May 1, 2006

EA-06-047

Mr. Gary Van Middlesworth
Vice-President
Duane Arnold Energy Center
3277 DAEC Road
Palo, IA 52324-9785

SUBJECT: NOTICE OF VIOLATION (OFFICE OF INVESTIGATIONS REPORT NO. 3-2004-033) DUANE ARNOLD ENERGY CENTER

Dear Mr. Van Middlesworth:

This refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) at the Duane Arnold Energy Center (DAEC) that was completed on October 26, 2005. The investigation concerned a former supervisor's apparent willful violation of a DAEC refueling procedure on November 9, 2004. In that instance, the former supervisor failed to complete a "Pre Fuel Move Checklist," as required by a DAEC fuel handling procedure before moving three irradiated fuel bundles in the DAEC spent fuel pool. A summary of the OI report was provided to you on March 9, 2006.

In the letter transmitting the summary of the OI report, we provided you the opportunity to address the apparent violation described in that letter by either attending a predecisional enforcement conference (PEC), providing a written response, or requesting alternative dispute resolution (ADR) before we made our final enforcement decision. On March 15, 2006, you indicated that a PEC would not be necessary, you would not be requesting ADR, and a written response would be submitted. In a letter dated April 7, 2006, you provided a written response to the apparent violation.

Based on the information developed during the investigation and the information that you provided in your April 7, 2006, letter, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it described in the summary of OI Report No. 3-2004-033 provided to you on March 9, 2006. In summary, DAEC Refueling Procedure No. 403, "Performance of Fuel Handling Activities," Revision No. 16, was issued on June 16, 2004, and required that the designated fuel handling supervisor complete applicable sections of the "Pre Fuel Move Checklist" before starting fuel handling activities. On November 9, 2004, a refueling floor supervisor, who was primarily responsible for preparing Revision No. 16 to the procedure, was the designated fuel handling supervisor and he failed to complete the "Pre Fuel Move Checklist" before moving three irradiated fuel bundles in the DAEC spent fuel pool, as required by the refueling procedure. Based on the information developed during the OI investigation, it appears that the refueling floor supervisor had sufficient understanding of the procedural requirement to complete applicable sections of the "Pre Fuel Move Checklist" before starting fuel handling activities on November 9, 2004. Also, the refueling floor supervisor was

experienced in refueling floor activities and was appropriately trained for the movement of

irradiated fuel in the spent fuel pool. Therefore, this is considered to be a willful violation, demonstrating at least careless disregard of a procedure required by DAEC Technical Specification 5.4.1, and the violation has been 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**.

In accordance with the Enforcement Policy, a base civil penalty in the amount of $60,000 was considered for a Severity Level III violation occurring on November 9, 2004. Since this is a willful 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 since your staff identified the violation and notified the NRC. Credit was also given for the *Corrective Action* factor. Corrective actions consisted of: (1) suspending fuel movement on the refuel floor; (2) taking disciplinary action; (3) creating a dedicated fuel movement team; (4) re-training operators involved in fuel movement; and (5) assigning a manager to sponsor new fuel receipt.

Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in your April 7, 2006, letter. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

Please contact Bruce L. Burgess, Chief, Reactor Projects Branch 2 at (630) 829-9629 with any questions.

If you disagree with the enforcement sanction, you may request 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 pursing 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 enclosure, and your response, if you choose to respond, 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. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do**, **Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA by Geoffrey Grant acting for/

James L. Caldwell
Regional Administrator

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

Enclosures: 1. Notice of Violation
2. NUREG/BR-0317 (LICENSEE ONLY)

cc w/encls: 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

FILE NAME: G:\EICS\Duane Arnold\06-047 EA SLIII No CP - FINAL.wpd

Publicly Available ☐ Non-Publicly Available ☐ Sensitive Non-Sensitive

To receive a copy of this document, indicate in the box: "C" = Copy w/o att/encl "E" = Copy w/att/encl "N" = No copy

OFFICE	RIII	E	NRR*	E	OGC	E	D:OE*	E	RIII	E	RIII	E
NAME	Weil		Pascarelli		B. Jones		Johnson		Boland for Pederson		West for Satorius	
DATE	04/26/06		04/26/06		04/20/06		04/26/06		4/28/06		4/28/06	

OFFICE	RIII	N	RIII	N								
NAME	O'Brien		Grant for Caldwell									
DATE	5/1/06		5/1/06									

OFFICIAL RECORD COPY

* HQ concurrences provided in 4-26-2006 e-mail from D. Starkey, OE.

SUBJECT: NOTICE OF VIOLATION (OFFICE OF INVESTIGATIONS REPORT NO. 3-2004-033) DUANE ARNOLD ENERGY CENTER

DISTRIBUTION:
ADAMS (PARS)
SECY
OCA
L. Reyes, EDO
W. Kane, DEDR
M. Johnson, OE
C. Nolan, OE
D. Starkey, OE
N. Hilton, OE
J. Caldwell, RIII
G. Grant, RIII
M. Satorius, RIII
C. Pederson, RIII
A. Boland, RIII
S. West, RIII
L. Chandler, OGC
B. Jones, OGC
J. Bonanno, OGC
J. Dyer, NRR
D. Holody, Enforcement Officer, RI
C. Evans, Enforcement Officer, RII
K. O'Brien, Enforcement Officer, RIII
K. Fuller, Enforcement Officer, RIV
R. Pascarelli, Enforcement Coordinator, NRR
Resident Inspector
E. Brenner, OPA
H. Bell, OIG
G. Caputo, OI
J. Schlueter, OSTP
R. Paul, RIII:OI
C. Dvorak, RIII:OI
N. Hane, RIII:OI
B. Burgess, RIII
C. Weil, RIII:EICS
J. Strasma, RIII:PA
R. Lickus, RIII
J. Lynch, RIII
OEWEB
OEMAIL
OAC3 DRPIII
DRSIII
PLB1
JRK1

NOTICE OF VIOLATION

FPL Energy, LLC
Duane Arnold Energy Center

Docket No.050-00331
License No. DPR-49
EA-06-047

During an NRC investigation completed on October 26, 2005, 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 2 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 preparation for refueling, refueling equipment operation, and core alterations.
>
> Section 5.2 of DAEC Refueling Procedure 403, Revision 16, dated June 16, 2004, "Performance of Fuel Handling Activities," a procedure that implements Technical Specification 5.4.1 and Regulatory Guide 1.33, provides that prior to the start of fuel handling activities, the Refueling Services Manager or the designated Fuel Handling Supervisor shall complete applicable sections of the "Pre Fuel Move Checklist."
>
> Contrary to the above, on November 9, 2004, a designated fuel handling supervisor failed to complete a Pre Fuel Move Checklist prior to relocating three irradiated fuel bundles in the DAEC Spent Fuel/Cask Pool.
>
> This is a Severity Level III violation (Supplement I) (EA-06-047).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your April 7, 2006, letter. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. However, you are required to submit pursuant to the provisions of 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-06-047" and send it 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 letter transmitting this Notice of Violation (Notice).

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.

If you choose to respond, 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.

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