

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket No. 50-259, 50-260, 50-296
Tennessee Valley Authority) License Nos. DPR-33, DPR-52, DPR-68
Browns Ferry Nuclear Plant)
Units 1, 2 and 3) EA-14-005

CONFIRMATORY ORDER

I

Tennessee Valley Authority (TVA or Licensee) is the holder of License Nos. DPR-33, DPR-52, and DPR-68, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on December 20, 1973, June 28, 1974, and July 2, 1976, respectively. The licenses authorize the operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, in accordance with the conditions specified therein. The facility is located on the Licensee's site in Athens, Alabama.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on April 3, 2014.

II

On February 14, 2014, the NRC issued Inspection Report 05000259, 260, 296/2013005 to TVA, (IR) which documented the identification of two apparent violations that were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy.

The first apparent violation involved two examples of TVA's submission of information that was not complete and accurate in all material respects, as required by 10 CFR 50.9, Completeness and Accuracy of Information. The information contained in TVA's letters was inaccurate because, contrary to their assertions, TVA's stated control room staffing levels were not sufficient to implement certain fire response procedures and achieve safe shutdown on the three-unit site during a postulated 10 CFR 50, Appendix R fire event.

The second apparent violation involved TVA's change to a license condition without submitting an amendment request, as required by 10 CFR 50.90, Amendment of License or Construction Permit at Request of Holder. In this case, from June 29, 2010, through October 30, 2013, the licensee inappropriately changed the requirements for site staffing, incorporated as part of license amendments 271, 300, and 259, without submission of a license amendment request. The licensee's actions to amend staffing levels via a commitment change resulted in bypassing the review and approval that would occur as part of the license amendment process.

III

On April 3, 2014, the NRC and TVA met in an ADR session mediated by a professional mediator, 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. The NRC and TVA agreed that the issues described in NRC Inspection Report

05000259, 260, 296/2013005 represent violations of regulatory requirements. The violations are as follows:

- a. 10 CFR 50.9(a) requires, in part, that information provided to the Commission by a licensee or information required by statute or by the Commission's regulations, orders or license conditions to be maintained by the licensee shall be complete and accurate in all material respects.

Contrary to the above, TVA provided information to the Commission that was not complete and accurate in all material respects as evidenced by the following two examples:

In a letter dated June 29, 2010, TVA provided inaccurate information to the NRC indicating that the minimum staffing levels stated in their licensing basis were not required to achieve safe shutdown on the three-unit site during an Appendix R fire event. TVA's letter stated, "TVA has assessed the number of operators required to carry out the SSIs. The most demanding staffing is required by 0-SSI-16, "Control Building Fire EL (elevation) 593 Through EL 617." The evaluation concludes that the minimum staffing of three USs (Unit Supervisors), six ROs (Reactor Operators), and eight AUOs (Auxiliary Unit Operators) is adequate for successful implementation of this SSI." This information was inaccurate because the licensee needed an additional SRO (Senior Reactor Operator) to successfully implement 0-SSI-16.

In a letter dated November 30, 2011, TVA provided inaccurate information to the NRC indicating that the minimum staffing levels stated in their licensing

basis were not required to achieve safe shutdown on the three-unit site during an Appendix R fire event. TVA's letter stated, "...Total staffing level is one Shift Manager (SM), *three* Unit Supervisors (US), Six ROs, and eight AUOs. *One of the US may be the STA (Shift Technical Advisor)...*" This statement was inaccurate because the minimum staffing levels stated in their licensing basis were required to achieve safe shutdown on the three-unit site during an 10 CFR 50, Appendix R fire event.

The above information was material to the NRC because it was reviewed by the NRC staff to determine compliance with regulatory requirements.

- b. 10 CFR 50.90 requires, in part, that whenever a holder of an operating license under this part desires to amend the license or permit, application for an amendment must be filed with the Commission, as specified in 10 CFR 50.4, fully describing the changes desired, and following as far as applicable, the form prescribed for original applications.

Contrary to the above, from June 29, 2010 to October 30, 2013, the licensee inappropriately amended the requirements of their license without filing an application for an amendment as specified in 10 CRFR 50.4. Specifically, the licensee inappropriately changed the requirements for site staffing incorporated as part of license amendments 271, 300, and 259, without submission of a license amendment request. The licensee's actions to amend staffing levels via a commitment change resulted in bypassing the review and approval that would occur as part of the license amendment process.

2. Based on TVA's review of the incident and NRC's concerns with respect to precluding recurrence of the violations, TVA agrees to implement and continue to implement corrective actions and enhancements specified in Section V of this Confirmatory Order.
3. The NRC considers the corrective actions and enhancements discussed in Section V of this Confirmatory Order to be appropriately prompt and comprehensive to address the causes which gave rise to the incident discussed in the NRC's Inspection Report of February 14, 2014.
4. Based on the corrective actions and enhancements described above, NRC will conduct follow-up inspections using NRC Manual Chapter Inspection Procedure 92702 to confirm, among other things, the thoroughness and adequacy of the actions specified in Section V of this Confirmatory Order. Close out inspection of the corrective actions documented in this Confirmatory Order will make the need for additional follow up inspection of the violations unnecessary.
5. The NRC and TVA agree that the above elements will be incorporated into issuance of a Confirmatory Order.
6. In consideration of the commitments delineated above and in Section V of this Confirmatory Order, the NRC agrees to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's IR to TVA of February 14, 2014 (EA-14-005).
7. This agreement is binding upon successors and assigns of TVA.

On April 25, 2014, TVA consented to issuance of this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective 30 days after issuance and that it has waived its right to a hearing.

IV

Because the licensee has agreed to take additional actions to address NRC's concerns, as set forth in Section V of this Confirmatory Order, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that TVA'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 requires that TVA's commitments be confirmed by this Order. Based on the above and TVA's consent, this Confirmatory Order is effective 30 days after issuance.

V

Accordingly, pursuant to Sections 104b., 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 Parts 50, IT IS HEREBY ORDERED, THAT LICENSE NOS. DPR-33, DPR-52 AND DPR-68 ARE MODIFIED AS FOLLOWS:

1. TVA agrees to implement, or continue to implement, the following corrective actions and enhancements:

a. Actions related to the violation of 10 CFR 50.9, Completeness and Accuracy of Information:

i. Fleet-wide:

1. By no later than September 1, 2014, TVA will revise and issue a fleet-wide procedure governing the preparation of information intended to support licensing submittals to the NRC. The procedure shall contain requirements for the preparation (including specifications for draft information), verification, and management oversight of this information, and will delineate acceptable validation documents. The procedure will include an overt discussion of the roles and responsibilities for individuals involved. BFN will provide training in accordance with the procedure change process.

ii. BFN-specific:

1. By no later than May 23, 2014, TVA will design, develop, and implement a BFN Integrated Completeness and Accuracy Review Evaluation Board (ICAREB). The ICAREB will be chartered to provide pre-submittal reviews of correspondence and supporting documentation for BFN licensing submittals to the NRC, including

those prepared by BFN staff and Corporate Nuclear. Specific criteria for dissolution of the ICAREB will be established, but it will remain active, at a minimum, until a fleet-wide procedure governing the preparation of information intended to support licensing submittals to the NRC is active.

2. By no later than August 21, 2014, BFN Licensing will prepare a benchmarking report identifying industry best practices in the area of 10 CFR 50.9 compliance in the preparation and validation of inputs to NRC submittals. This report will be made available to the NRC for review. BFN will consider benchmarking results, as appropriate, for implementation.

b. Actions related to the violation of 10 CFR 50.90:

i. Fleet-wide:

1. By July 15, 2014, TVA will benchmark nuclear industry methodologies used to maintain Licensing Bases Documents. A report on this activity will be made available to the NRC for review. BFN will consider benchmarking results for implementation.
2. By no later than August 15, 2014, TVA will develop and issue a fleet-wide Licensing Compliance Review Procedure to establish the process for verifying that changes to NPG administrative and technical procedures not covered under the 10 CFR 50.59 review process are reviewed for conformance to the current licensing basis. BFN will provide training in accordance with the procedure

change process.

3. By no later than August 15, 2014, TVA will revise NPG-SPP-01.1 and NPG-SPP-01.2 to incorporate the Licensing Compliance Review process, including verification of compliance.
4. By no later than September 26, 2014, TVA will convert NLDP-5 "FSAR Management" to an NPG Standard Programs and Processes (SPP) procedure. BFN will provide training in accordance with the procedure change process.
5. By no later than June 13, 2014, TVA will implement, via an independent entity, a review of the 10 CFR 50.9 and 10 CFR 50.90 Root Cause Analysis reports to assess the completeness and adequacy of the identified root/contributing causes, extent of cause, extent of condition and CAPRs/CAs. The deliverable from this review will be a report with documented recommendations. TVA will consider these recommendations for implementation.
6. By no later than July 15, 2015, TVA will implement, via an independent entity, an effectiveness review of the corrective actions completed to date with regard to the 10 CFR 50.9 and 10 CFR 50.90 Root Cause Analyses.

ii. BFN-specific:

1. TVA completed a snapshot self-assessment to verify if commitments are being implemented accurately on March 25, 2014.
2. TVA acknowledges that there have been previous instances

where repetitive PERs were submitted on the issue of adequate staffing and the issue was ineffectively resolved. BFN commits to close the CAP Fundamental Problem that was identified under the 95003 that resulted in significant programmatic and organizational changes in TVA's CAP by no later than April 9, 2014. In addition, the NRC recently closed the 95003 Tier 1 CAL Commitment in the BFN CAP.

3. By no later than May 2, 2014, TVA will develop and implement an Interim Licensing Compliance Review Checklist for use by procedure writing organizations and document reviewers to ensure the correct licensing basis documents are referenced when revising procedures. This Interim Licensing Compliance Review Checklist will be used until issuance of a revised Licensing Compliance Review Procedure. (b.i.2 Fleet-wide action above).
4. By no later than November 26, 2014, TVA will perform a detailed review of all procedures revised prior to August 15, 2014, during the Procedure Upgrade Project to ensure that the licensing basis information required by the revised SPP-01.1 and SPP-01.2 is identified. This review will include all licensing, administrative and governance procedures. The revised procedures will institutionalize the licensing review process and provide sustainability from that point forward in the Procedure Upgrade Project.
5. By no later than November 28, 2014, TVA will complete training of BFN Engineering, Licensing and licensed Operators regarding the scope and hierarchy of licensing basis documents, lessons

learned from circumstances associated with EA-14-005, and the associated change process. The training material will be available for NRC review.

6. Through December 31, 2014, changes to BFN licensing commitments will be reviewed and approved by a second site licensing engineer in addition to review and approval by site licensing. The focus of this additional review will be to ensure that the correct regulatory change process(es) has/have been used. This action will be discontinued upon completion of the training encompassed in item 5 above.
7. By December 31, 2015, TVA will review a sample of facility changes, based on plant risk and complexity, that have occurred from 2004 to May 2014, to determine whether these changes have been appropriately incorporated into the licensing basis documents. TVA's method of selecting facility changes to be sampled will be provided to the NRC by July 15, 2014. Any identified discrepancies will be dispositioned through the corrective action process. The results of this review will be made available to the NRC.
8. By December 31, 2015, TVA will review a sample of BFN facility changes, based on plant risk and complexity, accomplished within the last 3 years and processed outside of the 10 CFR 50.59 process to determine whether these changes have been appropriately incorporated into the licensing basis documents. TVA's method of selecting facility changes to be sampled will be provided to the NRC by July 15, 2014. Any identified

discrepancies will be dispositioned through the corrective action process. The results of this review will be made available to the NRC.

9. By December 31, 2014, TVA will make a presentation to the 1) Regulatory Issue Working Group and 2) the Regulating Utility Group regarding the circumstances of the violations discussed above and the importance of leadership attention to the effective management of the current licensing basis and complete and accurate communications with the NRC. The presentation will be made available to the NRC in advance.

- c. Prior to July 15, 2014, TVA will perform, via an independent entity, a reevaluation of Operations minimum shift staffing. The results of that staffing evaluation will be documented as a reference to OPDP-1, "Conduct of Operations."
- d. Upon completion of the terms of items of the Confirmatory Order, TVA will provide the NRC with a letter discussing its basis for concluding that the Order has been satisfied.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by TVA of good cause.

VI

Any person adversely affected by this Order, other than TVA, may submit a written answer and/or request a hearing on this Order within 30 days from the date of this Order, pursuant to 10

CFR 2.302 and 10 CFR 2.309. Where good cause is shown, consideration will be given to extending the time to answer or 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.

If a hearing is requested by a person whose interest is adversely affected, the Commission will, if appropriate, issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in the NRC adjudicatory proceedings, including a request for a 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's E-Filing rule at 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or to physically deliver or mail a copy of documents on optical storage media. Participants may not submit paper copies of their filings unless they seek and receive an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 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 identification (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 certificate). Based on 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 the 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 the NRC's "Guidance for Electronic Submission," which is available on the NRC'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 System, users will be required to install a Web browser plug-in obtained from the NRC's 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 a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's 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's 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, 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 NRC'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's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll free call to 1- 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 extension 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 the reason for the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd>, 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 submissions.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

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 30 days from the date of this 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.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Leonard D. Wert
Deputy Regional Administrator for Operations

Dated this 1st day of May 2014.