

February 11, 2004

B. K. Thompson, Business Manager
International Brotherhood
of Electrical Workers
System Council U-4
3944 Florida Blvd.
Palm Beach Gardens, FL 33410

SUBJECT: REPLY TO QUESTIONS REGARDING THE FLORIDA POWER AND LIGHT'S
REINVESTIGATION PACKAGE FOR UNESCORTED ACCESS
AUTHORIZATION

Dear Mr. Thompson:

In your letter dated October 14, 2003, you asked whether the Florida Power and Light (FP&L) "reinvestigation package" for unescorted access meets or exceeds the Nuclear Regulatory Commission's January 7, 2003, Order addressing access authorization at nuclear power plants. In addition, in a telephone conversation with NRC staff on January 7, 2003, you raised two additional issues: First, you questioned the need for individuals to sign waivers releasing information related to medical records in order to maintain unescorted access, and secondly, you questioned some of the language in the Personnel Access Data System (PADS) consent form, language that would release FP&L and its officers from some liability.

The staff has reviewed FP&L's reinvestigation package and has found the material to be consistent with NRC regulations, the January 7, 2003, Order and the guidance the NRC issued to help licensees implement the order.

In regard to your medical records issue, some NRC regulations do require that medical records be consulted. For example, 10 CFR Part 20, Subpart H, "Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas," requires the determination by a physician that an individual is fit to use respiratory protection equipment and includes record keeping requirements. In addition, 10 CFR Part 26, "Fitness for Duty Programs," requires that a licensee's Medical Review Officer be a licensed physician who has knowledge of substance abuse disorders and can interpret an individual's test results in the light of the individual's medical history. See also 10 CFR 73.56(b)(2). These requirements are reflected in FP&L's forms. Moreover, the NRC explicitly requires licensees to protect the personal information of those with unescorted access (10 CFR 73.56(f), 10 CFR 73.57(f) and 10 CFR 26.29) from unauthorized disclosure. The January 7, 2003, Order reiterates these requirements, and they too are reflected in FP&L's forms. Any unauthorized disclosure would be a violation of NRC regulations and therefore subject to enforcement actions.

You also expressed a concern about FP&L seeking release from liability for receipt, disclosure, or use of the collected information in determining eligibility for unescorted access. The release appears to be consistent with a licensee's obligation to satisfy the NRC's requirement to obtain certain information. It is limited to receipt, disclosure, and use authorized by the employee,

and, as the PADS consent form makes clear, the employee, by signing the form, is only authorizing receipt, disclosure, and use that are solely for the purpose of determining the employee's eligibility for unescorted access. FP&L remains liable for un-authorized receipt, disclosure, or use; that is, FP&L remains liable -- and, as noted earlier, subject to NRC enforcement -- for receipt, disclosure, or use that is not in accord with applicable Federal law. Some more general remarks about the PADS form and other consent forms are in order. Licensees are required to develop a mechanism for sharing information related to the status of unescorted access and participation in follow-up programs. This process ensures that such information is available to licensees even if the individual applying for unescorted access fails to provide this information voluntarily. The nuclear industry has chosen to expand the use of an existing system (i.e., PADS) as the means of satisfying the information-sharing requirement. This shared information is limited in scope. Moreover, under 10 CFR 73.56(f), a licensee other than the one responsible for the investigation cannot see the information unless the licensee needs the information to make a decision about unescorted access and the employee has consented to the sharing of the information.

More generally, as part of the January 7, 2003, Order licensees were directed to establish a program for conducting reinvestigations and, under suitable restraints, for sharing the results of those reinvestigations. To complete the required components of these reinvestigations, the licensee seeks the consent of the person being reinvestigated, sometimes as required by federal law, such as 10 CFR 73.56(f) or the Fair Credit Reporting Act. In so doing, the licensee serves notice on the person holding unescorted access of what types of information the licensee seeks, and, just as important, what limitations there are on the licensee's use of the information. Each person is entitled to make an informed decision and as a result, may choose not to consent to have the reinvestigation conducted. Should a person choose to withhold consent, the licensee would be unable to make a determination of trustworthiness and reliability as ordered by the Commission. In such a case, the licensee would be forced to revoke the unescorted access of that person, as the requirements of the Order could not be met.

Reinvestigations are among the actions the NRC requires that licensees take to mitigate against the potential threat that a utility employee might commit a terrorist act against a nuclear power plant. Nonetheless, the staff is aware that some individuals working in the nuclear industry have concerns regarding the enhancements to the Access Authorization and Fitness-for-Duty programs ordered by the NRC, and that these concerns are prompted, in many cases, by the licensee-developed waivers that personnel have been asked to sign.

The staff carefully considered the personal privacy issues associated with the requirements of this Order and concluded that the actions required of licensees are reasonable and prudent. The staff believes that these requirements are no more intrusive than the background investigation conducted when access was initially granted.

B.K. Thompson

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If you have any additional questions, suggestions, or comments, please contact Mr. Brad Baxter at (301) 415-6742 or Mr. Michael Burrell at (301) 415-6415 of my staff.

Sincerely,

/RA/

Garmon West, Jr., Acting Section Chief
Licensee Personnel Security Section
Division of Nuclear Security
Office of Nuclear Security and Incident Response

B.K. Thompson

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