



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

February 19, 2004

EA-04-028

Carolina Power & Light Company
ATTN: C. S. Hinnant
Senior Vice President
Nuclear Generation/CNO
P. O. Box 1551
Raleigh, NC 27602

**SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS
(U.S. DEPARTMENT OF LABOR ADMINISTRATIVE REVIEW BOARD CASE
NO. 02-007)**

Dear Mr. Hinnant:

This is in reference to an apparent violation of NRC requirements prohibiting discrimination against employees who engage in protected activities, i.e., 10 CFR 50.7. The apparent violation involves Carolina Power & Light Company's (CP&L) discriminatory actions against Mr. Richard M. Kester at CP&L's Corporate Security Offices. This apparent violation was discussed with you on February 19, 2004.

The apparent violation is based on findings from a U.S. Department of Labor (DOL) Administrative Review Board (ARB) proceeding (ARB Case No. 02-007). The ARB found in its Final Decision and Order of Remand, issued September 30, 2003, that Richard M. Kester was the subject of employment discrimination in 1999 when CP&L terminated him in retaliation for raising concerns about a security breach at CP&L's nuclear facilities. A copy of the ARB's Final Decision and Order of Remand is enclosed.

The NRC staff has reviewed the DOL findings and conclude that the action taken against Mr. Kester 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 Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select "What We Do, Enforcement, then Enforcement Policy." 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.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation within 30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be open for public observation, and will be held within 30 days of your receipt of this letter. The NRC will also issue a press release to announce the conference. Please contact Ms. Carolyn F. Evans, Regional Counsel/Enforcement Officer, at 404-562-4414, within 7 days of the date of this letter to notify the NRC of your intended response.

Regardless of which option CP&L chooses, you should be aware that the predecisional enforcement conference is not a forum for relitigating the DOL decision. That decision was based on an adjudicatory hearing in which CP&L participated as a party. Therefore, we do not expect you to discuss in any detail the factual conclusions forming the basis for the DOL decision. Rather, our primary interest in conducting the conference will be to discuss actions CP&L has taken or is taking to address the environment for raising concerns at CP&L.

Should you choose to respond in writing, your response should be clearly marked as a "Response to An Apparent Violation" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified, or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In addition, please be advised that the number and characterization of the apparent violations may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Frank Congel, Director
Office of Enforcement

Docket Nos.: 050-325, 050-324, 050-261, 050-400
License Nos.: DPR-71, DPR-62, DPR-23, NPF-63

Enclosure: Department of Labor Administrative Review Board Final Decision and Order of Remand, dated September 30, 2003.

cc w/encl:

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*Previously concurred

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