NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–335, 50–389; License Nos.: DPR–67, NPF–16; EA–07–321]

In the Matter of Florida Power and Light Company, St. Lucie Nuclear Plant; Confirmatory Order (Effective Immediately)

I

Florida Power and Light Company (FPL or Licensee) is the holder of Operating License Nos. DPR–67 and NPF–16, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 1, 1976, and April 6, 1983, respectively. The license authorizes the operation of St. Lucie Nuclear Plant, Units 1 and 2, (St. Lucie or facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Jensen Beach, Florida.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on May 16, 2008.

II

On September 1, 2006, the NRC Office of Investigations (OI) began an investigation (OI Case No. 2–2006–034) at St. Lucie Nuclear Plant. Based on the evidence developed during the investigation, the NRC staff concluded that a supervisor at St. Lucie willfully failed to take action to identify two contract workers as untrustworthy, subsequent to their actions to falsify a work order related to valve maintenance activities they performed. The results of the investigation were sent to FPL in a letter dated April 2, 2008.

The NRC's letter of April 2, 2008, documented the forgoing incident which occurred on or about March 10, 2005. Two contractors documented a work order to indicate that they had used the torque wrench required by the work order when, in fact, they had used a different torque wrench, in an apparent effort to conceal their over-torquing of a valve. The April 2nd letter also documented the subsequent investigation of this incident by FPL and the corrective actions taken by FPL's St. Lucie management. Although FPL's immediate actions to ensure all maintenance and operational issues associated with the valve in question were prompt and comprehensive, the NRC's letter of April 2, 2008, documented two apparent violations associated with FPL's initial review and investigation into the matter.

III

On May 16, 2008, the NRC and FPL met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decisionmaking authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. The NRC and FPL agreed that a violation occurred involving FPL's failure to adhere to FPL Nuclear Division Policy, NP–415, Revision 3, and ADM–15.02. These procedures require, in part, that in all instances where the trustworthiness and reliability of a person who is currently granted unescorted access (UA) is called into question by credible objective evidence, the responsible supervisor or manager of that individual shall promptly contact the appropriate site security manager at the nuclear plant site. In this case, the falsification of the work order called into question the trustworthiness and reliability of the two contract workers. However, FPL did not ensure that the site security manager was contacted or otherwise initiate action such that the trustworthiness and reliability of the two contract workers could be assessed at that time. The actions of the two contract workers should have been considered in evaluating the two contract workers' suitability for continued unescorted access and possible entry into the Personnel Access Data System (PADS). As a result, FPL did not meet the Access Authorization program objective in 10 CFR 73.56(b)(1), which is to provide high assurance that individuals granted UA are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage. Subsequently, the two contract workers' trustworthiness was evaluated and they were entered into PADS. Prior to being entered into PADS, however, the contract workers were granted access to a number of nuclear sites, including St. Lucie.

2. The NRC and FPL agreed that CR 2005–7449 did not fully document the circumstances of the matter to permit FPL to conduct a thorough review such that corrective actions and a trustworthiness and reliability assessment would be performed.

3. The NRC and FPL agreed that the violation described above did not result in any adverse consequences. However, the failure to conduct a trustworthiness and reliability assessment is of concern to the NRC because the potential consequences, under different circumstances, could be significant.

4. FPL reiterated its commitment to the conduct of trustworthiness and reliability assessments as required. FPL agreed that the violation discussed above occurred as stated, and in response, agreed to implement or has completed the following corrective actions and enhancements:

a. FPL will issue a fleet-wide training brief to managers and supervisors reinforcing the requirements of NP–415, the corporate policy governing Denial of Unescorted Access to FPL's Nuclear Facilities, and the site implementing procedures on access control.

b. FPL will revise the site administrative procedures on access control as necessary to ensure that they require that contractor representatives and supervisors immediately notify FPL management of any incident or behavior that may call into question the trustworthiness or reliability of an individual.

c. Site-specific Control and Acceptance of Contracted Services procedures will be revised as necessary to ensure that the NP–415 requirements are reviewed by the Site Technical Representative (STRs) as part of the termination request process. FPL will also conduct a review of existing procedures related to contractor oversight and administration to ensure that the processes therein properly reflect the access control responsibilities of FPL.

d. All STRs will receive a training bulletin that reinforces management expectations regarding FPL ownership of access control as part of the procedure revision. The initial and continuing training lesson plan will be revised to ensure that STRs, supervisors and managers understand management expectations regarding FPL ownership of access control.

e. FPL will review fleet-wide the site administrative procedures for access control to ensure they require an express declaration of favorable or unfavorable termination, and to ensure that contractors are not allowed to manage their own access terminations without FPL management or STR approval.

f. Plant management will reinforce management expectations via a fleet-wide training brief to all managers and supervisors, including the Management Review Committee (MRC) and the Initial Screening Team (IST), reinforcing the requirements of NP–415 and the site

access control procedures. A Lessons-Learned Bulletin will be deployed for all Corrective Action Program Coordinators (CAPCOs) to ensure that identified CRs contain sufficient detail for the MRCs to make informed decisions regarding level, investigation type, and immediate action recommendations.

g. A representative from the Security Department will be added as a primary member of the MRC at each site.

h. Management will conduct a briefing to MRC members with a focus on the lessons learned from the NNI event and need for conservative action for any issues that question the trustworthiness or reliability of any individual. FPL will institutionalize an MRC Job Familiarization Guide requiring new MRC and IST members to receive an orientation from management on the importance of recognizing potential security concerns while reviewing CRs.

i. To address situations where the CR evaluator is not the person primarily responsible for the event/issue, plant procedures will be revised to require the system/process owner to review the evaluator's analysis and approve of the evaluation.

j. Supervisor initial and continuing Fitness-For-Duty and Continued Behavioral Observation Program training will reinforce FPL's expectation of each Supervisor's obligations to notify the Security Department of any potential trustworthiness and reliability issues.

k. At St. Lucie, FPL validated that each fleet nuclear policy was appropriately implemented in a site implementing procedure. FPL will conduct an extent of condition review to validate the implementation of nuclear policies throughout the fleet.

l. FPL agrees to complete all corrective actions and enhancements identified in this paragraph 4 (items a. through k.) within six months of the date of issuance of the Confirmatory Order.

5. The NRC and FPL agree that the above elements will be incorporated into a Confirmatory Order.

6. In consideration of the commitments delineated in Item 4 above, the NRC agrees to exercise enforcement discretion to forego issuance of a Notice of Violation against FPL for all matters discussed in the NRC's letter to FPL of April 2, 2008 (EA–07–321).

7. This agreement is binding upon successors and assigns of the St. Lucie Nuclear Plant and FPL.

On June 10, 2008, the Licensee consented to issuance of this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee 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 issuance of this Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 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*, effective immediately, that License Nos. DPR–67 and NPF–16 are modified as follows:

a. FPL will issue a fleet-wide training brief to managers and supervisors reinforcing the requirements of NP–415, the corporate policy governing Denial of Unescorted Access to FPL's Nuclear Facilities, and the site implementing procedures on access control.

b. FPL will revise the site administrative procedures on access control as necessary to ensure that they require that contractor representatives and supervisors immediately notify FPL management of any incident or behavior that may call into question the trustworthiness or reliability of an individual.

c. Site-specific Control and Acceptance of Contracted Services procedures will be revised as necessary to ensure that the NP–415 requirements are reviewed by the Site Technical Representative (STRs) as part of the termination request process. FPL will also conduct a review of existing procedures related to contractor oversight and administration to ensure that the processes therein properly reflect the access control responsibilities of FPL.

d. All STRs will receive a training bulletin that reinforces management expectations regarding FPL ownership of access control as part of the procedure revision. The initial and continuing training lesson plan will be revised to ensure that STRs, supervisors and managers understand management expectations regarding FPL ownership of access control.

e. FPL will review fleet-wide the site administrative procedures for access control to ensure they require an express declaration of favorable or unfavorable termination, and to ensure that contractors are not allowed to manage their own access terminations without FPL management or STR approval.

f. Plant management will reinforce management expectations via a fleet-wide training brief to all managers and supervisors, including the Management Review Committee (MRC) and the Initial Screening Team (IST), reinforcing the requirements of NP–415 and the site access control procedures. A Lessons-Learned Bulletin will be deployed for all Corrective Action Program Coordinators (CAPCOs) to ensure that identified CRs contain sufficient detail for the MRCs to make informed decisions regarding level, investigation type, and immediate action recommendations.

g. A representative from the Security Department will be added as a primary member of the MRC at each site.

h. Management will conduct a briefing to MRC members with a focus on the lessons learned from the NNI event and need for conservative action for any issues that question the trustworthiness or reliability of any individual. FPL will institutionalize an MRC Job Familiarization Guide requiring new MRC and IST members to receive an orientation from management on the importance of recognizing potential security concerns while reviewing CRs.

i. To address situations where the CR evaluator is not the person primarily responsible for the event/issue, plant procedures will be revised to require the system/process owner to review the evaluator's analysis and approve of the evaluation.

j. Supervisor initial and continuing Fitness-For-Duty and Continued Behavioral Observation Program training will reinforce FPL's expectation of each Supervisor's obligations to notify the Security Department of any potential trustworthiness and reliability issues.

k. At St. Lucie, FPL validated that each fleet nuclear policy was appropriately implemented in a site implementing procedure. FPL will conduct an extent of condition review to validate the implementation of nuclear policies throughout the fleet.

l. FPL agrees to complete all corrective actions and enhancements identified in this paragraph (Section V, items a. through k.) within six months of the date of issuance of the Confirmatory Order.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by FPL of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

If a person other than FPL requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order may, within 20 days of the issuance of this order, in addition to requesting a hearing, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error. The motion must state with particularity the reasons why the Order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

A request for a hearing or to set aside the immediate effectiveness of this Order must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 FR 49,139) and was codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™_ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted 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; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

VII

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A

request for hearing shall not stay the immediate effectiveness of this order.

Dated this 13th day of June 2008.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Regional Administrator.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Dominion Energy Kewaunee, Inc.; Kewaunee Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.90, for Facility Operating License No. DPR–43, issued to Dominion Energy Kewaunee, Inc. (the licensee), for operation of the Kewaunee Power Station (KPS), located in Kewaunee County, Wisconsin. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the facility operating license by removing condition 2.C(5), ''Fuel Burnup,'' which had limited the peak rod average burnup to 60 gigawatt-days per metric ton urnanium (GWD/MTU) until completion of an NRC environmental assessment supporting an increased limit. The proposed action would allow an increase of the maximum rod average burnup to as high as 62 GWD/MTU. The licensee has procedures in place to ensure that maximum rod burnup will not exceed 62 GWD/MTU.

The proposed action is in accordance with the licensee's application dated July 2, 2007.

The Need for the Proposed Action

The proposed action to delete the license condition for fuel burnup would allow a higher maximum rod average burnup of 62 GWD/MTU, which would allow for more effective fuel management. If the amendment is not approved, the licensee will not be provided the opportunity to increase maximum rod average burnup to as high as 62 GWD/MTU and allow fuel management flexibility.

Environmental Impacts of the Proposed Action

In this environmental assessment regarding the impacts of the use of extended burnup fuel beyond 60 GWD/MTU, the Commission is relying on the results of the updated study conducted for NRC by the Pacific Northwest National Laboratory (PNNL), entitled ''Environmental Effects of Extending Fuel Burnup Above 60 GWD/MTU'' (NUREG/CR–6703, PNNL–13257, January 2001). Environmental impacts of high burnup fuel up to 75 GWD/MTU were evaluated in the study, but some aspects of the review were limited to evaluating the impacts of the extended burnup up to 62 GWD/MTU because of the need for additional data on the effect of extended burnup on gap release fractions. All the aspects of the fuel-cycle were considered during the study, from mining, milling, conversion, enrichment and fabrication through normal reactor operation, transportation, waste management, and storage of spent fuel.

The amendment would allow KPS to extend lead rod average burnup to 62 GWD/MTU. The NRC staff has completed its evaluation of the proposed action and concludes that such changes would not adversely affect plant safety, and would have no adverse affect on the probability of any accident. For the accidents that involve damage or melting of the fuel in the reactor core, fuel rod integrity has been shown to be unaffected by extended burnup under consideration; therefore, the probability of an accident will not be affected. For the accidents in which core remains intact, the increased burnup may slightly change the mix of fission products that could be released in the event of a serious accident, but because the radionuclides contributing most to the dose are short-lived, increased burnup would not have an effect on the consequences of a serious accident beyond the previously evaluated accident scenarios. Increases in projected consequences of postulated accidents associated with fuel burnup up to 62 GWD/MTU are not considered significant, and remain well below regulatory limits.

Regulatory limits on radiological effluent releases are independent of burnup. The requirements of 10 CFR 50.36a and Appendix I to 10 CFR Part 50 ensure that any release of gaseous, liquid or solid radiological effluents to unrestricted areas is kept ''As Low As is Reasonably Achievable.'' Therefore, NRC staff concludes that during routine operations, there will be no significant increase in the amount of gaseous radiological effluents released into the environment as a result of the proposed action, nor will there be a significant increase in the amount of liquid radiological effluents or solid radiological effluents released into the environment.

The proposed action will not change normal plant operating conditions. No changes are expected in the fuel handling, operational or storing processes. There will be no significant changes in radiation levels during these evolutions. No significant increase in the allowable individual or cumulative occupational radiation exposure is expected to occur.

The use of extended irradiation will not change the potential environmental impacts of incident-free transportation of spent nuclear fuel or the accident risks associated with spent fuel transportation if the fuel is cooled for 5 years after being discharged from the reactor. The PNNL report for the NRC (NUREG/CR–6703, January 2001), concluded that doses associated with incident-free transportation of spent fuel with burnup to 75 GWD/MTU are bounded by the doses given in 10 CFR 51.52, Table S–4 for all regions of the country, based on the dose rates from the shipping casks being maintained within regulatory limits. Increased fuel burnup will decrease the annual discharge of fuel to the spent fuel pool, which will postpone the need to remove spent fuel from the pool.

NUREG/CR–6703 determined that no increase in environmental effects of spent fuel transportation accidents are expected as a result of increasing fuel burnup to 75 GWD/MTU.

The proposed action does not affect non-radiological plant effluents, and no changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or on endangered and/or threatened species and their habitats are expected. The proposed action does not involve any historical or archaeological sites.

The proposed action will not change the method of generating electricity or the method of handling any influents from the environment or non-radiological effluents to the environment. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of this amendment. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. For more detailed information regarding the environmental impacts of extended fuel burnup, please refer to the