



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, IL 60532-4352

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November 10, 2009

EA-09-060

Mr. Christopher J. Schwarz
Vice President, Operations
Entergy Nuclear Operations, Inc.
Palisades Nuclear Plant
27780 Blue Star Memorial Highway
Covert, MI 49043-9530

**SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2008-020]**

Dear Mr. Schwarz:

The enclosed Confirmatory Order is being issued to Entergy Nuclear Operations, Inc., (Entergy) as a result of a successful Alternative Dispute Resolution (ADR) session on September 15, 2009. The enclosed commitments were made by Entergy as part of a settlement agreement concerning an apparent violation that occurred at Entergy.

In a letter dated July 14, 2009, the U.S. Nuclear Regulatory Commission (NRC) provided to Entergy the results of an investigation completed by the NRC's Office of Investigations (OI). As indicated in our letter, the NRC reached a preliminary conclusion that Entergy had deliberately violated NRC requirements. A Factual Summary of the OI investigation was enclosed with our letter.

Our July 14, 2009, letter offered you a choice to: (1) attend a Predecisional Enforcement Conference; or (2) request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, you requested ADR to resolve differences that you had with the NRC concerning the apparent violation. An ADR mediation session was held on September 15, 2009,

Enclosure 3 contains Sensitive Unclassified Non-Safeguards Information. Upon separation, this transmittal letter and Enclosures 1 and 2 are decontrolled.

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and a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session and are contained within the enclosed Order. Consistent with the purposes of ADR, you and the NRC acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in the NRC's letter dated July 14, 2009.

At the session, you made no admission that Entergy had deliberately violated any NRC requirements and agreed that the enclosed Confirmatory Order with a Notice of Violation (Notice) would be issued in settlement of a disputed claim in order to avoid further action by the NRC. In light of the corrective actions you have taken or agreed to take, as described in the enclosed Confirmatory Order, the NRC is satisfied that its concerns will be addressed by making your commitments 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 14, 2009, letter to you.

We have enclosed a copy of the 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" (Enclosure 2) dated October 13, 2009, you agreed to issuance of this Confirmatory Order. The Notice, which contains Security-Related information, is included as Enclosure 3.

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 or to the Notice. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, IL 60532. Additionally, please mark your entire response "Security-Related Information -- Withhold from Public Disclosure under 10 CFR 2.390." In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for your response to this letter. However, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information. If you have any questions or comments concerning this letter, please contact Mr. Steven Orth of my staff at 630-810-4373.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and the Order, without its Notice, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The Order will also be published in the Federal Register. However, because the

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Notice contains Security-Related information, it will not be made available electronically for public inspection. The NRC will also include the Order on its Enforcement Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

Docket No. 50-255
License No. DPR-20

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form
3. Notice of Violation (Non-Public)

cc w/encls: S. Coker, NSIR/DSO/DDSO/STSB

cc w/Enclosure 1: Distribution via Listserv

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Letter to Christopher J. Schwarz from Mark A. Satorius dated November 10, 2009

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
NRC OFFICE OF INVESTIGATIONS INVESTIGATION REPORT NO. 3-2008-020

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Entergy Nuclear Operations, Inc.)

Palisades Nuclear Plant)

27780 Blue Star Memorial Highway)

Covert, MI 49043-9530

Docket No. 050-00255

License No. DPR-20

EA-09-060

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Entergy Nuclear Operations, Inc. (Licensee or Entergy) is the holder of Reactor Operating License No. DPR-20 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 24, 1971. The license authorizes the operation of the Palisades Nuclear Plant in accordance with conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 15, 2009.

II

On May 22, 2008, the NRC completed a security baseline inspection at the Palisades Nuclear Plant. The inspection covered one or more of the key attributes of the security cornerstone of the NRC's Reactor Oversight Process. As a result of the inspection observations, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 3-2008-020). Based on the evidence developed during the inspection and investigation, the NRC identified a violation of

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10 CFR 50.9 for inaccurate and incomplete information. This violation is described in the separate Notice of Violation, included as Enclosure 3 to the transmittal letter. (Because the Notice of Violation contains Security-Related information, it is not being made publicly available.)

The results of the investigation were sent to Entergy in a letter dated July 14, 2009. This letter offered Entergy the opportunity to either participate in ADR mediation or to attend a Predecisional Enforcement Conference. On July 28, 2009, the NRC and Entergy agreed to mediate. On September 15, 2009, the NRC and Entergy participated in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As used by the NRC, ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the September 15, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Entergy will publish the corrective actions set forth in this Confirmatory Order to the Entergy fleet nuclear workforce, via **Inside Entergy**, within one month of the issuance of the Confirmatory Order. Entergy will provide a copy of the publication to the Regional Administrator, Region III, within one month of publication of the article.

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2. Entergy agrees to develop and implement a formal process, within the current Corrective Action Program (CAP), that ensures that Safeguards and Security-Related information, which would otherwise not be contained in the CAP, is processed in an auditable manner, consistent with Entergy's existing CAP. Entergy will develop and implement this process within six months of the date of the Confirmatory Order and will provide a description of these program changes to the Regional Administrator, Region III, within one month of their implementation.

Entergy will complete training for those personnel with Safeguards access on the program described above within 90 days of the effective date of the procedure or process described above.

3. Entergy will provide training to Entergy's nuclear workforce on the sensitivity and importance of providing complete and accurate information to the NRC. This training will be completed within one year of the date of the issuance of the Confirmatory Order. Entergy will tailor the training, as appropriate, to reflect the level of the individuals within the organization and their specific responsibilities for communicating with the NRC. Entergy will maintain auditable records of the training and will provide notification to the Regional Administrator, Region III, within one month of completion of the training.
4. Entergy will assess its succession planning process with respect to how that process addresses unanticipated, short-term personnel losses in key positions. Entergy will complete this assessment, and will develop corrective actions, as appropriate, within

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six months of the date of the issuance of the Confirmatory Order. Entergy will provide the results of this assessment to the Regional Administrator, Region III, within one month of its completion.

5. An Entergy executive will meet with the three NRC Regional Administrators for the regions in which Entergy owns and operates plants, to share and discuss the results of the safety culture workplace survey conducted at each Entergy nuclear plant in 2009. Subject to the schedules of the Entergy and NRC executive participants, Entergy will seek to have these meetings conducted by March 31, 2010.
6. Entergy will provide a lessons-learned presentation to the Regional Utility Groups for the NRC Regions in which Entergy operates nuclear facilities within one year of the date of the issuance of the Confirmatory Order. That lessons-learned presentation will address the events which gave rise to the Confirmatory Order and the corrective actions taken. Entergy will provide a copy of the proposed presentation to the Regional Administrator, Region III, for review prior to the presentation.
7. The NRC agrees to cite Entergy for a single violation of 10 CFR 50.9, associated with incomplete and inaccurate information, based exclusively on the information contained in Condition Reports CR-PLP-2007-05448 and CR-PLP-2007-05758 and the February 5, 2008, verbal communications with the NRC. The NRC will not assign a Severity Level to the violation and will not issue a civil penalty for the violation.
8. Entergy, by signing the Agreement in Principle, makes no admission that any employee or former employee deliberately violated any NRC requirements and that this agreement is settlement of a disputed claim in order to avoid further action by the NRC.

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On October 13, 2009, Entergy consented to issuing this Order with the commitments, as described in Section V below. Entergy further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Entergy has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Entergy'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 Entergy's commitments be confirmed by this Order. Based on the above, and Entergy'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, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY:

1. Entergy shall publish the corrective actions set forth in this Confirmatory Order to the Entergy fleet nuclear workforce, via **Inside Entergy**, within one month of the issuance of the Confirmatory Order. Entergy shall provide a copy of the publication to the Regional Administrator, Region III, within one month of publication of the article.

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2. Entergy shall develop and implement a formal process, within the current Corrective Action Program (CAP), that ensures that Safeguards and Security-Related information, which would otherwise not be contained in the CAP, is processed in an auditable manner, consistent with Entergy's existing CAP. Entergy shall develop and implement this process at all of Entergy's licensed facilities within six months of the date of the Confirmatory Order and shall provide a description of these program changes to the Regional Administrator, Region III, within one month of their implementation.

Entergy shall complete training for those personnel with Safeguards access on the program described above within 90 days of the effective date of the procedure or process described above.

3. Entergy shall provide training to Entergy's nuclear workforce on the sensitivity and importance of providing complete and accurate information to the NRC. This training shall be completed at all of Entergy's licensed facilities within one year of the date of the issuance of the Confirmatory Order. Entergy shall tailor the training, as appropriate, to reflect the level of the individuals within the organization and their specific responsibilities for communicating with the NRC. Entergy shall maintain auditable records of the training and shall provide notification to the Regional Administrator, Region III, within one month of completion of the training.
4. Entergy shall assess its succession planning process with respect to how that process addresses unanticipated, short-term personnel losses in key positions. Entergy shall complete this assessment for all of Entergy's licensed facilities, and shall develop

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corrective actions, as appropriate, within six months of the date of the issuance of the Confirmatory Order. Entergy shall provide the results of this assessment to the Regional Administrator, Region III, within one month of its completion.

5. An Entergy executive shall meet with the three NRC Regional Administrators for the regions in which Entergy owns and operates plants, to share and discuss the results of the safety culture workplace survey conducted at each Entergy nuclear plant in 2009. Subject to the schedules of the Entergy and NRC executive participants, Entergy shall seek to have these meetings conducted by March 31, 2010.
6. Entergy shall provide a lessons-learned presentation to the Regional Utility Groups for the NRC Regions in which Entergy operates nuclear facilities within one year of the date of the issuance of the Confirmatory Order. That lessons-learned presentation shall address the events which gave rise to the Confirmatory Order and the corrective actions taken. Entergy shall provide a copy of the proposed presentation to the Regional Administrator, Region III, for review prior to the presentation.

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

VI

Any person adversely affected by this Confirmatory Order, other than Entergy, may request a hearing within 20 days of the Confirmatory Order's publication in the Federal Register. Where good cause is shown, consideration will be given to extending the time to request a hearing.

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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.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Federal Register 49,139 (August 28, 2007). 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 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 a 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>.

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Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it 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 (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

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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 docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Entergy 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.

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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 this Order is published in the Federal Register 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.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

Mark A. Satorius, Regional Administrator, Region III

Dated this 10th day of November 2009

CONSENT AND HEARING WAIVER FORM

Entergy Nuclear Operations, Inc., hereby agrees to comply with the terms and conditions of the Confirmatory Order to be issued relating to enforcement action No. EA-09-060, which will be immediately effective upon its issuance. By signing below, Entergy Nuclear Operations, Inc., consents to the issuance of the referenced Confirmatory Order, effective immediately upon its issuance and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order pursuant to 10 CFR 2.202(a)(3) and (d).



Thomas P. Kirwin
General Manager Plant Operations
Palisades Nuclear Plant
for Christopher J. Schwarz
Site Vice President
Entergy Nuclear Operations, Inc.
Palisades Nuclear Plant

October 13, 2009

Date

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Notice contains Security-Related information, it will not be made available electronically for public inspection. The NRC will also include the Order on its Enforcement Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

Docket No. 50-255
License No. DPR-20

Enclosures:

- 1. Confirmatory Order
- 2. Consent and Hearing Waiver Form
- 3. Notice of Violation (Non-Public)

cc w/encls: S. Coker, NSIR/DSO/DDSO/STSB

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¹ NSIR concurrence received via e-mail from G. West on November 03, 2009

² OE concurrence received via e-mail from D. Furst on November 05, 2009

³ OGC No Legal Objection received via e-mail from K. Sexton on November 2, 2009