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Date: Mon, Oct 31, 2005 4:39 PM
Subject: Comments on Pilot Program on Use of Alternative Dispute Resolution

Attached are comments on behalf of the Nuclear Regulatory Services Group in response to the NRC's request for comments on the "Pilot Program on the Use of Alternative Dispute Resolution in the Enforcement Program" (70 Fed. Reg. 58245). Please contact me if you have any questions or need any further information related to these comments. We appreciate your assistance.

Dan Stenger

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October 31, 2005

Mr. Michael T. Lesar
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**Re: Comments on Pilot Program on Use of Alternative Dispute
Resolution in the Enforcement Program (70 Fed. Reg. 58245)**

Dear Mr. Lesar:

We are submitting these comments on behalf of the Nuclear Regulatory Services Group (NRSG) in response to the NRC's request for comments on its pilot program to permit the use of Alternative Dispute Resolution (ADR) to resolve certain investigation and enforcement matters.¹ The NRSG has previously commented in favor of the NRC's ADR pilot program. We offer the comments below on the implementation of the pilot program, the future of the program, and the Staff's proposed evaluation criteria for assessing the effectiveness of the program to date.

1. *ADR should be made a permanent part of the enforcement process.* We encourage the NRC to continue, and in fact expand, its use of ADR. The experience with implementation of the pilot program to date has been quite positive. In particular, the use of Early ADR has been a valuable approach to resolve discrimination issues promptly and in a less adversarial manner than the traditional investigation and enforcement process. As the NRC's Enforcement Policy recognizes in Section VII.B.5, prompt settlement of discrimination claims can help promote a Safety Conscious Work Environment (SCWE). Likewise, the use of post-investigation ADR can help licensees

¹ The NRSG is a consortium of nuclear licensees represented by the law firm of Ballard Spahr Andrews & Ingersoll, LLP.

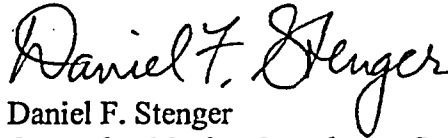
and the NRC focus their efforts on developing and implementing comprehensive corrective actions, instead of expending resources for a predecisional enforcement conference. Accordingly, the NRC should continue the ADR program as a permanent part of the enforcement process.

2. *The ADR program should be expanded to other types of enforcement actions.* The NRC has indicated that it is considering the expansion of the ADR program to include enforcement actions against individuals, as well as traditional enforcement matters beyond discrimination and other wrongdoing cases. We encourage the NRC to expand the use of ADR to all appropriate investigation and enforcement cases. With respect to enforcement actions against individuals, the NRC has long recognized that even a proposed enforcement action against an individual can have a serious impact on the person's reputation and livelihood. In our view, allowing an individual to request mediation could help resolve the individual enforcement matter efficiently while reducing the potential for unnecessarily stigmatizing the individual and damaging his reputation, particularly if the violation turns out not to be substantiated. With respect to traditional enforcement cases, ADR can be a useful technique to help resolve disputed issues of fact or law on which the proposed enforcement action depends. As noted above, ADR can also help the licensee and NRC focus on corrective actions.
3. *The NRC should assess the training and experience of mediators.* The NRC's proposed evaluation criteria for the ADR program includes, "Were the mediators and the program administrator fair and helpful?" We agree with the NRC that the quality of the mediators is a crucial factor. The most effective mediators are usually those with relevant industry experience or other experience and qualifications in the field. For NRC investigation and enforcement matters, the mediators should ideally have experience with nuclear facility operations and, in discrimination cases, familiarity with the legal standards under Section 211 of the Energy Reorganization Act and 10 C.F.R. 50.7. We urge the NRC to monitor the qualifications and experience level of mediators and would support efforts by Cornell University (the program administrator) to conduct NRC-specific training for mediators.
4. *The NRC should conduct periodic public workshops on the ADR program.* Because the ADR program is still in its initial stages, it would be useful for the NRC to continue to conduct public workshops so that the NRC, licensees and other stakeholders can share their experience with implementation of the ADR program in practice. Such public exchanges can help identify good practices as well as areas in need of improvement.

Mr. Michael T. Lesar
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We appreciate the opportunity to comment on the ADR pilot program. We believe the use of ADR can provide substantial benefits and urge the NRC to continue with the program and make it available in most areas of the enforcement process.

Very truly yours,

A handwritten signature in black ink, reading "Daniel F. Stenger". The signature is written in a cursive, flowing style.

Daniel F. Stenger
Counsel to Nuclear Regulatory Services Group