



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

February 24, 2000

IA 00-005

PUBLIC/PDR HOLD

Mr. Joseph Zelaya
[HOME ADDRESS DELETED
PURSUANT TO 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (NRC INTEGRATED INSPECTION REPORT
NOS. 50-250, 251/99-02 AND OFFICE OF INVESTIGATIONS REPORT
NO. 2-1999-013)

The Nuclear Regulatory Commission (NRC) conducted an inspection on March 21 through May 1, 1999, at the Turkey Point Nuclear Plant. The inspection included a review of the licensee's Access Authorization Program for compliance with 10 CFR 73.56 and the Physical Security Plan. As part of this inspection, the NRC reviewed an incident identified by Florida Power and Light Company (FPL) involving your failure to disclose your criminal history during the pre-employment screening process at the Turkey Point Nuclear Plant. An excerpt from the inspection report, issued on May 27, 1999, documenting this review is provided as Enclosure 1. Subsequently, the NRC Office of Investigation (OI) initiated an investigation into the matter to determine if you willfully falsified your Personal History Questionnaire. The OI investigation was completed on January 13, 2000, and a copy of the report synopsis is provided as Enclosure 2.

Based on the inspection and investigation, the NRC concluded that you falsified an FPL "Personal History Questionnaire for Unescorted Access Authorization" (PHQ) when you failed to include prior criminal charges against you. Based on the information you provided on the PHQ, you were hired as a contract insulation supervisor and granted temporary, unescorted access to both protected and vital areas on August 31, 1998. Subsequently, FPL received your Federal Bureau of Investigation (FBI) fingerprint information which revealed numerous criminal charges not included on your PHQ. On October 6, 1998, FPL terminated your access authorization as unfavorable based on the results of its review which revealed that you failed to disclose your complete criminal history on the PHQ.

Part 50.5 (a)(2) of Title 10 of the Code of Federal Regulations (10 CFR) provides, in part, that an employee of a licensee, or employee of a contractor or subcontractor of a licensee, may not deliberately submit to the licensee, or the licensee's contractor or subcontractor, information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. A copy of 10 CR 50.5 is provided as Enclosure 3. You violated this requirement when you deliberately failed to report your full criminal history on the PHQ. Specifically, Pages 8 and 9 of the FPL PHQ required that you list each incident of arrest, indictment, charge, conviction or detainment for violating any criminal law, and you failed to do so. You acknowledged this requirement when you certified by your signature the following statement on the FPL PHQ "I certify that I have read the instructions and the information I have provided is complete and accurate to the best of my knowledge. I understand that any falsified or omitted information may result in the denial of access, and other consequences imposed by Federal Law (10 CFR 50.5 "Deliberate Misconduct)". When interviewed by FPL regarding this matter, you

acknowledged that the arrest and conviction information provided by the FBI was correct and admitted that you failed to report your criminal history in order to obtain employment.

The objective of the NRC's access authorization regulation, 10 CFR 73.56, is to provide a high degree of assurance that individuals granted unescorted access are trustworthy and reliable. One required element of this program is the completion of a background investigation including verification of criminal history. Failure to complete a full and accurate PHQ (one of the documents licensees review and evaluate as part of the background investigation) is material to the NRC, for the decision to grant unescorted access authorization is based on the licensee's assessment of information submitted by licensee employees and contractors. The NRC relies on accurate records of activities and the integrity of individual workers to ensure the health and safety of the public, and therefore, expects no less than full compliance with all applicable requirements.

In this case, your failure to provide complete and accurate information regarding your criminal history circumvented the regulatory process. Therefore, after consultation with the Director, Office of Enforcement, the NRC has decided to issue the enclosed Notice of Violation (Notice), included as Enclosure 4. This decision was based not only on the fact that you violated the NRC's regulations regarding deliberate misconduct but that FPL would not have granted you unescorted access had the information been known. Therefore, this violation has been classified at Severity Level III in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions."

You are required to respond to this letter and should follow the instructions specified 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.

You should be aware that if there is evidence of similar misconduct on your part in the future, you may be subject to further enforcement action that could possibly include an Order prohibiting your involvement in NRC licensed activities for a term of years. A violation of 10 CFR 50.5 may also lead to criminal prosecution.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, the enclosed Notice, and any response you provide, with personal privacy information removed, will be made publically available after 45 days unless you provide a sufficient basis to withdraw this violation. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made public without redaction.

If you have any questions regarding this letter, please contact Kenneth P. Barr, Chief, Plant Support Branch at (404) 562-4653.

J. Zelaya

3

Sincerely,

/RA

Luis A. Reyes
Regional Administrator

Enclosures: 1. Excerpt from Inspection Report
No. 50-250, 251/99-02
2. Synopsis to OI Report No. 2-1999-013
3. 10 CFR 50.5
4. Notice of Violation

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Excerpt from Inspection Report No. 50-250, 251/99-02

S1 Conduct of Security and Safeguards Activities

S1.1 Access Authorization Program

a. Inspection Scope (81700)

The licensee's Access Authorization Program (AAP) was reviewed against regulatory requirements and the Physical Security Plan (PSP). In addition, Licensee Event Report (LER) 50-250, 251/1998-006-00 was reviewed.

b. Observations and Findings

The licensee's AAP was reviewed at the corporate office located in Juno Beach during the period of March 29 and 30, 1999. From review of procedure A1-1, "Processing Applications for Unescorted Access," Revision 6, dated September 4, 1998, the inspector verified that requirements of 10 CFR 73.56 were clearly outlined. For eight of ten records reviewed, the inspector determined the licensee appropriately performed background investigations, adjudicated negative information, and granted appeals as required. The following two issues were reviewed and discussed in detail:

- LER 1998-006-00 issued on October 6, 1998, addressed an incident involving a contract supervisor who was unfavorably terminated due to criminal history information which was discovered upon return of the Federal Bureau of Investigation (FBI) fingerprint record. The individual had been granted temporary unescorted access to protected and vital areas on August 31, 1998. The individual listed that he had no arrests on his Personnel History Questionnaire (PHQ); however, the FBI criminal record revealed 14 arrests. Upon interview by the licensee, the individual admitted all the arrests were correct and resulted in convictions, and that he knowingly failed to list the arrests in order to gain employment. The licensee's evaluation determined that the work performed by the individual involved safety-related equipment; however, safety systems were not affected or threatened. The licensee entered the individual into the Personnel Access Data System (PADS).
- In addition, the inspector reviewed information regarding a contract Health Physics technician granted temporary unescorted access on September 21, 1998, who was unfavorably terminated on October 8, 1998, for failing to list several arrests on his PHQ. These arrests were discovered by the licensee when the individual's FBI criminal history was returned.

A preliminary review of the licensee's actions by the inspector identified that the processing and termination of the individuals was in accordance with regulatory requirements. LER 50-250, 251/1998-006-00 is closed.

c. Conclusions

For those access authorization records reviewed, the licensee complied with the requirements of 10 CFR 73.56 and implementing procedures.

NOTICE OF VIOLATION

Joseph S. Zelaya

IA 00-005

During an NRC inspection conducted on March 21- May 1, 1999 and an NRC investigation completed on January 13, 2000, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(2) states, in part, that an employee of a licensee, or employee of a contractor or subcontractor of a licensee, may not deliberately submit to the licensee, or the licensee's contractor or subcontractor, information that the employee knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 73.56 (b), requires in part, that nuclear power plant licensees establish and maintain an access authorization program which provides a high degree of assurance that individuals granted unescorted access to protected and vital areas of a nuclear power plant are trustworthy and reliable. The unescorted access authorization program must include a background investigation that verifies information concerning an individual's criminal history.

Contrary to above, you deliberately submitted information to Florida Power and Light Company (FPL) that you knew to be incomplete. Specifically, as of August 24, 1998, you failed to list any prior criminal charges on the FPL "Personal History Questionnaire for Unescorted Access Authorization" (PHQ) during the pre-employment screening process at the Turkey Point Nuclear plant, when in fact you had a number of charges including three during the period 1993-1995, as evidenced by Federal Bureau of Investigation fingerprint information. As a result, you were granted unescorted access authorization to protected and vital areas of the Turkey Point Nuclear Plant between August 31 and October 6, 1998, and FPL was precluded from all pertinent information on which to conduct a full background investigation in accordance with 10 CFR 73.56 (b). (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Joseph S. Zelaya is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, Atlanta Federal Center, 61 Forsyth Street, S. W., Suite 23T69, Atlanta, Georgia 30303-3415, and marked "Open by Addressee Only" and a copy to the NRC Resident Inspector at the Turkey Point Nuclear Plant, with a similar marking 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" and should include for the violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (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. If an adequate reply is not

Enclosure 4

received within the time specified in this Notice, an order or a Demand for Information may be issued. 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 to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and the Enforcement Officer, Region II.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR 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 2.790(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.

Dated this 24th day of February, 2000