



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, IL 60532-4352

January 25, 2012

IA-11-061

Mr. Edward G. Johnson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(A)]

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2011-003)

Dear Mr. Johnson:

The enclosed Confirmatory Order is being issued to you as a result of a successful Alternative Dispute Resolution (ADR) session. The enclosed commitments were made by you as part of a settlement agreement between you and the U.S. Nuclear Regulatory Commission (NRC) concerning your apparent violation of NRC requirements at the Palisades Nuclear Plant, as discussed in our letter to you dated October 28, 2011.

The apparent violation involved you, as an at-the-controls reactor operator, leaving the at-the-controls area of the Control Room without providing a turnover to a qualified individual and obtaining permission from the Control Room Supervisor on October 23, 2010. Our letter also informed you that the apparent violation was being considered for escalated enforcement action in accordance with the NRC's Enforcement Policy.

In response to our letter, you requested ADR. An ADR mediation session was held on December 20, 2011, and a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session. Consistent with the purposes of ADR, you and the NRC acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in our letter dated October 28, 2011.

At the session, you agreed that a Confirmatory Order (Effective Immediately) would be issued in settlement of a disputed claim in order to avoid further action by the NRC. In light of the corrective actions you agreed to take, as described in the Confirmatory Order (Enclosure 1), the NRC is satisfied that its concerns will be addressed by making your commitments legally binding. Therefore, the NRC has agreed not to pursue any further enforcement action in connection with the issues described in our letter dated October 28, 2011.

As evidenced by your signed "Consent and Hearing Waiver Form" (Enclosure 2) dated January 17, 2012, you agreed to the issuance of the 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 Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 2.390 of the NRC's "Rules of Practice," a copy of this letter (with your address removed), along with its enclosures, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

The Confirmatory Order will be published in the *Federal Register*. The NRC will also include this letter and its enclosures on its Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html> under Significant Enforcement Actions.

Sincerely,

/RA/

Cynthia D. Pederson
Acting Regional Administrator

Docket No. 55-33166
License No. OP-31438

Enclosures:

1. Confirmatory Order (Effective Immediately)
2. Consent and Hearing Waiver

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DISTRIBUTION:

See next page

FILE NAME: G:\ORAI\IICS\ENFORCEMENT\Enforcement Cases 2011\IA-11-061 Palisades Licensed ATC Operator\IA-11-061 Draft ADR Order.docx

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DATE	01/20/12	01/20/12	01/23/12	01/23/12	
OFFICE	D:OE	D:NRR	D:OGC	RIII	RIII
NAME	Zimmerman ¹	Leeds	Scott	Orth	Pederson
DATE	01/12/12	01/12/12	01/12/12	01/23/12	01/24/12

OFFICIAL RECORD COPY

¹ Concurrence received via e-mail from Gerald Gulla dated January 12, 2012

Letter to Edward Johnson from Cynthia Pederson dated January 25, 2012

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2011-003)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Edward G. Johnson

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Docket No. 55-33166
License No. OP-31438
IA-11-061

CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

I

Mr. Edward G. Johnson is the holder of Reactor Operator License No. OP-31438 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended (Public Law 93-438), effective July 18, 2008. The license authorizes Mr. Johnson to manipulate the controls of the Palisades Nuclear Plant, Facility License No. DPR-20.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on December 20, 2011.

II

On December 7, 2010, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 3-2011-003) associated with Mr. Johnson's apparent violation of procedure requirements as an at-the-controls reactor operator at the Palisades Nuclear Plant, by removing himself from his watch standing responsibilities without proper turnover and approval from the Control Room

Supervisor on October 23, 2010. Entergy Nuclear Operations, Inc. (Entergy) is the facility licensee for the Palisades Nuclear Plant.

Based on the results of the OI investigation, the NRC identified one apparent violation. The apparent violation involved Mr. Johnson, as an at-the-controls reactor operator, leaving the at-the-controls area of the Control Room without providing a turnover to a qualified individual and obtaining permission from the Control Room Supervisor. Mr. Johnson's actions were contrary to Palisades Technical Specification 5.4.1.a, as implemented through Entergy Nuclear Management Manual EN-OP-115, Revision 9, "Conduct of Operations." Specifically, EN-OP-115, Section 4.13.b, requires that the reactor operator at-the-controls is to remain in the at-the-controls area of the Control Room except as necessary to transition from one at-the-controls area to another. Section 5.11 requires that in the case where a Control Room operator needs to be relieved during their shift, permission must be granted by the Shift Manager or Control Room Supervisor, as applicable, and a verbal turnover is conducted to a qualified individual.

On December 20, 2011, the NRC and Mr. Johnson met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. Alternative Dispute Resolution is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Mr. Johnson requested use of the NRC's ADR process to resolve differences he had with the NRC. During an ADR session on December 20, 2011, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Prior to resumption of licensed duties, Mr. Johnson agreed to participate in the Entergy Remediation Plan developed for Mr. Johnson as a licensed operator at Palisades.

Significant components of this Remediation Plan require that Mr. Johnson:

- a) Research and provide presentations to senior Palisades leadership and Operations personnel on the event and the associated duties and responsibilities of a licensed reactor operator;
- b) Participate in interviews with senior Entergy management to assess his eligibility and readiness to resume licensed duties;
- c) Complete at least 40 hours of "Under Instruction" watch on each shift as a licensed reactor operator and receive a favorable recommendation from each Shift Manager; and,
- d) Participate in a simulator scenario and associated training that include handling stressful situations and conflict management.

Mr. Johnson agreed to notify the NRC Region III Enforcement/Investigations Officer in writing within 14 days of either the successful completion of the Remediation Plan or the termination of the plan by either Mr. Johnson or Entergy.

2. Mr. Johnson recognizes an opportunity for licensed operators at other nuclear facilities to learn from his violation. Mr. Johnson agreed to convey his personal lessons learned from this event by authoring and submitting an article to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein. Mr. Johnson agreed that the article will contain a description of the events of October 22 - 23, 2010; his personal lessons learned from the event, including his understanding of the importance of teamwork; the safety and legal responsibilities of a licensed reactor operator and the responsibilities to public safety; the corrective actions taken by Mr. Johnson; and Mr. Johnson's interactions with the NRC resulting from the violation. Mr. Johnson agreed to submit the draft article to the NRC Region III Enforcement/Investigations Officer within 30 days of the issuance of the Confirmatory Order and agreed to submit the final article to the Professional Reactor Operator Society for possible publication, after providing 15 days for NRC comment, and no later than 60 days of the date of the Confirmatory Order. Within 7 days of Mr. Johnson's submission to the Professional Reactor Operator Society, Mr. Johnson agreed to provide a copy of that submission to the NRC Region III Enforcement/Investigations Officer.
3. The NRC agreed not to pursue any further enforcement action in connection with the NRC's October 28, 2011, letter to Mr. Johnson. This does not prohibit NRC from taking enforcement action in accordance with the NRC Enforcement Policy, if Mr. Johnson commits a similar violation in the future or violates the Order.

On January 17, 2012, Mr. Johnson consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Mr. Johnson further agreed that this Confirmatory Order is to be effective upon issuance and that Mr. Johnson has waived his right to a hearing.

IV

Since Mr. Johnson has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

We find that Mr. Johnson'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, we have determined that public health and safety require that Mr. Johnson's commitments be confirmed by this Confirmatory Order. Based on the above and Mr. Johnson's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 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 55, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Prior to resumption of licensed duties, Mr. Johnson shall participate in the Entergy Remediation Plan developed for Mr. Johnson as a licensed operator at Palisades Nuclear Plant. Significant components of this Remediation Plan require that Mr. Johnson shall:
 - a) Research and provide presentations to senior Palisades leadership and Operations personnel on the event and the associated duties and responsibilities of a licensed reactor operator;
 - b) Participate in interviews with senior Entergy management to assess his eligibility and readiness to resume licensed duties;
 - c) Complete at least 40 hours of "Under Instruction" watch on each shift as a licensed reactor operator and receive a favorable recommendation from each Shift Manager; and,
 - d) Participate in a simulator scenario and associated training that include handling stressful situations and conflict management.

Mr. Johnson shall notify the NRC Region III Enforcement/Investigations Officer in writing within 14 days of either the successful completion of the Remediation Plan or the termination of the plan by either Mr. Johnson or Entergy.

2. Mr. Johnson shall convey his personal lessons learned from this event by authoring and submitting an article to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein. Mr. Johnson agreed that the article will contain a description of the events of October 22 - 23, 2010; his personal lessons learned from the event, including his understanding of the importance of teamwork; the safety and legal responsibilities of a licensed reactor operator and the responsibilities to public safety;

the corrective actions taken by Mr. Johnson; and Mr. Johnson's interactions with the NRC resulting from the violation. Mr. Johnson shall submit the draft article to the NRC Region III Enforcement/Investigations Officer within 30 days of the issuance of the confirmatory order and shall submit the final article to the Professional Reactor Operator Society for possible publication, after providing 15 days for NRC comment, and no later than 60 days of the date of the confirmatory order. Within 7 days of Mr. Johnson's submission to the Professional Reactor Operator Society, Mr. Johnson shall provide a copy of that submission to the NRC Region III Enforcement/Investigations Officer.

The Regional Administrator, Region III, NRC, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Johnson of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Johnson, 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 the NRC's 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 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, 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 Mr. Johnson) 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 a 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 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 ORDER.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia D. Pederson
Acting Regional Administrator
NRC Region III

Dated this 25th day of January 2012

CONSENT AND HEARING WAIVER FORM

Edward G. Johnson hereby agrees to comply with the terms and conditions of the Confirmatory Order arising out of an alternative dispute resolution process related to individual action No. IA-11-061. Mr. Johnson understands that the Confirmatory Order will be immediately effective upon its issuance. By signing below, Mr. Johnson consents to the issuance of the referenced Confirmatory Order, effective immediately upon its issuance and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order.

 /RA
Edward G. Johnson
Licensed Reactor Operator
Palisades Nuclear Plant

1/17/2012
Date