



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

April 9, 2008

EA-07-138

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 -
\$130,000 (TURKEY POINT NUCLEAR PLANT - NRC OFFICE OF
INVESTIGATIONS REPORT NO. 2-2006-013)

Dear Mr. Stall:

This refers to an investigation completed by the NRC's Office of Investigations (OI) on December 13, 2006. The purpose of the investigation was to determine if security officers employed with Wackenhut Nuclear Services (Wackenhut) at Florida Power and Light Company's (FPL) Turkey Point Nuclear Plant (Turkey Point) were willfully inattentive to duty (sleeping) during 2004 – 2006. The results of the OI investigation, including the identification of apparent violations of 10 CFR 73.55(f)(1), were provided to FPL by NRC letter dated October 30, 2007.

Our October 30, 2007, letter provided FPL with the opportunity to address the apparent violations by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In letters dated February 28, and March 14, 2008, respectively, FPL provided an initial and supplemental response to the apparent violations.

Based on the information developed during the investigation and the information that you provided in your written response, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in our letter of October 30, 2007. In summary, the NRC concluded that on multiple occasions during 2004-2006, security officers at Turkey Point were willfully inattentive to duty, or served as lookouts such that other security officers could be inattentive while on duty. Included in these multiple examples is an incident that occurred on April 6, 2006, in which a security officer was observed by an NRC inspector to be inattentive to duties while standing duty on a vital area compensatory post. The activities of these security officers caused FPL to be in violation of 10 CFR 73.55(f)(1) because the officers were not capable of maintaining continuous communication with an individual in each continuously manned alarm station.

In its written responses of February 28, and March 14, 2008, FPL stated that based on the limited information provided by the NRC regarding the alleged inattentiveness incidents, it could not substantiate that all the incidents occurred. Without specific information regarding each instance of alleged inattentiveness, FPL could not ascertain whether a violation of NRC requirements occurred. Furthermore, with respect to an incident that occurred on April 6, 2006, FPL stated that it could not substantiate that the security officer had been inattentive. As such, FPL disagreed that a violation occurred regarding the April 6, 2006, incident.

Notwithstanding the information provided in FPL's written response of February 28, 2008, the NRC concluded the multiple incidents of inattentiveness represented a violation of 10 CFR 73.55(f)(1), including the incident that was observed by the NRC inspector on April 6, 2006. In addition, the NRC concluded that all examples of inattentiveness and complicity or facilitation by other security personnel were willful in nature. The NRC's conclusion regarding the willful inattentiveness of the officers is supported, in part, by the officers' statements to OI during the investigation.

The NRC considers this matter to be a significant security concern on several levels. Inattentive security force members have a potential negative impact on the ability of FPL to provide high assurance that its security response strategy can be effectively implemented. The willful aspects, and the complicity and facilitation by other security personnel of inattentive behavior on the part of fellow security personnel on duty, is of particular concern to the NRC and cannot be tolerated. In addition, the fact that multiple examples were identified indicates that this behavior was more than an isolated occurrence during the 2004-2006 timeframe.

On January 22, 2008, the NRC issued a significant enforcement action and civil penalty (EA-07-110,113,116,119) to FPL for various security-related violations that occurred at Turkey Point during the 2004-2006 timeframe. The NRC attributed the cause of these previous violations to be due, in part, to a substantial lack of oversight by FPL in its day-to-day and managerial oversight of its onsite security contractor, and its security program. The multiple examples involving security guard inattentiveness and the complicity and/or facilitation by other security personnel to support inattentive behavior that are the subject of the enclosed Notice only serve to demonstrate FPL's lack of management control of the Turkey Point security program during this same period of time.

Based on the above, this violation is categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$65,000 is considered for a Severity Level III violation. Because the violation was 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 because the multiple examples were identified as a result of an NRC OI investigation.

¹ A Severity Level II problem and \$208,000 civil penalty was issued to FPL's Turkey Point facility on January 22, 2008 (EA-07-110,113,116,119) for multiple security-related violations.

Regarding the factor of Corrective Action, the NRC's letter of October 30, 2007, afforded FPL the opportunity to fully describe its corrective actions in response to the multiple examples of a violation of 10 CFR 73.55(f)(1), and noted that FPL could reference or include previously docketed correspondence, if the correspondence adequately addressed the required response. FPL's written response of February 28, 2008, did not make reference to or include any new information. Rather, it stated that the NRC was aware of the significant changes to its security program at Turkey Point, and also referenced its response to NRC Bulletin 2007-01, "Security Officer Attentiveness" to support its conclusion that measures are in place to ensure attentiveness of the Turkey Point security force. The NRC notes that while FPL did make reference to its response to NRC Bulletin 2007-01 as supporting information, the FPL response specifically stated that the Bulletin response "is not intended to respond to the pending NRC enforcement action regarding alleged inattentiveness of security officers." FPL's supplemental response of March 14, 2008, made reference to its Reply to the Notice of Violation and Proposed Imposition of Civil Penalty, dated February 28, 2008 (in response to EA-07-110,113,116,119), in which FPL documented a number of corrective actions it had taken in response to problems that existed in the Turkey Point Security organization during the period 2004 through early 2006.

Based on the NRC's review of previously docketed correspondence, including FPL's response to NRC Bulletin 2007-001, FPL's letter of February 28, 2008, and its letter of March 14, 2008, insufficient information was provided to permit the NRC to conclude that the FPL has determined the root and contributing causes of the violation examples, such that it can conclude that prompt and comprehensive corrective actions were taken that will prevent violations of similar root causes. In particular, based on the docketed correspondence, FPL failed to thoroughly evaluate and address the root and contributing causes of security force inattentiveness and the complicity and facilitation by other security personnel of inattentive behavior, while on duty. In addition, FPL provided insufficient detail as to specific corrective actions that have been taken or planned to address recurring problems with its lack of managerial oversight of its onsite security contractor. Therefore, credit is not warranted for the factor of Corrective Action.

Therefore, to emphasize the importance of security force attentiveness, prompt identification of violations and the need for comprehensive corrective actions, and in recognition of the willful aspects of the violation examples and previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount two times the base civil penalty, for a total of \$130,000, for the Severity Level III violation.

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. Kriss Kennedy, Director, Division of Reactor Safety, Region II, at (404) 562-4601.

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:

William Jefferson, Jr.
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Licensing Manager
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 B. Keeling, OCA
 Enforcement Coordinators
 RI, RIII, RIV
 E. Hayden, OPA
 G. Caputo, OI
 H. Bell, OIG
 M. Burrell, OE
 M. Ashley, NRR
 D. Furst, NSIR
 C. Casto, RII
 J. Shea, RII
 K. Kennedy, RII
 H. Christensen, RII
 D. Ayres, RII
 C. Evans, RII
 S. Sparks, RII
 M. Sykes, RII
 J. Munday, RII
 J. Stewart, RII
 K. Clark, RII
 R. Hannah, RII
 R. Trojanowski, RII
 OEMAIL
 PUBLIC

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/		
NAME	CEVANS	JMUNDAY		KKENNEDY	DEFER TO OGC	VMCCREE
DATE	3/28/08	03/27/08		03/27/08	03/28/08	
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OGC	NSIR	OE	NRR		
SIGNATURE			NHILTON FOR			
NAME	MCLARK	BWESTREICH	CCARPENTER	BBOGER		
DATE	4/7/08	4/7/08	4/9/08	4/1/08		
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-07-138

During an NRC investigation completed on December 13, 2006, a violation of NRC requirements was 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 violation and associated civil penalty is set forth below:

10 CFR 73.55 provides requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

10 CFR 73.55 (f) (1), Communication requirements, requires that each guard, watchman or armed response individual on duty shall be capable of maintaining continuous communication with an individual in each continuously manned alarm station required by paragraph (e)(1) of this section, who shall be capable of calling for assistance from other guards, watchmen, and armed response personnel and from local law enforcement authorities.

Contrary to the above, during 2004-2006, six security officers at Florida Power and Light Company's Turkey Point Nuclear Plant were willfully inattentive to duty, or willfully served as lookouts such that security officers could be inattentive to duty. Included in these multiple examples is an incident that occurred on April 6, 2006, in which a security officer was observed by an NRC inspector to be inattentive to duties while standing duty on a vital area compensatory post. The activities of these security officers precluded FPL from adhering to 10 CFR 73.55(f)(1) in that the officers were not capable of maintaining continuous communication with an individual in each continuously manned alarm station.

This is a Severity Level III violation (Supplements III, VII).
Civil Penalty - \$ 130,000 (EA-07-138)

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-07-138)" 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

Enclosure 1

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 be 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 9th day of April 2008