

## II. Further Information

Documents related to this action, including the withdrawal letter for the 5-year POLA and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: ML032731017 for the September 2003 request from the Army; ML032930189 for the NRC **Federal Register** notice for this action; ML051520319 for the Army's May 2005 request for an alternate decommissioning schedule; ML051640102 for the Staff's June 2005 acceptance of the Army's request for review; ML051660038 for the June 2005 NRC **Federal Register** notice; and ML052130480 for the July 2005 withdrawal letter from the Army. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

These documents may also be viewed electronically on the public computers located at the NRC's PDR, located in O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 19th day of August, 2005.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Deputy Director Division of Waste Management and Environment, Office of Nuclear Material Safety and Safeguards.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

### Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License No. 290, issued to Florida Power Corporation (the licensee, also doing business as

Progress Energy-Florida,) for operation of the Crystal River Unit 3 (CR-3) Nuclear Generating Plant located in Citrus County, FL.

The proposed amendment would allow the licensee to utilize a probabilistic methodology to determine the contribution to main steamline break (MSLB) leakage rates for the once-through steam generator (OTSG) from the tube end crack (TEC) alternate repair criteria (ARC) described in CR-3 Improved Technical Specification (ITS) 5.6.2.10.2.f. This amendment revision involves a change to ITS 5.6.2.10.2.f to incorporate the basis of the proposed probabilistic methodology and the method and technical justification for projecting the TEC leakage that may develop during the next operating cycle following each inservice inspection of the CR-3 OTSGs. This notice supercedes the previous notice dated March 15, 2005 (70 FR 12746).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This LAR [license amendment request] proposes to change the method to determine the projected MSLB leakage rates for TEC. Potential leakage from OTSG tubes, including leakage contribution from TEC, is bounded by the MSLB evaluation presented in the CR-3 Final Safety Analysis Report (FSAR) and testing performed during the development of Topical Report BAW-2346P, Revision 0. The inspection required by the ARC will continue to be performed as required by CR-3 ITS 5.6.2.10. This inspection provides continuous monitoring of tubes with TEC indications remaining in service, and ensures that degradation of new tubes containing TEC indications is detected. The proposed change

in method to determine MSLB leakage rates for TEC and the addition of a method to project the TEC leakage that may develop during the next operating cycle do not change any accident initiators.

2. Does not create the possibility of a new or different type of accident from any accident previously evaluated.

This LAR proposes to change the method to determine the projected MSLB leakage rates for TEC and the addition of a method to project the TEC leakage that may develop during the next operating cycle. The changes introduce no new failure modes or accident scenarios. The proposed changes do not change the assumptions made in Topical Report BAW-2346P, Revision 0, which demonstrated structural and leakage integrity for all normal operating and accident conditions for CR-3. The addition of a method to project the TEC leakage provides an additional means to monitor the initiation of TEC. The design and operational characteristics of the OTSGs are not impacted by the use of a probabilistic methodology to determine MSLB leakage rates.

3. Does not involve a significant reduction in the margin of safety.

This LAR proposes to change the method to determine the projected MSLB leakage rates for TEC and the addition of a method to project the TEC leakage that may develop during the next operating cycle. The resulting leakage estimates will be lower than the estimates from the old method. However, the estimates from the proposed method will be more realistic and do not impact the acceptance criteria. The methodology relies on the same accident analyses described in Topical Report BAW-2346P, Revision 0, and License Amendment Request #249, Revision 0, and utilizes the same leakage test data and leakage limit. The CR-3 FSAR analyzed accident scenarios are not affected by the change and remain bounding. The limits established in CR-3 ITS 3.4.12 and 5.6.2.10.2.f have not been changed. The addition of a method to project the TEC leakage that may develop during the next operating cycle provides an additional means to monitor the initiation of TEC. Therefore, the proposed change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-

day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's public document room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public

Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect

to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)-(viii).

A request for a hearing or a petition for leave to intervene must be filed 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; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Services Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated August 12, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://>

[www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 22nd day of August, 2005.

For the Nuclear Regulatory Commission.

**Brenda L. Mozafari,**

*Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[IA-05-007]

### In the Matter of Joseph Guariglia; Confirmatory Order (Effective Immediately)

#### I

Mr. Joseph Guariglia (Mr. Guariglia) is employed by Nine Mile Point Nuclear Station, LLC, at the Nine Mile Point Nuclear Station. The facility is located in Lycoming, NY. In June 2000, Mr. Guariglia was a fire protection supervisor at the facility.

#### II

Following the receipt of information in January 2004, an investigation was initiated by the NRC's Office of Investigations (OI), Region I, on February 3, 2004, at the Nine Mile Point Nuclear Station. This investigation was initiated to determine whether Mr. Guariglia deliberately violated conditions of the Nine Mile Point Unit 2 license by compromising an unannounced fire drill in June 2000. Based on the evidence developed during its investigation, OI substantiated that Mr. Guariglia deliberately compromised the unannounced fire drill in June 2000. Mr. Guariglia was informed of the NRC finding in a letter dated March 18, 2005.

#### III

In response to the NRC's March 18, 2005 letter, Mr. Guariglia requested the use of Alternative Dispute Resolution (ADR) to resolve this matter. ADR is a process in which a neutral mediator, with no decision-making authority, assisted the NRC and Mr. Guariglia to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. An ADR session was

held between Mr. Guariglia and the NRC in Philadelphia, PA, on June 22, 2005, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. During that ADR session, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

1. The NRC determined that a violation occurred when an unannounced fire drill at Nine Mile Point Unit 2 was compromised in June 2000. This was contrary to technical specifications and 10 CFR Part 50, Appendix R, which require that persons planning and authorizing an unannounced fire drill shall ensure that the responding shift fire brigade members are not aware that a fire drill is being planned until it is begun.

2. The NRC maintains that Mr. Guariglia deliberately compromised the fire drill when he called the fire brigade leader to inform him of its time and location. Because Mr. Guariglia's deliberate actions placed Nine Mile Point 2 in violation of NRC requirements, Mr. Guariglia was in violation of 10 CFR 50.5. Mr. Guariglia maintains that he does not recall the specifics associated with this fire drill. However, in light of the evidence available, Mr. Guariglia agreed that the fire drill was compromised and agreed that he was in violation of 10 CFR 50.5.

3. Mr. Guariglia, subsequent to the identification of this violation, will take actions to assure that he learned from this violation and provide the NRC with assurance that it will not recur. These actions include (a) writing an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions and (b) prior to December 31, 2005, participating in a stand-down meeting with appropriate fire protection staff and describing the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.

4. In light of Mr. Guariglia's agreement to Items 1 and 2 and the actions he will take as described in Item 3, the NRC agrees to issue a Notice of Violation without a specified severity level, to Mr. Guariglia. The NRC will place the Notice of Violation, which will be publically available in ADAMS, on the NRC "Significant Enforcement Actions—Individuals" website. The Notice of Violation will be placed on the "Significant Enforcement Actions—

Individuals" Web site no longer than 1 year.

5. Mr. Guariglia agreed to issuance of a Confirmatory Order confirming this agreement.

#### IV

Since Mr. Guariglia has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that Mr. Guariglia's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above and Mr. Guariglia's consent, this Confirmatory Order is immediately effective upon issuance.

#### V

Accordingly, pursuant to Sections 103, 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, that prior to December 31, 2005:*

1. Mr. Guariglia shall write an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions.

2. Mr. Guariglia shall participate in a stand-down meeting with appropriate fire protection staff and describe the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.

3. Mr. Guariglia shall notify the NRC, in writing, within 30 days of completion of the actions described in Items 1 and 2 above.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Guariglia of good cause.

#### VI

Any person adversely affected by this Confirmatory Order, other than Mr. Guariglia, 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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted