



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 12, 2019

EA-18-066
EA-19-045

Mr. Mano Nazar, President
and Chief Nuclear Officer
Nuclear Division
Florida Power & Light Company
Mail Stop: EX/JB
700 Universe Blvd.
Juno Beach, FL 33408

SUBJECT: ST. LUCIE PLANT – NOTICE OF VIOLATION AND PROPOSED
IMPOSITION OF CIVIL PENALTY - \$232,000 (NRC INVESTIGATION
REPORT NUMBERS 2-2017-024 AND 2-2019-009)

Dear Mr. Nazar:

This letter refers to two investigations conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) related to Florida Power and Light's (FPL) St. Lucie Nuclear Plant. The purposes of the investigations were to determine whether a contract employee at St. Lucie Nuclear Plant was the subject of employment discrimination in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.7, "Employee protection" (OI Report No. 2-2017-024); and to determine whether a FPL senior licensee executive, or potentially others, deliberately provided the NRC with incomplete and inaccurate information in violation of 10 CFR 50.9, "Completeness and accuracy of information" (OI Report No. 2-2019-009).

For OI investigation 2-2017-024 (dated May 21, 2018), NRC determined that the FPL Regional Vice President (VP) – Operations, deliberately caused a contract employee's assignment to be cancelled the week of March 13, 2017. The cancellation occurred, in part, because the contract employee entered a concern into St. Lucie's corrective action program on March 13, 2017. In summary, a Framatome (formerly known as Areva) part-time employee asserted that his work re-assignment was cancelled in March 2017, after submitting a condition report at FPL's St. Lucie nuclear plant. The contract employee, as the lead supervisor for Framatome's refueling team at St. Lucie, had been pre-scheduled by Framatome and FPL to transfer to Turkey Point nuclear plant for the same role. On March 13, 2017, the contract employee submitted a condition report that documented concerns with the St. Lucie's requirement for Framatome personnel to wear multiple dosimeters while performing refueling work. On March 16, 2017, the contract employee's re-assignment to Turkey Point was cancelled.

The NRC determined that the contract employee's work assignment was cancelled, at least in part, for raising a nuclear safety concern via the submission of a condition report. The cancellation of the contract employee's work assignment is a violation of 10 CFR 50.7.

Additionally, the NRC determined that the deliberate actions of the former FPL Regional VP - Operations caused FPL to be in violation of 10 CFR 50.7. Our determinations were based on information developed during the investigation and information that you provided during the predecisional enforcement conference (PEC) process.

OI's investigation documented that FPL's Regional VP - Operations sent an e-mail to the Framatome VP of Outage Services on March 14, 2017. The body of the FPL VP's e-mail included the text of the condition report that was submitted by the contract employee on March 13, 2017, and a related question regarding the condition report. The evidence documented that both VPs acknowledged the sending, and the receipt, of the March 14th e-mail. Additionally, the evidence indicated that the FP&L Regional VP initiated a subsequent phone discussion on March 14th with the Framatome VP of Outage Services which included discussing the contract employee's reassignment to Turkey Point. OI's evidence documented that on March 14th the Framatome VP (Outage Services), contacted the Framatome Manager, PWR/Reactor Services and directed him to inform the contract employee that his re-assignment was cancelled. On March 16th, the Framatome Manager (PWR/Reactor Services), informed the employee that his re-assignment to Turkey Point was cancelled. The temporal proximity of the concerned individual's (CI) submission of the condition report and the initiation of the adverse action by an FPL executive and the subsequent implementation of the adverse action within a few days by Framatome management was deemed a discriminatory act. The NRC determined that neither FPL or Framatome presented sufficient evidence to support their assertions that the adverse employment action was justified for business reasons.

During the PECs, FPL and Framatome denied that a violation of 10 CFR 50.7 occurred. Generally, FPL and Framatome asserted that (1) the protected activity was not a contributing factor to any adverse personnel action and that the NRC's only basis was "temporal proximity," (2) that Framatome's reassignment of the contractor was justified by legitimate safety (business) reasons; (3) and that the contractor did not suffer an adverse personnel action, but instead was reassigned. The NRC's determination that a violation occurred was based on factors such as: the CI's subordinates, coworkers, and superiors, both at Framatome and FPL, almost universally spoke very highly of him; neither FPL or Framatome produced sufficient evidence to indicate that the performance of the CI, or the performance of his reactor services team, was a significant concern during the refueling outage; and, the staff noted that the former FPL Regional VP – Operation's testimony differed significantly from the testimony of other witnesses and included inconsistencies that undercut his credibility and specifically discredited his assertions that the CI's removal from the Turkey Point outage was unrelated to his protected activities. The NRC determined that FPL's and Framatome's assertion that the contractor's reassignment was justified by legitimate safety (business) reasons was not reasonable because of evidence which indicated that the 2017 spring refueling outage was the shortest outage for St. Lucie in many years and that the reactor services portion of the outage, managed by the contract employee, incurred only minimal scheduling delays. Lastly, the NRC determined that the contractor did suffer an adverse action when he was removed from the Turkey Point outage. When the contractor was directed not to go to Turkey Point, it was not clear if Framatome would provide an alternative work assignment. The individual is a part-time Framatome employee and is only paid when he works. A reasonable person would view the cancellation of the workers pre-scheduled transfer as a materially adverse action and one that could potentially chill others who raise nuclear safety concerns.

The NRC considers violations of 10 CFR 50.7 significant because of the potential that individuals might not raise safety issues for fear of retaliation. Based on the deliberate action

and the level of manager involved in the adverse action, this violation has been categorized in accordance with the "NRC Enforcement Policy," at Severity Level II. See NRC Enforcement Policy, Violation Example 6.10.b.1.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$232,000 is considered for the Severity Level II violation of 10 CFR 50.7, "Employee Protection." The NRC considered both the Identification and Corrective Action factors with respect to this willful violation in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. Credit for Identification is not appropriate, since the violation was identified by the NRC via the Agency's allegation program. The NRC determined *Corrective Action* credit was warranted due to corrective actions initiated by FPL. Completed corrective actions include an Employee Concerns Program (ECP) investigation, safety conscious work environment (SCWE) surveys in St. Lucie and Turkey Point radiation protection departments, and training of senior nuclear managers. Planned corrective actions include items such as a fleet-wide communication that reinforces the SCWE policy, ECP personnel training, ECP third-party audits, and the creation of a personnel action review board process to review certain employment actions involving contractor personnel brought to FPL's attention. Therefore, to emphasize the importance of prompt identification and correction of violations, the NRC has determined, as provided for in Section 2.3.4 of the NRC Enforcement Policy, to issue the enclosed Notice of Violation (Notice) and Proposed Imposition of Civil Penalty of \$232,000, which is the base civil penalty amount for the Severity Level II violation.

If you disagree with this enforcement sanction, you may deny the violation, as described in the enclosed Notice, or 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 using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found 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 a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) David Jones at (301) 287-9525 within 10 days of the date of this letter. You may also contact both ICR and Mr. Jones for additional information. If you decide to participate in ADR, your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalty until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also make available, within ADAMS, the letter describing the apparent violation, dated October 19, 2018, and the NRC presentation from the PEC held on February 4, 2019. To the extent possible, your response, if provided, should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at http://www.nrc.gov/reading_rm/doc_collections/enforcement/actions/.

Concerning OI Report No. 2-2019-009 (dated April 23, 2019), the NRC determined that a former FPL Corporate Support Vice President, whose previous position was FPL Regional VP-Operations (discussed above), deliberately provided incomplete and inaccurate information to FPL that was subsequently submitted by FPL to the NRC. Had the inaccurate information not been detected it would have adversely impacted NRC's deliberations for OI investigation 2-2017-024. In a letter dated December 10, 2018, Agencywide Documents Access and Management System (ADAMS) Accession No. ML18346A182, FPL submitted to the NRC a photocopied journal that had been maintained by the then FPL Regional Vice President (VP) - Operations. The letter stated that the journal contained material that was highly relevant to the facts in OI investigation 2-2017-024. Subsequently, in a letter dated January 17, 2019 (ADAMS No. ML#19024A085), FPL stated that they had developed cause to question the authenticity of the outage journal. The evidence developed during OI's investigation (2-2019-009) revealed that the FPL Regional VP - Operations deliberately submitted a journal to FPL which contained incomplete and inaccurate information. Had the inaccurate information not been detected it would have adversely impacted NRC's deliberations for the St. Lucie discrimination case (OI investigation 2-2017-024).

Section 2.3.11, "Inaccurate and Incomplete Information," of the Enforcement Policy, states that *"Generally, if the matter was promptly identified and corrected by the licensee or applicant before the NRC relies on the information, or before the NRC raises a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information."* Therefore, the NRC determined that pursuant to Section 2.3.11 of the Enforcement Policy, no further action should be taken with respect to FPL for OI Report 2-2019-009) because FPL (1) proactively identified the concern and promptly informed the NRC, (2) withdrew the journal prior to it adversely impacting the NRC's enforcement proceedings for the discrimination case (OI Report 2-2017-024), (3) conducted a detailed investigation which included the hiring of a forensics analyst, and (4) took appropriate personnel actions. For NRC enforcement actions involving the FPL VP, see (ADAMS No. ML19234A334).

If you have any questions concerning either of these matters, please contact David Jones of my staff at (301) 287-9525.

Sincerely,

/RA/

George A. Wilson, Director
Office of Enforcement

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

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
3. NUREG/BR-0317 Rev. 2, Enforcement Alternative Dispute Resolution Program

SUBJECT: ST. LUCIE PLANT – NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$232,000 (NRC INVESTIGATION REPORT NUMBERS 2-2017-024 AND 2-2019-009)
DATE: September 12, 2019

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Publicly Available

ADAMS Accession No.: ML19234A332

OFFICE	OE/EB	OE/CRB	OGC	OE/D
NAME	DJones	DSolorio	SKirkwood	GWilson
DATE	8/30/19	9/9/19	8/22/19	9/12/19

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

St. Lucie Plant
Juno Beach, FL

Docket No. 050-335/389
License No. DPR-67/NPF-16
EA-18-066

During an NRC investigation completed on May 21, 2018, a violation of an NRC requirement 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:

A. 10 CFR 50.7(a), states, in part, that "Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment." The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

10 CFR 50.7(a)(1)(i), states, in part, that the protected activities include but are not limited to providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes.

A Florida Power and Light Regional Vice President - Operations deliberately discriminated against a Framatome (formerly known as Areva) contract employee for engaging in a protected activity in March of 2017. Specifically, a contract employee who raised safety concerns during the St. Lucie refueling outage had a work assignment to Turkey Point Nuclear Plant cancelled shortly after submitting a condition report. The actions of FPL management were, in part, based on the contractor's engagement in a protected activity.

This is a Severity Level II violation (Enforcement Policy Sections 2.2.1.d, 6.10).
Civil Penalty - \$232,000.

Pursuant to the provisions of 10 CFR 2.201, Florida Power & Light is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty. This reply should be clearly marked as a "Reply to a Notice of Violation (EA-18-066)" and should include for the violation: (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 to avoid further violations; (4) your plan and schedule for completing short and long term corrective actions and (5) the date when full compliance will be achieved.

Enclosure 1

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.

Florida Power & Light may pay the civil penalty 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 within 30 days of the date of this Notice 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 (EA-18-066)" and may: (1) deny the violation 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 2.3.4 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(ies), and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region II, 245 Peachtree Center Ave. N.E., Suite 1200, Atlanta, GA 30303, and the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, 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 in the NRC's Agencywide Documents Access and Management 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 or proprietary information. 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 of receipt.

Dated this 12th day of September, 2019