

March 25, 1996

EA 96-051

Florida Power and Light Company  
ATTN: Mr. T. Plunkett  
President - Nuclear Division  
P. O. Box 14000  
Juno Beach, FL 33408-0420

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE  
(Department of Labor Case No. 92-ERA-10)

Dear Mr. Plunkett:

On January 19, 1996, the Secretary of Labor issued a Decision and Remand Order which found that Florida Power and Light Company (FP&L) discriminated against Mr. Regino R. Diaz-Robainas (Department of Labor Case No. 92-ERA-10), in violation of Section 211 of the Energy Reorganization Act (ERA). Specifically, as determined by the Secretary of Labor, on August 19, 1991, FP&L terminated Mr. Diaz-Robainas for his failure to submit to a psychological evaluation which was ordered by FP&L in retaliation for his engaging in protected activities. Mr. Diaz-Robainas' protected activities included the identification of various safety issues and complaints of alleged discrimination to FP&L management and the NRC during the period February through August 1991. A copy of the Secretary of Labor's decision is enclosed (Enclosure 1).

The Secretary of Labor's decision reversed previous Department of Labor (DOL) actions and concluded that the order by the FP&L's former Director of Nuclear Engineering requiring Mr. Diaz-Robainas to submit to a psychological examination, his refusal of which resulted in his termination, was a measure to deter him from engaging in protected activities. We recognize that, to comply with the NRC requirements regarding fitness-for-duty and safeguards/security, licensee management must have the ability to exercise judgement to determine if employees are fit-for-duty or pose a threat to the safe operation of the facility. However, if the only reason that licensee management takes action such as ordering an employee to submit to a psychological evaluation is because the employee engaged in protected activity, we agree with the Secretary of Labor that such management action would constitute discrimination in violation of Section 211 of the Energy Reorganization Act. Based on the Secretary of Labor's decision in this particular case, the action against Mr. Diaz-Robainas is an apparent violation of 10 CFR 50.7 which prohibits discrimination against an employee who engages in protected activities such as providing an employer or the NRC information about safety concerns and alleged violations of NRC requirements.

Based on the Secretary of Labor's decision in this case, the 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. Based on the information available in the DOL case record, it may not be necessary to conduct a

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predecisional enforcement conference in order for the NRC to make an informed enforcement decision in this case. A Notice of Violation is not presently being issued for this apparent violation. Before the NRC makes its enforcement decision, we are providing you an opportunity, within 30 days of the date of this letter, to either (1) respond to the apparent violation addressed in the Secretary of Labor's Decision and Remand Order or (2) request a predecisional enforcement conference.

Your response should be clearly marked as a "Response to An Apparent Violation in DOL Case No. 92-ERA-10" and should include: (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.

We are also concerned with the potential chilling effect that may have resulted from the apparent violation and the issuance of the Secretary of Labor's finding that FP&L discriminated against Mr. Diaz-Robainas. Therefore, notwithstanding the information requested above and whether or not you agree with the Secretary of Labor's decision, we expect you to address the actions taken or planned to assure that this adverse employment action did not deter other licensee or contractor personnel from identifying safety-related concerns.

Your response should be submitted under oath or affirmation and 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 sought and granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

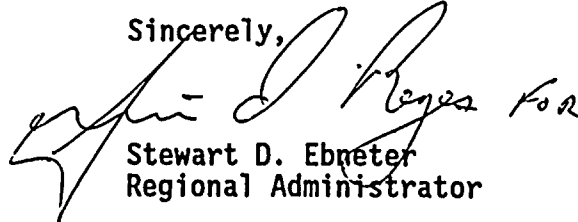
If you choose not to provide a response and would prefer participating in a predecisional enforcement conference, please contact Mr. Kerry Landis at (404) 331-5509 as soon as possible.

In addition, please be advised that the characterization of the apparent violation described above 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, its enclosure, and any response you submit will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Should you have any questions concerning this letter, please contact us.

Sincerely,



Stewart D. Ebnetter  
Regional Administrator

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

Enclosure: Secretary of Labor Decision,  
dated January 19, 1996

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cc w/encl (cont'd on Page 5)

FP&L

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