



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

August 6, 2009

EA-08-244

Mr. Cary Alstadt
Manager, Columbia Plant
Westinghouse Electric Company LLC
Commercial Nuclear Fuel Division
Drawer R
Columbia, SC 29250

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2008-002]

Dear Mr. Alstadt:

The enclosed Confirmatory Order is being issued to Westinghouse Electric Company, LLC (WEC), as a result of a successful alternative dispute resolution (ADR) session. The enclosed commitments were made by WEC as part of a settlement agreement for an issue involving falsified ventilation filter reading data, falsified records in the electronic training system, and inaccurate information in the corrective action program at the WEC Columbia Plant, Columbia, South Carolina.

In a letter dated May 6, 2009, the Nuclear Regulatory Commission (NRC) provided WEC with the results of an investigation completed by the NRC's Office of Investigations (OI), including the identification of three apparent violations. The apparent violations involved: (1) the failure to establish adequate management measures as required by 10 CFR 70.62(d), to ensure that Items Relied On For Safety (IROFS) are available and reliable to perform their function when needed, in that the periodicity of required ventilation system filter differential pressure readings was not specified in implementing procedures; (2) two examples of information provided to the NRC or required to be maintained by the licensee that were not complete and accurate as required by 10 CFR 70.9, including: (a) information documented in the corrective action program and provided to the NRC on September 11, 2007 regarding the identification and employment status of the individual responsible for the falsification of ventilation system data, and (b) training records in the Electronic Training and Procedures System (ETAPS) documenting employee completion of required training when, in fact, the training was not completed; and, (3) training records that were falsified by a contractor foreman, who accessed individual electronic training records of various employees and acknowledged completion of certain training requirements, when those training requirements were not accomplished. This last apparent violation was a willful violation of License Application Section 3.4.1, and Columbia Plant Administrative Procedure CA-002, Columbia Plant Procedure System, Section 3.13. A Factual Summary of the OI investigation was enclosed with our May 6, 2009 letter.

Our May 6, 2009 letter also offered WEC a choice to: (1) attend a Predecisional Enforcement Conference; (2) provide a written response; or (3) request ADR with the NRC in an attempt to resolve these issues. In response, WEC requested ADR in an attempt to resolve these issues. An ADR mediation session was held on July 27, 2009, at which a preliminary agreement was reached. The elements of the preliminary agreement, which were formulated and agreed upon at the mediation session, are contained within the enclosed Confirmatory Order.

As discussed in the enclosed Confirmatory Order, WEC agreed to a number of corrective actions and enhancements, including procedural revisions, management oversight of contractor activities, review of the causes of the falsification issues and corresponding development of additional corrective actions and enhancements, and incorporation of lessons learned into new employee and annual refresher training for all WEC and contractor employees. WEC also provided independent training for certain managers regarding enhanced investigative and documentation techniques for issues which have the potential to include employee wrongdoing, and will follow up with an independent assessment of the effectiveness this training. In addition, WEC will conduct an independent assessment of the effectiveness of the employee concerns processes to satisfactorily resolve WEC and contractor employee concerns.

In light of the corrective actions WEC has agreed to take as described in the enclosed Confirmatory Order, the NRC is satisfied that its concerns will be addressed by making WEC's commitments legally binding through the Confirmatory Order. Therefore, the NRC has agreed to refrain from proposing a civil penalty and issuing a Notice of Violation or other enforcement action for the matters discussed in our letter to WEC of May 6, 2009 (EA-08-244). We will evaluate the implementation of your commitments during future inspections.

We have enclosed a Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the preliminary agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated July 31, 2009, you agreed to issuance of this 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, Region II, 61 Forsyth Street, SW Suite 23T85, Atlanta, Georgia 30303-8931, ATTN: Regional Administrator.

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. accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and the enclosed Confirmatory Order, on its website at www.nrc.gov; select Public Meetings and Involvement, then Enforcement. 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).

If you have any questions or comments concerning this letter, please contact Mr. Joseph Shea, Director, Division of Fuel Facilities Inspection, at 404-562-4700.

Sincerely,

/RA/

Victor M. McCree
Deputy Regional Administrator

Docket No. 70-1151
License No. SNM-1107

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc w/encls.:
Marc Rosser
Manager
Environment, Health and Safety
Commercial Nuclear Fuel Division
Electronic Mail Distribution

Susan Jenkins
Section Leader
Division of Waste Management
Bureau of Land and Waste Management
Electronic Mail Distribution

Distribution w/encls: (See page 4)

Distribution w/encls:

W. Borchardt, OEDO
 M. Virgilio, OEDO
 B. Mallett, OEDO
 D. Dorman, NMSS
 C. Marco, OGC
 C. Carpenter, OE
 E. Julian, SECY
 B. Keeling, OCA
 Enforcement Coordinators
 RI, RIII, RIV
 E. Hayden, OPA
 G. Caputo, OI
 H. Bell, OIG
 R. Wharton, NMSS
 L. Reyes, RII
 V. McCree, RII
 K. Kennedy, RII
 C. Evans, RII
 S. Sparks, RII
 J. Shea, RII
 D. Rich, RII
 J. Ledford, RII
 R. Hannah, RII
 R. Trojanowski, RII
 OEMAIL
 OEWEB
 PUBLIC

X PUBLICLY AVAILABLE NON-PUBLICLY AVAILABLE SENSITIVE NON-SENSITIVE
 ADAMS: Yes ACCESSION NUMBER: _____

OFFICE	RII:DFFI	RII:DFFI	RII:ORA			
SIGNATURE	Via email 7/28/09	Via email 7/28/09	SES for 7/31/09			
NAME	DRICH	JSHEA	CEVANS			
DATE						
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OGC	NMSS	OE			
SIGNATURE	C. Boote for via email 7/31/09	Via email 7/29/09	BSummer for via email 7/29/09			
NAME						
DATE						
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YESNO	YESNO

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No.: 70-1151
Westinghouse Electric Company LLC)	License No.: SNM-1107
)	
)	EA-08-244

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Westinghouse Electric Company LLC (WEC or Licensee) is the holder of Operating License No. SNM-1107 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70. The license in effect at the time of the matters described below was most recently amended via Amendment 5, issued on April 10, 2009. The license authorizes the operation of WEC in accordance with the conditions specified therein. The facility is located on the Licensee's site in Columbia, South Carolina.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on July 27, 2009.

II

On August 11, 2008, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2-2008-002) regarding activities at the WEC facility located in Columbia, South Carolina. Based on the evidence developed during the investigation, the NRC staff identified three apparent violations.

The first apparent violation involved the failure to establish adequate management measures, as required by 10 CFR 70.62(d), to ensure that Items Relied On For Safety (IROFS) are available and reliable to perform their function when needed, in that the periodicity of required ventilation system filter differential pressure readings, which the Integrated Safety Analysis specified as IROFS Vent 902, was not specified in implementing procedures.

The second apparent violation involved two examples in which information provided to the NRC or required to be maintained by the licensee was not complete and accurate as required by 10 CFR 70.9. In the first example, information documented in the corrective action program and provided to the NRC on September 11, 2007 regarding the circumstances surrounding falsified ventilation system data was inaccurate and incomplete as to the identification and employment status of the individual responsible for the falsification. In the second example, training records documenting employee completion of required training were incomplete and inaccurate in that the Electronic Training and Procedures System (ETAPS) indicated training was completed when, in fact, it was not.

The third apparent violation involved training records that were falsified by a contractor foreman, who accessed individual electronic training records of various employees and acknowledged completion of certain training requirements, when those training requirements were not accomplished. This action was an apparent willful violation of Columbia Plant Administrative Procedure CA-002, Columbia Plant Procedure System, which states that ETAPS End Users must read and then acknowledge procedures governing their job responsibilities in ETAPS before performing work assignments or manufacturing processes.

The results of the investigation were sent to the Licensee in a letter dated May 6, 2009. This letter also offered the Licensee the opportunity either to: provide a written response, attend a Predecisional Enforcement Conference, or participate in ADR mediation. In response to the NRC's offer, the Licensee requested use of the NRC's ADR process to resolve the apparent violations.

III

On July 27, 2009, representatives of the NRC and WEC met in an ADR session mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. WEC acknowledged that corrective actions and enhancements were warranted to preclude recurrence of the matters discussed in the NRC's letter of May 6, 2009.
2. With respect to the matters described in Section II above and NRC concerns with respect to precluding recurrence, WEC completed the following corrective actions and enhancements:
 - a. As part of the Nuclear Criticality Safety Improvement Project, WEC has updated procedures and provided enhanced markings to delineate steps that are critical to the availability and reliability of IROFS. This program was completed June 30, 2009.

- b. WEC revised management oversight for maintenance and contractor activities by establishing: (1) a Maintenance Operations Manager position responsible for day-to-day Westinghouse maintenance activities and (2) a Site Maintenance Manager, reporting to the Plant Manager, responsible for providing direct oversight of contractor operations, including contractor corrective action program issues and contractor training.
- c. Required primary service providers (i.e., Greggs Construction, Prime State Insulation (PSI)) to have a safety/compliance officer to monitor compliance with procedures and ensure safe operation of contractor activities.
- d. Reset ETAPS passwords for all PSI employees.
- e. Provided instruction to all WEC and contractors employees via the annual required refresher training to not share ETAPS passwords, and trained supervisors on methods to verify employee training completion.
- f. Developed process and procedures by which WEC will audit completion of required training on a sitewide basis.
- g. Required a Performance Improvement Program for PSI which includes expectations related to safety, reporting of issues, procedural compliance, training and fitness-for-duty.

- h. Provided independent training for human resources, security and two Environmental Health and Safety (EH&S) managers regarding enhanced investigative training and documentation techniques for issues which have the potential to include employee wrongdoing.

- 3. In addition to the actions completed by WEC as discussed above, WEC agreed to additional corrective actions and enhancements for the Columbia Fuel Fabrication Facility, as fully delineated below in Section V of the Confirmatory Order.

- 4. At the ADR session, the NRC and WEC agreed that (1) the actions referenced in Section III.2 and Section V would be incorporated into a Confirmatory Order, and (2) the resulting Confirmatory Order would be considered by the NRC for any assessment of WEC, as appropriate.

- 5. In consideration of the completed corrective actions delineated in Section III.2 and the actions to be taken delineated in Section V of this Confirmatory Order, the NRC agreed to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to WEC of May 6, 2009 (EA-08-244).

- 6. This agreement is binding upon successors and assigns of WEC.

On July 31, 2009, the Licensee consented to issuance of this Order with the commitments described in Section III.2 and Section V. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has completed the actions as delineated in Section III.2 and agreed to take the actions as set forth in Section V, 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 III.2 and 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 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 70, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. SNM-1107 BE MODIFIED AS FOLLOWS:

- a. WEC will conduct a quarterly management audit, on a sampling basis, of Apparent Cause Analyses in the WEC Corrective Action Program.
- b. WEC will conduct an analysis of the causes of the falsification issues identified in Section II above, and develop additional corrective actions and

enhancements in response to the analysis.

- c. WEC will incorporate lessons learned from this incident into new employee training and annual refresher training to all WEC and contractor employees. Aspects to be communicated will include, but are not limited to, the falsification of the multiple records and/or data, and consequences of such actions.
- d. WEC will conduct an independent assessment of the effectiveness of the employee concerns processes to satisfactorily resolve WEC and contractor employee concerns.
- e. WEC will conduct an independent assessment of the effectiveness of the enhanced investigative and documentation techniques in Section III.2.h within six months of issuance of the Confirmatory Order. The independent assessment will be conducted by a party other than the developer of the program.
- f. WEC agrees to complete the items listed in Section V within twelve (12) months of issuance of the Confirmatory Order, unless otherwise stated.
- g. Within three (3) months of completion of the terms of the Confirmatory Order, WEC will provide the NRC with a letter discussing its basis for concluding that the Confirmatory Order has been satisfied.

Notification to the NRC, as outlined above, should be made to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW Suite 23T85, Atlanta, Georgia 30303-8931.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon demonstration by WEC of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of the Order's publication in the Federal Register. 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

If a person other than WEC 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.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 Federal Register 49,139) and was codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in

some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes

an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing

