



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

January 22, 2008

IA-07-026

Mr. Luis Fernandez
[NOTE: HOME ADDRESS
DELETED UNDER 10 CFR 2.390(a)]

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATION REPORT NO. 2-2006-012]

Dear Mr. Fernandez:

The enclosed Confirmatory Order is being issued to you as a result of a successful alternative dispute resolution (ADR) session on November 9, 2007. The enclosed commitments were made by you as part of a settlement agreement concerning your involvement in an apparent violation that occurred at Florida Power and Light Company's (FPL) Turkey Point Nuclear Plant in October of 2004.

In a letter dated May 30, 2007, the NRC provided you with the results of an investigation completed by the NRC's Office of Investigations (OI). As indicated in our letter, the NRC reached a preliminary conclusion that you deliberately documented incomplete or inaccurate information related to damaged contingency response weapons in Condition Report (CR) 2004-13573. The CR, which is required to be maintained by the FPL, was provided to the NRC staff during an ongoing inspection and investigation. The NRC reached a preliminary conclusion that you were in apparent violation of 10 CFR 50.5, in that your actions caused FPL to be in apparent violation of 10 CFR 50.9. A Factual Summary of the OI investigation was enclosed with our letter.

Our letter of May 30, 2007, offered you a choice to: (1) attend a Predecisional Enforcement Conference; (2) provide a written response; or (3) request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, you requested ADR to resolve differences you had with the NRC concerning the apparent violation. An ADR mediation session was held on November 9, 2007, at which a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session and are contained within the enclosed Order. Consistent with the purposes of ADR, you and the NRC acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in the NRC's letter of May 30, 2007.

As part of the ADR settlement agreement, you agreed to take certain actions, including your commitment not to seek employment in NRC-regulated activities for a period of time. You also

agreed to other actions including your participation in training to discuss lessons learned from this matter and the importance of preparing complete and accurate condition reports and other internal documents, should you resume employment in NRC-regulated activities in the future.

The NRC is satisfied that its concerns will be addressed by making your commitments legally binding through the enclosed Confirmatory Order. Therefore, the NRC has agreed not to pursue any further enforcement action in connection with the issues described in our May 30, 2007, letter to you.

We have enclosed a Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated January 17, 2008, you agreed to issuance of this Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, because this issue involves security-related information and disclosure to unauthorized individuals could present a security vulnerability, if you choose to respond, you must mark your entire response "Proprietary Information in accordance with 10 CFR 2.390(d)(1)" and follow the instructions for withholding in 10 CFR 2.390(b)(1). If you choose to provide a response, please provide your response to NRC Region II, ATTN: Regional Administrator, 61 Forsyth Street SW Suite 23T85, Atlanta, Georgia 30303-8931, within 30 days. In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for your response. If Safeguards Information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and the attached Confirmatory Order, at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>; then select **Significant Enforcement Actions**. Your response to the Confirmatory Order will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). This letter will be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/foia-privacy.html>.

L. Fernandez

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Questions or comments concerning this letter and Confirmatory Order should be addressed to Ms. Carolyn Evans, Enforcement Officer and Regional Counsel, Region II, at 404-562-4414.

Sincerely,

/R/A

Victor M. McCree
Acting Regional Administrator

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

CERTIFIED MAIL: 7006 2760 0000 8494 4896
RETURN RECEIPT REQUESTED

cc:

David A. Repka
Winston & Strawn, L.L.P.
1700 K Street, NW
Washington, DC 20006

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X PUBLICLY AVAILABLE ☐ NON-PUBLICLY AVAILABLE ☐ SENSITIVE ☐ NON-SENSITIVE
 ADAMS: ☐ Yes ACCESSION NUMBER: _____

OFFICE	RII COUNSEL	RII:DRS	RII:DRS	RII:ORA	RII:ORA	
SIGNATURE						
NAME		JMUNDAY	JSHEA	CCASTO	VMCCREE	
DATE						
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OGC	NSIR	OE			
SIGNATURE	/RA via email/	/RA via email/	/RA via email/			
NAME	M. Clark	R. Correia	N. Hilton			
DATE	1/16/2008	1/16/2008	1/16/2008			
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YESNO	YESNO

OFFICIAL RECORD COPY DOCUMENT NAME:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Mr. Luis Fernandez

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IA-07-026

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Mr. Luis Fernandez is the former Security Project Manager for Wackenhut Nuclear Services (Wackenhut) at the Turkey Point Nuclear Plant (Turkey Point) operated by Florida Power and Light Company (FPL). FPL holds License No. DPR-31 and DPR-41, issued by the Nuclear Regulatory Commission (NRC or Commission) on July 19, 1972, and April 10, 1973, respectively, pursuant to 10 CFR Part 50. The licenses authorize the operation of Turkey Point, Units 3 & 4, in accordance with the conditions specified therein. Turkey Point is located on the Licensee's site in Florida City, Florida.

II

In approximately October 2004, a firing pin from a contingency response weapon was discovered to be damaged at FPL's Turkey Point facility. Mr. Fernandez participated in an inquiry of the damage and documented the results of that inquiry in Condition Report (CR) 2004-13573. As the Security Project Manager for WNS at Turkey Point during this time, Mr. Fernandez was knowledgeable of the circumstances and assisted in the preparation and/or approval of the documentation contained in Condition Report (CR) 2004-13573.

Enclosure 1

In February 2006, the NRC's Office of Investigations (OI) initiated an investigation into the circumstances surrounding the damaged firing pin, and the NRC was provided a copy of CR 2004-13573. Based on the OI investigation, the NRC reached a preliminary conclusion that Mr. Fernandez' documentation of the circumstances involving the damaged firing pin in CR 2004-13573 was not complete and accurate in all material respects. The NRC also preliminarily concluded that Mr. Fernandez' incomplete or inaccurate documentation of the circumstances was deliberate. As a result, the NRC concluded that Mr. Fernandez was in apparent violation of 10 CFR 50.5, in that his actions caused FPL to be in violation of 10 CFR 50.9.

The results of the NRC's preliminary conclusion were provided to Mr. Fernandez by letter dated May 30, 2007. The NRC's letter informed Mr. Fernandez that the NRC was considering the apparent violation for escalated enforcement action in accordance with the NRC Enforcement Policy, and offered Mr. Fernandez a choice to: (1) attend a Pre-decisional Enforcement Conference; (2) provide a written response; or (3) request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, Mr. Fernandez requested ADR to resolve the matter. Mr. Fernandez and the NRC participated in an ADR session in Miami, Florida on November 9, 2007. Consistent with the purposes of ADR, the parties acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in the NRC's letter to Mr. Fernandez of May 30, 2007.

Enclosure 1

As the result of the ADR session, Mr. Fernandez and the NRC reached a settlement agreement.

The elements of the Agreement in Principle consisted of the following:

1. Mr. Fernandez elaborated on the circumstances concerning his involvement in the drafting of Condition Reports, in support of his view that his actions did not represent deliberate misconduct. Mr. Fernandez acknowledges that CR 2004-13573 was inartfully worded and subject to misinterpretation. However, Mr. Fernandez also stated that he had no intent to deceive the NRC or FPL with respect to CR 2004-13573. Furthermore, Mr. Fernandez expressed a clear understanding of the importance of preparing documentation at NRC-regulated facilities that is complete and accurate.
2. Mr. Fernandez indicated that since approximately February 2006, he has not been involved in any activities at any facility that is subject to NRC regulations. Mr. Fernandez also indicated that, as of the date of the ADR meeting, he has no intention of working or seeking employment in any activities or at any facility subject to NRC regulations, and that he will not seek employment requiring his participation in NRC-regulated activities before June 30, 2008.
3. Mr. Fernandez agreed that, should he seek employment with an entity involved in NRC-regulated activities and requiring unescorted access authorization prior to June 30, 2010, he will provide the NRC with a letter discussing the steps he has taken to assure his understanding of the importance of completeness and accuracy of information at facilities subject to NRC regulation. In addition, Mr. Fernandez agreed to provide any such future employer with a copy of this Confirmatory Order. Mr. Fernandez further agreed he will make himself available to participate in training to discuss lessons learned

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from this matter and the importance of completeness and accuracy of condition reports and other internal documents.

4. The NRC concluded that Mr. Fernandez's agreement not to seek employment with an entity involved in NRC-regulated activities and requiring unescorted access authorization until after June 30, 2008, and his agreement, should he seek employment with such an entity prior to June 30, 2010, to provide to the NRC a letter discussing the steps he has taken to assure his understanding of NRC requirements in effect at the time, is sufficient to address all Agency concerns regarding his involvement in the matter discussed in the NRC's letter of May 30, 2007.
5. In consideration of the above, the NRC agreed to forego issuance of a Notice of Violation or other enforcement action in this matter.
6. The NRC and Mr. Fernandez agreed that the above elements will be incorporated into a Confirmatory Order.
7. Mr. Fernandez agreed to waive the right to request a hearing regarding all or any part of the Confirmatory Order.

IV

Because Mr. Fernandez has agreed to take actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

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I find that Mr. Fernandez's commitments set forth in Section V below are acceptable and necessary, and I conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Fernandez's commitments be confirmed by this Order. Based on the above and Mr. Fernandez's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. Fernandez will not seek employment requiring his participation in NRC-regulated activities before June 30, 2008.
2. Should Mr. Fernandez seek employment with an entity involved in NRC-regulated activities and requiring unescorted access authorization before June 30, 2010, he will provide the NRC with a letter discussing the steps he has taken to assure he understands the importance of providing complete and accurate information at facilities subject to NRC regulation.
3. Mr. Fernandez will provide any future employer engaged in NRC-regulated activities with a copy of this Confirmatory Order.
4. Should Mr. Fernandez resume employment in NRC-regulated activities, he will make

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himself available to participate in training to discuss lessons learned from this matter and the importance of preparing complete and accurate condition reports and other internal documents.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Fernandez of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Luis Fernandez, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator, NRC Region II, 61 Forsyth Street SW Suite 23T85, Atlanta, GA, 30303-8931; and to Mr. Luis Fernandez. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than Mr. Fernandez requests a hearing, that person shall set forth with particularity the

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manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Victor M. McCree
Acting Regional Administrator

Dated this 22nd day of January 2008

Enclosure 1

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