



# Florida Power

CORPORATION

Crystal River Unit 3  
Docket No. 88-302

March 18, 1994  
3F0394-10

U. S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, D. C. 20555

Subject: Notice of Violation  
U. S. Department of Labor Case No. 88-ERA-29

Reference: NRC to FPC letter, 3N0294-09, dated February 16, 1994  
FPC to NRC letter, 3F1293-08, dated December 8, 1993  
NRC to FPC letter, 3N1293-08, dated December 3, 1993  
NRC to FPC letter, 3N0993-18, dated September 24, 1993  
FPC to NRC letter, 3F0488-13, dated April 25, 1988

Dear Sir:

Florida Power Corporation (FPC) provides the attached as our response to the subject Notice of Violation (Attachment 1).

Sincerely,

P. W. Beard, Jr.  
Senior Vice President  
Nuclear Operations

PMB/GAW:ff

Attachments

xc: Regional Administrator, Region II  
NRR Project Manager  
Senior Resident Inspector

300000

CRYSTAL RIVER ENERGY COMPLEX: 15760 W Power Line St • Crystal River, Florida 34428-6708 • (904) 795-6486

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FLORIDA POWER CORPORATION  
REPLY TO A NOTICE OF VIOLATION

VIOLATION 50-302/EA 93-226

Based on the results of an investigation and administrative hearings conducted by the U. S. Department of Labor (DOL) Case No. 88-ERA-29 that involved employee discrimination, and the resulting Order of the Secretary of Labor dated August 25, 1993, the NRC has determined that a violation of its regulations occurred. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violation is listed below:

Section 210 (now 211) of the Energy Reorganization Act of 1974, as amended, and 10 CFR 50.7 prohibit discrimination by a Commission licensee, permittee, an applicant for a Commission license or permit, or a contractor or subcontractor of a Commission licensee, permittee, or applicant against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected include, but are not limited to, the reporting of safety concerns by an employee to his employer or to the NRC.

Contrary to the above, as determined by the Secretary of Labor in a decision issued on August 25, 1993, Douglas A. Tritt, a former employee of the Fluor Constructors International, Inc., a contractor of the Florida Power Corporation, who was employed as an electrician at the Crystal River Nuclear Plant during the 1987 outage, was discharged from his employment on December 3, 1987, by the Fluor Constructors International Inc., for engaging in protected activities (88-ERA-29). These protected activities included reporting safety concerns to the union representative and Mr. Tritt's supervisors related to health physics requirements for work being performed in the reactor building during the outage. (01013)

ADMISSION OR DENIAL OF THE ALLEGED VIOLATION

Florida Power Corporation (FPC) denies the violation.

REASONS FOR THE DENIAL

The primary reason for the denial is that Mr. Tritt was not a victim of discrimination for engaging in protected activities. He was discharged following his refusal to return to work in the Crystal River Unit 3 reactor building, even though FPC had taken reasonable steps to answer questions he had raised regarding the safety of his working conditions. In addition, Fluor Constructors International Inc. (Fluor) had considered the availability of alternative work assignments outside the reactor building before deciding to discharge Mr. Tritt.

The second reason is more complex but equally compelling. As you are aware, FPC was not a party to the DOL proceeding. As a result, FPC was not in a position to fully develop the DOL record for the eventual benefit of the NRC concerning the actions of FPC with respect to Mr. Tritt. Among the purposes of the November 22, 1993 Enforcement Conference was for the NRC to "obtain other information that will help the NRC determine the appropriate enforcement action" with respect to a potential violation. FPC and Fluor provided the NRC with additional information on the discrimination issue that DOL did not have an opportunity to consider. However, the information provided in the Notice of Violation and our understanding of past policy decisions lead us to believe that the NRC is relying solely on the decision of the Secretary of Labor.

The Department of Labor Secretary's August, 1993 Order stated:

"Three [cited] cases require the employer to do an investigation and provide an explanation to an employee who articulates a safety-based reason for refusing to work.

By contrast, on this record, neither Fluor nor FP&L (sic) investigated the work site or attempted in any way to explain why the air monitoring machine and HP technician was absent, contrary to the safety instructor's statement that they would be present at the work site. Tritt's work refusal therefore did not lose its protection, as it would have if some responsible party had investigated and explained adequately the change in safety equipment and personnel." Secretary's Order at 8-9, emphasis added.

However, the NRC'S record includes reliable and probable information, which demonstrates an investigation was conducted by Tritt's supervisors and an adequate explanation was given to the employee:

1) In May, 1988, the NRC received the DOL investigator's report pertaining to Mr. Tritt's complaint. (A copy of this report was provided to you in FPC's December 8, 1993 supplemental transmittal and is Attachment 2.) That investigative report included the FPC union steward's advice to Mr. Tritt on December 3, 1987, that he should return to work. The union steward had checked the safety issue raised by the employee and saw no problem. Furthermore, Tritt informed the union steward that he "just wanted to get his check and get out of there." The DOL record compliments this report by establishing that the union steward spent substantial time during the morning on December 3, 1987 with Mr. Tritt.

2) The now-retired union steward's November 17, 1993 affidavit (provided to the NRC and is Attachment 3), explains that, after review, he advised Mr. Tritt of the safety associated with going back into the reactor building and even conveyed some of his own experiences in working with radiation areas.

3) A now retired FPC supervisor, [REDACTED] also provided the NRC with an affidavit (Attachment 4), dated November 17, 1993, and attended the Enforcement Conference. The DOL record is clear that Mr. Tritt had substantive conversations with [REDACTED] regarding his concerns. That record stops short, however, in developing [REDACTED]'s response to the worker's concerns because [REDACTED] was not a witness at the DOL proceeding. [REDACTED] states:

"I contacted the health physics department and determined that proper HP coverage had been available throughout the time when Mr. Tritt was working on the reactor vessel head. I also spoke with the other workers who were present at that time, none of whom had concerns about the proper supervision of the project from a radiological protection standpoint. I was also advised by HP that the dose received by Mr. Tritt had been well within limits. I verified that the air monitoring had been properly conducted throughout the day." (Affidavit at p.2)

4) Concurrently with the initiation of his Department of Labor proceeding, Mr. Tritt apparently submitted an allegation to the NRC with respect to health physics requirements for work being performed in the reactor building during the Crystal River 3 Refuel Cycle VI outage of 1987. In a letter dated April 25, 1988, to Mr. B. A. Wilson of Region II, NRC, [REDACTED] of FPC provided the NRC with information concerning the health physics allegations. This concluded that the health physics practices were normal and sound.

#### Further Mitigating Factors

The NRC has recognized that, in the years since Mr. Tritt initiated his DOL proceeding, FPC has implemented many improvements in its programs to address and resolve concerns and to ensure that employees feel free to raise safety concerns without fear of discrimination. A copy of FPC's programs and actions designed to assure that improper discrimination will not occur at Crystal River 3 was enclosed in the Enforcement Conference Summary dated December 3, 1993. FPC's corporate values, management philosophy, and employee concerns program reflect, I believe, a culture at Crystal River Unit 3 which promotes the identification and resolution of legitimate concerns. We are very concerned that the issuance of a violation by the NRC, based on a DOL record developed in a proceeding to which FPC was not a party, will mistakenly be attributed to the plant's current work environment. That attribution would negate some of the progress which we have made over the last several years in this area.

As you are aware, Fluor appealed the Secretary of Labor's order to the 11th Circuit of the Federal Court of Appeals. That appeal was dismissed as premature because the DOL Order did not determine the damages due Mr. Tritt. The matter is now before DOL Administrative Law Judge Rudolph L. Jansen for a determination

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of damages. Once the DOL determines the amount of damages, Fluor intends to appeal the final agency action of the DOL to the 11th Circuit. In an appeal, Fluor intends to pursue the legal arguments which were reviewed with you at the Enforcement Conference. In consideration of the likely appeal, FPC believes it is appropriate for the NRC to hold in abeyance any enforcement action against either FPC or Fluor until the appeal is decided. Such action is consistent with prior NRC practice. At a minimum, the NRC should acknowledge the right of Fluor and FPC to reopen this enforcement action in the event of a subsequent reversal of the DOL Secretary's Order, consistent with 10 CFR Part 2, Appendix C, XIII.

In summary, FPC requests the NRC to withdraw the Notice of Violation based on a review of all the relevant information in the case or hold it in abeyance until the Fluor appeal to DOL is decided.