



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

December 27, 2001

EA-01-308

Mr. Dale E. Young, Vice President
Crystal River Nuclear Plant (NA1B)
ATTN: Supervisor, Licensing &
Regulatory Programs
15760 West Power Line Street
Crystal River, FL 34428-6708

**SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2001-001)**

Dear Mr. Young:

This is in reference to an apparent violation of Nuclear Regulatory Commission (NRC) requirements prohibiting discrimination against employees who engage in protected activities, i.e., 10 CFR 50.7, Employee Protection. The apparent violation involves actions taken by Florida Power Corporation (FPC) against a former employee. This apparent violation was discussed with Mr. Daniel L. Roderick of your staff on December 27, 2001.

The apparent violation is based on an investigation initiated by the NRC's Office of Investigations (OI) on January 24, 2001, and completed on October 17, 2001. The evidence developed during the investigation indicated that discrimination was deliberate and was a factor in the non-selection of a security access control employee for a security position in late 2000 and 2001. FPC took these actions, in part, in retaliation for the employee's protected activity involving her preventing the conduct of an audit of security Access Authorization files in the latter half of 2000, and the initiation of an Employee Concern in November 2000 regarding a similar matter. A copy of the synopsis to OI Report No. 2-2001-001 is included as Enclosure 1 to this letter.

The NRC staff's review of this matter indicates that the action taken against this individual was in apparent violation of 10 CFR 50.7. Therefore, this apparent violation is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. A summary of the OI report, which forms the basis for the NRC's conclusion that an apparent violation occurred, is included as Enclosure 2. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation may change as a result of further NRC review.

As discussed with Mr. Roderick on December 27, 2001, the NRC will conduct a closed predecisional enforcement conference at a time and date to be determined. You will be contacted in the future to determine a mutually agreeable time and date for the conference. This conference will be closed to public observation in accordance with the Commission's

program as discussed in the Enforcement Policy, and will be transcribed. The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that violations have occurred or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root causes, missed opportunities to identify the apparent violation sooner, corrective actions, significance of the issues, and the need for lasting and effective corrective action. In addition, this is an opportunity for you to point out any errors in our investigation findings and for you to provide any information concerning your perspectives on 1) the severity of the apparent violation, 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

In addition, the NRC specifically requests the presence of the individuals who held the following positions at the time of the events discussed in Enclosure 2: the Supervisor of Plant Access Authorization (i.e., the security access control employee's immediate supervisor), and the Manager of Corporate Security, Progress Energy Corporation. The presence of these individuals at the conference will assist the NRC in fully understanding all relevant facts.

In accordance with the Enforcement Policy, the former employee who was the subject of the alleged discrimination will be provided an opportunity to participate in the predecisional enforcement conference and provide information to assist the NRC in its enforcement decision. This participation will be in the form of a statement and comment on the licensee's presentation, followed by an opportunity for the licensee to respond to the former employee's presentation.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room (PDR) or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

Should you have any questions concerning this letter, please contact me at (404) 562-4501 or Ms. Anne T. Boland, Enforcement Officer, at (404) 562-4421.

Sincerely,

/RA/

Victor M. McCree, Acting Director
Division of Reactor Projects

Docket Nos: 50-302
License Nos.: DPR-72

Enclosures: 1. OI Report Synopsis
2. Summary of OI Report

cc: (see page 3)

cc w/ encls:

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SYNOPSIS

The U.S. Nuclear Regulatory Commission (NRC), Region II, Office of Investigations (OI), initiated this investigation on January 24, 2001, following a complaint by a Security Access Control employee at the Crystal River Nuclear Plant (CRNP), that she was not retained due to filing an employee concern prior to a merger of CRNP with Carolina Power and Light Company, a subsidiary of Progress Energy Company.

Based on the evidence gathered during this investigation, OI substantiated that the access control employee was deliberately discriminated against by Progress Energy Company management as a result of engaging in protected activity. Evidence further substantiated that NRC contractors were placed in the CRNP alcohol and drug testing pool without the contractors receiving the required training and notification that their names were in the pool. However, willfulness was not substantiated in the alcohol and drug testing issue.

APPROVED FOR RELEASE ON 12/18/01 - SES

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FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II~~

SUMMARY OF OFFICE OF INVESTIGATIONS (OI) REPORT 2-2001-001

OI Report 2-2001-001 involves a former Florida Power Corporation (FPC) security access control employee at the Crystal River Nuclear Plant who was allegedly discriminated against for engaging in protected activity. The employee was initially informed that she would not be retained after a 2000-2001 merger between FPC and Carolina Power and Light Company (CP&L). The parent company after the merger was Progress Energy Corporation (PEC).

The protected activity involved the former security access control employee's concerns related to a request to conduct an audit of security Access Authorization files at the Crystal River facility. The evidence indicated that individuals in the former access control employee's chain of command during and after the merger, including the Manager of Corporate Security, PEC, held a strong desire to conduct and complete the audit prior to the merger. During approximately March through December of 2000, CP&L requested and attempted to conduct an audit of all FPC Access Authorization files. The former security access control employee, acting in her official capacity, did not permit the audit because of her belief that the audit would be in violation of regulatory requirements. The employee later initiated an Employee Concern in November 2000 to voice her objection regarding the requested audit.

Because of the merger, CP&L implemented an employee selection process to fill two new security positions at the Crystal River facility; a Senior Support Analyst position and a Support Analyst position. The new security positions were created because the merger between CP&L and FPC resulted in a change in various security job functions and responsibilities at the Crystal River facility. The employee selection process for the new positions involved a "best fit" review of FPC and CP&L employees, which considered education level, previous experience, and other "skill sets" and qualifications. In approximately June of 2000, the former security access control employee's immediate supervisor indicated to her that her skills and experience were highly sought after and she was a "shoo-in" for a position in the security organization after the merger.

The position description for the Support Analyst position did not require a four-year college degree. The position description for the Senior Support Analyst position required a four year college degree. The former security access employee did not possess a four year college degree. FPC and CP&L individuals involved in the selection process stated that a four year college degree was necessary for both positions. However, the evidence revealed that at least one individual at FPC or CP&L who did not have a four year degree held a position with equivalent or greater responsibility than the Senior Support Analyst position within the security organization.

During the selection process, the former security access control employee was informed that, as an incumbent, she did not need two interviews with individuals involved in the selection process if two members of the Staffing Committee had personal knowledge of her work. However, on November 27, 2000, the former security access control employee's immediate supervisor (the Supervisor of Plant Access Authorization at the site) and the second line supervisor (the Superintendent for Access Control, CP&L) became aware that she had filed an Employee Concern. Later that same day, the former security access control employee was contacted to schedule a second interview.

On January 5, 2001, the former security access control employee was informed that she would not be retained. The evidence indicated that the licensee espoused various reasons for the decision not to retain the former security access control employee, including a lack of skill sets,

inadequate culture fit, and her lack of a four-year degree. The decision not to retain the former security access employee represents an adverse action. The former security access control employee was subsequently offered and accepted the position of Support Analyst on February 20, 2001, the day after OI informed FPC of the initiation of the OI investigation.

The evidence revealed that FPC took an adverse action against the former security access control employee, at least in part, in retaliation for her involvement in protected activities.