



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

October 20, 2000

EA-00-230

Florida Power and Light Company
ATTN: Mr. T. F. Plunkett
President, Nuclear Division
P. O. Box 14100
Juno Beach, FL 33408-0420

SUBJECT: DEPARTMENT OF LABOR (DOL) ADMINISTRATIVE LAW JUDGE (ALJ)
RECOMMENDED DECISION AND ORDER (ALJ CASE NO.: 2000-ERA-00005)

Dear Mr. Plunkett:

On July 13, 2000, a DOL ALJ issued a Recommended Decision and Order (RDO) regarding a complaint of discrimination filed by Mr. Donald Duprey against Florida Power and Light Company (FP&L). Mr. Duprey charged that FP&L demoted him while employed at the Turkey Point Nuclear Plant, in retaliation for raising safety concerns to FP&L management and the Nuclear Regulatory Commission (NRC). As you may recall, the NRC's Office of Investigations (OI) conducted a review of this issue prior to the ALJ's issuance of the RDO. The OI report synopsis was provided to both parties in the DOL complaint by letter dated March 21, 2000, and concluded that discrimination was not a factor in the actions comprising the complaint.

The ALJ dismissed the complaint, finding that "...the evidence of record, on balance, shows clearly and convincingly that [FP&L] would have demoted Complainant even if no improper motive existed, i.e., even if Complainant's protected activity had not occurred." However, the ALJ also noted under a dual motive analysis that the "Complainant was also demoted for the illegitimate reason of retaliation for his protected activity."

The NRC and DOL have different responsibilities in the area of whistleblower discrimination cases. At DOL, the focus is on whether the complainant is entitled to a remedy. At NRC, the issue is whether or not the licensee violated the Agency's regulation prohibiting employment discrimination. Consequently, a licensee who took action based at least in part on protected activity may have violated the NRC's employee protection regulation, 10 CFR 50.7.

In this case, the NRC's Enforcement Policy would support initiation of the enforcement process on the basis of the ALJ finding related to protected activity. However, based on the prior NRC OI investigation and our review of the ALJ decision in this case, the NRC has decided to defer its enforcement decision pending completion of the administrative review process at DOL.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

No response to this letter is required. Please feel free to contact me at 404-562-4421 should you have any questions regarding this matter.

Sincerely,

/RA

Anne T. Boland
Enforcement Officer

Docket Nos. 50-250, 50-251
License Nos. DPR-31, DPR-41

cc w/encl:

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