

NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No.: 50-369 and 50-370
Duke Energy Carolinas, LLC)	License No.: NPF-9, NPF-17
McGuire Nuclear Station)	
)	EA-09-252

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

[NRC-2010-0196]

I

Duke Energy Carolinas, LLC's (Duke Energy or Licensee) is the holder of License Nos. NPF-9 and NPF-17, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50, on June 12, 1981, and March 3, 1983, respectively. The license authorizes the operation of the McGuire Nuclear Station (MNS or facility) in accordance with the conditions specified therein. The facility is located at the Licensee's site in Huntersville, North Carolina.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 29, 2010.

II

On November 26, 2008, the NRC's Office of Investigations (OI) initiated an investigation (OI Case No. 2-2009-009) regarding activities at the MNS located in Huntersville, NC. Based on the evidence developed during the investigation, the NRC staff preliminarily concluded that on approximately October 20, 2008, a contract employee introduced and used marijuana inside the Protected Area at MNS, and a second contract employee was aware of the potential use of the

illegal drug but failed to report this to the appropriate site personnel as required by site procedure. The NRC's letter to Duke Energy of January 27, 2010, documented the NRC's conclusions and the following two apparent violations:

1. 10 CFR 26.10, states in part, that a licensee's Fitness For Duty (FFD) program must provide reasonable measures for the early detection of individuals who are not fit to perform activities within the scope of 10 CFR Part 26. Section 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty. The Duke Energy Nuclear Policy Manual, NSD 218.10.1, Revision 9, states in relevant part, that where unusual behavior, lack of trustworthiness and reliability, or evidence that an individual is not fit for duty is observed, it shall be reported to the manager of Access Services. On approximately October 20, 2008, a contract employee observed the use of marijuana inside of the Protected Area but failed to immediately report the event as required by MNS's continuing behavior observation program.
2. 10 CFR 26.10(c), states in part, that a licensee's FFD program must have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances. 10 CFR 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty. The Duke

Energy Nuclear Policy Manual, NSD 217.8, Revision 14, states, in relevant part, that illegal drugs are prohibited by company or departmental policy from actual or attempted introduction into the site Protected Area. On approximately October 20, 2008, a contract employee introduced and used marijuana inside of the Protected Area at the MNS.

III

On March 29, 2010, the NRC and Duke Energy 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. Regarding the apparent violation discussed in Section II.1 above, Duke Energy's internal investigation could not substantiate the observed use of marijuana inside of the Protected Area. Regarding the second apparent violation discussed in Section II.2 above, Duke Energy's internal investigation could not substantiate the introduction and use of marijuana inside the Protected Area at the McGuire Nuclear Station. Nonetheless, in the context of the ADR mediation, Duke Energy agrees not to contest the NRC's characterization of the first or second apparent violation. The NRC concluded that both violations were due to deliberate misconduct.
2. The NRC acknowledged that Duke Energy, prior to the ADR session, already took certain actions that address the issues underlying the apparent violations. These actions included:

- a. Revision of the Duke Energy FFD Policy to more clearly communicate the obligation to report suspicious behavior;
 - b. 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 violation.
 - c. Reviewed access determinations for involved individuals, implemented targeted searches of individuals and certain areas within the McGuire Protected Area, and denied unescorted access for the individuals involved. Duke Energy also reviewed the work activities performed by the contractor individual at the McGuire site. No issues were identified.
 - d. Coaching and mentoring session with nuclear site Human Resources directors and General Office staff Human Resources consultants to emphasize the importance of prompt reporting of FFD/BOP concerns.
3. In addition to the actions completed by Duke Energy as discussed above, Duke Energy agreed to additional corrective actions and enhancements, as fully delineated below in Section V of this Confirmatory Order.
4. The NRC and Duke Energy agree that the above elements will be incorporated into a Confirmatory Order. The resulting Confirmatory Order will be considered by the NRC for any assessment of Duke Energy, as appropriate.
5. The NRC normally considers characterization of the significance of the apparent violations discussed above at Severity Level III. However, in consideration of the commitments delineated in Paragraphs 4 and 5 above, the NRC and Duke Energy agree 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 will be cited as an attachment to the Confirmatory Order, with no response to the violation required from Duke Energy. This 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).

6. This agreement is binding upon successors and assigns of Duke Energy.

On May 24, 2010, Duke Energy consented to issuance of this Confirmatory Order with the commitments, as described in Section V below. Duke Energy further agrees that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Duke Energy 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 Confirmatory Order.

I find that Duke Energy'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 Duke Energy's commitments be confirmed by this Confirmatory Order. Based on the above and Duke Energy's consent, this Confirmatory Order is immediately effective upon issuance.

Accordingly, pursuant to Sections 51, 53, 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. NPF-9 and NPF-17 BE MODIFIED AS FOLLOWS:

- a. Within ninety (90) days of the effective date of this Confirmatory Order, Duke Energy will develop a summary of lessons learned from the facts and circumstances surrounding the apparent violations and communicate this summary:
 - i. to Duke Energy nuclear generation employees;
 - ii. in the Duke Energy-specific Plant Access Training for a period of one (1) year following the communication set forth in 5.a.i. above;
 - iii. to Nuclear Human Resources personnel; and
 - iv. to Duke Energy's approved screening contractor organizations.
- b. Within one hundred and eighty (180) days of the effective date of this Confirmatory Order, perform 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 implement appropriate enhancements in accordance with Duke Energy's corrective action program. Such assessment will include benchmarking with at least three nuclear fleets to identify best practices; evaluation of processes and procedures utilized to guide responses to identification of potential introduction of illegal drugs or alcohol into the Protected Area of a nuclear station; and associated oversight of contractor workforce.

- c. Prior to December 31, 2011, perform an effectiveness review of the corrective actions identified in V.a. and V.b. above.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Duke Energy 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 date 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 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.

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 Confirmatory 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.

VII

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 Confirmatory 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 CONFIRMATORY ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/
Luis A. Reyes
Regional Administrator

Dated this 2nd day of June 2010

NOTICE OF VIOLATION

Duke Energy Carolinas, LLC
McGuire Nuclear Station
Units 1 and 2

Docket No. 50-369 and 50-370
License No.: NPF-9, NPF-17
EA-09-252

During an investigation completed by the NRC on September 3, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 26.10, states in part, that a licensee's FFD program must provide reasonable measures for the early detection of individuals who are not fit to perform activities within the scope of 10 CFR Part 26. Section 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty.

10 CFR 26.10(c), states in part, that a licensee's FFD program must have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances. 10 CFR 26.20 states, in relevant part, that each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Section 26.23(a) states, in part, that contractor personnel performing activities within the scope of this part for a licensee must be subject to the licensee's program relating to fitness-for-duty.

The Duke Energy Nuclear Policy Manual, NSD 217.8, Revision 14, states, in relevant part, that illegal drugs are prohibited by company or departmental policy from actual or attempted introduction into the site Protected Area.

The Duke Energy Nuclear Policy Manual, NSD 218.10.1, Revision 9, states in relevant part, that where unusual behavior, lack of trustworthiness and reliability, or evidence that an individual is not fit for duty is observed, it shall be reported to the manager of Access Services.

Contrary to the above, on approximately October 20, 2008, a contract employee introduced and used marijuana inside of the Protected Area at the McGuire Nuclear Station. In addition, a second contract employee became aware of the potential use of marijuana inside of the Protected Area but failed to immediately report the event as required by McGuire Nuclear Station's continuing behavior observation program.

This is a Severity Level IV violation (Supplement III).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket in the enclosed Confirmatory Order. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-09-252," and send it to the U.S. Nuclear Regulatory Commission,

ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 2nd day of June 2010.