



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

September 12, 2019

EA-18-119

Craig Ranson, Senior Vice President
Installed Base America
Framatome Inc.
155 Mill Ridge Road
Lynchburg, VA 24502

**SUBJECT: FRAMATOME – NOTICE OF VIOLATION (OFFICE OF
INVESTIGATIONS REPORT NO. 2-2017-024)**

Dear Mr. Ranson:

This letter refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) related to St. Lucie Plant Unit 1. The purpose of the investigation was to determine whether a Framatome (formerly known as Areva) 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." The NRC determined, based on the investigation dated May 21, 2018, that the contract employee's assignment was deliberately 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 a letter dated October 19, 2018, Agencywide Documents Access and Management System (ADAMS) Accession No. ML18283A958, the NRC notified Framatome of an apparent violation of 10 CFR 50.7, "Employee protection," which the NRC was considering for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, the NRC requested Framatome's participation in a predecisional enforcement conference (PEC) to address the apparent violation.

On February 5, 2019, the NRC held a PEC at the NRC Headquarters office in Rockville, Maryland, with members of your staff to discuss the apparent violation, its significance, the root cause(s), and any corrective actions. The conference was closed to public observations pursuant to NRC practice regarding cases involving potential discrimination. Also, the NRC conducted three related PECs during the week of February 4, 2019 that were also closed to the public. On March 9, 2019, the contract employee, who was the subject of the discrimination, reviewed all PEC transcripts, provided a statement, and responded to NRC questions.

In summary, a Framatome part-time employee asserted that his work re-assignment was cancelled in March 2017, after submitting a condition report at Florida Power & Light's (FPL) 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 FPL's Turkey Point nuclear plant for the same role. On March 13, 2017, the contract employee submitted a condition report that documented concerns with 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 willful actions of Framatome management caused Framatome to be in violation of 10 CFR 50.7. Our determinations were based on the information developed during the investigation and the PEC process.

Ol's investigation documented that FPL's Regional VP for St. Lucie and Turkey Point sent an e-mail to the Framatome Vice President (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. Ol'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 CI's submission of the condition report and the initiation of the adverse action by an FPL executive and the subsequent implementation of the adverse action by Framatome management within a few days 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, Framatome and FPL denied that a violation of 10 CFR 50.7 occurred. Generally, Framatome and FPL 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 Framatome or FPL 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'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 Framatome's and FPL'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 willfulness and the level of the Framatome managers involved in the adverse action, this violation has been categorized in accordance with the "NRC Enforcement Policy," at Severity Level III. See NRC Enforcement Policy, Violation Example 6.10.c.1.

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 Framatome.

Framatome's corrective actions include: conducting follow-up safety conscious work environment (SCWE) surveys to review the effectiveness of actions in areas of concern; formalizing Framatome's practice for prior SCWE review of personnel changes to include non disciplinary reassignments of personnel above the level of customer task lead; developing and delivering training to Framatome management personnel to include a case study on recent industry events; including refresher training on SCWE expectations and condition reports in pre-outage on-boarding to include effective communications and condition reporting; and developing guidance for monitoring and combatting burnout for "non-covered" outage supervisors.

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) for the Severity Level III violation. A base civil penalty in the amount of \$14,500 was considered for this Severity Level III violation. However, in accordance with Section 3.6 of the Enforcement Policy, the issuance of a civil penalty was mitigated based on the merits of the case. The staff determined that the outcome from the proposed civil penalty may be overly punitive rather than a deterrent for the following reasons: (1) the NRC recognizes the influence exerted by FPL on Framatome's management; (2) FPL, as the licensee, received a civil penalty in the amount of \$232,000 as the initiator of the discriminatory act; and (3) the NRC recognized Framatome's quick response in assigning an alternative, although not equal, position to the concerned individual, resulting in a relatively less severe adverse action. As such, the staff determined that a notice of violation without the imposition of a civil penalty was sufficient to communicate the necessity of complying with 10 CFR 50.7. This enforcement action may be used in the evaluation of any future significant violations, which could result in a civil penalty. In addition, issuance of the Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>

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 5, 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/.

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

Sincerely,

/RA/

George A. Wilson, Director
Office of Enforcement

Enclosure:
Notice of Violation

SUBJECT: FRAMATOME – NOTICE OF VIOLATION (OFFICE OF INVESTIGATIONS
REPORT NO. 2-2017-024) DATE: September 12, 2019

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NOTICE OF VIOLATION

Framatome (formerly known as Areva)
Lynchburg, VA

EA-18-119

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 violation is listed below:

Title 10 of the *Code of Federal Regulations* (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.

Framatome willfully discriminated against a Framatome contract employee for engaging in a protected activity in March 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 by Framatome managers shortly after submitting a condition report (CR). The actions of Framatome management were, in part, based on the contractor's engagement in a protected activity.

This is a Severity Level III violation (Enforcement Policy Sections 6.10).

Pursuant to the provisions of 10 CFR 2.201, Framatome is hereby required to submit a written statement or explanation to the 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, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation (EA-18-119)" 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.

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, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will

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be given to extending the response time. Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/readingrm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. 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 withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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).

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.