



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

EA-07-110,113,116,119

Florida Power and Light Company
ATTN: Mr. J. A. Stall, Senior Vice President
Nuclear and Chief Nuclear Officer
P. O. Box 14000
Juno Beach, FL 33408-0420

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY, EXERCISE OF ENFORCEMENT DISCRETION - \$208,000 (TURKEY POINT NUCLEAR PLANT - NRC INSPECTION REPORT NO. 05000250/2007402 AND 05000251/2007402 AND OFFICE OF INVESTIGATIONS REPORT NO. 2-2006-012)

Dear Mr. Stall:

This refers to the Nuclear Regulatory Commission's (NRC) inspection completed on February 24, 2006, at Florida Power and Light Company's (FPL) Turkey Point Nuclear Plant, subsequent in-office inspection, and an investigation completed by the NRC's Office of Investigations (OI) on August 23, 2006. The inspections and investigation were conducted to review security issues at Turkey Point, and included the identification of four apparent violations (AV). In summary, the apparent violations involved two separate incidents in which security weapons were willfully rendered non-functional (tampering), one AV involving the failure to report a tampering issue to the NRC within one hour of discovery, and one AV involving related incomplete or inaccurate documentation in an FPL condition report (CR) that was subsequently provided to the NRC. The results were discussed with FPL on May 24, 2007, and documented in NRC inspection report 05000250/2007402 and 05000251/2007402, dated May 25, 2007.

On July 25, 2007, a predecisional enforcement conference (PEC) was conducted in the NRC's Region II Office with FPL, to discuss the apparent violations, the significance, the root causes, and FPL's corrective actions. In summary, FPL stated that it did not contest the willful aspects or circumstances of the two AVs involving tampering with security weapons. FPL also agreed that a one-hour report was not made as required, and that certain CR documentation was incomplete or inaccurate. FPL executives emphasized that Turkey Point's security program performance did not meet its expectations, and that corrective actions have been put in place to evaluate and trend the potential for intentional damage to security equipment. At the conclusion of the conference, FPL offered its view that the apparent violations involving tampering with security weapons did not reach the threshold for escalated enforcement.

Based on the information developed during the inspection and investigation, and the information you provided during the conference, the NRC has determined that four violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and

Proposed Imposition of Civil Penalty (Notice). In summary, the violations involve: (1) the failure to comply with the requirements of the Turkey Point Physical Security Plan, Sections 4.1 and 5.4, Revision 0b, and Security Force Instruction (SFI) 2404, Section 2.3, Revision 21, when in approximately August 2005, a contract security shift lieutenant removed and broke a firing pin from a contingency response weapon, rendering the weapon non-functional; (2) the failure to comply with the requirements of an NRC Order and Interim Compensatory Measures of February 25, 2002, Section B.4(f), when in approximately April 2004, a contract security officer removed the firing pins from two contingency response weapons, rendering the weapons non-functional; (3) failure to comply with the requirements of 10 CFR 50.9, when in 2004, a contract security supervisor documented information relating to damaged contingency response weapons in Condition Report (CR) 2004-13573, which was incomplete or inaccurate in a material respect. In this case, the CR was provided to the NRC staff during an ongoing inspection and investigation in February 2006; and (4) failure to comply with the requirements of 10 CFR Part 73, Appendix G, Paragraph 1.I (a)(3), when in approximately September-October 2005, FPL failed to report to the Commission an event involving the interruption of normal operation of a licensed nuclear power reactor through the unauthorized use of or tampering with its machinery, components, or controls, including the security system. Specifically, the tampering event involved a broken firing pin that rendered a contingency response weapon non-functional.

The unavailability of contingency response weapons represents a significant security concern because of its impact on the ability of FPL to provide high assurance that its security response strategy could be effectively implemented. Additionally, because of the willful nature of the weapons tampering, FPL could not definitively conclude that other weapons had not been tampered with during this time. The NRC also notes that, to our knowledge, the willful destruction and/or disassembly of contingency response weapons of this magnitude is unprecedented. The Agency also views the actions and judgments of other individuals within the security organization, who held managerial positions of substantial authority and influence, to be of serious concern. These actions and judgments directly contributed to the reporting violation, were a factor in the violation involving inaccurate/incomplete documentation, and likely caused or contributed to a delay in the identification of significant failures regarding security-related matters at Turkey Point. When considered in total, the above violations are reflective of a substantial lack of oversight by FPL in its day-to-day and managerial oversight of its onsite security contractor, and its security program. We also note that under the NRC Enforcement Policy, licensees are responsible for the actions of their contractors.

Finally, as a matter of Agency policy, armed security personnel are defined as members of a critical group of personnel who, through their job function, pose an increased threat if they were to act as an insider. Individuals in these job functions have access to sensitive areas of the plant, and, in the case of security personnel, the authority to carry arms. Because at least some of the violations were caused by the willful actions of security personnel, or were the result of the actions of security management, the Agency's level of concern cannot be overstated.

Based on the above, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level II problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$104,000 is considered for a Severity Level II problem. Because of the Severity Level II problem, the multiple violations that were determined to be willful and because FPL's Turkey Point facility has

been the subject of escalated enforcement within the past two years¹, 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.

The NRC concluded that credit is not warranted for the factor of Identification for any of the referenced violations. In summary, the two violations involving removed and broken firing pins were identified during a routine weapons maintenance check. However, the licensee's investigation failed to identify or question the willful aspects of these matters until the NRC began its inquiry into this matter. In fact, the licensee's initial investigation into the violation involving the two removed firing pins concluded that the pins had possibly fallen out due to not being properly seated during reassembly following weapons maintenance. The inaccurate CR was identified by the NRC during its on-site inspection, as was the violation involving the failure to report the tampering issue to the Commission. Based on this, the NRC concluded that, on balance, credit was not warranted for the factor of Identification.

As fully discussed at the PEC, FPL took numerous corrective actions in response to the violations, including: (1) the conduct of a root cause investigation into the circumstances of each violation; (2) the inspection of weapons in the field once FPL became aware of the issues; (3) the development of site procedures to clarify the requirement to report security equipment tampering events and to provide guidance for the recognition and initial response when tampering with security equipment is suspected; (4) the development of a Conduct of Security procedure, modeled after the site's Conduct of Operations procedure, to clearly establish the standards and expectations for Security Department personnel; (5) the notification of other FPL facilities on the tampering matters; (6) the conduct of additional training for security personnel on the breakdown and re-assembly of weapons; (7) the development of weapons maintenance procedures that provide for independent verification of weapon assembly, and (8) instructions to conduct inspections of weapons during the first hour of each shift. Additional corrective actions were also presented at the conference by FPL. Based on the above, credit is warranted for the factor of Corrective Action.

In accordance with the NRC Enforcement Policy, a base civil penalty is normally assessed for a Severity Level II problem. Notwithstanding the normal guidance contained in the NRC Enforcement Policy, the NRC may also choose to exercise discretion and either escalate or mitigate enforcement sanctions and civil penalties within the Commission's statutory authority, to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of a particular case. In this case, the NRC considers FPL's lack of oversight over its security contractor, and the apparent unprecedented nature of violations involving the willful tampering of contingency response weapons, to be particularly egregious. Therefore, to emphasize the degree of Agency concern, and after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, Office of the Executive Director for Operations, it has been concluded that the exercise of Enforcement Discretion in accordance with Section VII.A.1 of the NRC Enforcement Policy is appropriate. Therefore, the NRC is issuing the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of two times the base civil penalty, for a total civil penalty of \$208,000, for this Severity Level II problem.

¹ A White finding and Notice of Violation was issued on November 22, 2006 (EA-06-200).

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.

If you disagree with this enforcement sanction you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/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 pursuing 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 and enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Should you have any questions concerning this letter, please contact Mr. Joseph Shea, Director, Division of Reactor Safety, Region II, at (404) 562-4600.

Sincerely,

/RA/

Victor M. McCree
Acting Regional Administrator

Docket Nos.: 50-250, 50-251
License Nos.: DPR-31, DPR-41

Enclosures:

1. Notice of Violation and Proposed Imposition
of Civil Penalty
2. NUREG/BR-0317
3. NUREG/BR-0254

cc w/encls:

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 RI, RIII, RIV
 E. Hayden, OPA
 G. Caputo, OI
 H. Bell, OIG
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 M. Ashley, NRR
 D. Furst, NSIR
 C. Casto, RII
 J. Shea, RII
 K. Kennedy, RII
 H. Christensen, RII
 C. Evans, RII
 S. Sparks, RII
 S. Vias, RII
 J. Munday, RII
 J. Stewart, RII
 K. Clark, RII
 R. Hannah, RII
 R. Trojanowski, RII
 OEMAIL
 PUBLIC

See Previous Concurrence

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	/RA/	/RA/	/RA/	/RA/	/RA/	
NAME	C. Evnas	JMUNDAY	JSHEA	CCASTO	VMCCREE	
DATE	1/7/2008	1/7/2008	1/7/2008	1/17/2008	1/22/2008	
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OGC	NSIR	OE	NRR		
SIGNATURE	/RA via email/	/RA via email/	/RA via email/	/RA via email/		
NAME	M. Clark	R. Correia	N. Hilton	J. Dyer		
DATE	1/16/2008	1/16/2008	1/16/2008	1/16/2008		
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Florida Power and Light Company
Turkey Point Nuclear Plant
Units 3 & 4

Docket Nos. 50-250, 50-251
License Nos. DPR-31, DPR-41
EA-07-110,113,116,119

During an NRC inspection completed on February 24, 2006, and an investigation completed on August 23, 2006, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

- A. The Florida Power and Light Company (FPL) Physical Security Plan (PSP), Revision 0b, Section 4.1, states, in part, "The armed responder is equipped with, or has readily available (if at a stationary post), a contingency weapon." Additionally, Section 5.4 states, in part, "Security officers are properly equipped to fulfill their assigned duties to implement the protective strategy, and security measures during normal operations."

FPL Security Force Instruction (SFI) 2404, Target Set and Defensive Strategy, Revision 21, Section 2.3, states, in part, "Response personnel are armed with a semi-automatic rifle."

Contrary to the above, on or about August of 2005, the licensee failed to ensure that armed responders were equipped with contingency weapons in accordance with the PSP. Specifically, an FPL contract security lieutenant willfully removed and broke a firing pin from a contingency response weapon, rendering the weapon non-functional. As a result, an armed responder would not have been able to fulfill their assigned duties and effectively implement the licensee's protective strategy.

- B. NRC Order and Interim Compensatory Measures, dated February 25, 2002, Section B.4(f), requires the licensee to "Equip all armed responders with contingency weapons."

FPL SFI 2404, Target Set and Defensive Strategy, Revision 18, Section 2.3, states, in part, "All armed responders should be armed with a semi-automatic rifle."

Contrary to the above, on or about April of 2004, the licensee failed to ensure that two armed responders were equipped with contingency weapons. Specifically, an FPL contract security officer willfully removed the firing pins from two contingency response weapons (Weapons # 8 and # 25), rendering the weapons non-functional. As a result, two armed responders would not have been able to fulfill their assigned duties and effectively implement the licensee's protective strategy.

- C. 10 CFR 50.9 (a) requires that information provided to the Commission by a licensee or information required by statute or by the Commission's regulations, orders, or license

conditions to be maintained by the licensee shall be complete and accurate in all material respects.

Contrary to the above, the licensee maintained and provided to the Commission information that was not complete and accurate in all material respects. Specifically, the licensee, through the action of its on-site security contractor, documented information in Condition Report (CR) # 2004-13573, which inaccurately or incompletely characterized a recreation of events involving a damaged contingency response weapon firing pin. The CR was maintained by the licensee and provided to the NRC during a February 2006 on-site inspection at the licensee's facility. This information was material to the NRC, in that the substance of the information was used to support the NRC's inquiry into security concerns.

- D. 10 CFR Part 73, Appendix G, Paragraph 1.I.(a)(3) requires that an event involving the interruption of normal operation of a licensed nuclear power reactor through the unauthorized use of or tampering with its machinery, components, or controls including the security system is to be reported to the NRC within one hour of discovery, followed by a written report within 60 days.

Contrary to the above, in approximately September-October 2005, the licensee failed to make a required report to the NRC, within one hour of discovery, followed by a written report within 60 days, of a tampering event involving the willful breaking of a firing pin from a contingency response weapon, which rendered the weapon non-functional.

This is a Severity Level II Problem (Supplements III, VII).
Civil Penalty - \$ 208,000 (EA-07-110,113,116,119)

Pursuant to the provisions of 10 CFR 2.201, Florida Power and Light Company (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation and Proposed Imposition of Civil Penalty; (EA-07-110,113,116,119)" and should include for each violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

Within the same time provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part; demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation and Proposed Imposition of Civil Penalty, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Your response 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 www.nrc.gov/reading-rm/pdr.html www.nrc.gov/reading-rm/adams.html. 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(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.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 22nd day of January 2008