

December 22, 2009

EA-09-009
EA-09-203

Tennessee Valley Authority
ATTN: Mr. Preston D. Swafford
Chief Nuclear Officer and
Executive Vice President
3R Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

SUBJECT: CONFIRMATORY ORDER (EFFECTIVELY IMMEDIATELY)
(OFFICE OF INVESTIGATION REPORT NOS. 2-2006-025 & 2-2009-003)

Dear Mr. Swafford:

The enclosed Confirmatory Order is being issued to the Tennessee Valley Authority (TVA) to confirm commitments made to the U.S. Nuclear Regulatory Commission (NRC) as part of a settlement agreement between TVA and the NRC concerning the results of two NRC investigations conducted by the NRC Office of Investigations (OI), Region II, at TVA's Browns Ferry Nuclear Plant (BFN). The investigations were conducted to determine if a former contractor in one instance and a TVA employee in the other were discriminated against for engaging in protected activities.

In an NRC letter dated October 22, 2009, and during a teleconference on November 24, 2009, the NRC provided TVA with the results of these separate investigations and noted that, based on the evidence developed during the investigations, the staff determined that two apparent violations of 10 CFR 50.7, "Employee protection," had occurred. The first investigation (OI 2-2006-025), initiated on July 7, 2006, determined that a former contractor hired to work in the Nuclear Assurance (NA) organization at BFN was fired, at least in part, because he raised a safety concern to management. Specifically, he accused his manager of being "too close to the line organization" to effectively and independently perform his responsibilities. The second investigation (OI 2-2009-003), initiated on October 2, 2008, determined that a maintenance mechanic (MM), a TVA employee at BFN, was demoted for raising a safety concern regarding TVA's compliance with its Fitness for Duty program. Specifically, the MM questioned TVA management regarding the failure to perform for-cause testing of two individuals after an altercation on November 29, 2007. As a result, the MM was also required to participate in a developmental training program in order to be considered for supervisory positions in the future.

In the October 22, 2009, NRC letter and during the November 24, 2009, teleconference, the NRC informed you that the two apparent violations were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The NRC offered you a choice to: (1) provide a written response to the apparent violations of 10 CFR 50.7; (2) discuss the apparent violations at a predecisional enforcement conference; or (3) request the use of Alternative Dispute Resolution (ADR) to resolve the matter. TVA did not acknowledge that violations occurred. At TVA's request, an ADR mediation session was held on December 4, 2009, in Rockville, Maryland, at which an agreement in principle was reached. The terms and conditions of that agreement are set forth in the enclosed Confirmatory Order.

As discussed in the enclosed Confirmatory Order, TVA took numerous actions prior to the mediation session, and agreed to take additional steps to address the apparent violations, to ensure that these actions are effective and the lessons learned from these events are extended to the TVA fleet. In light of the actions that TVA took, as well as the additional actions TVA committed to complete, the NRC agreed to not pursue further enforcement action to issue a Notice of Violation or civil penalty in this matter. However, we will evaluate the implementation of your commitments during future inspections.

The enclosed Confirmatory Order (Effective Immediately) confirms the commitments made in the agreement in principle. In the signed "Consent and Hearing Waiver" Form (copy enclosed) dated December 16, 2009, TVA agreed to issuance of the 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 O4A15, 11555 Rockville Pike, Rockville, MD 20852

Questions concerning the enclosed Confirmatory Order should be addressed to John Wray, NRC Office of Enforcement, who can be reached at 301-415-1288 or via e-mail at john.wray@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. 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/

Roy Zimmerman, Director
Office of Enforcement

Docket Nos.: 50-259; 50-260; 50-296;
50-327, 50-328; 50-391

License Nos.: DPR-33; DPR-52; DPR-68;
DPR-77; DPR-79; NPF-90;
CPPR-92

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated December 16, 2009

cc w/enclosures: (See attached list)

P. D. Swafford

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cc w/ enclosure:

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OFFICE	OE	OE	OGC	OE
NAME	JWray	DSolorio	MBarkman (NLO)	RZimmerman
DATE	12/15/09	12/16/09	12/16/09	12/22/09

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