

May 1, 2006

EA-04-053

Mr. Gary Van Middlesworth
Site Vice-President
Duane Arnold Energy Center
3277 DAEC Road
Palo, IA 52324

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION
(OFFICE OF INVESTIGATIONS REPORTS NO. 3-2003-021 AND 3-2004-023)
(DUANE ARNOLD ENERGY CENTER)

Dear Mr. Van Middlesworth:

This refers to investigations by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI) (Reports No. 3-2003-021 and 3-2004-023). The first investigation was completed on February 6, 2004 (OI Report No. 3-2003-021) and concerned a former supervisor's apparent deliberate violation of a radiation protection procedure on July 23, 2003, at the Duane Arnold Energy Center (DAEC). Specifically, the former supervisor directed an operator to relocate irradiated items stored in the cask pool without health physics (HP) personnel being present as required by a DAEC radiation protection procedure. A predecisional enforcement conference (PEC) was held on June 1, 2004, to discuss this issue.

The second investigation concerned the accuracy of information entered into the Personnel Access Data System (PADS) and provided at the June 1, 2004, PEC. During the PEC, the NRC staff questioned the former supervisor's unescorted access authorization status relative to other NRC-licensed facilities. To resolve these questions, the NRC conducted an inspection to review the supervisor's current access authorization status, the DAEC access authorization process, and the DAEC's implementation of its access authorization process relative to the former supervisor. As a result of these inspection efforts, an OI investigation was initiated regarding the entry of potentially inaccurate access authorization information into the Personnel Access Data System (PADS). Subsequently, in a September 24, 2004, letter, the DAEC staff informed the NRC that inaccurate information may have been provided to the NRC during the PEC. As a result, OI expanded its investigation to include the accuracy and completeness of information provided by DAEC managers at the June 1, 2004, PEC. Report No. 3-2004-023 was completed on October 17, 2005.

Based on information developed during the OI Investigation No. 3-2003-021, information provided during the June 1, 2004, PEC, and all other pertinent information, the NRC has determined that a deliberate violation of NRC requirements occurred at DAEC on July 23, 2003. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in the summary of OI Report No. 3-2003-021 provided to DAEC on April 28, 2004. In summary, DAEC Administrative Control Procedure (ACP) No. 1407.2, "Material Control in the Spent Fuel Pool and Cask Pool," required that health physics (HP)

personnel be present whenever items are relocated within or removed from the pools. On July 23, 2003, a supervisor deliberately directed an operator to move items stored in the DAEC cask pool, in advance of spent fuel cask loading, without HP personnel being present. This violation is a serious regulatory concern and is categorized in accordance with the NRC Enforcement Policy at Severity Level III. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Also, the actions of the supervisor on July 23, 2003, were in violation of 10 CFR 50.5(a)(1), "Deliberate Misconduct," and resulted in issuance of a Notice of Violation on this date to the supervisor.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for the Severity Level III violation that occurred on July 23, 2003. Because this was a deliberate violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit was warranted for the *Identification* factor because DAEC personnel identified the violation on July 23, 2003, and notified the NRC.

In assessing whether credit was warranted for the *Corrective Action* factor, we reviewed your corrective actions, which included: (1) incorporating oversight of key plant activities into the daily work scheduling process; (2) reviewing leadership failures with site supervisors and managers; and (3) initiating plans to terminate the supervisor. In reviewing these corrective actions, we noted that the supervisor resigned from DAEC prior to your staff completing the planned personnel action. However, subsequent to the individual's resignation, your staff did not promptly complete a comprehensive review of the individual's post-employment access authorization status, and did not promptly update PADS to ensure that other licensees would be informed regarding issues that may affect their future decisions to grant the individual unescorted access authorization. You subsequently implemented additional corrective actions to address these items.

Although your corrective actions for the violation appeared to be adequate relative to DAEC site-specific activities, we determined that your corrective actions associated with terminating the supervisor's employment, including reviewing and updating the supervisor's post-employment unescorted access authorization, were not completed in a prompt manner and were not wholly consistent with requirements included in an NRC Security Order issued on January 7, 2003 (EA-02-061). Nevertheless, in accordance with Section VII.B.6 of the Enforcement Policy, the NRC may refrain, in part, from issuing a civil penalty for a Severity Level III violation that involves special circumstances. In this instance, we determined that, overall, your corrective actions were prompt and complete. In one instance, your initial delay and incomplete corrective actions occurred during the early implementation period for the NRC Order. Therefore, in recognition of your staff's self identification of the violation and the overall efforts to complete corrective actions, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and not propose a civil penalty for the violation associated with OI Report No. 3-2003-021 (EA-04-053). However, significant violations in the future could result in a civil penalty.

Office of Investigations Report No. 3-2004-023 concluded that five DAEC managers deliberately provided inaccurate information about the access authorization status of the former supervisor for entry into PADS, and that two DAEC managers willfully provided inaccurate information at the June 1, 2004, PEC concerning the former supervisor. However, based on a review of OI Report No. 3-2004-023 and other pertinent information, the NRC staff has determined that no violations of NRC regulations regarding deliberate misconduct, 10 CFR 50.5, or completeness and accuracy of information, 10 CFR 50.9, occurred. DAEC managers provided complete and accurate information regarding their assessment of the former supervisor's post employment status for entry in PADS. Additionally, information provided by the two DAEC managers at the PEC, whether accurate or not, was not material to the NRC's decision making process. Therefore, the NRC staff is not taking enforcement action in this case. However, as a result of this investigation, the NRC did identify performance deficiencies in the access authorization program that are being evaluated under the Significance Determination Process (SDP). You will be informed of the SDP evaluation in separate correspondence.

You are required to respond to the violation and you should follow the instructions in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Please contact Steven Orth, Team Leader, Plant Support Team at (630) 829-9827 with any questions.

If you disagree with the enforcement sanction, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve the issues. Alternative dispute resolution is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response to the enclosed Notice will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA by Geoffrey Grant Acting for/

James L. Caldwell
Regional Administrator

Docket No. 50-331
License No. DPR-49

Enclosure: Notice of Violation

cc w/encl: J. Stall, Senior Vice President, Nuclear and Chief Nuclear Officer
R. Helfrich, Senior Attorney
M. Ross, Managing Attorney
W. Webster, Vice President, Nuclear Operations
M. Warner, Vice President, Nuclear Operations Support
R. Kundalkar, Vice President, Nuclear Engineering
J. Bjorseth, Site Director
D. Curtland, Plant Manager
S. Catron, Manager, Regulatory Affairs
Chairman, Linn County Board of Supervisors
D. McGhee, Iowa Department of Public Health

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DATE	04/28/06		04/28/06		04/28/06		4/29/06		05/01/06		05/01/06	
OFFICE	RIII	N										
NAME	Grant for Caldwell											
DATE	5/1/06											

OFFICIAL RECORD COPY

¹ HQ concurrence provided on 04/28/2006 by C. Nolan, OE.

² No legal objection received on 04/28/2006 from G. Longo, OGC.

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C. Evans, Enforcement Officer, RII

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R. Barnes, Enforcement Coordinator, NSIR

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NOTICE OF VIOLATION

FPL Energy, LLC
Duane Arnold Energy Center

Docket No.050-00331
License No. DPR-49
EA-04-053

During an NRC investigation completed on February 6, 2004, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Duane Arnold Energy Center (DAEC) Technical Specification 5.4.1. provides, in part, that written procedures shall be established, implemented and maintained covering the applicable procedures recommended in Regulatory Guide 1.33, Revision 2, Appendix A, February 1978.

Section 7 of Appendix A to Regulatory Guide 1.33, "Quality Assurance Program Requirements (Operation)," Revision 2, February 1978, provides, in part, that the licensee establish written procedures for radiation protection.

Section 3.2.7 of DAEC Administrative Control Procedure ACP1407-2, "Material Control in the Spent Fuel Pool and Cask Pool," Revision 10, dated November 4, 2002, a procedure that implements Technical Specification 5.4.1 and Regulatory Guide 1.33, provides, in part, that health physics shall be notified and present prior to relocating or removing any item stored in the spent fuel pool and cask pool.

Contrary to the above, on July 23, 2003, a Refueling Floor Supervisor directed an operator to relocate irradiated items in the cask pool without notifying health physics or ensuring that health physics personnel were present prior to relocating the irradiated items.

This is a Severity Level III violation (Supplements I, IV and VII) (EA-04-053).

Pursuant to the provisions of 10 CFR 2.201, FPL Energy, LLC, (licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and the Enforcement Officer, Region III, and a copy to the NRC Resident Inspector at the Duane Arnold Energy Center, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-04-053" and should include for the violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (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. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 1st day of May 2006