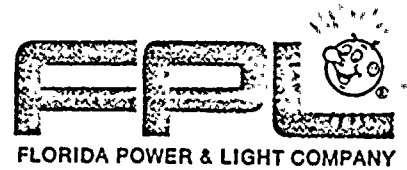


USNRC REGION II
ATLANTA, GEORGIA



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January 18, 1980
L-80-27

Mr. James P. O'Reilly, Director, Region II
Office of Inspection and Enforcement
U. S. Nuclear Regulatory Commission
101 Marietta Street, Suite 3100
Atlanta, Georgia 30303

Dear Mr. O'Reilly:

Re: RII:TEB
Docket Nos. 50-335/79-33, 50-389/79-32,
50-250/79-35, 50-251/79-35

Florida Power & Light Company has reviewed the subject inspection report and a response is attached.

There is no proprietary information in the report.

Very truly yours,

A handwritten signature in cursive script that reads 'Robert E. Uhrig'.

Robert E. Uhrig
Vice President
Advanced Systems & Technology

REU/GDW/ah

Attachments

cc: Harold F. Reis, Esquire

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OFFICIAL COPY
PEOPLE ... SERVING PEOPLE

ATTACHMENT

Re: RII:TEB
Docket Nos. 50-335/79-33, 50-389/79-32,
50-250/79-35, 50-251/79-35

Finding:

Based on the NRC inspection November 27-30, 1979, certain of your activities were apparently not conducted in full compliance with NRC requirements as indicated below. These items have been categorized as described in correspondence to you dated December 31, 1974.

As required by Section 21.21(a) of 10 CFR Part 21, each entity subject to these regulations shall adopt appropriate procedures for evaluation of deviations and assure that a Director or responsible officer is informed if the construction or operation of a facility, or activity, or a basic component supplied for such a facility or activity fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order or license of the Commission relating to a substantial safety hazard or contains a defect. Section 21.21(b)(3) delineates the information to be included in the written report. Section 21.51 delineates the maintenance of record requirements. FPL QA Manual Procedure No. QP 16.4, Rev. 0, April 23, 1979 has been developed to specify the measures and responsibilities to ensure compliance to 10 CFR Part 21.

Contrary to the above Part 21 requirements, FPL Corporate QA Manual QA Procedure, QP 16.4, Paragraph 5.2 and Figure 16.4-1 does not require that all deviations be formally evaluated and documented as Part 21 evaluations. Since formal Part 21 evaluations are not performed and documented in all cases, it follows that the following Part 21 requirements cannot be met: (1) informing of the responsible officer (21.21(a)(2)); (2) the written reports to the Commission contain the required information (21.21(b)(3)); and (3) the required records be maintained (21.51).

Response:

Florida Power & Light Company has reviewed the foregoing Notice of Violation and respectfully requests reconsideration based on the following information.

The Notice of Violation states that "Contrary to the above Part 21 requirements, FPL Corporate QA Manual QA Procedure, QP 16.4, Paragraph 5.2 and Figure 16.4-1 does not require that all deviations be formally evaluated and documented as Part 21 evaluations."

Section 206 of the Energy Reorganization Act of 1974 provides, in pertinent part, that:



- (a) Any individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended, or pursuant to this Act, who obtains information reasonably indicating that such facility or activity or basic components supplied to such facility or activity--
- (1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or
 - (2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate,

shall immediately notify the Commission of such failure to comply, or of such defect, unless such person has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

- (b) Any person who knowingly and consciously fails to provide the notice required by subsection (a) of this section shall be subject to a civil penalty in an amount equal to the amount provided by Section 234 of the Atomic Energy Act of 1954, as amended.

(Emphasis added.) Section 206 thus establishes only a reporting requirement. Beyond that, it does not impose an obligation for the classification of deviations.

Consistent with Section 206, the "Purpose" section of Part 21 provides:

The regulations in this part establish procedures and requirements for implementation of Section 206 of the Energy Reorganization Act of 1974. That section requires any individual director or responsible officer of a firm constructing, owning, operating or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, who obtains information reasonably indicating: (a) That the facility, activity or basic component supplied to such facility or activity fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards or (b) that the facility, activity, or basic component supplied to such facility or activity contains defects, which could create a substantial safety hazard, to immediately notify the Commission of such failure to comply or such defect, unless he has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.



(10 CFR 21.1) Consistent with its stated purpose, nowhere does Part 21 require the evaluation of all deviations. The regulations prescribe no procedures for evaluation beyond those needed to support the notification requirements of Section 206 which, in turn, are embodied in Part 21.

In sum, both Section 206 and Part 21 deal with notification. Neither requires the evaluation of all deviations. The proper submission of reports is all that is necessary.

In fact, the NRC Staff has stated:

It is the Staff's position that the licensee is not required to report under Part 21 an occurrence that falls within the scope of either Part 21 or 50.55 (e) or Reg. Guide 1.16 if that occurrence is reported in accordance with 50.55(e) or Reg. Guide 1.16 requirements.

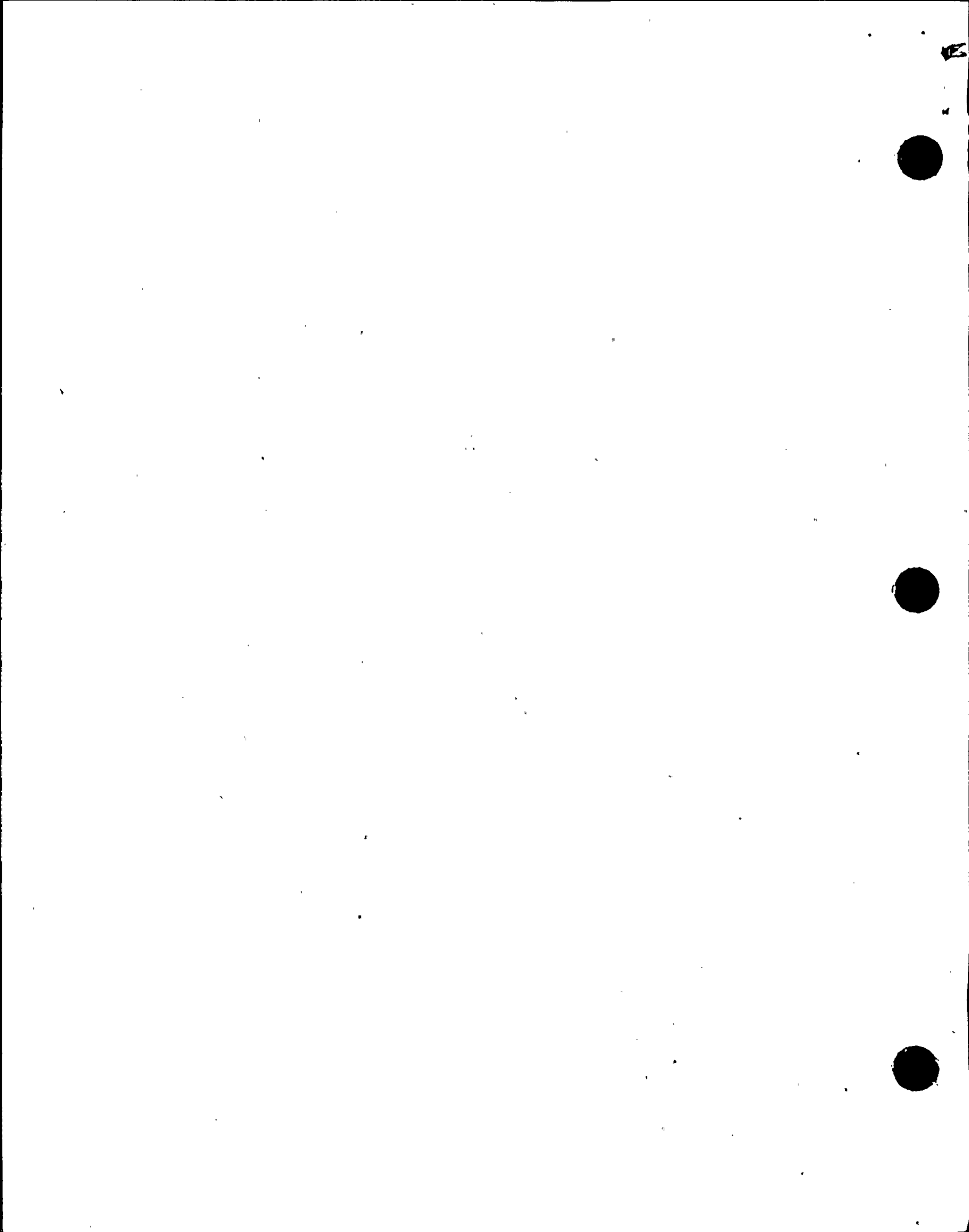
(Letter to John W. Gore (AIF), from Ernst Volgenau (NRC), dated April 21, 1978, Attachment, p. 1.) Implicit in that statement is the position that, so long as proper reports are made -- such as pursuant to the requirements of 50.55(e) or Reg. Guide 1.16 -- a separate evaluation (which would result only in a determination as to the applicability of Part 21) is not required.

The Notice of Violation further states, "Since formal Part 21 evaluations are not performed and documented in all cases, it follows that the following Part 21 requirements cannot be met: (1) informing of the responsible officer (21.21(a) (2); (2) the written reports to the Commission contain the required information (21.21(b)(3); and (3) the required records be maintained (21.51)."

Quality Procedure 16.4 in part requires that the Vice President of Advanced Systems & Technology be notified of any item which is evaluated to meet the reporting requirements of 10 CFR 21 and which has not been reported to the NRC by another means. Quality Procedure 16.6 states that the Vice President of Advanced Systems & Technology is responsible through the Manager of Nuclear Licensing for reviewing and issuing all reports of 10 CFR 50.55(e) deficiencies to NRC for plants under construction. Power Resources Procedure 3421.1 requires that all Licensee Event Reports be signed by the Vice President, Power Resources or his designee. Licensee Event Reports (or reportable occurrences) are reported in accordance with Facility Technical Specifications which implement Regulatory Guide 1.16. Thus the responsible officer is required to be notified of all items determined to be reportable to the NRC under 10 CFR 21, 10 CFR 50.55(e) and Technical Specifications.

On April 28, 1978, Mr. Ernst Volgenau as Director of the NRC Office of Inspection and Enforcement wrote a letter to Mr. John W. Gore of the Atomic Industrial Forum, Inc., cited above, in response to certain questions raised by Mr. Gore relative to 10 CFR 21. In that letter Mr. Volgenau stated:

"It is the Staff's position that the licensee is not required to report under Part 21 an occurrence that falls within the scope of either Part 21 or 50.55(e) or Reg. Guide 1.16 if that occurrence is reported in accordance with 50.55(e) or Reg. Guide 1.16 requirements.



In such cases, it is also the Staff's position that the time requirements (oral, 24 hours under 50.55(e) and Reg. Guide 1.16; written, 30 days under 50.55(e) and 14 days under Reg. Guide 1.16) of the reporting method used would be controlling and, for the licensee, the Part 21 reporting times would not be applicable."

(Emphasis added.) Based on the foregoing, the information requirements of items reported in accordance with 10 CFR 50.55(e) or Technical Specifications are governed by 10 CFR 50.55(e) and the Facility Technical Specifications and not 10 CFR 21.

Records are maintained of all items determined to be reportable under 10 CFR 50.55(e) and Facility Technical Specifications. It is questionable whether 10 CFR 21.51 applies to items reported in accordance with 10 CFR 50.55(e) and Facility Technical Specifications. Nevertheless, FPL practices and procedures meet the 10 CFR 21.51 requirements for record keeping.

Following the publication of 10 CFR 21, many meetings were held between NRC and utility representatives to determine the meaning of the new regulation. Utility representatives were assured at these meetings and later in writing that Part 21 was aimed at suppliers and that the utilities had only to continue their past practices of reporting in accordance with 10 CFR 50.55(e) and Facility Technical Specifications to be in compliance with 10 CFR 21. FPL procedures for implementing 10 CFR 21 were reviewed by NRC inspectors following the issuance of 10 CFR 21. Our procedures were determined at that time to satisfactorily implement 10 CFR 21 requirements.

It is disturbing to have NRC inspectors cite our previously accepted practices against an apparently new interpretation of 10 CFR 21 without benefit of rulemaking or even prior notification.

In summary, based on the foregoing, FPL requests that the Notice of Violation be reconsidered. We will be pleased to discuss this matter further with you or your representatives.

