

U.S. Nuclear Regulatory Commission
Region II
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Number: II-96-61

FOR IMMEDIATE RELEASE

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(Wednesday, July 17, 1996)

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**NRC STAFF PROPOSES \$100,000 CIVIL PENALTY AGAINST FP&L
BASED ON LABOR DEPARTMENT RULING AT TURKEY POINT**

The Nuclear Regulatory Commission staff has proposed a \$100,000 civil penalty against Florida Power & Light Company for alleged discrimination against a former employee at the Turkey Point nuclear power plant.

The NRC decision is based upon a case in which the Secretary of Labor reversed previous Department of Labor decisions by the DOL Area Director and a DOL Administrative Law Judge by concluding that the company discriminated against Mr. Regino R. Diaz-Robainas when he was terminated on August 19, 1991 for failure to submit to a psychological evaluation ordered by FP&L. The labor secretary's ruling found that Mr. Diaz-Robainas was engaged in protected activities which included (1) identification of technical issues involving safety concerns, (2) various verbal complaints to management alleging he was being discriminated against for identifying safety concerns, and (3) assertions made to FP&L that he would go to the media and the NRC.

In a Predecisional Enforcement Conference with the NRC, held in Atlanta on June 14 of this year, FP&L denied the alleged violation, stating that Mr. Diaz-Robainas' referral to a psychologist to undergo a fitness-for-duty evaluation was based on a pattern of declining performance and behavioral observations, and that he was terminated for failure to comply with the referral order.

In a letter to FP&L, Stewart D. Ebnetter, administrator of the NRC's Region II office in Atlanta, said that, despite the company's denial, "the NRC adopts the Secretary of Labor's decision and finds that the action taken against Mr. Diaz-Robainas was an act of discrimination for his having engaged in protected activities." He said the violation was classified as a Severity Level 2, the NRC's second most serious category, "because it involved discrimination by a member of management above first-line supervision."

Ebnetter noted that FP&L has appealed the labor secretary's decision in this case to the United

States Court of Appeals for the Eleventh Circuit. He said that, if the case is successfully appealed and the Secretary of Labor's decision is reversed, "the NRC will reconsider this enforcement action at that time."

The NRC also informed FP&L that the company may defer written response and payment of the proposed civil penalty until 30 days after judicial review of the case is completed and a decision based on the review is issued.

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