

CASE NO: 2017-0190  
DATE REC'D: 12/05/2016  
SPECIALIST:  
RELATED CASE:

**From:** DeSalvo, Andrew  
**To:** FOIA Resource  
**Subject:** [External\_Sender] FOIA; SEVERITY LEVEL: Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) Notice of Enforcement Discretion (NOED) and, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature)  
**Date:** Friday, December 02, 2016 1:53:25 PM

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Andrew DeSalvo  
(b) (6)

December 2, 2016

Freedom of Information, Privacy & Information Collections Branch  
Customer Service Division, Office of the Chief Information Officer  
Mail Stop: T-5F09  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
FOIA.Resource@nrc.gov Ph: 301-415-7169 Fax: 301-415-5130

SUBJECT: Freedom of Information Act Request; SEVERITY LEVEL: Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) Notice of Enforcement Discretion (NOED) and, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature).

To whom it may concern:

Freedom of Information Act Request

I am seeking access to records under the Freedom of Information Act (or under the Freedom of Information Act and the Privacy Act).

My name, address, and daytime telephone number (in case you need to contact me to discuss your request) as follows:

Andrew DeSalvo  
(b) (6)

I describe the requested records (or information) as specifically as possible:

#### DESCRIPTION OF THE REQUESTED RECORDS

"Region II Enforcement and Investigations action Assigning Severity Level for purposes of determining the potential radiological or other hazards associated with continued operation, for Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) Notice of Enforcement Discretion (NOED) which increased the ultimate heat sink temperature from 100 degrees F to 103 degrees F and prevented the shutdown of both units; and, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature) entered 22 times prior to the event."

including individual and company names (where applicable):

Enforcement and Investigations Coordination Staff  
Enforcement Officer: David Gamberoni  
Office of Investigations, Region II  
U. S. Nuclear Regulatory Commission  
245 Peachtree Center Avenue, NE Suite 1200  
Atlanta, Georgia 30303-1257

as well as the relevant dates, places, events, subjects, and other details:

On July 20, 2014 at 1452 , Turkey Point Units 3 and 4 entered the Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) which requires both units to be placed in Hot Standby within 12 hours and Cold Shutdown within the following 30 hours. The action was entered because the UHS temperature exceeded the limit of 100 degrees Fahrenheit (F) due to a natural event. This event was reported to the NRC in accordance with 10 CFR 50.72(b)(3)(v)(B) because UHS capability to remove residual heat was impacted. At 1800 the NRC verbally approved a natural event Notice of Enforcement Discretion (NOED) which increased the ultimate heat sink temperature from 100 degrees F to 103 degrees F and prevented the shutdown of both units.

During 2014, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature) was entered 22 times prior to the event. The first entry was on June 7, 2014 with a maximum temperature of 96.11 degrees F. The last entry occurred on July 19, 2014 at 1655 with a temperature of 99.7 degrees F culminating in the event being evaluated.

FOIA and its EFOIA amendments also give the option to specify the form or format in which you would like to receive the requested records, as follows:

if the agency maintains the requested records in electronic format, I choose to receive the information electronically (on a disk or CD-ROM).

Please have the NRC's FOIA/PA Officer record the request and assign a tracking number. In addition, please send a written acknowledgment letter indicating the name and telephone number of the NRC FOIA/PA Specialist, whom you should contact if you need to discuss the processing and/or status of your request.

Yours sincerely,

ANDREW DeSALVO  
(b) (6)

enclosure

EXHIBIT A

Andrew DeSalvo  
(b) (6)

July 8, 2016

Enforcement and Investigations Coordination Staff  
Enforcement Officer: David Gamberoni  
Office of Investigations, Region II  
U. S. Nuclear Regulatory Commission  
245 Peachtree Center Avenue, NE Suite 1200  
Atlanta, Georgia 30303-1257

MEMORANDUM FOR: Enforcement Officer: David Gamberoni

SUBJECT: RII-2016-A-0014; Assessing Significance; TS 3.7.4, Ultimate Heat Sink (UHS) 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature)

To whom it may concern;

Thanks for your attention pertaining to an investigation of ALLEGATION REPORT RII-2016-A-0014.

I.) ALLEGER has Exhibit #: NRC-025-00-BD01, and "(A)dditional info provided by FPL regarding UHS. I thought you might be interested", as follows:

CITE

United States Nuclear Regulatory Commission Official Hearing Exhibit  
In the Matter of: FLORIDA POWER & LIGHT COMPANY  
(Turkey Point Nuclear Generating, Units 3 and 4)  
ASLBP #: 15-935-02-LA-BD01  
Docket #: 05000250 & 05000251  
Exhibit #: NRC-025-00-BD01

Turkey Point  
Canal Temperature Exceeded 100 degrees F.  
Event Date:  
CR Number: 1979256  
PI-AA-100-1005-F01, Revision 6

REFERENCE

1.0 Executive Summary

On July 20, 2014 at 1452 , Turkey Point Units 3 and 4 entered the Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) which requires both units to be placed in Hot Standby within 12 hours and Cold Shutdown within the following 30 hours. The action was entered because the UHS temperature exceeded the limit of 100 degrees Fahrenheit (F) due to a natural event. This event was reported to the NRC in accordance with 10 CFR 50.72(b)(3)(v)(B) because UHS capability to remove residual heat was impacted. At 1800 the NRC verbally approved a natural event Notice of Enforcement Discretion (NOED) which increased the ultimate heat sink temperature from 100 degrees F to 103 degrees F and prevented the shutdown of both units.

During 2014, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature) was entered 22 times prior to the event. The first entry was on June 7, 2014 with a maximum temperature of 96.11 degrees F. The last entry occurred on July 19, 2014 at 1655 with a temperature of 99.7 degrees F culminating in the event being evaluated.

This root cause was chartered to understand the organizational drivers of this event as opposed to the actual technical or scientific causes of the rise in cooling canal water temperature.

Through its investigation the root cause team determined that the organization has not recognized signals that would indicate a need for further investigation of the Cooling Canal System (CCS), or are have not been monitoring key factors that should be been used to assess the CCS's ability to meet its mission as the UHS.

These examples are:

- x Monitoring cooling canal water temperature and acting on rising canal water temperatures - Average canal temperatures have shown periodic all-time highs over the last 5 years; however, the all-time highs have been consistent since September 2013 through today.
- x Monitoring cooling canal Level (volume of water) and acting on reduced water levels.

II.) ALLEGER has NUREG-1600, the "policy statement is applicable to enforcement matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment", as follows:

CITE

NUREG-1600  
General Statement of  
Policy and Procedure for  
NRC Enforcement Actions

<http://www.nrc.gov/docs/ML0037/ML003715971.pdf>

#### REFERENCE

The NRC also has the authority to exercise discretion to permit continued operations - despite the existence of a noncompliance -- where the noncompliance is not significant from a risk perspective and does not, in the particular circumstances, pose an undue risk to public health and safety. When noncompliance occurs, the NRC must evaluate the degree of risk posed by that noncompliance to determine if specific immediate action is required.

#### REQUEST FOR INFORMATION

III.) NOW, ALLEGER makes this REQUEST FOR INFORMATION (RFI) to the Enforcement Officer: David Gamberoni as follows:

A.) Assessing Significance; findings of Potential Safety Consequences; please provide a RESPONSE pertaining to SUBJECT, as follows:

1.) Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) which requires both units to be placed in Hot Standby within 12 hours and Cold Shutdown within the following 30 hours. The action was entered because the UHS temperature exceeded the limit of 100 degrees Fahrenheit (F) due to a natural event. This event was reported to the NRC in accordance with 10 CFR 50.72(b)(3)(v)(B) because UHS capability to remove residual heat was impacted. At 1800 the NRC verbally approved a natural event Notice of Enforcement Discretion (NOED) which increased the ultimate heat sink temperature from 100 degrees F to 103 degrees F and prevented the shutdown of both units.

2.) During 2014, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature) was entered 22 times prior to the event.

B.) Assigning Severity Level; please provide a RESPONSE pertaining to SUBJECT, as follows:

For purposes of determining the appropriate enforcement action, violations [except the majority of those associated with findings evaluated through the Significance Determination Process (SDP)] are normally categorized in terms of four levels of severity to show their relative importance or significance

Region II Enforcement and Investigations action Assigning Severity Level for purposes of determining the potential radiological or other hazards associated with continued operation, as follows:

- 1.) Turkey Point Units 3 and 4 entered the Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS);
- 2.) NRC verbally approved a natural event Notice of Enforcement Discretion (NOED) which increased the ultimate heat sink temperature from 100 degrees F to 103 degrees F and prevented the shutdown of both units; and,
- 3.) 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature) was entered 22 times prior to the event.

C.) III. RESPONSIBILITIES; please provide a RESPONSE pertaining to SUBJECT, as follows:

Region II written notification provided to the Commission for the following situation:

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation (cases involving severe weather or other natural phenomena may be addressed by the NRC staff without prior Commission consultation in accordance with Section VII.C)

a.) Action for Technical Specification (TS) 3.7.4, Ultimate Heat Sink (UHS) which requires both units to be placed in Hot Standby within 12 hours and Cold Shutdown within the following 30 hours. The action was entered because the UHS temperature exceeded the limit of 100 degrees Fahrenheit (F) due to a natural event. This event was

reported to the NRC in accordance with 10 CFR 50.72(b)(3)(v)(B) because UHS capability to remove residual heat was impacted. At 1800 the NRC verbally approved a natural event Notice of Enforcement Discretion (NOED) which increased the ultimate heat sink temperature from 100 degrees F to 103 degrees F and prevented the shutdown of both units.

b.) During 2014, 0-ONOP-.011.1 (Intake Canal Low Level or High Temperature) was entered 22 times prior to the event.

CITE

July 31, 2014

Mr. Michael Kiley  
Turkey Point Nuclear Plant Vice President  
Florida Power & Light Company  
9760 SW 344th St.  
Florida City, FL 33035

SUBJECT: EXTENSION OF NOTICE OF ENFORCEMENT DISCRETION (NOED) FOR  
FLORIDA POWER AND LIGHT COMPANY (FPL) REGARDING TURKEY POINT  
NUCLEAR GENERATING STATION UNITS NOS. 3 AND 4 [NOED NO. 14-2-001]

REFERENCE

This determination was qualitative and based upon balancing the effect on public health and safety of not operating, against the potential radiological or other hazards associated with continued operation (Inspection Manual Chapter 0410, Section 06.02.b, (i.e., natural event NOED)).

<http://www.nrc.gov/docs/ML1421/ML14213A069.pdf>

Yours sincerely,

ANDREW DeSALVO

enclosure

ANNEX I

CITE

NUREG-1600  
General Statement of  
Policy and Procedure for  
NRC Enforcement Actions

URL: <http://www.nrc.gov/docs/ML0037/ML003715971.pdf>

REFERENCE

A. Assessing Significance

1. Actual Safety Consequences. In evaluating actual safety consequences, the NRC considers issues such as actual onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticalities, core damage, loss of significant safety barriers, loss of control of radioactive material or radiological emergencies. (See Section IV.A.5.c for guidance on violations that are associated with SDP findings with actual consequences.)

2. Potential Safety Consequences. In evaluating potential safety consequences, the NRC considers the realistic likelihood of affecting safety, i.e., the existence of credible scenarios with potentially significant actual consequences. The NRC will use risk information wherever

possible in assessing significance and assigning severity levels. A higher severity may be warranted for violations that have greater risk significance and a lower severity level may be appropriate for issues that have low risk significance. Duration is an appropriate consideration in assessing the significance of violations.

3. Impacting the Regulatory Process. The NRC considers the safety implications of noncompliances that may impact the NRC's ability to carry out its statutory mission. Noncompliances may be significant because they may challenge the regulatory envelope upon which certain activities were licensed. These types of violations include failures such as: failures to provide complete and accurate information, failures to receive prior NRC approval for changes in licensed activities, failures to notify NRC of changes in licensed activities, failure to perform 10 CFR 50.59 analyses, reporting failures, etc., Even inadvertent reporting failures are important because many of the surveillance, quality control, and auditing systems on which both the NRC and its licensees rely in order to monitor compliance with safety standards are based primarily on complete, accurate, and timely recordkeeping and reporting. The existence of a regulatory process violation does not automatically mean that the issue is safety significant. In determining the significance of a violation, the NRC will consider appropriate factors for the particular regulatory process violation. These factors may include: the significance of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reasonableness of the failure given their position and training, and whether the failure invalidates the licensing basis. Factors to consider for failures to provide complete and accurate information are addressed in Section IX of this policy. Unless otherwise categorized in the Supplements to this policy statement, 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. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

4. Willfulness. Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., negligence or inadvertent clerical errors in a document submitted to the NRC. In determining the significance of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the significance assessment will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be considered at least more than minor. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization.

#### c. Violations Associated with Actual Consequences

Violations that involve actual consequences such as an overexposure to the public or plant personnel above regulatory limits, failure to make the required notifications that impact the ability of Federal, State and local agencies to respond to an actual emergency preparedness (site area or general emergency), transportation event, or a substantial release of radioactive material, will be assigned severity levels and will be subject to civil penalties.

## V. PREDECISIONAL ENFORCEMENT CONFERENCES

When the NRC learns of a potential violation for which escalated enforcement action

appears to be warranted, or recurring nonconformance on the part of a contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the predecisional enforcement conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes, and missed opportunities associated with the apparent violations; (2) a common understanding of corrective actions taken or planned; and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

The NRC may conduct Regulatory Conferences (in lieu of predecisional enforcement conferences) to discuss the significance of findings evaluated by the Reactor Oversight Process's SDP when apparent violations are associated with potentially significant findings. The purpose of Regulatory Conferences is to get information from licensees on the significance of findings evaluated through the SDP whether or not violations are involved. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued (i.e., a Notice of Violation associated with a white, yellow, or red SDP finding), a subsequent predecisional enforcement conference is not normally necessary.

If the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, contractor, or vendor, a predecisional enforcement conference will not normally be held. If a predecisional enforcement conference is not held, the licensee may be given an opportunity to respond to a documented apparent violation (including its root causes and a description of planned or implemented corrective actions) before the NRC takes enforcement action. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the documented apparent violation.

The NRC will normally provide an opportunity for an individual to address apparent violations before the NRC takes escalated enforcement action. Whether an individual will be provided an opportunity for a predecisional enforcement conference or an opportunity to address an apparent violation in writing will depend on the circumstances of the case, including the severity of the issue, the significance of the action the NRC is contemplating, and whether the individual has already had an opportunity to address the issue (e.g., an Office of Investigation or a Department of Labor hearing).

## ANNEX II

### CITE

NRC INSPECTION MANUAL PLPB  
MANUAL CHAPTER 0410  
NOTICES OF ENFORCEMENT DISCRETION

URL: <http://www.nrc.gov/docs/ML1307/ML13071A487.pdf>

### REFERENCE

#### 06.02 Types of NOEDs.

b. Natural Event NOEDs. In unusual situations such as severe weather, grid instability, pandemic conditions, or other natural phenomena, or during public emergencies unrelated to natural events, a licensee may request a natural event NOED. When these conditions exist, a natural event NOED may be appropriate if compliance with TS or specific license conditions could worsen the current or pending non-radiological public health and safety emergency. Such situations are expected to occur rarely. During these conditions, a government entity (such as the U.S. Department of Homeland Security) or a responsible independent entity (such as a regional power authority or RC) should

Issue Date: 03/13/13 17 0410

determine that challenges in delivering power together with potential, non-radiological adverse effects to public health and safety constitute an emergency. It is the licensee's

responsibility to contact the government agency or independent entity and obtain a statement to this effect. The NRR plant PM shall expeditiously inform the Commission that a natural event NOED has been granted or denied. The NRC plant PM shall also notify OE that a natural event NOED has been granted, so that OE can issue a same-day Enforcement Notification (EN) to the Commission.

The staff may only grant a natural event NOED if all of the following conditions are met: (a) the public health and safety or common defense and security of not operating is balanced against the potential radiological or other hazards associated with continued operation, (b) safety will not be affected unacceptably by exercising this discretion, and (c) there will be no net increase in radiological risk after the licensee has implemented compensatory measures.

The determination that radiological public health and safety will not be unacceptably affected is qualitative and must be based on an assessment of how continued operation, with the potential for the interruption of power delivery resulting from the natural event, would affect public health and safety, versus how the cessation of operations would affect public health and safety. The licensee's request must be sufficiently detailed to allow the staff to make this determination. Risk insights, informed judgments, and quantitative analysis, may be used to support the determination.

The licensee's NOED request must specifically state that all of the criteria described for a natural event NOED have been satisfied. In addition, the request must include the government agency or independent entity requesting the licensee to maintain power to the grid, if applicable, including the individual contact name and telephone number. If the licensee has not satisfied all of the criteria, the NRC will not grant a NOED, and the licensee must comply with the license requirements until the NRC has approved a license amendment request under 10 CFR Part 50.

During pandemic conditions, the licensee may determine that there are plant-specific impacts on staffing that have occurred at its nuclear station and, absent enforcement relief, would be required to shut down. These impacts would preclude normal operation in accordance with the license. When these conditions exist, a natural event NOED may be appropriate.

<http://www.nrc.gov/docs/ML1307/ML13071A487.pdf>

### ANNEX III

#### IV. CONCLUSIONS OF LAW

7.17 The Board has considered all of the evidence presented by the parties on Contention 1. Based upon a review of the entire record in this proceeding and the proposed and reply findings of fact and conclusions of law submitted by the parties, and based upon the findings of fact set forth above, which are supported by reliable, probative and substantial

- 32 -

evidence in the record, the Board has decided all matters in controversy concerning this contention and reaches the following conclusions:

7.19 We conclude that the Staff's UHS LAR review and corresponding EA satisfies NEPA's requirements and the NRC's regulations in 10 C.F.R. Part 51.

<http://www.nrc.gov/docs/ML1610/ML16103A357.pdf>

### ANNEX IV

#### BIBLIOGRAPHY

NUREG-1600  
General Statement of  
Policy and Procedure for  
NRC Enforcement Actions



<http://www.nrc.gov/docs/ML0037/ML003715971.pdf>

NRC INSPECTION MANUAL PLPB  
MANUAL CHAPTER 0410  
NOTICES OF ENFORCEMENT DISCRETION

<http://www.nrc.gov/docs/ML1307/ML13071A487.pdf>

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
In the Matter of  
FLORIDA POWER & LIGHT COMPANY ) Docket Nos. 50-250-LA 50-251-LA  
Turkey Point Nuclear Generating, Units 3 and 4  
NRC STAFF TESTIMONY OF AUDREY L. KLETT, BRIANA A. GRANGE,  
WILLIAM FORD, AND NICHOLAS P. HOBBS CONCERNING CONTENTION 1

<http://www.nrc.gov/docs/ML1531/ML15314A662.pdf>

Turkey Point Units 3 and 4  
Docket Nos. 50-250 and 50-251  
Renewed Facility Operating License Nos. DPR-31 and DPR-41  
Subject: Request for Extension of Enforcement Discretion Regarding  
Technical Specification 3/4.7.4, Ultimate Heat Sink

<http://www.nrc.gov/docs/ML1421/ML14212A520.pdf>

FPL-008 - FPL Ultimate Heat Sink Temperature License Amendment Request, July 10, 2014 (ADAMS Accession No. ML14196A006). Accession Number ML15314A532 07/10/2014

<http://www.nrc.gov/docs/ML1531/ML15314A532.pdf>

<http://www.nrc.gov/docs/ML1610/ML16103A357.pdf>

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