consistent in following this practice and the policy should be revised to explain the circumstances under which the policy will be followed or ignored.

6. Supplement VII of the revised policy provides examples of severity levels to be assigned with respect to “Miscellaneous Matters,” including violations of 10CFR50.7. One example is that “threats of discrimination” may be classed as Severity Level III. This language is highly ambiguous. A “threat of discrimination” is not defined. Without a definition, a wide variety of circumstances and behaviors may be placed in this category, many of which might not warrant escalated enforcement. The reference to “threats of discrimination” should be eliminated.
7. In Supplement VII, the revised policy also lists as an example of a Level II violation “The failure of licensee management to take effective action in correcting a hostile work environment.” This example is quite vague. The terms “management” and “hostile work environment” are not defined, and might be stretched to include a wide variety of personnel and circumstances. Although DOL case law has given some definition to hostile work environment, NRC is not adhering to DOL case law in its administration of 50.7 enforcement policy. Also, without some demonstrated basis for clear impact on risk or public health and safety, it seems inappropriate and inconsistent with other parts of the NRC’s oversight reform effort to classify hostile work environment violations as severely as Level II.
8. Section VII.A.1.h provides for the escalation of civil penalties for violations involving departures from the Final Safety Analysis Report. This provision is not consistent with the NRC’s movement toward risk-informed enforcement, and should be deleted.

TXX-00115  
Page 5 of 5

This communication contains no new licensing basis commitments regarding CPSES  
Units 1 and 2.

Sincerely,

*C. L. Terry*

C. L. Terry

By: *Roger B. Walker*  
Roger B. Walker  
Regulatory Affairs Manager

GLM/clc

cc: NEI - Stephen D. Floyd  
E. W. Merschoff, Region IV  
J. I. Tapia, Region IV  
D. H. Jaffe, NRR  
Resident Inspectors, CPSES

RECEIVED  
2000 JUN -7 PM 9: 51  
RULES & DIR. BRANCH  
US NRC



MAY 29 2000  
L-2000-127

65FR#25368  
1 May 2000  
②

David L. Meyer  
Chief, Rules and Directives Branch  
Division of Administrative Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Mail Stop T6D59  
Washington, DC 20555-0001

Re: Florida Power & Light Company Comments  
Revision of the NRC Enforcement Policy  
65 Fed. Reg. 25368 (May 1, 2000)

RECEIVED  
2000 JUN -7 PM 9:52  
RULES & DIR. BRANCH  
US NRC

Dear Mr. Meyer:

Florida Power & Light Company (FPL), the owner and operator of the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, hereby submits the following comments on the above-referenced Federal Register notice concerning revisions to the NRC's General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy). FPL supports changes to risk-inform the Enforcement Policy subject to the comments below.

Risk Informing the Enforcement Policy

FPL supports NRC's efforts to align its Enforcement Policy with the overall changes to the revised Reactor Oversight Process. The adoption of the interim Enforcement Policy will help ensure that enforcement action is tailored to those situations where violations result in actual consequences or potential safety consequences. These changes will enable licensees to prioritize and focus resources on issues with the greatest risk significance, thus improving protection of the public health and safety.

Enforcement Conferences in Individual Enforcement Actions

The revised Enforcement Policy provides that in cases of individual enforcement actions, NRC will "normally" provide an individual an opportunity to address apparent violations before NRC takes escalated enforcement action. In order to ensure due process and fundamental fairness, an individual that is the subject of a potential enforcement action should have, as a minimum, an opportunity at a predecisional enforcement conference to provide information that will assist NRC in determining the appropriate enforcement action, if any. An enforcement action against an individual can result in civil penalties and orders barring that individual from licensed activities. Even the issuance of a Notice of Violation without further sanction can significantly affect the ability of an individual to obtain employment. For these reasons, NRC should revise the Enforcement Policy to provide an opportunity for an enforcement conference to individuals for which apparent violations have been identified.

We appreciate the opportunity to comment on the revisions to the Enforcement Policy.

Sincerely yours,

R. John Gianfrancesco, Jr.  
Manager  
Administrative Support and Special Programs

Template: ADM-013

E-RIDS=ADM-03  
Add: Renai Pedersen  
(RMP)