



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
REGION II  
245 PEACHTREE CENTER AVENUE, SUITE 1200  
ATLANTA, GEORGIA 30303-1257

June 2, 2010

EA-09-252

Mr. Regis T. Repko  
Vice President  
Duke Energy Carolinas, LLC  
McGuire Nuclear Station  
2700 Hagers Ferry Road  
Huntersville, NC 28078-8985

**SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)  
[NRC OFFICE OF INVESTIGATION REPORT NO. 2-2009-009]**

Dear Mr. Repko:

The enclosed Confirmatory Order (Effective Immediately) is being issued to Duke Energy Carolinas, LLC (Duke Energy) McGuire Nuclear Station (MNS) as a result of a successful alternative dispute resolution (ADR) session. The enclosed commitments were made by Duke Energy as part of a settlement agreement involving an incident that occurred in October 2008, in which a contract employee introduced and used an illegal drug (marijuana) inside the Protected Area (PA) at the MNS. This behavior was observed by another contract employee who failed to report it as required by procedure.

In a letter dated January 27, 2010, the Nuclear Regulatory Commission (NRC) provided Duke Energy with the results of an investigation completed by the NRC's Office of Investigations (OI). The purpose of the investigation was to determine whether contract personnel willfully failed to report that illegal drugs were brought into or used within the protected area of the McGuire Nuclear Station. A Factual Summary of the OI investigation was enclosed with our letter which documented the NRC's conclusion that on or about October 20, 2008, two apparent violations occurred, involving: (1) a contract employee who introduced and used marijuana inside the PA at the MNS; (2) the failure to report this behavior when observed by another contract employee, as required by site procedure. The NRC's letter of January 27, 2010, preliminarily concluded that both apparent violations were due to deliberate misconduct.

In addition, our letter of January 27, 2010, offered Duke Energy a choice to either: (1) attend a Predecisional Enforcement Conference; (2) provide a written response; or (3) request alternative dispute resolution (ADR) with the NRC in an attempt to resolve any disagreement regarding whether violations occurred, the appropriate enforcement action, and the appropriate corrective actions.

In response, Duke Energy requested ADR in an attempt to resolve the issue. An ADR mediation session was held on March 29, 2010, and a preliminary settlement was reached.

While Duke Energy's internal investigation could not substantiate the actual use of drugs, in the context of the ADR mediation, Duke Energy agreed not to contest the NRC's apparent findings on this matter. The elements of the preliminary agreement were formulated and agreed upon at the mediation session and are documented in the enclosed Confirmatory Order.

As fully discussed in the enclosed Confirmatory Order, Duke Energy completed a number of corrective actions to preclude recurrence and agreed to other corrective actions and enhancements, including but not limited to: (1) development of a summary of lessons learned from the facts and circumstances surrounding the apparent violations and communication of this summary to Duke Energy nuclear generation and Nuclear Human Resources personnel, and to Duke Energy's approved screening contractor organizations; (2) a policy revision and other actions to re-emphasize the obligation of plant personnel to report suspicious behavior; (3) performance of an independent investigation through its Employee Concerns Program to assess the response and actions arising out of the facts and circumstances surrounding the apparent violations; (4) performance of a self-assessment of the adequacy of the programs and processes in place to detect and deter the introduction of illegal drugs and alcohol into the Protected Area of Duke Energy's nuclear stations, and implementation of appropriate enhancements in accordance with Duke Energy's corrective action program.

In consideration of the above, the NRC agreed that the above non-compliances will be characterized as one violation of 10 CFR Part 26, with a significance of Severity Level IV. The violation is cited as an attachment to the Confirmatory Order (enclosed), with no response to the violation required from Duke Energy. Issuance of the Confirmatory Order completes the Agency's enforcement action with respect to Duke Energy regarding all matters discussed in the NRC's letter to Duke Energy of January 27, 2010 (EA-09-252). The NRC will conduct subsequent reviews as warranted to confirm the completion of corrective actions and enhancements as documented in the Confirmatory Order.

We have enclosed a Confirmatory Order (Effective Immediately) to memorialize the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated May 24, 2010, 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 NRC Region II, ATTN: Regional Administrator, 245 Peachtree Center Avenue, Suite 1200, Atlanta, Georgia 30303-1257.

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, on its website at [www.nrc.gov](http://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. Kriss Kennedy, Director, Division of Reactor Safety, at 404-997-4600.

Sincerely,

*/RA/*

Luis A. Reyes  
Regional Administrator

Docket No.: 50-369 and 50-370

License No.: NPF-9, NPF-17

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc w/encls.: (see page 4)

Duke Energy Carolinas, LLC

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cc w/encls.:

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 ADAMS:  Yes      ACCESSION NUMBER: \_\_\_\_\_

OFFICE	RII:ORA	RII:DRS	RII:DRS	RII:ORA	
SIGNATURE	/RA/	/RA <b>By HChristensen for/</b>	/RA <b>By HChristensen for/</b>	/RA/	
NAME	CEVANS	KKENNEDY	JLUBINSKI	VMCCREE	
DATE	4/26/10			6/1/10	
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO
OFFICE	OE	OGC	NRR		
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NAME	GGiila	CSafford	GWest		
DATE	5/6/10	5/5/10	5/3/10		
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YESNO

OFFICIAL RECORD COPY      DOCUMENT NAME: