



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket No. IA-18-040; NRC-2019-0172]

Order Prohibiting Involvement in NRC-Licensed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order prohibiting involvement in NRC-licensed activities to Mr. Thomas Summers. The NRC determined that Mr. Thomas Summers engaged in deliberate misconduct that caused Florida Power & Light to be in violation of in violation 10 CFR 50.7, "Employee protection," and 10 CFR 50.9, "Completeness and accuracy of information."

DATES: The Order prohibiting involvement in NRC-licensed activities was issued on September 12, 2019.

ADDRESSES: Please refer to Docket ID **NRC-2019-0172** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov/> and search for Docket ID **NRC-2019-0172**. Address questions about NRC docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail:

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the

FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public

Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The Order is available in ADAMS under Accession No. ML19234A336.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: David Jones, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9525, e-mail: david.jones@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 13th day of September 2019.

For the Nuclear Regulatory Commission.

George A. Wilson, Director,
Office of Enforcement.

Attachment - Order Prohibiting Involvement in NRC-Licensed Activities

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). On August 24, 2015,

For OI Report No. 2-2017-024, NRC determined that Mr. Thomas Summers, as the former FPL Regional Vice President (VP) – Operations, deliberately cancelled a contract employee's assignment during 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 a letter dated October 19, 2018, Agencywide Documents Access and Management System (ADAMS) Accession No. ML18283B007, the NRC notified Mr. Thomas Summers of an apparent violation of 10 CFR 50.5, "Deliberate misconduct", which the NRC was considering for escalated enforcement action in accordance with the NRC Enforcement Policy. This rule prohibits an employee or contractor of an NRC licensee (FPL) from engaging in deliberate misconduct that causes an NRC licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of a license issued by the Commission. In the letter, the NRC requested your participation in a predecisional enforcement conference (PEC) to address the apparent violation. On February 6, 2019, the NRC held a PEC at the NRC Headquarters office in Rockville, Maryland, with Mr. Thomas Summers and his attorney to discuss the apparent violation.

OI's investigation documented that Mr. Thomas Summers, as the former FPL Regional VP – Operations sent an e-mail to the Framatome VP of Outage Services on March 14, 2017. The body of your 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 Mr. Thomas Summers and the Framatome VP acknowledged the sending, and the receipt, of the March 14th e-mail. Additionally, the evidence indicated that you 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 Nuclear Plant. The temporal proximity of the individual's submission of the condition report and the initiation of the adverse action by Mr. Summers, an FPL executive was deemed a discriminatory act.

During the PEC Mr. Thomas Summers denied violating 10 CFR 50.5, "Deliberate misconduct", and denied that FPL violated 10 CFR 50.7, "Employee protection." Generally, Mr. Thomas Summers asserted that the protected activity was not a contributing factor to any adverse personnel action and that the NRC's only basis was "temporal proximity", and that the removal of the individual from the Turkey Point Nuclear Plant assignment was justified by legitimate safety (business) reasons. The NRC's determination that a violation occurred was based on factors such as: the individual's subordinates, coworkers, and superiors, both at Framatome and FPL, almost universally spoke very highly of him; neither you, FPL, or Framatome produced sufficient evidence to indicate that his performance, or the performance of his reactor services team, was a significant concern during the refueling outage; and, the staff noted that your testimony differed significantly from the testimony of other witnesses, including

inconsistencies that undercut your credibility and specifically discredited your assertions that the individual's removal from the Turkey Point refueling outage was unrelated to his protected activities. The NRC determined that the 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 or if such an alternative would provide comparable income. 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 an adverse action and one that could potentially chill others who raise nuclear safety concerns.

Accordingly, the NRC determined that Mr. Thomas Summers actions were deliberate and a violation of 10 CFR 50.5, "Deliberate misconduct". The NRC considers deliberate violations of 10 CFR 50.7, "Employee protection", significant because of the potential that individuals might not raise safety issues for fear of retaliation.

For OI Report No. 2-2019-009, NRC determined that Mr. Thomas Summers, as the former FPL Corporate Support VP, engaged in deliberate misconduct that caused FPL to be in violation of 10 CFR 50.9, "Completeness and accuracy of information". On October 19, 2018 (see ADAMS Accession No. ML18346A182), the NRC informed Mr. Thomas Summers of its enforcement deliberations for OI Report No. 2-2017-024. Within

a week of this date, Mr. Thomas Summers presented to FPL an outage journal that contained information regarding the discrimination concern. This journal had not been presented during FPL's employee concerns program investigation (Spring of 2017) or during Mr. Summers OI interview in February 2018 (OI Report No. 2-2017-024). In a letter dated December 10, 2018, (ADAMS Accession No. ML18346A182) FPL submitted the photocopied journal to the NRC. FPL's letter stated that the journal contained material that was highly relevant to the facts in OI Report No. 2-2017-024. Subsequently, in a letter dated January 17, 2019, ADAMS Accession No. ML19024A085, FPL stated that they had developed cause to question the authenticity of the outage journal provided by Mr. Thomas Summers.

In a letter dated July 1, 2019, ADAMS Accession No. ML19172A284, the NRC notified Mr. Thomas Summers of an apparent violation of 10 CFR 50.5, "Deliberate Misconduct," which the NRC considered for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, the NRC offered Mr. Thomas Summers the opportunity to participate in a PEC to address the apparent violation. On July 29, 2019, the NRC held a PEC at the NRC Headquarters office in Rockville, Maryland, with Mr. Thomas Summers and his attorney to discuss the apparent violation.

OI's investigation determined that Mr. Thomas Summers 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 enforcement deliberations for the St. Lucie discrimination case (OI Report No. 2-2017-024). OI's investigation documented that previously, Mr. Thomas Summers claimed to have located the journal at St. Lucie Nuclear Plant shortly after receipt of the apparent

violation for the discrimination concern on October 19, 2018. A review of access authorization badge activity at St. Lucie Nuclear Plant indicated that Mr. Thomas Summers had not entered the plant. When confronted, Mr. Thomas Summers admitted to providing a false narrative about the discovery of the journal at St. Lucie Nuclear Plant. The results of a forensics analysis, procured by FPL, contradicted Mr. Thomas Summers claim that pertinent journal entries for the discrimination case were made in February and March of 2017. The forensics analysis, conducted in January 2019, indicated that the journal entries were less than a year old (i.e., as compared to the expected two years). The analysis included testing of pages that contained information pertinent to the discrimination case. Despite Mr. Thomas Summers testimony that the journal is an accurate record of events; the documentary and testimonial evidence obtained by OI during the investigation demonstrated that you deliberately provided incomplete and inaccurate information to FPL to influence an NRC proceeding, namely the upcoming St. Lucie discrimination case PECs to avoid potential NRC enforcement actions.

During the PEC Mr. Thomas Summers denied violating 10 CFR 50.5, "Deliberate misconduct" and 10 CFR 50.9, "Completeness and accuracy of information". Generally, Mr. Summers asserted that the journal was an accurate reflection of activities during the St. Lucie Nuclear Plant refueling outage. Additionally, Mr. Summers asserted that the journal contained personal notes and that it was not an official company document. The NRC determined that Mr. Summers PEC presentation did not supplant the investigative evidence developed by the NRC. The NRC determined that the journal was material because it was provided to FPL in response to you receiving an apparent violation, and

contained personnel performance information for a contractor of an NRC licensee (FPL) directly relevant to that apparent violation.

Accordingly, the NRC determined that Mr. Summers actions were deliberate and that 10 CFR 50.5, "Deliberate misconduct" was violated. The NRC considers the deliberate violation of 10 CFR 50.9, "Completeness and accuracy of information", significant because of Mr. Thomas Summers attempt to unduly influence the NRC's deliberations for the discrimination case discussed above.

III.

Based on the above, the NRC determined that Mr. Thomas Summers, as Regional Vice President – Operations, and as Corporate Support Vice President, engaged in deliberate misconduct that caused the Licensee to be in violation of in violation 10 CFR 50.7, "Employee Protection", and 10 CFR 50.9, "Completeness and accuracy of information".

Consequently, given the significance of the underlying issues, Mr. Summers position within the FPL organization that had a very broad sphere of influence, and the deliberate nature of the actions; the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Thomas Summers were permitted at this time to be involved in NRC-licensed activities. Therefore, Thomas Summers is prohibited from any involvement in NRC-licensed activities for a period of five years from the effective date of this Order. Additionally, Thomas Summers is required to notify the NRC of his first employment in NRC-licensed activities following

the prohibition period. Furthermore, I find that the significance of Mr. Thomas Summers conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV.

Accordingly, pursuant to sections 103, 161b, 161i, 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 50.5. IT IS HEREBY ORDERED, EFFECTIVE UPON THE DATE OF ISSUANCE, THAT:

1. Mr. Thomas Summers is prohibited for five years, from the effective date of this Order, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Mr. Thomas Summers is currently involved with an NRC licensee engaged in any other NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this order to the employer.
3. Mr. Thomas Summers shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities, as defined in paragraph IV.1 above,

provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Thomas Summers shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Thomas Summers of good cause.

V.

In accordance with 10 CFR 2.202, Mr. Thomas Summers must submit a written answer to this Order under oath or affirmation within 20 days of its publication in the Federal Register. Mr. Thomas Summers failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. In addition, Mr. Thomas Summers and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the Federal Register. Where good cause is shown, consideration will be given to extending the time to answer or 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 20555-001, and include a statement of good cause for the extension.

VI.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (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 proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the 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 documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) 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 E-Filing 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 documents 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/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and 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, 11555 Rockville Pike,

Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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 submission.

If a person other than Mr. Thomas Summers 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 Mr. Thomas Summers or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. 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 IV above shall be final 30 days from the date this Order is published in the Federal Register without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 12th day of September 2019.

For the Nuclear Regulatory Commission

George A. Wilson, Director
Office of Enforcement

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