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Florida
Power
CORPORATION

January 7, 1981

File: 3-0-3-a-3
#3-011-05



Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Proposed General Statement of Policy and
Procedure for Enforcement Actions

Dear Sir:

In response to the Nuclear Regulatory Commission's request in The Federal Register, dated October 7, 1980, Florida Power Corporation has reviewed the Proposed General Statement of Policy and Procedure for Enforcement Actions. Although FPC has several comments to offer for consideration, including comments on the nine (9) questions in The Federal Register, dated October 17, 1980, (see Attachment 1) the foremost comment must be that the Comment Period should be extend to at least March 1, 1981, to permit development and proposal of reasoned alternatives to be used in attaining the common goal of prompt corrective actions and improving safety. This action will allow the nuclear industry to fully evaluate the Policy. The Public Regional Meetings were held in the first week of December, and the Christmas Holiday Season, with its associated vacations, has minimized the time for evaluation. Since those meetings the effective comment period has been reduced to approximately two weeks. This Policy is too important and far-reaching not to allow all reasonable time for evaluation and comment.

Throughout the proposed policy, the flexibility of taking mitigating circumstances into account when determining a sanction is stated, but this flexibility turns out to be very minor when compared to the hard and fast portion of the policy. The matching of Severity Levels to civil penalties may make it easier for the NRC to determine a civil penalty and/or any other sanction, but it takes away from the utility any chance of proving the existence of mitigating circumstances. The flexibility is employed in the determination of the Severity Level of violation, which, without hard and fast definition, could lead to Severity Level

Approved by card... 1/12/81

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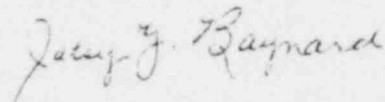
determinations in excess of that which is warranted. This, coupled with the automatic civil penalty structure associated with the Severity Levels, leads to an enforcement policy that seems to be out of the control of anyone that would, for a good reason, desire to modify to fit a particular situation.

A practical enforcement policy would present defined Severity Levels (or other such criteria references) that would not leave flexibility in the determination of a violation. It would, however, provide complete flexibility in the sanctions employed due to a violation. This flexibility would enable the Office Directors to take into account everything that has bearing on the violation, not just a list of pre-thought items that may not be appropriate for all violations.

FPC appreciates the opportunity to comment on this proposed enforcement policy. Please contact this office if further discussion or clarification is desired.

Very truly yours,

FLORIDA POWER CORPORATION



Patsy Y. Baynard
Manager
Nuclear Support Services

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Attachments

ATTACHMENT 1

Response to Nine (9) Specific NRC Questions

Question 1: Is the policy fair and equitable?

Response 1: The policy is fair to the extent that it sets up enforcement criteria which try to be consistent across many licensed activities. The policy, as written, may or may not be equitable. Just as the enforcement criteria are not exactly defined, so the equitability of the policy can only be accomplished by the judicious use of the criteria. The key to being equitable is whether or not all parties can reach similar if not the same conclusions as to the Severity Level to be assigned a violation.

Question 2: Is the policy understandable?

Response 2: The policy is understandable to the extent that it is published. As noted above, the actual enforcement of the policy may not necessarily be as understandable. In addition, the reasoning associated with the action does not closely correlate with the ultimate goal of assuring safety.

Question 3: Are the Severity Levels appropriate?

Response 3: It is difficult to determine whether the Severity Levels are appropriate or not when the Levels themselves are not clearly defined. The examples given for each Severity Level are appropriate, but, without clearly defined Levels, some violations may be stretched to a Severity Level beyond which was envisioned. Also, in the attempt to define every conceivable violation, the number of Severity Levels became excessive. Levels I and II should be combined, since they carry the same civil penalty potential. Levels III and IV are adequate. Levels V and VI should be deleted, as they have no real definition or examples.

Question 4: Are the different types of activities well-enough defined? Should there be others?

Response 4: The different types of activities regulated by the NRC and given in Section III are well-enough defined. There need not be other activities included.

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ATTACHMENT 1

Response to Nine (9) Specific NRC Questions

(Continued)

Question 5: Are the distinctions among various types of licensees, shown in Table 1, appropriate?

Response 5: Such a table should not be used because it limits discretion and flexibility. The punitive effects can vary significantly due to financial base.

Question 6: Are the factors for determining the level of enforcement action appropriate? Should there be others?

Response 6: The factors for determining the level of enforcement action seem appropriate. However, as referenced in the Response to Question 3, until Severity Levels are clearly defined, it is difficult to determine what factors are really appropriate to determine the level of enforcement action. Assessing of penalties for identifying, correcting and reporting should be eliminated. Failure to perform prompt corrective action should be evaluated and considered as a basis for enforcement action since this approaches a willful act.

Question 7: Is the degree of discretion allowed to Office Directors appropriate? Should there be more flexibility permitted? Less?

Response 7: The Office Directors should have the discretion to levy enforcement actions over the entire spectrum of possible sanctions. The proposed policy locks in a penalty where an Office Director could take mitigating circumstances into account. The proposed levels of increases and reductions should be deleted and the Office Director should be given total flexibility in the imposition of sanctions.

Question 8: Are the levels of civil penalties that require Commission involvement appropriate? Should they be higher? Lower?

Response 8: The levels of civil penalties that requires Commission involvement are appropriate. However, the same attention for restarts should also receive the same elements of urgency as the initial shutdown action.

ATTACHMENT 1

Response to Nine (9) Specific NRC Questions

(Continued)

Question 9: Are the provisions for escalated action, set forth in Table 2, appropriate?

Response 9: Table 2 is included in this policy as an example of what enforcement action could be taken. The title even states "Examples....".

As stated above, and reiterated here, any enforcement policy cannot and should not be so rigid as to give exact civil penalty and enforcement action tables without formal and stated regard for the circumstances of a violation. No two violations are ever exactly the same. Even a group of similar violations may defy a definition that attempts to cover the entire group. Therefore, the table should be deleted.

In the alternative, the table should identify enforcement actions guidelines that could be taken for Severity Levels I, II, or III violations.