



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St. S.W.
Washington D.C. 20590

JUL 29 2003

Mr. H. William Habermeyer, Jr.
President
Florida Power Corporation
A Progress Energy Company
P. O. Box 14042
St. Petersburg, FL 33733

RE: CPF No. 2-2002-6003

Dear Mr. Habermeyer:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$5,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Lloyd Yates, Vice-President Fossil Generation

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

FLORIDA POWER CORPORATION,
A Progress Energy Company

Respondent.

CPF No. 2-2002-6003

FINAL ORDER

During October 23-24, 2001, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Saint Petersburg, Florida. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated February 12, 2002, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§195.509 and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated March 11, 2002 (Response). Respondent contested the allegation of violation and provided information in mitigation of the proposed civil penalty. Respondent did not request a hearing, consequently Respondent waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. §195.509(a) by not having a written qualification program in place by April 27, 2001.

In response, Respondent argued that it has two manuals that are used to qualify staff for pipeline and terminal operations. Respondent explained that plant staff overlooked the manuals during the OPS inspection. Respondent's response included a copy of its "Terminal Operator Pre-Journeyman Development Manual" and "Pipeline Maintenance Manual." On July 12, 2002, Respondent submitted its "FPC OQ Program Plan."

At the time of the inspection, October 23-24, 2001, Respondent did not have a written operator qualification plan. Respondent's OQ Program Plan was prepared and issued on May 15, 2002 and submitted on July 12, 2002, after the April 27, 2001-deadline. Accordingly, I find that Respondent's did not have a written operator qualification plan by April 27, 2001 as required by 49 C.F.R. §195.509(a).

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations. The Notice proposed a \$5,000 civil penalty for violation of 49 C.F.R. § 195.509(a).

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a civil penalty of \$5,000, as Respondent failed to have a written qualification program in place by April 27, 2001. In response to the Notice and in support of its position, the Respondent submitted its "Terminal Operator Pre-Journeyman Development Manual," "Pipeline Maintenance Manual" and "FPC OQ Program Plan." Respondent argued that the proposed \$5,000 civil penalty is unwarranted and should be withdrawn.

Respondent's "FPC OQ Program Plan" was prepared and issued on May 15, 2002. Respondent did not have a written operator qualification plan by April 27, 2001 as required by 49 C.F.R. §195.509(a). The other manuals submitted by Respondent comply with the operation and maintenance training requirements of 195.403, not the qualification of pipeline personnel requirements of Subpart G, 49 CFR 195. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of 49 C.F.R. §195.509(a).

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$5,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in an United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of a petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon written request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.



Stacey Gerard
Associate Administrator
for Pipeline Safety

JUL 29 2003

Date Issued