

January 3, 2007

EA-06-178

Nuclear Management Company, LLC  
ATTN: Douglas E. Cooper  
Senior Vice President & Chief Nuclear Officer  
700 1<sup>st</sup> Street  
Hudson, WI 54016-9894

SUBJECT: CONFIRMATORY ORDER (EFFECTIVELY IMMEDIATELY)  
(OFFICE OF INVESTIGATION REPORT NO. 3-2005-010)

Dear Mr. Cooper:

The enclosed Confirmatory Order is being issued to the Nuclear Management Company, LLC (NMC) as part of a settlement agreement between NMC and the U.S. Nuclear Regulatory Commission (NRC) regarding an apparent violation of 10 CFR 50.7, "Employee protection," issued by the NRC to NMC, dated August 22, 2006.

In its August 22, 2006, letter, the NRC provided NMC with the results of an investigation completed by the NRC's Office of Investigations (OI) (OI Report No. 3-2005-010). The purpose of the investigation was to determine whether a senior reactor operator (SRO) was the subject of employment discrimination for raising a nuclear safety concern in a corrective action program (CAP) report. Our letter noted that, based on the evidence developed during the investigation, we concluded that the SRO was discriminated against, in part, for raising a concern in a CAP report.

In addition, our August 22, 2006, letter offered you a choice to: (1) attend a predecisional enforcement conference, (2) provide a written response, or (3) request alternative dispute resolution (ADR) with the NRC. In response, NMC requested ADR to resolve the apparent violation of 10 CFR 50.7. An ADR mediation session was held on October 31, 2006, in Green Bay, Wisconsin, at which the parties entered into a settlement agreement. The terms and conditions of that settlement agreement are set forth in Section IV of the enclosed Confirmatory Order.

As part of settlement agreement, NMC agreed to take a number of actions, including: revising its policy on writing CAP reports, training its supervisory employees on safety conscious work environment (SCWE) principles, communicating its safety culture policy to its employees, conducting a safety culture survey at the Point Beach Nuclear Plant (Point Beach) and developing action plans to address significant issues identified as needing management attention in the NMC 2004 and 2006 Comprehensive Cultural Assessments at Point Beach. In recognition of these contemplated actions, the NRC agreed to cease pursuing further enforcement action relating to the August 22, 2006, letter. We will, however, evaluate the implementation of your commitments related to employee protection during future inspections.

D. Cooper

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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 December 20, 2006, you agreed to issuance of this letter and Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

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

Questions concerning this Confirmatory Order should be addressed to Russell Arrighi, NRC Office of Enforcement, who can be reached at 301-415-0205 or via e-mail at [rja1@nrc.gov](mailto:rja1@nrc.gov).

A copy of this letter and its enclosures 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, and its attached Confirmatory Order, on its website at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement, Significant Enforcement Actions**. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

Sincerely,

/RA/  
Cynthia A. Carpenter, Director  
Office of Enforcement

Docket Nos. 50-263, 50-255, 50-266;  
50-301, 50-282, 50-306  
License Nos. DPR-22, DPR-20, DPR-24;  
DPR-27, DPR-42, DPR-60

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated December 20, 2006

cc w/enclosures: (See attached list)

Letter to Douglas E. Cooper - Dated: January 3, 2007

cc w/enclosures: M. Sellman, President and Chief Executive Officer  
J. Rogoff, Vice President, Counsel & Secretary  
F. Kuester, President and Chief  
Executive Officer, We Generation  
C. Anderson, Senior Vice President, Group Operations  
J. Cowan, Executive Vice President  
and Chief Nuclear Officer  
R. Fenech, Senior Vice President, Nuclear  
Fossil and Hydro Operations  
L. Lahti, Manager, Regulatory Affairs  
J. McCarthy, Site Director of Operations  
D. Weaver, Nuclear Asset Manager  
D. Koehl, Site Vice President - Point Beach  
T. Palmisano, Site Vice President - Prairie Island  
P. Harden, Site Vice President - Palisades  
J. Conway, Site Vice President - Monticello  
Plant Manager, Point Beach  
Training Manager, Point Beach  
Site Assessment Manager, Point Beach  
Site Engineering Director, Point Beach  
Emergency Planning Manager, Point Beach  
Regulatory Affairs Manager, Point Beach  
Regulatory Affairs Manager, Prairie Island  
Regulatory Affairs Manager, Monticello  
Regulatory Affairs Manager, Palisades  
K. Duveneck, Town Chairman  
Town of Two Creeks  
Chairperson  
Public Service Commission of Wisconsin  
J. Kitsembel, Electric Division  
Public Service Commission of Wisconsin  
State Liaison Officer, Wisconsin  
Tribal Council, Prairie Island Indian Community  
Administrator, Goodhue County Courthouse  
A. Udrys, Esquire, Consumers Energy Company  
S. Wawro, Director of Nuclear Assets, Consumers Energy Company  
Supervisor, Covert Township  
Office of the Governor  
State Liaison Office, State of Michigan  
L. Brandon, Michigan Department of Environmental Quality -  
Waste and Hazardous Materials Division  
M. Sellman, Chief Executive Officer  
and Chief Nuclear Officer  
Manager, Nuclear Safety Assessment  
Nuclear Asset Manager, Xcel Energy, Inc.  
State Liaison Officer, Minnesota Department of Health

Attached List (Cont'd)

2

cc: w/enclosures: R. Nelson, President  
Minnesota Environmental Control Citizens  
Association (MECCA)  
Commissioner, Minnesota Pollution Control Agency  
D. Gruber, Auditor/Treasurer,  
Wright County Government Center  
Commissioner, Minnesota Department of Commerce  
Manager - Environmental Protection Division  
Minnesota Attorney General's Office

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Sincerely,

/RA/

Cynthia A. Carpenter, Director  
Office of Enforcement

Docket Nos. 50-263, 50-255, 50-266; 50-301, 50-282, 50-306  
License Nos. DPR-22, DPR-20, DPR-24; DPR-27, DPR-42, DPR-60

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cc w/enclosures: (See attached list)

Distribution

ADAMS (PARS)	SECY	OCA	C. Carpenter, OE
J. Luehman, OE	R. Arrighi, OE	L. Chandler, OGC	J. Longo, OGC
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DRSIII	Enforcement Coordinators RI, RII, RIII, and RIV	OEMAIL	
RidsNrrDirStrib	OE r/f	Point Beach Senior Resident Inspector	
OE WEB	OE EA File	Palisades Senior Resident Inspector	
Monticello Senior Resident Inspector			
Monticello Senior Resident Inspector			

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ADAMS- **ML063630306**

OE:ES	OGC	OE:D
RArrighi	BJones	CCarpenter
12/20/06	12/21/06	01/03/07

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

Nuclear Management Company	)	Docket Nos.: 50-263, 50-255,
Monticello Nuclear Generating Plant	)	50-266; 50-301, 50-282, 50-306
Palisades Nuclear Power Plant	)	License Nos.: DPR-22, DPR-20,
Point Beach Nuclear Plant Units 1 & 2	)	DPR-24; DPR-27, DPR-42, DPR-60
Prairie Island Nuclear Generating Plant Units 1 & 2	)	
		EA-06-178

CONFIRMATORY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

I

Nuclear Management Company, LLC (NMC or Licensee) is the holder of Facility Operating License Nos. DPR-20, DPR-42, and DPR-60 and renewed Facility Operating License Nos. DPR-22, DPR-24, and DPR-27 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on, February 21, 1991, April 5, 1974, October 29, 1974, November 8, 2006, December 22, 2005, and December 22, 2005, respectively. The licenses authorize the operation of Monticello Nuclear Generating Plant, Palisades Nuclear Power Plant, Point Beach Nuclear Plant (PBNP), and Prairie Island Nuclear Generating Plant in accordance with conditions specified therein. The facilities are located on the Licensee’s sites in Monticello, Minnesota; South Haven, Michigan; Two Rivers, Wisconsin; and Red Wing, Minnesota.

II

On March 18, 2005, the NRC’s Office of Investigations (OI) began an investigation to determine whether a senior reactor operator (SRO) at the PBNP was the subject of employment discrimination in violation of 10 CFR 50.7, “Employee protection.” In OI Report No. 3-2005-010, OI concluded that an SRO was discriminated against by PBNP management, in part, for raising safety concerns using the Licensees’ corrective action program (CAP). By letter dated

August 22, 2006, the NRC identified to the Licensee an apparent violation of 10 C.F.R. 50.7, and offered NMC the opportunity to provide a written response, attend a predecisional enforcement conference, or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and NMC and, if possible, assist the NRC and NMC in reaching an agreement. NMC chose to participate in ADR. On October 31, 2006, the NRC and NMC met in Green Bay, Wisconsin, in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution.

### III

This Confirmatory Order is issued pursuant to the agreement reached during the ADR process. Specifically, NMC agreed to the following:

1. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC agrees to review, revise, and communicate to NMC employees and managers its policy relating to the writing of corrective action program (CAP) reports, and provide training to NMC employees and managers to clarify management's expectation regarding the use of the program with the goal to ensure employees are not discouraged, or otherwise retaliated or perceived to be retaliated against, for using the CAP.
2. By no later than June 30, 2007, NMC agrees to communicate its safety culture policy (including safety conscious work environment (SCWE)) to NMC employees, providing employees with the opportunity to ask questions in a live forum.

3. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC agrees to train its employees holding supervisory positions and higher who have not had formal training on SCWE principles within the previous two years of the Confirmatory Order. NMC agrees to use a qualified training instructor (internal or external) for such training.

NMC shall review and enhance, if necessary, its refresher SCWE training consistent with NMC's refresher training program and provide such refresher training to its employees.

New employees holding supervisory positions and higher shall be trained on SCWE principles within nine (9) months of their hire dates unless within the previous two years of their hire dates, they've had the same or equivalent SCWE training.

4. By no later than March 30, 2007, NMC agrees: to develop action plans to address significant issues identified as needing management attention in the NMC 2004 and 2006 Comprehensive Cultural Assessments at PBNP; to conduct focus group interviews with Priority 1 & 2 organizations to understand the cause of the survey results; and to review and, as appropriate, reflect nuclear industry best practices in its conduct of focus groups and action plans to address the issues at PBNP.

NMC has agreed that this Confirmatory Order shall include the commitments noted above, and NRC has agreed it will not pursue any further enforcement action for this issue and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy.



On December 20, 2006, NMC consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV, below. NMC further agreed in its December 20, 2006, letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing. 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 IV 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 the public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance. NMC is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

#### IV

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, EFFECTIVE IMMEDIATELY, THAT LICENSE NOS. DPR-22, DPR-20, DPR-24, DPR-27, DPR-42 , AND DPR-60 ARE MODIFIED AS FOLLOWS:

1. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC shall review, revise, and communicate to NMC employees and managers its policy relating to the writing of corrective action program (CAP) reports, and provide training to NMC

employees and managers to clarify management's expectation regarding the use of the program with the goal to ensure employees are not discouraged, retaliated against, or perceived to be retaliated against, for using the CAP.

2. By no later than June 30, 2007, NMC shall communicate its safety culture policy (including safety conscious work environment (SCWE)) to NMC employees, providing employees with the opportunity to ask questions in a live forum.
3. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC shall train its employees holding supervisory positions and higher who have not had formal training on SCWE principles within the previous two years of the confirmatory order. NMC agrees to use a qualified training instructor (internal or external) for such training.

NMC shall review and enhance, if necessary, its refresher SCWE training consistent with NMC's refresher training program and provide such refresher training to its employees.

New employees holding supervisory positions and higher shall be trained on SCWE principles within nine (9) months of their hire dates unless within the previous two years of their hire dates, they've had the same or equivalent SCWE training.

4. By no later than March 30, 2007, NMC shall develop action plans to address significant issues identified as needing management attention in the NMC 2004 and 2006 Comprehensive Cultural Assessments at PBNP; to conduct focus group interviews with Priority 1 & 2 organizations to understand the cause of the survey results; and to review and, as appropriate, reflect nuclear industry best practices in its conduct of focus groups and action plans to address the issues at PBNP.

As part of the development of the action plans, NMC shall also assess and address any legacy issues identified in prior safety culture assessments (i.e. CAP report AR00510074 and Synergy Safety Culture Assessment) that impact the safety culture at PBNP.

The executive summary, analysis, and contemplated action plans shall also be submitted to the NRC.

5. By no later than December 31, 2008, NMC shall perform another survey at PBNP comparable to the 2004 and 2006 surveys to assess trends of the safety culture at the site and the overall effectiveness of corrective actions taken in response to prior year assessments (i.e. CAP report AR00510074 and 2006 Synergy survey).
6. By no later than 3 months after the receipt of the next cultural survey results at PBNP, NMC shall submit the executive summary, analysis of the results, and the contemplated corrective actions to the NRC.
7. NMC shall continue to implement a process which ensures that adverse employment actions are in compliance with NRC employee protection regulations and principles of SCWE.
8. In the event of the transfer of the operating license of any NMC operated facility to another entity, the commitments shall survive for the NMC fleet generally and PBNP specifically.

9. Any reference to NMC employees includes all NMC employees fleet wide. The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and 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: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and to the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that 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 either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If 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 CFR § 2.309(d) and (f).

If the 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. 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 shall be final 20 days from the date of this Order without further order or proceedings. If an extension of times 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. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director  
Office of Enforcement

Dated this 3<sup>rd</sup> day of January, 2007

Enclosure 2  
(ML063540433)