



**Florida
Power**
CORPORATION
Crystal River Unit 3
Docket No. 50-902

March 31, 1994
3F0394-15

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: FPC to NRC letter 3F0394-10, dated March 18, 1994

Dear Sir:

Florida Power Corporation (FPC) provided the referenced letter as our response to the subject Notice of Violation. Attachment 1, Page 2, Paragraph 3 of that letter stated "However, the NRC's record includes reliable and probable information,...". The statement should have read "However, the NRC's record includes reliable and probative information,...".

A revised Page 2 is included as a replacement. FPC regrets any misunderstanding that may have been caused by this oversight.

Sincerely,

K. R. Wilson, Manager
Nuclear Operations Licensing

KRW/RLM:ff

Attachment

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

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:

"The 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 probative 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.