



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

October 19, 2007

EA-07-162

Randall K. Edington
Senior Vice President, Nuclear
Mail Station 7602
Arizona Public Service Company
P.O. Box 52034
Phoenix, AZ 85072-2034

SUBJECT: CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE
IMMEDIATELY) [OFFICE OF INVESTIGATIONS REPORT NO. 4-2007-009]

Dear Mr. Edington:

The enclosed Confirmatory Order is being issued to Arizona Public Service Company (APS) as a result of a successful alternative dispute resolution (ADR) mediation session. The enclosed commitments were made by APS as part of a settlement agreement between APS and the NRC concerning the falsification, by a qualified senior reactor operator, at the Palo Verde Nuclear Generating Station (PVNGS), of a record related to a steam generator blowdown. Our concerns about an apparent deliberate violation of 10 CFR 50.9 were described to you in our letter dated July 12, 2007. A Factual Summary of the OI investigation was enclosed with that letter.

In response to our July 12 letter, you requested ADR to address the apparent violation. Subsequently, an ADR mediation session was conducted on August 27, 2007, at which time a preliminary settlement agreement was reached. The elements of the preliminary agreement are contained in the enclosed Order.

As part of the settlement agreement, APS agreed to take a number of actions. In recognition of these actions, and those corrective actions already completed, the NRC is satisfied that its concerns will be addressed by these actions that will be made legally-binding through the enclosed Confirmatory Order. Therefore, the NRC has agreed not to pursue any further enforcement action in connection with the issues described in our July 12, 2007, letter to APS. We will evaluate the implementation of your commitments during future inspections.

As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated October 17, 2007, 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 the address listed in the letterhead.

If you have any questions or comments concerning this letter, please contact Mr. Michael Vasquez, Senior Enforcement Specialist, at 817-860-8121, or Ms. Karla Fuller, Regional Counsel and Team Leader for the Allegation Coordination and Enforcement Staff, at 817-860-8271.

To the extent possible, any response you provide should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. 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 the attached Confirmatory Order, at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>; then select **Significant Enforcement Actions**. Your response to the Confirmatory Order will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket Nos. 50-528, 50-529, 50-530
License Nos. NPF-41, NPF-51, NPF-74

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc w/enclosures:

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Regional Administrator

DRP Director
 DRS Deputy Director
 Branch Chief, DRP/D
 Senior Project Engineer, DRP/D **(RLN1)**
 Team Leader, DRP/TSS **(CJP)**
 DRS STA **(DAP)**
 DRP Deputy Director
 PV Site Secretary **(PRC)**
 K. D. Fuller, RC/ACES **(KDF)**
 C. A. Carpenter, D:OE **(CAC)**
 OE:EA File **(RidsOeMailCenter)**
 D. Starkey, OE
 M. Vasquez, RIV
 M. Haire, RIV

DRS Director
 Senior Resident Inspector **(GXW2)**
 Branch Chief DRS/OB
 Senior Project Engineer, DRP/D **(GEW)**
 RITS Coordinator **(MSH3)**
 V. Dricks, PAO **(VLD)**
 D. Pelton, OEDO RIV Coordinator **(DLP1)**
 M. Ashley, NRR
 J. Wray, OE
 C. Maier, RIV
 R4ALLEGATION
 B. Tindell, DRS/OB
 W. Maier, RIV
 D. White, OI

SUNSI Review Completed: GMV ADAMS: Yes No Initials: GMV

Publicly Available** Non-Publicly Available Sensitive Non-Sensitive

DOCUMENT NAME: S:\RAS\ACES\ENFORCEMENT\EA Cases – Open\Palo Verde – Deliberate SRO/Conf_Order-from-ADR\Draft_APS-Conf_Order.doc

RIV:SES:ACES	OB	RPBD	DD:DRP	D:DSP	RC/ACES
GMVasquez	ATGody	TWPruett	ATHowell	DDChamberlain	KDFuller
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09/15/07	9/25/07	9/20/07	9/24/07	9/26/07	9/26/07

DRA	OE	OGC	RA		
TPGwynn	N Hilton	M Clark	EECollins		
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10/2/07	10/15/07	10/11/07	10/19/07		

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket Nos. 50-528, 50-529, 50-530
Arizona Public Service Company)	License Nos. NPF-41, NPF-51, NPF-74
Palo Verde Nuclear Generating Station)	EA-07-162

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Arizona Public Service Company (APS) (Licensee) is the holder of reactor operating licenses, License Nos. NPF-41, NPF-51, NPF-74, issued by the Nuclear Regulatory Commission (NRC or Commission), pursuant to 10 CFR Part 50, on June 6, 1985, April 24, 1986, and November 25, 1987. The licenses authorize the operation of Palo Verde Nuclear Generating Station (PVNGS) in accordance with conditions specified therein. The facility is located on the Licensee's site in Buckeye, Arizona. This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on August 27, 2007.

II

On November 20, 2006, the NRC Office of Investigations (OI) began an investigation (OI Case No. 4-2007-009) at PVNGS. As a result of the staff's review of the information, the NRC was concerned that a senior reactor operator (SRO), stationed as a reactor operator, appeared to have engaged in deliberate misconduct. Specifically, on November 8, 2006, the SRO had

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mistakenly entered an incorrect blowdown constant into the plant computer and subsequently attempted to conceal the mistake by falsifying the blowdown record. The NRC's preliminary findings were discussed in a letter to APS dated July 12, 2007. That letter identified an apparent violation of 10 CFR 50.9 that was being considered for escalated enforcement action, and identified the NRC's concern that the SRO actions may have involved willfulness in the form of deliberate misconduct. A predecisional enforcement conference had been scheduled to discuss the apparent violation. However, prior to the conference, APS requested ADR in an attempt to resolve the issue. 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 is mediation.

On August 27, 2007, the NRC and APS met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. At the conclusion of the ADR session, APS and the NRC did reach an Agreement in Principle. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During that ADR session, a preliminary settlement agreement was reached. Pursuant to the NRC's Alternative Dispute Resolution program (ADR), the following are the terms and conditions agreed upon in principle by APS and the NRC relating to the issues described in the NRC's letter to APS dated July 12, 2007.

Whereas, APS and the NRC agree that there were two issues: (1) a licensed operator failed to self-report an error he made in entering data into a plant computer, and

subsequently he attempted to conceal his error, and (2) a failure by APS to promptly notify other licensees of a potential access authorization issue with respect to this individual, in violation of NRC requirements;

Whereas, the actions of this licensed operator, though unacceptable, were of very low significance from a nuclear safety perspective;

Whereas, the actions of this licensed operator were identified by APS and APS promptly informed the NRC;

Whereas the access authorization issue is of very low safety significance;

Whereas, APS has completed corrective actions to address the issues described in the July 12, 2007, letter issued by the NRC to APS, including actions to correct the initial error made by the plant licensed operator, to reduce the likelihood of similar errors in the future, to improve Independent Verifications, to further improve the safety culture in the plant Operations Department, and to improve APS' processes for ensuring that pertinent information regarding personnel access authorization is appropriately communicated to other nuclear power plant licensees; and

Whereas, these terms and conditions shall not be binding on either party until memorialized in a confirmatory order issued by the Nuclear Regulatory Commission to APS relating to this matter.

APS planned to complete additional corrective and improvement actions with respect to these issues, and agrees to take the following actions, which will be included in a Confirmatory Order from the NRC to APS:

1. APS will develop training on these issues, using a case study. The training will focus on the importance of self-reporting errors, the importance of performing good independent verifications, and deterring individuals from concealing mistakes. APS will provide this training to its Operations Department within 6 months of the date of the Confirmatory Order.

2. APS will perform assessments of its independent verification processes in the Operations and Maintenance Departments. The assessments will be completed within 12 months of the date of the Confirmatory Order, and applicable actions resulting from the assessment will be tracked for completion. In addition, within this same time period, APS will incorporate in a Quality Assurance (QA) audit plan a follow-up assessment to ensure the actions to improve the independent verification processes were effective.

3. Within 12 months of the date of this Confirmatory Order, APS will provide training on both issues identified above to its leaders and managers. The intent of this training will be to focus leaders and managers on the importance of balancing accountability with encouraging workers to self-report errors and on the importance of communicating this with their workers, and on ensuring that potential access authorization issues are promptly addressed.

4. Within 12 months of the date of the Confirmatory Order, APS will utilize the case study identified in Item 3 in evaluating its training for new leaders with a goal towards ensuring that new leaders are sensitized to balancing accountability with encouraging workers to self-report errors, on the importance of communicating this with their workers, and on ensuring that potential access authorization issues are promptly addressed.

5. Within 6 months of the date of the Confirmatory Order, APS will conduct a follow-up safety culture review of its Operations Department, in order to determine the effectiveness of its actions to improve the safety culture in the Operations Department, and applicable actions resulting from the review will be tracked for completion.

6. Within 30 days of the date of the Confirmatory Order, APS will provide the NRC with written communication regarding the weaknesses found in its process for identifying potential access authorization issues to other licensees through the Personnel Access Data System (PADS). APS will describe its corrective actions in this letter, and will send the letter to the Document Control Desk with a copy to the Regional Administrator, NRC RIV and to the Resident Inspector at the Palo Verde Nuclear Generating Station.

7. Within 6 months of the date of the Confirmatory Order, APS will develop a generic communication for the industry in the form of an Operating Experience report regarding weaknesses it found in its process for informing other licensees of potential access authorization issues concerning individuals who resign from the plant before any disciplinary action is taken against them.

The NRC agrees not to pursue any further enforcement action in connection with the issues described in the NRC's July 12, 2007, letter to APS, including the access authorization issue described in that letter, and will not count these matters 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.

The NRC agrees to provide APS with 48 hours notice prior to issuance of the Confirmatory Order described in this agreement.

On October 17., 2007, APS consented to issuing this Order with the commitments, as described in Section V below. APS further agreed that this Order is to be affective upon issuance and that it has waived its right to a hearing.

IV

Since APS has agreed to take additional actions to address NRC concerns, as set forth in Section III above, 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 V 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 public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE Nos. NPF-41, NPF-51, NPF-74 ARE MODIFIED AS FOLLOWS:

1. APS will develop training on the issues described in the apparent violation identified in the NRC's letter to APS dated July 12, 2007, using a case study. The training will focus on the importance of self-reporting errors, the importance of performing good independent verifications, and deterring individuals from concealing mistakes. APS will provide this training to its Operations Department (permanent employees and contractors scheduled to work in the Operations Department for 1-year or more) within 6 months of the date of the Confirmatory Order.
2. APS will perform assessments of its independent verification processes in the Operations and Maintenance Departments. The assessments will be completed within 12 months of the date of the Confirmatory Order, and applicable actions resulting from the assessment will be tracked for completion. In addition, within this same time period, APS will incorporate in a QA audit plan a follow-up assessment to ensure the actions to improve the independent verification processes were effective.
3. Within 12 months of the date of this Confirmatory Order, APS will provide training to its leaders and managers on the two issues in this case: (1) a licensed operator failed to

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self-report an error he made in entering data into a plant computer, and subsequently he attempted to conceal his error, and (2) a failure by APS to promptly notify other licensees of a potential access authorization issue with respect to this individual, in violation of NRC requirements. The intent of this training will be to focus leaders and managers on the importance of balancing accountability with encouraging workers to self-report errors and on the importance of communicating this with their workers, and on ensuring that potential access authorization issues are promptly addressed.

4. Within 12 months of the date of the Confirmatory Order, APS will utilize the case study identified in Item 3 in evaluating its training for new leaders with a goal towards ensuring that new leaders are sensitized to balancing accountability with encouraging workers to self-report errors, on the importance of communicating this with their workers, and on ensuring that potential access authorization issues are promptly addressed.
5. Within 6 months of the date of the Confirmatory Order, APS will conduct a follow-up safety culture review of its Operations Department, in order to determine the effectiveness of its actions to improve the safety culture in the Operations Department, and applicable actions resulting from the review will be tracked for completion.
6. Within 30 days of the date of the Confirmatory Order, APS will provide the NRC with written communication regarding the weaknesses found in its process for identifying potential access authorization issues to other licensees through the Personnel Access Data System (PADS). APS will describe its corrective actions in this letter, and will send the letter to the Document Control Desk with a copy to the Regional Administrator, NRC RIV, and to the Resident Inspector at PVNGS.

7. Within 6 months of the date of the Confirmatory Order, APS will develop a generic communication for the industry in the form of an Operating Experience report regarding weaknesses it found in its process for informing other licensees of potential access authorization issues concerning individuals who resign from the plant before any disciplinary action is taken against them.

The Regional Administrator, NRC Region IV 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 APS, 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 20555-0001. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to APS. Because of the possible 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 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 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 CFR § 2.309 (d) and (f).

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Elmo E. Collins, Regional Administrator

Dated this 19th day of October 2007

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