



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
REGION II  
245 PEACHTREE CENTER AVENUE, SUITE 1200  
ATLANTA, GEORGIA 30303-1257

June 21, 2010

EA-10-037

Mr. Mano Nazar  
Executive Vice President  
and Chief Nuclear Officer  
Florida Power and Light Company  
P.O. Box 14000  
Juno Beach, FL 33408-0420

**SUBJECT: FINAL SIGNIFICANCE DETERMINATION OF WHITE FINDING AND NOTICE OF VIOLATION; NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$70,000 (NRC INSPECTION REPORT 05000250/2010009, TURKEY POINT NUCLEAR PLANT)**

Dear Mr. Nazar:

This letter provides you with the final significance determination of a preliminary Greater than Green finding and the five apparent violations (AVs) discussed in NRC Inspection Report Nos. 05000250/2010008, dated March 11, 2010, and 05000250, 251/2009005, dated January 28, 2010. The inspection finding was assessed using the NRC's Significance Determination Process and was preliminarily characterized as Greater than Green, which represents a finding with at least low to moderate safety significance that may require additional NRC inspection. The finding involved the failure to properly manage known degradation of Boraflex, a neutron absorber material used in the Turkey Point Unit 3 spent fuel pool (SFP). The NRC's inspection report also identified two AVs associated with the finding, involving: (1) the failure to comply with Technical Specifications (TS) 5.5.1.1.a and 10 CFR § 50.68(b)(4) requirements to assure that the effective neutron multiplication factor ( $K_{eff}$ ) would be maintained less than 1.0, for all cases in the Unit 3 SFP when flooded with unborated water; and (2) the failure to implement effective corrective actions as required by 10 CFR Part 50, Appendix B, Criterion XVI, for the degradation of Boraflex in the Unit 3 SFP.

NRC Inspection Report Nos. 05000250/2010008 and 05000250, 251/2009005 also identified three AVs that were being considered for escalated enforcement under the NRC's traditional enforcement process. In summary, the AVs involved: (1) failure to provide notification to the NRC in accordance with the requirements of 10 CFR § 50.73 when testing of Boraflex panels in the Unit 3 SFP revealed degradation beyond minimum design values specified in the Updated Final Safety Analysis Report (UFSAR); (2) failure to comply with 10 CFR § 50.59, which requires licensees to maintain records, including written evaluations, which provide the bases for a determination that a change, test, or experiment does not require a license amendment; and (3) failure to update the FSAR in accordance with 10 CFR § 50.71(e) so that the report accurately reflects significant changes made to the facility.

At your request, a Regulatory and Predecisional Enforcement Conference was held on April 14, 2010, to discuss your views on these issues. A meeting summary was issued on April 27, 2010, which included copies of the slide presentation made by Florida Power and Light Company (FPL) (ADAMS Accession # ML101170029). During the conference, FPL staff discussed the circumstances surrounding the Turkey Point Unit 3 Boraflex degradation issues, FPL's assessment of the significance of the preliminary Greater than Green finding, the five AVs, and the corrective actions taken, including the root cause evaluation. At the conference, FPL also summarized its assessment of the finding and concluded that the Unit 3 SFP degradation had no safety significance due, in part, to effective SFP management activities as well as conservatism in design margins. FPL asserted that the significance of the AVs assessed under the NRC's traditional enforcement process did not rise to the level of escalated enforcement because the AVs did not impede NRC's actions or the regulatory process. However, FPL agreed that the following violations of NRC requirements occurred: (1) failure to comply with TS 5.5.1.1.a; (2) failure to update the UFSAR in accordance with 10 CFR § 50.71(e); and (3) failure to provide notification to the NRC in accordance with 10 CFR § 50.73.

Although FPL agreed that a violation of TS 5.5.1.1.a requirements occurred, they did not agree that a violation of 10 CFR § 50.68(b)(4) occurred, stating that  $K_{eff}$  for the SFP storage racks was always maintained within requirements under the conditions specified in 10 CFR § 50.68. With regard to the 10 CFR Part 50, Appendix B, Criterion XVI violation, FPL disagreed with this AV as written. FPL stated that the SFP storage cells described in the Criterion XVI AV summary had degraded below the licensee's established administrative limit, not the design limit as described in the violation summary. FPL also did not agree that a violation of 10 CFR § 50.59 occurred because the licensee stated that the inability to implement License Amendment Request 234, which credited the use of Metamic inserts, did not constitute a proposed change, test, or experiment within the context of 10 CFR § 50.59. The licensee believed they were following the guidance currently described in Regulatory Issue Summary (RIS) 2005-20 with respect to the Boraflex degradation and resulting compensatory measures.

Several technical questions were posed to the licensee during the April 14, 2010, meeting by the NRC. The licensee committed to provide the following additional technical information to the NRC in response to questions and as further clarification: (1) a copy of the 10 CFR § 50.59 review performed for the compensatory measures implemented in the Unit 3 SFP; (2) a copy of the analysis performed that concluded that the most reactive fuel assembly available could be safely placed in the most degraded cell, without credit for either soluble Boron or interim compensatory measures, and  $K_{eff}$  would be maintained less than 1.0; (3) copies of NETCO reports for the three BADGER testing campaigns performed in the Unit 3 SFP; (4) an explanation of the statements in FPL Letter L-2001-115 that concluded that the areal density of a measured panel was 0.004 grams of Boron-10 per square centimeter ( $g\text{-B10}/\text{cm}^2$ ); and (5) documentation explaining how the uncertainty associated with RACKLIFE and BADGER testing is handled consistent with the 10 CFR § 50.68(b)(4) requirement to determine  $K_{eff}$  at a 95 percent probability and 95 percent confidence level.

After considering the information developed during the inspection and information provided by FPL during and after the conference, the NRC has concluded that the finding involving: (1) the failure to comply with the TS 5.5.1.1.a requirement to assure that  $K_{eff}$  would be maintained less than 1.0, for all cases in the Unit 3 SFP when flooded with unborated water, and (2) the failure to implement effective corrective actions as required by 10 CFR Part 50, Appendix B, Criterion XVI, for the degradation of Boraflex neutron absorber material below the administrative limits, is

appropriately characterized as a White finding of low to moderate significance with regard to safety, which will require additional NRC inspections.

The NRC concluded that licensee data are insufficient to support the conclusion that, when accounting for identified degradation of Boraflex panels in the Turkey Point Unit 3 spent fuel storage racks,  $K_{\text{eff}}$  would have been maintained less than 1.0 for all cases when flooded with unborated water as required by TS 5.5.1.1.a, which includes minimum design values as expressed in Chapter 9 of the UFSAR. The NRC notes that, as FPL presented at the conference, the actual soluble boron concentration remained at sufficient levels such that a criticality event would be highly unlikely, given the degraded Boraflex panels in the Turkey Point Unit 3 spent fuel storage racks. In addition, FPL implemented compensatory measures including increasing soluble boron concentration levels, to ensure that the SFP remained subcritical, as the NRC acknowledged in Confirmatory Action Letter (CAL) RII-10-002, dated December 19, 2009.

This conclusion is based on a review of the Turkey Point Unit 3 SFP current licensing basis criticality analysis, as approved by the NRC in 2000, which determined that the calculated maximum  $K_{\text{eff}}$  provided a limited margin to criticality. Chapter 9 of the Turkey Point UFSAR states, in part, that the most limiting depletion of Boron-10 from the Boraflex fuel storage racks was a reduction of nominal Boron-10 areal density of 50 percent for Region II racks. This analysis attempted to account for known Boraflex degradation issues by assuming a reduced Boron-10 areal density of 0.006 g-B10/cm<sup>2</sup> in the Boraflex, which represents a reduction in the nominal Boron-10 areal density of 50 percent. However, the on-going Boraflex degradation at Turkey Point necessitated an effective Boraflex surveillance program to assure that the minimum areal density did not exceed the design basis limits. Due to the limited margin available in the Unit 3 SFP criticality analysis and the small number of storage cells actually tested, degradation that results in areal densities below the assumed values expressed in Chapter 9 of the UFSAR could reasonably be assumed to result in a  $K_{\text{eff}}$  equal to or greater than 1.0 and a criticality, if flooded with unborated water.

Although the generic aspects of compliance with 10 CFR 50.68 remain under review, the NRC has concluded that the specific circumstances of the Turkey Point 10 CFR 50.68 matter are appropriately resolved via citation of TS 5.5.1.1.a.

The staff determined that the information provided by the licensee did not have an appreciable impact on the NRC Inspection Manual Chapter (IMC) 0609 Appendix M analysis. The staff also determined that the finding had a cross-cutting aspect in the area of Problem Identification and Resolution since the licensee did not take appropriate corrective actions to address safety issues and adverse trends in a timely manner, commensurate with their safety significance and complexity (P.1(d)). After further review, the cross-cutting aspect associated with P.1(c), as discussed in NRC Inspection Report 05000250/2010008, is no longer applicable.

Regarding the three AVs assessed under the NRC's traditional enforcement process, based on the information developed during the inspection and the information you provided during and after the conference, the NRC has determined that two violations of NRC requirements

occurred. One of these violations is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. In summary, FPL failed to provide notification to the NRC in accordance with the requirements of 10 CFR § 50.73 when testing and evaluation of Boraflex panels in the Unit 3 SFP racks revealed Boraflex degradation beyond minimum design values specified in the UFSAR. The NRC considers the failure to provide the required notification to be a significant matter because it impacted the NRC's ability to review and assess FPL's corrective actions for managing SFP Boraflex degradation. Had this information been reported as required, it is very likely that the NRC would have initiated additional follow-up inspections and inquiries into the degradation of the Unit 3 SFP from 2004 onward.

In addition, as discussed in the Enforcement Policy, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. In this case and as discussed above, the NRC concluded that the failure to provide the required report is associated with a White finding for FPL's failure to adequately manage Unit 3 FPL Boraflex degradation. Based on the above, the significance of this violation is characterized at Severity Level III in accordance with the NRC Enforcement Policy.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$70,000 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement action within the last 2 years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy.

At the enforcement conference, FPL offered no substantive root cause assessment of its failure to make the required notification in accordance with 10 CFR § 50.73, and did not provide any detailed corrective actions to allow the NRC to conclude that its actions in response to the violation were prompt and comprehensive. Therefore, credit is not warranted for the factor of *Corrective Action*.

Therefore, to emphasize the importance of prompt correction of violations, 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 (Notice) in the base amount of \$70,000 for this Severity Level III violation.

A second violation was identified involving the failure to update the UFSAR in accordance with 10 CFR § 50.71(e). The significance of this violation is characterized at Severity Level IV because it did not significantly impede the NRC's regulatory process. This violation is non-cited because the criteria of Section VI.A.1 of the NRC Enforcement Policy have been satisfied.

Regarding the AV associated with 10 CFR § 50.59, the NRC determined that the additional information provided by FPL after the conference established a sufficient basis for the NRC to conclude that a violation did not occur. In this case, the NRC concluded that FPL followed the guidance currently described in RIS 2005-20 with respect to Boraflex degradation and resulting

compensatory measures. Therefore, the NRC concluded that a violation of 10 CFR § 50.59 did not occur.

You have 30 calendar days from the date of this letter to appeal the staff's significance determination for the White finding or the Notice of Violation and Proposed Civil Penalty. An appeal of the White finding will be considered to have merit only if it meets the criteria given in NRC IMC 0609, Attachment 2.

For administrative purposes, this letter is issued as a separate NRC Inspection Report, No. 05000250/2010009. Accordingly, AVs 05000250/2009-005-03, 04, 05 and 06 are closed. AV 05000250/201008-01 is considered withdrawn. The following violations are open: Violation 05000250/201009-01, Failure to properly manage known Turkey Point Unit 3 Boraflex spent fuel pool degradation and the cross-cutting aspect associated with this finding in the area of Effective Corrective Actions, P.1(d); Violation 05000250/201009-02, Failure to make notification to the NRC in accordance with the requirements of 10 CFR § 50.73 when testing of Boraflex panels in the Unit 3 SFP revealed degradation beyond minimum design values specified in the Updated Final Safety Analysis Report (UFSAR) with no cross-cutting aspect; and Non-cited Violation 05000250/201009-03, Failure to update the FSAR in accordance with 10 CFR § 50.71(e) so that the report accurately reflects significant changes made to the facility with no cross-cutting aspect.

Because plant performance for this issue has been determined to be beyond the licensee response band of the NRC Action Matrix, we will use the Action Matrix to determine the most appropriate NRC response for this event. We will notify you, by separate correspondence, of that determination.

You are required to respond to this letter and should follow the instructions specified in the NUREG/BR-0254, Rev. 5 at the following link, <http://www.nrc.gov/reading-rm/doc-collections/nureqs/brochures/br0254/r5/br0254r5.pdf>.

In accordance with 10 CFR § 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

FPL

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Should you have any questions concerning this letter, please contact Mr. Marvin Sykes at 404-997-4629.

Sincerely,

***/RA/***

Luis A. Reyes  
Regional Administrator

Docket No.: 50-250  
License No.: DPR-31

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

cc w/Encl: (see page 7)

FPL

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Should you have any questions concerning this letter, please contact Mr. Marvin Sykes at 404-997-4629.

Sincerely,

*/RA/*

Luis A. Reyes  
Regional Administrator

Docket No.: 50-250  
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cc w/Encl: (see page 7)

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Letter to Mano Nazar from Luis Reyes dated June 21, 2010

SUBJECT: FINAL SIGNIFICANCE DETERMINATION OF WHITE FINDING AND NOTICE OF VIOLATION; NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$70,000 (NRC INSPECTION REPORT 05000250/2010009, TURKEY POINT NUCLEAR PLANT)

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NOTICE OF VIOLATION  
AND PROPOSED IMPOSITION OF A CIVIL PENALTY

Florida Power and Light  
Turkey Point Nuclear Plant  
Unit 3

Docket Nos. 50-250  
License No. DPR-31  
EA-10-037

The NRC identified violations of NRC requirements during an inspection and in-office review completed on December 31, 2009, and on March 5, 2010. 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 is set forth below:

I. Violation Assessed a Civil Penalty

10 CFR § 50.73(a)(2)(B) states that the licensee shall report to the NRC any condition which was prohibited by the plant's Technical Specifications (TS).

TS 5.5.1.1.a states that the Unit 3 spent fuel storage racks are designed and shall be maintained with an effective neutron multiplication factor ( $K_{\text{eff}}$ ) less than 1.0 when flooded with unborated water, which includes an allowance for biases and uncertainties as described in the Updated Final Safety Analysis Report (UFSAR), Chapter 9.

Contrary to the above, from 2004 to May 10, 2010, the licensee failed to report a condition that was prohibited by its TS. Specifically, testing since 2004 revealed that Unit 3 spent fuel pool Boraflex degradation exceeded values such that the Unit 3 spent fuel storage racks would not be maintained with  $K_{\text{eff}}$  less than 1.0 when flooded with unborated water when considering the biases and uncertainties described in Chapter 9 of the UFSAR. This condition is prohibited by Turkey Point Unit 3 TS, but it was not reported to the NRC as required by 10 CFR § 50.73(a)(2)(B).

This is a Severity Level III violation (Supplement I).  
Civil Penalty - \$70,000 (EA-10-037).

II. Violations Not Assessed a Civil Penalty

- A. TS 5.5.1.1.a states that the Unit 3 spent fuel storage racks are designed and shall be maintained with a  $K_{\text{eff}}$  less than 1.0 when flooded with unborated water, which includes an allowance for biases and uncertainties as described in Chapter 9 of the UFSAR.

Chapter 9 of the Turkey Point UFSAR states, in part, that the most limiting depletion of Boron-10 from the Boraflex fuel storage racks was a reduction of nominal Boron-10 areal density of 50 percent for Region II racks.

Contrary to the above, the licensee failed to maintain the Unit 3 spent fuel storage racks such that  $K_{\text{eff}}$  would remain less than 1.0 when flooded with unborated water when considering the biases and uncertainties described in Chapter 9 of the UFSAR. Specifically, licensee data indicates that dissolution of Boron-10 from Boraflex panels in Region II of the

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Turkey Point Unit 3 spent fuel pool resulted in a reduction in the nominal Boron-10 areal density in excess of 50 percent, such that  $K_{\text{eff}}$  would not have been maintained less than 1.0 for all cases if the spent fuel pool had been flooded with unborated water.

- B. 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Action," states, in part, that measures shall be established to assure that conditions adverse to quality are promptly identified and corrected.

Turkey Point UFSAR page 9.5-12 states that the most limiting case obtained to assure  $K_{\text{eff}}$  was equivalent to less than 1.0 in Region II was a reduction of Boraflex nominal areal density by 50 percent.

Contrary to the above, a condition adverse to quality was not promptly identified and corrected. Specifically, in 2004 and 2007, the licensee identified two spent fuel pool storage cells with Boraflex degradation greater than an administrative action limit specified in Turkey Point Plant Curve Book, Section 5. However, the licensee failed to correct this condition adverse to quality until it was identified by NRC inspectors in December 2009.

These violations are associated with a White Significance Determination Process finding for Unit 3 in the Initiating Events cornerstone.

Pursuant to the provisions of 10 CFR 2.201, the Florida Power and Light Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-10-037" and for each violation should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken, and (4) the date when full compliance will be achieved. Your response may reference or include previous 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. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

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

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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 violation(s) listed in this Notice, in whole or in part; (2) 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, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Roy Zimmerman, 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, 245 Peachtree Center Avenue, Suite 1200, Atlanta, GA 30303-1257, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://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 21<sup>st</sup> day of June 2010

Enclosure