

April 4, 2007

EA-06-295

Mr. M. Nazar  
Senior Vice President and Chief Nuclear Officer  
Indiana Michigan Power Company  
Nuclear Generation Group  
One Cook Place  
Bridgeman, Michigan 49106

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Mr. Nazar:

The enclosed Confirmatory Order is being issued to the Indiana Michigan Power Company (I&M), the licensee for the D.C. Cook nuclear power plant, as part of a settlement agreement between I&M and the U.S. Nuclear Regulatory Commission (NRC) regarding an apparent violation of 10 CFR 50.7, "Employee protection," issued by the NRC to I&M, dated December 13, 2006.

By its December 13, 2006, letter to you, the NRC identified an apparent violation of 10 CFR 50.7 based on the United States Department of Labor (DOL) Administrative Review Board's (ARB) September 29, 2006 Final Decision and Order (ARB Case No. 04-147) affirming a DOL Administrative Law Judge's (ALJ) findings of fact and conclusions. On June 29, 2004, the ALJ issued a Proposed Decision and Order (ALJ Case No. 02-ERA-30), concluding that I&M had retaliated against a former test engineer at the D.C. Cook nuclear power plant in violation of Section 211 of the Energy Reorganization Act of 1974, as amended (the ERA). I&M disagreed with the ALJ decision and appealed it to the ARB for review.

Because of the ALJ decision, the NRC sent I&M a letter on September 30, 2004, expressing NRC's concern that there existed the potential for a chilling effect on the safety-conscious work environment (SCWE) at the D.C. Cook nuclear power plant. In its letter, the NRC sought information regarding the actions I&M had taken, was taking, or planned to take to prevent the event from having a negative effect on the willingness of D.C. Cook employees to raise safety concerns. On October 30, 2004, you responded to the NRC letter. The NRC had also informed I&M that, as its normal practice, it would monitor the ARB proceedings to determine if revisiting the matter would be warranted when the ARB would issue its decision. As mentioned above, the ARB issued its decision on September 29, 2006.

In its December 13, 2006 letter, the NRC offered I&M 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, I&M requested ADR to resolve the apparent violation of 10 CFR 50.7. The ADR mediation session was held on March 8, 2007, in Washington, D.C at which the parties entered into a settlement agreement. The terms and conditions of that settlement agreement are set forth in Section V of the enclosed Confirmatory Order.

As part of the settlement agreement, I&M agreed to complete a number of actions, including: the completion of the training of all non-supervisory plant workforce and long-term contractors on the subject of SCWE, the completion of a Nuclear Safety Culture (including SCWE) survey, the reinforcement of I&M's policy and expectation of its management relating to a SCWE as communicated by an executive level manager and the implementation of a periodic assessment of I&M's compliance with its hours of work limitation program and evaluation of the results for trends. In exchange for these actions, the NRC agreed to not pursue further enforcement action relating to the December 13, 2006, letter. We will, however, evaluate the implementation of the Confirmatory Order during future inspections.

We have enclosed a Confirmatory Order (Effective Immediately) to confirm the actions made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver" Form (copy enclosed) dated March 30, 2007, you agreed to issuance of the enclosed 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 Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Confirmatory 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 Shahram Ghasemian, NRC Office of Enforcement, who can be reached at 301-415-3591 or via e-mail at [sxq4@nrc.gov](mailto:sxq4@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

M. Nazar

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also include this letter, and its enclosed Confirmatory Order, on its website at [www.nrc.gov](http://www.nrc.gov). 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. 050-00315, 050-00316  
License Nos. DPR-58 and DPR-74

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated March 30, 2007

cc w/encl: J. Jensen, Site Vice President  
L. Weber, Plant Manager  
G. White, Michigan Public Service Commission  
L. Brandon, Michigan Department of Environmental  
Quality - Waste and Hazardous Materials Division  
Emergency Management Division  
MI Department of State Police  
State Liaison Officer, State of Michigan

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Sincerely,

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

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L. Weber, Plant Manager  
G. White, Michigan Public Service Commission  
L. Brandon, Michigan Department of Environmental  
Quality - Waste and Hazardous Materials Division  
Emergency Management Division  
MI Department of State Police  
State Liaison Officer, State of Michigan

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

Indiana Michigan Power Company	)	Docket Nos. 050-00315, 050-00316
D.C. Cook Nuclear Power Plant	)	License Nos. DPR-58 & DPR-74
	)	EA-06-295

CONFIRMATORY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

I

Indiana Michigan Power Company (I&M or Licensee) is the holder of Facility Operating License Nos. DPR-58 and DPR-74 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on October 25, 1974 and December 23, 1977, respectively. The licenses authorize the operation of the D.C. Cook nuclear power plant units 1 & 2 in accordance with conditions specified therein. The facility is located on the Licensee's site near Bridgeman, Michigan.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 8, 2007, in Washington, D.C.

By letter dated December 13, 2006, the NRC identified to the Licensee an apparent violation of 10 C.F.R. 50.7, "Employee Protection." The apparent violation was issued based on the United States Department of Labor (DOL) Administrative Review Board's (ARB's) September 29, 2006, Final Decision and Order (ARB Case No. 04-147) affirming a DOL Administrative Law Judge's (ALJ) findings of fact and conclusions. On June 29, 2004, the ALJ had issued a Proposed Decision and Order (ALJ Case No. 02-ERA-30), concluding that I&M had retaliated against an I&M former test engineer in violation of Section 211 of the Energy Reorganization Act of 1974, as amended (the ERA). I&M has denied that it violated the ERA and has appealed the ARB decision to the United States Court of Appeals for the Sixth Circuit. Although at this time there is no indication that the impact of the apparent violation is not isolated, the NRC is concerned that, in the absence of appropriate management actions, the ARB decision may ultimately have a broader impact on the D.C. Cook plant's safety-conscious work environment (SCWE).

In its December 13, 2006, letter to I&M, the NRC offered I&M the opportunity to provide a written response, attend a predecisional enforcement conference, or request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and I&M and, if possible, assist the NRC and I&M in reaching an agreement. I&M chose to participate in ADR with the NRC. On March 8, 2007, the NRC and I&M met in Washington, D.C., 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 March 8, 2007, mediation meeting. Specifically, I&M agreed to the following actions:

1. By no later than one-hundred eighty (180) calendar days after the issuance of this Confirmatory Order, I&M agrees to complete an assessment of the D.C. Cook plant's Nuclear Safety Culture including its SCWE.
  
2. Within sixty (60) calendar days after the completion of the assessment as referenced in paragraph 1 above, I&M shall make available to the NRC:
  - A. A description of the tools/methods used to conduct that assessment including the survey questions;
  - B. The results of the assessment and I&M's analysis of the results; and
  - C. The proposed actions, if any, I&M would plan to take to address the results of the assessment in order to ensure that a thriving SCWE exists at the D.C. Cook plant.
  
3. As expeditiously as possible but by no later than December 31, 2008, I&M agrees to complete the training of all D.C. Cook plant's non-supervisory employees and long-term contractors on the topic of SCWE.
  
4. By no later than sixty (60) calendar days after the issuance of this Confirmatory Order, a member of I&M management at a level at least equal to the D.C. Cook plant Site Vice President will communicate with D.C. Cook plant's workforce about the company's

policy and his/her expectations of management regarding the maintenance and enhancement of a SCWE.

5. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, I&M agrees to implement a periodic assessment of its compliance with its work hour limitations program and evaluate the results of the assessment for trends.

In exchange for I&M's actions set forth hereunder, the NRC agreed not to pursue any further enforcement action in connection with the NRC's December 13, 2006, letter to I&M 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 NRC Enforcement Policy, NUREG-1600. This Confirmatory Order will, however, be considered by the NRC for any assessment of the D.C. Cook plant's performance under the NRC's Reactor Oversight Process, as appropriate.

On March 30, 2007, I&M consented to the NRC issuing this Confirmatory Order. I&M further agreed 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 concern can be resolved through issuance of this Confirmatory Order.

#### IV

Since the licensee has taken several actions and implemented a number of programs relating to communications, training and human relation initiatives addressing the D.C. Cook plant's

safety culture and SCWE and has agreed to commit to the actions to address NRC's concern, as set forth in Section III above, the NRC has concluded that its concern can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's actions described in Section III are acceptable and necessary and conclude that with those actions 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 actions be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory 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-58 AND DPR-74 ARE MODIFIED AS FOLLOWS:

1. By no later than one-hundred eighty (180) calendar days after the issuance of this Confirmatory Order, I&M agrees to complete an assessment of the D.C. Cook plant's nuclear Safety Culture including its SCWE.
2. Within sixty (60) calendar days after the completion of the assessment as referenced in paragraph I above, I&M shall make available to the NRC:

- A. A description of the tools/methods used to conduct that assessment including the survey questions;
  - B. The results of the assessment and I&M's analysis of the results; and
  - C. The proposed actions, if any, I&M would plan to take to address the results of the assessment in order to ensure that a thriving SCWE exists at the D.C. Cook plant.
3. As expeditiously as possible but by no later than December 31, 2008, I&M agrees to complete the training of all D.C. Cook plant's non-supervisory employees and long-term contractors on the topic of a SCWE.
4. By no later than sixty (60) calendar days after the issuance of this Confirmatory Order, a member of I&M management at a level at least equal to the D.C. Cook plant Site Vice President will communicate with D.C. Cook plant workforce about the company's policy and his/her expectations of management regarding the maintenance and enhancement of a SCWE.
5. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, I&M agrees to implement a periodic assessment of its compliance with its work hour limitations program and evaluate the results of the assessment for trends.
6. In the event of the transfer of the operating license of D.C. Cook plant to another entity, the actions as required by this Confirmatory Order shall continue to apply to the D.C. Cook plant and accordingly survive any transfer of ownership or license.

7. The NRC understands that I&M has appealed the ARB decision to the United States Court of Appeals for the Sixth Circuit. The outcome of that appeal will not alter I&M's actions set forth herein or the provisions of this Confirmatory Order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee 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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 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: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555-0001. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, 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. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory 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 V shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of times 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.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

Cynthia A. Carpenter, Director  
Office of Enforcement

Dated this 4th day of April, 2007

ENCLOSURE 2

**(ML070930155)**