

December 5, 1996

EA 96-335

Mr. P. M. Beard, Jr. (SA2A)
Sr. VP, Nuclear Operations
Florida Power Corporation
Crystal River Energy Complex
15760 West Power Line Street
Crystal River, Florida 34428-6708

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION
(Department of Labor Case No. 96-ERA-5)
(NRC Office of Investigations Case No. 2-95-27)

Dear Mr. Beard:

On August 22, 1996, the Administrative Law Judge (ALJ) presiding in Department of Labor (DOL) case No. 96-ERA-5, James v. Pritts McEnany Roofing, Inc., issued a Recommended Decision and Order in the case. The ALJ found that Ms. Tracy A. James was the subject of employment discrimination in October 1995 when she was terminated by the president of Pritts McEnany Roofing, Inc. (now known as McEnany Roofing, Inc.), after she raised concerns about the failure of another employee of McEnany Roofing, Inc., to adhere to NRC security regulations at your Crystal River facility. The circumstances surrounding the apparent violation were also investigated by the NRC Office of Investigations (OI). The evidence developed during this investigation substantiated that McEnany Roofing, Inc., discriminated against Ms. James, a contractor escort, for engaging in protected activities. The apparent violation, a copy of the ALJ's Recommended Decision and Order and the synopsis of the OI investigation were transmitted to you by letter dated October 8, 1996.

A closed transcribed predecisional enforcement conference was conducted in the Region II office on October 22, 1996, to discuss the apparent violation, the root causes, and your corrective actions to preclude recurrence. The predecisional enforcement conference was a joint conference with Florida Power Corporation (FPC), McEnany Roofing, Inc., and the individual who terminated Ms. James. The report summarizing the conference was sent to you by letter dated November 8, 1996.

The NRC has concluded that a violation of NRC requirements occurred in this case; specifically, a violation of 10 CFR 50.7, which prohibits discrimination against an employee for engaging in activities protected by Section 211 of the Energy Reorganization Act (ERA). The activities which are protected include, but are not limited to, reporting of safety concerns by an employee to her employer.

This violation is considered to be a very significant regulatory concern because it involved discrimination against an employee by a senior contractor manager. Licensees have the primary responsibility for ensuring that all

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employees engaged in or affiliated with licensed activities, including contract employees, can raise safety concerns in a work environment conducive to such protected activity and free of fear from retaliation.

This violation normally would be categorized in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level II. However, the NRC has weighed the circumstances of this case and concluded that it is appropriate to exercise discretion and refrain from issuing a violation to FPC in this case in accordance with Section VII.B.6 of the Enforcement Policy. Section VII.B.6 permits the exercise of discretion to refrain from issuing an enforcement action based on the merits of the case after considering the guidance in the Enforcement Policy and such factors as the age of the violation, the safety significance of the violation, the overall sustained performance of the licensee, and other relevant circumstances. During the predecisional enforcement conference, your staff admitted the violation and demonstrated that Ms. James promptly sought and received FPC intervention in the adverse employee action against her. Your staff immediately attempted to rectify your contractor's adverse action by demanding that the contractor rehire the employee, and when that failed, you hired this employee at a higher salary.

In addition, you have taken significant corrective actions to improve your employee concerns programs, particularly in the education and control of contractors dealing with personnel involved in protected activities. Some of those actions include improvements to contractual requirements for the handling of contract employee safety concerns and training for FPC and contract employees, supervisors and managers. This training includes discussion of the prohibition against discrimination of employees for raising safety concerns. Our review of your program indicates that FPC has taken steps that both support our exercise of enforcement discretion as well as ensuring compliance with 10 CFR 50.7 and the ERA.

Therefore, in light of your overall positive actions to address employee concerns at the Crystal River Nuclear Plant, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to exercise enforcement discretion pursuant to Section VII.B.6 of the Enforcement Policy and not issue a violation in this case. A Severity Level II violation has been issued separately to McEnany Roofing, Inc. for discrimination by senior management in violation of 10 CFR 50.7 (enclosed).

Because of the information you provided to the NRC at the predecisional enforcement conference, a response to this letter is not required. However, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response will be placed in the NRC Public Document Room (PDR). If you choose to respond, 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. However,

if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Sincerely,

Original Signed by
S. D. Ebnetter

Stewart D. Ebnetter
Regional Administrator

Docket No. 50-302
License No. DPR-72

Enclosure: Notice of Violation Issued
to McEnany Roofing, Inc.

cc w/encl:
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NRC Resident Inspector
 U.S. Nuclear Regulatory Commission
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Anne Boland
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