



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

October 20, 2008

EA-08-172

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: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATION REPORT NO. 2-2007-011]

Dear Mr. Stall:

The enclosed Confirmatory Order is being issued to Florida Power and Light Company's (FPL) St. Lucie Nuclear Plant, as a result of a successful alternative dispute resolution (ADR) session. The enclosed commitments were made by FPL as part of a settlement agreement involving the failure to perform required searches of two containers that were allowed to enter the St. Lucie Nuclear Plant.

In a letter dated June 27, 2008, the Nuclear Regulatory Commission (NRC) provided FPL with the results of an investigation completed by the NRC's Office of Investigations (OI). The purpose of the investigation was to determine whether a contract Security Operations Supervisor willfully permitted a container into the St. Lucie Nuclear Plant without conducting the required search of its contents.

A Factual Summary of the OI investigation was enclosed with our letter, which together documented the NRC's conclusion that the Security Operations Supervisor deliberately permitted a container into the St. Lucie site without a proper search of its contents, as required by 10 CFR 73.55(d)(3), the St. Lucie Physical Security Plan, and FPL procedure Security Force Instruction (SFI) 2100.

In addition, our letter of June 27, 2008, offered FPL 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 regarding whether violations occurred, the appropriate enforcement action, and the appropriate corrective actions.

In response, FPL requested ADR to resolve any differences with the NRC concerning the apparent violation, and to discuss corrective actions. An ADR mediation session was held on August 25, 2008, 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.

As part of the ADR settlement agreement, and as discussed in the enclosed Confirmatory Order, FPL agreed to a number of organizational, procedural, and management oversight related corrective actions and enhancements to improve the thoroughness of searches at the St. Lucie Nuclear Plant, and at other FPL fleet-wide nuclear facilities. In consideration of the above commitments, the NRC agreed to exercise enforcement discretion to forego issuance of a Notice of Violation or other enforcement action for all matters discussed in NRC's letter to FPL of June 27, 2008 (EA-08-172). We will evaluate the implementation of your commitments during future inspections.

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 October 9, 2008, you agreed to issuance of this letter and 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, if you choose to provide a response, please provide it to me within 30 days at NRC Region II, ATTN: Regional Administrator, 61 Forsyth Street, SW Suite 23T85, Atlanta, Georgia 30303-8931.

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, on its website at www.nrc.gov; select Public Meetings and Involvement, then Enforcement. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

If you have any questions or comments concerning this letter, please contact Mr. Kriss Kennedy, Director, Division of Reactor Safety, at 404-562-4601, should you have any questions.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Docket No.: 50-335, 50-389
License No.: DPR-67, NPF-16

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc w/encls.:

Gordon L. Johnston
Site Vice President
St. Lucie Nuclear Plant
Electronic Mail Distribution

Christopher R. Costanzo
Plant General Manager
St. Lucie Nuclear Plant
Electronic Mail Distribution

Bill Parks
Operations Manager
St. Lucie Nuclear Plant
Electronic Mail Distribution

Terry L. Patterson
Licensing Manager
St. Lucie Nuclear Plant
Electronic Mail Distribution

Rajiv S. Kundalkar
Vice President
Nuclear Technical Services
Florida Power & Light Company
Electronic Mail Distribution

Don E. Grissette
Vice President
Nuclear Training and Performance
Improvement
Florida Power & Light Company
Electronic Mail Distribution

Seth B. Dunston
Training Manager
St. Lucie Nuclear Plant
Electronic Mail Distribution

M. S. Ross
Managing Attorney
Florida Power & Light Company
Electronic Mail Distribution

Marjan Mashhadi
Senior Attorney
Florida Power & Light Company
Electronic Mail Distribution

William A. Passetti
Bureau of Radiation Control
Department of Health
Electronic Mail Distribution

Craig Fugate
Director
Division of Emergency Preparedness
Department of Community Affairs
Electronic Mail Distribution

J. Kammel
Radiological Emergency Planning
Administrator
Department of Public Safety
Electronic Mail Distribution

Douglas Anderson
County Administrator
St. Lucie County
2300 Virginia Avenue
Ft. Pierce, FL 34982

Mano Nazar
Senior Vice President
and Nuclear Chief Operating Officer
Florida Power & Light Company
Electronic Mail Distribution

Senior Resident Inspector
Florida Power and Light Company
St. Lucie Nuclear Plant
U.S. NRC
P.O. Box 6090
Jensen Beach, FL 34957-2010

Distribution w/encls:

W. Borchardt, OEDO
M. Virgilio, OEDO
B. Mallett, OEDO
E. Leeds, NRR
J. Moore, OGC
C. Marco, OGC
C. Carpenter, OE
E. Julian, SECY
B. Keeling, OCA
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R. Barnes, OE
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T. Hoeg, RII
K. Clark, RII
R. Hannah, RII
R. Trojanowski, RII
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ADAMS: Yes ACCESSION NUMBER: _____ SUNSI REVIEW COMPLETE

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|--------------|--------------------|-------------------------|----------------|---------|--------|--------|
| OFFICE | RII:ORA | RII:DRS | | RII:ORA | | |
| SIGNATURE | /RA S. Sparks for/ | /RA H. Christensen for/ | | | | |
| NAME | CEVANS | KKENNEDY | | VMCCREE | | |
| DATE | 9/05/2008 | 9/5/2008 | | | | |
| 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/ | | | |
| NAME | | | | | | |
| DATE | 9/26/2008 | 9/12/2008 | 10/16/2008 | | | |
| E-MAIL COPY? | YES NO | YES NO | YES NO | YES NO | YESNO | YESNO |

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|---------------------------------|---|------------------------------|
| In the Matter of |) | |
| |) | Docket Nos.: 50-335, 50-389 |
| Florida Power and Light Company |) | License Nos.: DPR-67, NPF-16 |
| St. Lucie Nuclear Plant |) | |
| |) | EA-08-172 |

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Florida Power and Light Company (FPL or Licensee) is the holder of Operating License Nos. DPR-67 and NPF-16, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 1, 1976, and April 6, 1983, respectively. The license authorizes the operation of St Lucie Nuclear Plant, Units 1 and 2, (St. Lucie or facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Jensen Beach, Florida.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on August 25, 2008.

II

On January 7, 2008, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2-2007-011) regarding activities at the St. Lucie Nuclear Plant. Based on the evidence developed during the investigation, the NRC staff concluded that on April 21 and 23, 2006, a container was permitted to enter the site without being properly searched, in apparent violation of 10 CFR 73.55(d)(3), Section 9.4 of the St. Lucie Physical Security Plan, and

licensee implementing procedure Security Force Instruction (SFI) 2100. Specifically, after permitting the container into the site on April 21, 2006, a Security Operations Supervisor deliberately failed to conduct a search of the container to verify its contents in the manner required by licensee implementing procedure SFI 2100. The Security Operations Supervisor then left the container unattended, and the container remained inside the site for an extended period of time. The results of the investigation were sent to FPL in a letter dated June 27, 2008.

III

On August 25, 2008, the NRC and FPL met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. The NRC and FPL agreed that a violation occurred on April 21 and 23, 2006, when a container was permitted to enter the site without being properly searched, in violation of 10 CFR 73.55(d)(3), Section 9.4 of the St. Lucie Physical Security Plan, and licensee implementing procedure SFI 2100. Specifically, after permitting the container into the site on April 21, 2006, a Security Operations Supervisor deliberately failed to conduct a physical search of the container by verifying its contents, in violation of licensee implementing procedure SFI 2100. The Security Operations Supervisor then left the container unattended, and the container remained inside the site for an extended period of time.

2. Based on FPL's review of the incident, its root cause analysis, and NRC concerns with respect to precluding recurrence of the violation, FPL agreed to corrective actions and enhancements, as fully delineated in Section V of the Confirmatory Order.
3. At the ADR session, the NRC and FPL agreed that the above elements involving the violation, and FPL's corrective actions and enhancements as delineated in Section V, will be incorporated into a Confirmatory Order.
4. In consideration of the commitments delineated in Section V of this Confirmatory Order, the NRC agrees to exercise enforcement discretion to forego issuance of a Notice of Violation against FPL for all matters discussed in the NRC's letter to FPL of June 27, 2008, (EA-08-172).
5. This agreement is binding upon successors and assigns of the St. Lucie Nuclear Plant and FPL.

On October 9, 2008, the Licensee consented to issuance of this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

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

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and 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 the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NOS. DPR-67 AND NPF-16 ARE MODIFIED AS FOLLOWS:

- a. FPL will ensure current FPL Site procedures clearly address requirements for search thoroughness and completeness and that current FPL Site training lesson plans address this requirement.
- b. FPL will proceduralize fleet-wide security force personnel standards of performance and professionalism in a Conduct of Security procedure. Training on the new procedure was conducted for all security force personnel and will be provided to newly hired security force personnel.

- c. FPL will create a fleet security organization, and will increase on-site staffing of security organizations at St. Lucie, Turkey Point, and Seabrook Station to augment oversight of the contract security force. FPL will evaluate the security organization at Point Beach to determine management staffing needs.
- d. FPL will proceduralize management observations of the security force by FPL security personnel.
- e. FPL will conduct a fleet-wide briefing of security force supervisors and officers regarding this event and reinforcing proper search methods and requirements.
- f. FPL will establish a fleet-wide vehicle and material search procedure to provide consistency in processes. This procedure will include a standardized search checklist, provisions for documentation of vehicle and material search completion, and guidance to address and mitigate any factors that may impact security officers' ability to perform the search.
- g. FPL will establish a fleet-wide lesson plan for individual tasks concerning vehicle and material searches. Training will be conducted for future new hire sessions for security officers and annual requalifications.
- h. FPL agrees to complete all corrective actions and enhancements identified in Section V within nine months of the date of issuance of the Confirmatory Order. Training on the new guidelines and lesson plan will be completed beginning the

cycle following the approval date of the relevant procedure and the lesson plan.

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

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, 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 directed 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.

If a person other than FPL requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 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.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 Fed. Reg. 49,139) and was codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some

cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General

Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless

excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

VII

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

FOR THE NUCLEAR REGULATORY COMMISSION


/RA/

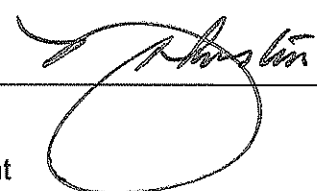
Luis A. Reyes
Regional Administrator

Dated this 20th day of October 2008

CONSENT AND HEARING WAIVER FORM

Florida Power and Light Company (FPL), St. Lucie Nuclear Plant, hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, I, Gordon L. Johnston, Site Vice President, St. Lucie Nuclear Plant (FPL), consent to the issuance of the Confirmatory Order, effective immediately, with the commitments described in the NRC's draft Confirmatory Order attached and, by doing so, waive, pursuant to 10 CFR 2.202(a)(3) and (d), the right to request a hearing on all or any part of the Order.


Gordon L. Johnston
Site Vice President
St. Lucie Nuclear Plant


Date

10/9/08