

July 14, 2005

IA-05-015

Mr. Richard M. Probasco  
**HOME ADDRESS DELETED**  
**UNDER 10 CFR 2.390**

SUBJECT: LETTER OF REPRIMAND AND CONFIRMATORY ORDER MODIFYING  
LICENSE (EFFECTIVE IMMEDIATELY)  
(NRC Office Of Investigation Report No. 1-2004-040)

Dear Mr. Probasco:

In a letter dated March 23, 2005, the NRC provided you with the results of an investigation initiated by the NRC Office of Investigations (OI), Region I, on August 27, 2004, at Entergy Nuclear Operation's Pilgrim Nuclear Power Station (Pilgrim). This investigation was initiated, in part, to determine if you were aware that a Control Room Supervisor (CRS) was sleeping or inattentive to duty in the control room on June 29, 2004, and if you failed to take immediate action and follow station procedures concerning the situation. Our letter noted that, based on the evidence developed during the OI investigation, it was substantiated that in careless disregard of requirements, you failed to follow procedures regarding the inattentive CRS. A factual summary of OI Investigation 1-2004-040 was enclosed with our letter.

Our March 23, 2005 letter also informed you that we were considering escalated enforcement action against you for an apparent violation of your Senior Reactor Operator (SRO) License in that you did not observe certain operating procedures and other conditions of the facility license. More specifically, although you took immediate actions to end the CRS's inattentive behavior by slamming a desk, the NRC concluded that you did not immediately relieve the CRS from duty, have him for-cause fitness-for-duty (FFD) tested, inform appropriate site personnel, and initiate a CR as required by Pilgrim Procedures ENN-NS-102, "Fitness For Duty Program" and ENN-LI-102, "Corrective Action Process." In addition, our letter noted that your failure to take these actions was found to be in careless disregard of NRC requirements because, despite your knowledge and experience, you failed to follow these procedural requirements. Specifically, you should have recognized the significance of the violations as a result of a sleeping incident on another crew in a break room two months earlier. After that occurrence, all SMs were required to discuss that incident with their crews to emphasize peer checking, alertness, attentiveness, and FFD-related matters. Additionally, you met with operations management approximately two hours after the incident and did not report it to them.

As a result of these findings, our letter offered you a choice to attend a Predecisional Enforcement Conference or to provide a written response. Subsequently, you were also provided an opportunity to request alternative dispute resolution (ADR) with the NRC in an

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attempt to resolve any disagreement on whether a violation occurred and the appropriate enforcement action. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program, which is now in effect, is mediation.

At your request, an ADR mediation session was held between you and the NRC in Philadelphia, PA on May 17, 2005, and a settlement agreement was reached regarding your role in this matter. The elements of the settlement agreement are as follows:

1. You agreed that you violated an NRC requirement by not properly documenting and informing management of your observation that a CRS was inattentive to duty in the control room on June 29, 2004.
2. The NRC maintained that your actions in violating the requirement was done willfully, in careless disregard of an NRC requirement. You contended that while you erred in violating the requirement, your actions were not willful, in careless disregard of an NRC requirement. The NRC and you agreed to disagree on this point.
3. You, subsequent to the identification of this violation, took actions to assure that you learned from this violation and provided the NRC with assurance that it would not recur. These actions included: a) sharing the NRC March 23, 2005 letter from the NRC with your SRO peers at Pilgrim to emphasize the significance of your violation; b) participating actively to share your experience with all Entergy plants via a corporate notification; and c) contributing to the preparation of an operating experience report with the Institute of Nuclear Power Operations.
4. As a result of your actions, you recognized an opportunity for licensed operators at Pilgrim, as well as licensed operators at other nuclear facilities, to learn from your violation. You agreed to participate in future training sessions at Pilgrim, including crew training, teamwork training, lifestyle training, and requalification module development, to convey your personal lessons-learned from this matter. You also agreed to convey your personal lessons-learned to other licensed operators at other nuclear power plants by issuance of a letter, within 90 days of issuance of this Letter of Reprimand, to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein, and making a presentation at a future symposium at a meeting of the Professional Reactor Operator Society, if invited.
5. In light of the actions you have taken as described in Item 3 above, those actions you have committed to do as described in Item 4 above, and your agreement to this Letter of Reprimand, the NRC agreed to not issue an Order or a Notice of Violation to you. However, you agreed to placement of this Letter of Reprimand into ADAMS as a publically available document, and its placement on the NRC "Significant Enforcement Actions - Individuals" website for a period of 1 year (the period of time the NRC routinely places Notices of Violation at Severity Level III and above to individuals).

While the NRC has agreed to not issue an Order to you imposing more severe sanctions, we have enclosed a Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated July 6, 2005, you agreed to issuance of this Confirmatory Order and Letter of Reprimand.

Although the NRC plans no further action regarding this matter, you are reminded that you hold a license from the United States government that confers upon you the special trust and confidence of the American people in the safe operation of nuclear facilities and places you in the position where your performance is expected to be above reproach. This includes, as an NRC Senior Reactor Operator license holder, your responsibility to follow all licensee procedures to ensure protection of the public health and safety, and to set an example for those under your supervision. Your actions on June 29, 2004, did not meet those standards. Any similar violations in the future could result in more significant enforcement action.

Finally, based in part on your violation, an enforcement action is being issued to the Pilgrim Nuclear Power Station on this date. A copy of our letter that issued this enforcement action to Pilgrim is enclosed.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Mail Stop O14E1, 11555 Rockville Pike, Rockville, MD 20852. We also request that you send us a letter informing us when all of the actions described in Items 3 and 4 above are completed.

In accordance with the agreement reached at the ADR session as noted in Item 5 above, a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter on its Web site for a period of 1 year at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement, Significant Enforcement Actions**, then **Individuals**. Your response, if you choose to provide one, with your address removed, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). This letter will be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>. A copy of this letter with your address removed, and your response if you choose to submit one, will also be placed in the docket file for your license.

If you have any questions or comments, please contact Mr. Karl Farrar, Region I Counsel, at 610-337-5301.

Sincerely,

*/RA/*

Samuel J. Collins  
Region I Administrator

Docket No. 55-61290  
License No. SOP-11768

Enclosures: As Stated

cc: Pilgrim Nuclear Power Station

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C/A

**SISP Review Complete:** \_\_\_\_\_ **(Reviewer's Initials)**

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DATE	06/07/05	06/07/05	06/13/05	06/14/05	06/15/05
OFFICE	RI/ORA	RI/RA	NRR/DIPM	HQ/OGC	OE/ES
NAME	KFarrar	SCollins RUrban for	BBoger BBoger for	SBrock RUrban for	LTrocine RUrban for **
DATE	06/16 /05	06/21/05	06/22/05	06/29/05	06/29/05
OFFICE	OE/SC	OE/D			
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DATE	07/01/05 **	07/07/05 **			

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
Richard M. Probasco

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Docket No. 55-61290  
License No. SOP-11768  
IA-05-15

CONFIRMATORY ORDER  
(EFFECTIVE IMMEDIATELY)

I

Richard M. Probasco (Mr. Probasco) is employed as a Shift Manager at the Pilgrim Nuclear Power Station (Pilgrim). Mr. Probasco is the holder of Senior Reactor Operator (SRO) License Number SOP-11768 issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 55. The license authorizes Mr. Probasco to direct the licensed activities of licensed operators at, and to manipulate all controls of, the Pilgrim Nuclear Power Station, facility license number DPR-35. The facility is located on an Entergy Nuclear Operations, Inc. site in Plymouth, MA.

II

An investigation was initiated by the NRC Office of Investigations (OI) on August 27, 2004, at Pilgrim. This investigation was initiated, in part, to determine if Mr. Probasco did not take appropriate corrective actions when he became aware of the inattentiveness of a Control Room Supervisor (CRS) on June 29, 2004. Based on the evidence developed during its investigation, OI substantiated that, in careless disregard for requirements, Mr. Probasco did not immediately

relieve the CRS from duty, have him for-cause fitness-for-duty tested, inform appropriate site personnel, and initiate a Condition Report (CR).

### III

In response to a March 23, 2005 letter, Mr. Probasco requested the use of Alternative Dispute Resolution (ADR) to resolve this matter with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Mr. Probasco in reaching an agreement on resolving any differences regarding the enforcement action. An ADR session was held between Mr. Probasco and the NRC in Philadelphia, Pennsylvania on May 17, 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:

6. Mr. Probasco agreed that he violated an NRC requirement by not properly documenting and informing management of his observation that a CRS was inattentive to duty in the control room on June 29, 2004.
7. The NRC maintained that Mr. Probasco's actions in violating the requirement was in careless disregard of an NRC requirement. Mr. Probasco contended that while he erred in violating the requirement, his actions were not willful, in careless disregard of an NRC requirement. The NRC and Mr. Probasco agreed to disagree on this point.
8. Mr. Probasco, subsequent to the identification of this violation, took actions to assure that he learned from this violation and provided the NRC with assurance that it would not recur.

These actions included: a) sharing the March 23, 2005 letter from the NRC with his SRO peers at Pilgrim to emphasize the significance of the violation; b) participating actively to share his experience with all Entergy plants via a corporate notification; and c) contributing to the preparation of an operating experience report with the Institute of Nuclear Power Operations.

9. As a result of Mr. Probasco's actions, he recognized an opportunity for licensed operators at Pilgrim, as well as licensed operators at other nuclear facilities, to learn from his violation. Mr. Probasco agreed to participate in future training sessions at Pilgrim, including crew training, teamwork training, lifestyle training, and requalification module development, to convey his personal lessons-learned from this matter. Mr. Probasco also agreed to convey his personal lessons-learned to other licensed operators at other nuclear power plants by issuance of a letter, within 90 days of issuance of the Letter of Reprimand referenced in Section III.5 below, to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein, and making a presentation at a future symposium at a meeting of the Professional Reactor Operator Society, if invited.
  
10. In light of the actions Mr. Probasco has taken as described in Item 3 above, those actions he has committed to do as described in Item 4 above, and his agreement to a Letter of Reprimand, the NRC agrees not to issue an Order or a Notice of Violation to Mr. Probasco. However, Mr. Probasco agreed to placement of this Letter of Reprimand into ADAMS as a publically available document, and its placement on the NRC "Significant Enforcement Actions - Individuals" website for a period of 1 year (the period of time the NRC routinely places Notices of Violation at Severity Level III and above to individuals).

#### IV

Since Mr. Probasco has agreed to take additional actions to address NRC concerns, as set forth in Section III, 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. Probasco's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments be confirmed by this Confirmatory Order. Based on the above and Mr. Probasco'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 C.F.R. §2.202 and 10 C.F.R. Part 55, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT:

1. Mr. Probasco participate in future training sessions at Pilgrim, including crew training, teamwork training, lifestyle training, and requalification module development, to convey his personal lessons-learned from this matter. Mr. Probasco will also convey his personal lessons-learned to other licensed operators at other nuclear power plants by issuance of a letter, within 90 days, to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein, and making a presentation at a future symposium at a meeting of the Professional Reactor Operator Society, if invited.

2. Mr. Probasco provide the NRC with one letter detailing his completion of all actions specified in Item 1 above, within 30 days of completion of these actions.

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

## VI

Any person adversely affected by this Confirmatory Order, other than Mr. Probasco, 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 to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to Baxter. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If such a person 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 C.F.R. § 2.714(d).

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 shall be sustained.

AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE EFFECTIVENESS DATE OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Michael R. Johnson, Director

Office of Enforcement

Dated this 14<sup>th</sup> day of July 2005