



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
1600 EAST LAMAR BOULEVARD  
ARLINGTON, TEXAS 76011-4511

December 10, 2018

EA-18-064

Ken J. Peters, Senior Vice President  
and Chief Nuclear Officer  
Attention: Regulatory Affairs  
Vistra Operations Company LLC  
P.O. Box 1002  
Glen Rose, TX 76043

SUBJECT: COMANCHE PEAK NUCLEAR POWER PLANT - NOTICE OF VIOLATION,  
NRC INSPECTION REPORT 05000445/2018090; 05000446/2018090 AND NRC  
INVESTIGATION REPORT 4-2017-030

Dear Mr. Peters:

This letter refers to an investigation completed on May 23, 2018, by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations at the Comanche Peak Nuclear Power Plant. The investigation was conducted, in part, to determine whether a reactor operator assigned to Vistra Operations Company LLC, at Comanche Peak Nuclear Power Plant, Units 1 and 2, willfully documented inaccurate information in a required record regarding the filling of the refueling water storage tank on April 28, 2017. The results of the investigation and details regarding the apparent violation were provided to you in U.S. Nuclear Regulatory Commission (NRC) Inspection Report 05000445/2018011; 05000446/2018011, dated October 4, 2018, Agencywide Documents Access and Management System (ADAMS) Accession ML18276A097.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference, requesting alternative dispute resolution, or by providing a written response before we made our final enforcement decision. In a letter dated November 14, 2018 (ADAMS Accession ML18330A071), you provided a written response to the apparent violation.

Based on the information developed during the investigation and the information that you provided in your response to the inspection report dated October 4, 2018, the NRC has determined that a violation of NRC requirements occurred. The violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.9, "Completeness and accuracy of information," is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the inspection report. The NRC has determined that this violation involved willfulness in the form of deliberate misconduct to ensure that information required by the Commission's regulations, orders, or license conditions to be maintained by the licensee is complete and accurate in all material respects.

Your November 14, 2018, written response included "Additional Information for Consideration" and indicated that the issue should not be treated as an escalated enforcement item and should

instead be evaluated using the NRC Enforcement Policy Section 2.3.2.a.4, which, you contend, could result in documenting the violation as a noncited violation. Your position was that the Reactor Operator was in a low-level position within the licensee's organization (and not a licensee official). You stated he did not have supervisory responsibilities warranting escalation of the violation in this case.

The NRC's position is that the circumstances in this case do not warrant treatment as a noncited violation for the following reasons. The NRC Enforcement Policy states that willful violations are of particular concern because the NRC's regulatory program is based on licensees and their employees acting with integrity and communicating with candor. The Commission cannot tolerate willful violations. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The term "willfulness" as used in the NRC Enforcement Policy refers to conduct involving either a careless disregard for requirements or a deliberate violation of requirements or falsification of information (refer to Section 2.2.1, "Factors Affecting Assessment of Violations" of the NRC Enforcement Policy).

In determining the significance of a violation involving willfulness, the NRC considered such factors as: the position, training, experience level, and responsibilities of the person involved in the violation; and the significance of any underlying violation. The individual who engaged in deliberate misconduct was a licensed operator and the NRC holds licensed operators to a high standard of integrity because they are authorized to operate the controls of a nuclear power plant. Licensed individuals have specific responsibilities under their NRC license and "licensed individual" is included in the definition of a licensee official (refer to Section 7.0 of the NRC Enforcement Policy). Because the licensed operator deliberately provided inaccurate information on a required record, the NRC has determined that this violation is appropriately categorized at Severity Level III in accordance with the NRC Enforcement Policy.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$145,000 is considered for a Severity Level III violation. Because your facility is the subject of a willful escalated enforcement action, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC has determined that *Identification* credit is warranted because your staff identified the condition and entered it into the corrective action program. The NRC has also determined that *Corrective Action* credit is warranted for your prompt and comprehensive corrective actions that included: (1) taking disciplinary action against the individual; (2) issuing several shift orders using operating experience that addressed falsification of logs and rounds; (3) conducting an organizational effectiveness investigation with licensed operators; and (4) conducting a site-wide communication concerning the violation.

Therefore, to encourage prompt identification and comprehensive correction of the violation, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in your letter dated November 14, 2018. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that

case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your responses, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions concerning this matter, please contact Mr. Mark Haire of my staff at 817-200-1148.

Sincerely,

  
Kriss M. Kennedy  
Regional Administrator

Docket Nos. 50-445; 50-446  
License Nos. NPF-87; NPF-89

Enclosure: Notice of Violation

## NOTICE OF VIOLATION

Vistra Operations Company LLC  
Comanche Peak Nuclear Power Plant,  
Units 1 and 2

Dockets: 05000455, 05000456  
Licenses: NPF-87, NPF-89  
EA-18-064

During an NRC investigation conducted from May 23, 2017, through May 23, 2018, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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

10 CFR Part 50, Appendix B, Criterion XVII, requires, in part, that sufficient records shall be maintained to furnish evidence of activities affecting quality. The licensee established three quality related procedures STA-422, "Corrective Action Program," STI-421.01, "Initiation of Issue Reports," and STI-421.02, "Issue Report Reviews," in part, to implement the station's problem identification and resolution process, including the identification and documentation of conditions adverse to quality. Further, the licensee's procedures above define a "condition adverse to quality," in part, as an undesired condition which impacts a system, structure, or component, including but not limited to failures, malfunctions, deviations, deficiencies, defective material and equipment, and non-conformances.

Contrary to the above, on April 28-29, 2017, the licensee failed to maintain information required by the Commission's regulations that was complete and accurate in all material respects. Specifically, following equipment manipulation and an unanticipated plant transient on Unit 2, the licensee failed to maintain complete and accurate information in condition report CR-2017-005788 relative to the cause of the transient and the identified condition adverse to quality in the corrective action program. As part of the corrective action program, the information in the condition report was material to the NRC because it is subject to NRC inspection and informs the NRC's review of and response to incidents such as the underlying procedure violation.

This is a Severity Level III violation (NRC Enforcement Policy, Section 2.2.1.d).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated November 14, 2018. 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-18-064" 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, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511, and a copy to the NRC Resident Inspector at the Comanche Peak Nuclear Power Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Enclosure

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the U.S. Nuclear Regulatory Commission, Director, Office of Enforcement, Washington, DC 20555-0001.

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 or proprietary information so that it can be made available to the public without redaction.

Dated this 10th day of December 2018