UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

U.S. Tennessee Valley Authority Browns Ferry Nuclear Plant Sequoyah Nuclear Plant Watts Bar Nuclear Plant	Docket Nos. 50-259; 50-260; 50-296; 50-327; 50-328; 50-390; 50-391 License Nos. DPR-33; DPR-52; DPR-68; DPR-77; DPR-79; NPF-90; CPPR-92

EA-09-009; EA-09-203

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

U.S. Tennessee Valley Authority (TVA or Licensee) is the holder of Operating License Nos. DPR-33; DPR-52; DPR-68 ; DPR-77 ; DPR-79 ; DPR-90 ; and Construction Permit No. CPPR-92 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of the Browns Ferry Nuclear Plant, Units 1, 2 and 3 (BFN), Sequoyah Nuclear Plant, Units 1 and 2, and Watts Bar Nuclear Plant, Unit 1 and construction activities associated with Watts Bar, Unit 2, in accordance with conditions specified therein. These facilities are located in Athens, Alabama; Soddy Daisy, Tennessee; and Spring City, Tennessee, respectively.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on December 4, 2009.

II

Two investigations were initiated by the NRC Office of Investigations (OI) to determine if a former contractor in one instance and a TVA employee in the other were discriminated against for engaging in protected activities.

On January 6, 2009, the NRC's Office of Investigations (OI) issued its investigative report regarding whether a former contracted Senior Assessor (SA) hired to work in the Nuclear Assurance (NA) organization, in connection with the BFN Unit 1 Restart Project, was the subject of employment discrimination in violation of 10 CFR 50.7, "Employee protection." In OI Report No. 2-2006-025, OI concluded that a SA was discriminated against for raising concerns regarding the independence of his manager.

On July 30, 2009, OI issued its investigative report regarding whether a maintenance mechanic (MM) employed by TVA at BFN was the subject of employment discrimination in violation of 10 CFR 50.7, "Employee protection." In OI Report No. 2-2009-003, OI concluded that the MM was discriminated against for raising concerns regarding the licensee's compliance with its Fitness for Duty program.

By letter dated October 22, 2009, and by teleconference on November 24, 2009, the NRC identified to the Licensee two separate apparent violations of 10 CFR 50.7, and offered TVA the opportunity to provide a written response, attend a pre-decisional enforcement conference, or to request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and TVA and, if possible, assist the NRC and TVA in reaching an agreement. TVA chose to participate in ADR.

III

On December 4, 2009, the NRC and TVA met in an ADR session in Maryland, mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consisted of the following:

1. The NRC acknowledged that TVA, prior to the ADR session, took numerous actions that address the issues underlying the apparent violations. These actions include:

   a. Browns Ferry Nuclear Plant (BFN) management conducts regular "Town Hall" meetings with TVA and contractor employees, which address topics of interest to the site, and during which feedback is solicited from employees. A regular area of focus is "Safety Culture" and the related topic of safety conscious work environment (SCWE).

   b. TVA issued "One Team, One Fleet, One TVA" pocket-size booklets which identify focus areas for site and corporate success. These booklets include a discussion of the need for a free flow of information where individuals can raise nuclear safety concerns without fear of retribution and have confidence that their concerns will be addressed. These booklets are widely used and form a key part of daily communications.

   c. SCWE-oriented brochures ("How Do I Speak Up for Safety" and "Voice Your Concerns") are distributed and are placed throughout the sites for TVA and contractor employees. These brochures and other Concerns Resolution Program (CRP) information are also made available to contractor employees through placement in their individual in-processing packages.

   d. "Speak Up For Safety" message pens, which also provide CRP contact telephone numbers, are regularly handed out to TVA and contractor employees.

   e. Additional fleet-wide posters promoting the CRP and encouraging the raising of concerns have been placed in strategic areas.

   f. CRP representatives provide regular SCWE-oriented presentations to TVA and contractor employees during mid-shift briefings, morning turnover meetings, and tailgate meetings.

   g. CRP representatives regularly attend contractor in-processing sessions prior to station outages to orient contractors about the Program's availability for raising concerns.

   h. Additional "Drop Boxes" have been placed in high-traffic areas where TVA and contractor employees can identify problems or concerns and have the option of doing so anonymously if they wish.

   i. TVA's procedure for the Corrective Action Program has been modified to prevent altering problem evaluation report (PER) statements initiated by TVA or contractor employees. (Certain non-intent changes are permitted such as removing employee names, SSN's, Safeguards Information, etc.).

   j. CRP staff conduct periodic "Pulsings" of individual TVA and contractor employees (approximately 50 individuals per quarter per site) in which feedback is sought regarding work environment issues including willingness to raise concerns.

k. Site electronic bulletin boards regularly communicate SCWE-related messages which encourage raising/voicing problems and concerns.

l. An online computer-based training course was added which discusses the components of a nuclear safety culture, what is meant by a SCWE, and the avenues available to raise concerns. The training is required annually as a refresher for TVA employees as well as for long-term contract personnel that re-badge on an annual basis.

m. Representatives from TVA's Office of the General Counsel (OGC) and the CRP completed training for TVA and contractor managers and supervisors addressing 10 CFR 50.7 "Employee Protection" and promoting a Safety Conscious Work Environment. The training covered managers and supervisory staff (TVA and contractor) on all shifts.

n. An "employment flag" has been placed on the file of the contractor manager involved in the case discussed in NRC's letter dated October 22, 2009. The employment flag provides, as a condition of being hired as an employee, individual TVA contractor, or as an employee of any TVA contractor, that the individual be required to attend a personal training session with representatives of the TVA OGC and the CRP regarding TVA's and NRC's requirements protecting employees who raise concerns (TVA Communications Practice 5, "Expressing Concerns and Differing Views" and 10 CFR 50.7, "Employee Protection"), as well as methods for promoting a safety conscious work environment.

o. The apparent violations have been entered into TVA's Corrective Action Program.

2. In addition, TVA agreed to take the following actions:

a. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall implement a process to review proposed licensee adverse employment actions at TVA's nuclear plant sites before actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed actions could negatively impact the SCWE. Such a process should consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce. By no later than one hundred twenty (120) calendar days after the issuance of this Confirmatory Order, TVA shall implement a process to review proposed significant adverse employment actions by contractors performing services at TVA's nuclear plant sites before the actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed action could negatively impact the SCWE. Such a process will likewise consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce.

b. By no later than seven (7) calendar days after the issuance of the Confirmatory Order, a member of TVA's executive management responsible for the licensee's nuclear power plant fleet will, in writing, communicate TVA's policy, and the expectations of management, regarding the employees' rights to raise concerns without fear of retaliation in the context of this Confirmatory Order.

c. By no later than the end of calendar year 2013, TVA shall perform two (2) independent safety culture assessments comparable to the independent survey conducted in February 2009. The surveys shall be administered in approximately two-year intervals. TVA shall assess and evaluate the results compared with the results of the prior years' surveys. TVA shall make the results of each survey and the planned corrective actions available for NRC review within sixty (60) calendar days after the development of the planned corrective actions.

d. Through the end of calendar year 2013 and on approximately a quarterly basis, TVA shall continue to analyze SCWE trends and develop planned actions, as appropriate.

e. By no later than sixty (60) calendar days after the issuance of the Confirmatory Order, representatives from the TVA's OGC and Human Resources shall conduct a lessons learned training session with the manager associated with the apparent violation discussed with TVA on November 24, 2009. The training shall be documented and made available to the NRC upon request.

f. Through calendar year 2013, TVA shall conduct "Town Hall"-type meetings at least annually at its nuclear power plants and corporate office with TVA and contractor employees which address topics of interest, including a discussion on TVA's policy regarding fostering a SCWE.

g. TVA shall incorporate a discussion of NRC's employee protection rule in the next revision of the "One Team, One Fleet, One TVA" booklet. The next revision will be completed by no later than December 31, 2010.

h. By no later than ninety (90) calendar days after the issuance of the Confirmatory Order, TVA shall modify its contractor in-processing program to ensure that a TVA representative provides a presentation regarding the CRP program and the TVA's SCWE policy during the contractor in-processing sessions at its nuclear power plants.

i. By no later than ninety (90) calendar days after the issuance of the Confirmatory Order, TVA shall revise its training program for new supervisors to incorporate a classroom discussion of the NRC's employee protection rule and the Company's policy on SCWE.

j. TVA's annual online computer-based training course initiative, which discusses the components of a nuclear safety culture, what is meant by a SCWE, and the avenues available to raise concerns, shall be maintained through calendar year 2013.

On December 16, 2009, TVA consented to issuing this Confirmatory Order with the commitments, as described in Section V below. TVA further agreed that this Confirmatory Order is to be effective upon issuance and it has waived its right to a hearing.

IV

Since TVA has agreed to take additional actions to address NRC concerns, as set forth in Item III above, and NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order and thereby has agreed not to issue a Notice of Violation or civil penalty in this matter.

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 the public health and safety require that the Licensee's commitments 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 103, 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 TVA SHALL:

1. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall implement a process to review proposed licensee adverse employment actions at TVA's nuclear plant sites before actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed actions could negatively impact the SCWE. Such a process should consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce. By no later than one hundred twenty (120) calendar days after the issuance of the confirmatory order, TVA shall implement a process to review proposed significant adverse employment actions by contractors performing services at TVA's nuclear plant sites before the actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed action could negatively impact the SCWE. Such a process will likewise consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce.

2. By no later than seven (7) calendar days after the issuance of this Confirmatory Order, a member of TVA's executive management responsible for the licensee's nuclear power plant fleet will, in writing, communicate TVA's policy, and the expectations of management, regarding the employees' rights to raise concerns without fear of retaliation in the context of this Confirmatory Order.

3. By no later than the end of calendar year 2013, TVA shall perform two (2) independent safety culture assessments comparable to the independent survey conducted in February 2009. The surveys shall be administered in approximately two-year intervals. TVA shall assess and evaluate the results compared with the results of the prior years' surveys. TVA shall make the results of each survey and the planned corrective actions available for NRC review within sixty (60) calendar days after the development of the planned corrective actions.

4. Through the end of calendar year 2013 and on approximately a quarterly basis, TVA shall continue to analyze SCWE trends and develop planned actions, as appropriate.

5. By no later than sixty (60) calendar days after the issuance of this Confirmatory Order, representatives from the TVA's OGC and Human Resources shall conduct a lessons learned training session with the manager associated with the apparent violation discussed with TVA on November 24, 2009. The training shall be documented and made available to the NRC upon request.

6. Through calendar year 2013, TVA shall conduct "Town Hall"-type meetings at least annually at its nuclear power plants and corporate office with TVA and contractor employees which address topics of interest, including a discussion on TVA's policy regarding fostering a SCWE.

7. TVA shall incorporate a discussion of NRC's employee protection rule in the next revision of the "One Team, One Fleet, One TVA" booklet. The next revision will be completed by no later than December 31, 2010.

8. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall modify its contractor in-processing program to ensure that a TVA representative provides a presentation regarding the CRP program and the TVA's SCWE policy during the contractor in-processing sessions.

9. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall revise its training program for new supervisors to incorporate a classroom discussion of the NRC's employee protection rule and the Company's policy on SCWE.

10. TVA's annual online computer-based training course initiative, which discusses the components of a nuclear safety culture, what is meant by a SCWE, and the avenues available to raise concerns, shall be maintained through calendar year 2013.

11. In the event of the transfer of the operating license of a facility to another entity, if any, the commitments for such facility shall survive any transfer of ownership.

12. For clarity purposes, TVA's commitments herein are applicable to the above-captioned nuclear plants unless otherwise stated.

VI

Any person adversely affected by this Confirmatory Order, other than TVA, may request a hearing within 20 days of its 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 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (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 proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based

submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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, or the 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, unless an NRC regulation or other law requires submission of such information. 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 submission.

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 Order and shall address the criteria set forth in 10 C.F.R. 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 above shall be final 20 days from the

date of this Confirmatory 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.

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy Zimmerman, Director
Office of Enforcement

Dated this 22 day of December, 2009