

NUCLEAR REGULATORY COMMISSION
[NRC-2013-0093]

In the Matter of Southern Nuclear Operating Company Farley Nuclear Plant, Units 1 and 2)))))	Docket No.: 50-348, 50-364 License No.: NPF-2, NPF-8 EA-12-145
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Confirmatory Order

I

Southern Nuclear Operating Company (SNC or Licensee) is the holder of License Nos. NPF-2 and NPF-8, issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), on June 25, 1977 and March 31, 1981. The licenses authorize the operation of Farley Nuclear Plant (FNP), Units 1 and 2, in accordance with conditions specified therein. The facility is located on the Licensee's site in Columbia, Alabama.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 15, 2013.

II

On July 3, 2012, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2-2011-018) regarding activities at the Farley Nuclear Plant. Based on the evidence developed during the investigation, the NRC issued a letter to FNP dated January 9, 2013, which documented an apparent violation that occurred during calendar years 2010 and 2011. Specifically, FNP Technical Specification 5.4.1.a, Procedures, requires in part, written procedures to be established, implemented and maintained covering the applicable procedures recommended in Regulatory Guide (RG) 1.33, Revision 2, Appendix A, February 1978. Section

7.e of Appendix A to RG 1.33 requires procedures for training workers in radiation protection. Farley procedure FNP-0-AP-42, Access Control, requires individuals badged as Unescorted Radiation Workers to undergo annual radiation worker training (RWT) to maintain radiation controlled area (RCA) access authorization. Licensee procedure NMP-TR-208, "Examination and Examination Security" requires examinees to remove or store reference material in such a way that it would not compromise the exam, to take the exam in an uninterrupted session, and for proctors to ensure all rules are followed while an examination is being administered. If cheating is observed the proctor is required to stop the exam.

The NRC's letter further stated that, during calendar years 2010 and 2011, FNP security personnel proctoring the annual RWT exams failed to ensure exams were not compromised as required by SNC procedure NMP-TR-208. Specifically, proctors compromised the integrity of the RWT exams by helping other security officers cheat on the exams by either suggesting or giving answers, or taking the exam in place of the security officers.

III

On March 15, 2013, the NRC and SNC 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. NRC and FNP agreed that the issue described above represents a violation of regulatory requirements, with the following clarifications: based on the results of FNP's investigation into the incidents as described in the NRC's letter of January 9, 2013, FNP

confirmed that one security officer inappropriately proctored annual RWT exams and failed to ensure that exams were not compromised, as required by SNC procedure NMP-TR-208 and Technical Specifications. In addition, FNP confirmed that one security officer received inappropriate assistance on RWT exams. Based on a review of the range of elapsed times it took for security officers and other plant employees to complete exams, FNP could not conclude that other security officers received inappropriate assistance. The NRC acknowledges and accepts FNP's explanation with respect to the elapsed times for taking RWT exams, and considers the explanation plausible and credible.

2. During the ADR, FNP described the corrective actions and enhancements completed in response to the issues described in the NRC's January 9, 2013, letter. These actions included but were not limited to the following:
 - a. In August 2012 and again in February 2013, FNP management briefed all Security Department personnel on pride, professionalism and personal accountability with a specific focus on training processes, exams procedures and expectations, and professional integrity.
 - b. FNP management re-tested all current Security Department personnel whose most-recent RWT exams were proctored by the individual who admitted to assisting security officers with their exams. All such employees passed their exams.
 - c. FNP management imposed a requirement that all Security Department training and test taking be performed in a training lab to minimize distractions during the training and evaluation processes.

- d. FNP management established, as part of the Security Human Behavior Program, a monitoring program to ensure that supervision will conduct random observations of Security Department personnel during computer-based training requalification exams. The monitoring program requires that the observations be reviewed by the FNP Security Manager each month. This action will continue until December 31, 2014, at which time it will be assessed to determine whether continuation is necessary.
- e. SNC conducted a thorough investigation of this matter (including interviews of 41 employees), which led to findings of certain violations of NMP-TR-208, "Examination and Examination Security," and irregularities in the exam processes by FNP Security Department personnel.
- f. FNP management issued appropriate levels of discipline for employees involved in violations and improper behavior, ranging from coaching to written discipline to termination.
- g. Actions specifically related to FNP included:
 - i. SNC disqualified all FNP computer-based training proctors and retrained them on the requirements of NMP-TR-208.
 - ii. SNC performed an additional review of the results of the most recent FNP Safety Culture assessment in order to determine whether -- in light of the RWT exam incident -- there were areas of concern that had not been identified when the results were initially reviewed. The additional review of the Safety Culture assessment did not reveal indications of problems with training and test-taking practices.
- h. SNC has also completed a Fleet-Wide Action consisting of a formal review of the "Examination and Examination Security" Procedure (NMP-TR-208) by the Training Department, to ensure adequate guidance is provided for examination

oversight. As a result, revisions to the procedure were made to clarify the proctoring requirements.

3. Based on SNC's review of the incident and the NRC's concerns with respect to precluding recurrence of the violation, SNC agrees to the following corrective actions and enhancements:

- a. SNC's Licensing Department conducted an assessment of opportunities for improvement for all proctored exams. As a result, SNC initiated a Condition Report for Fleet Security to evaluate the testing environment for the Security Departments at all three sites. The results of this evaluation will be assessed to determine whether corrective actions need to be implemented.
- b. As a result of the review conducted in Paragraph III.3.a, SNC also issued a Fleet-wide Condition Report to evaluate the testing environment and compliance with NMP-TR-208 at Corporate and the three operating sites. The results of this evaluation will be assessed to determine whether corrective actions need to be implemented.
- c. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, SNC will review other procedures referenced in NMP-TR-208 that relate to proctoring and determine whether revisions are needed to clarify any aspects of the procedures pertaining to proctoring.
- d. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, SNC will issue a company-wide communication regarding the revisions and clarifications that have been made to NMP-TR-208 and other procedures referenced in NMP-TR-208 to the extent there were revisions to any procedure identified in Paragraph III.3.c.

- e. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, senior management will communicate through various effective means such as, but not limited to, video, on a fleet-wide basis. Messages will clearly articulate that willful misconduct is incompatible with safe nuclear construction and operation. The communication will provide recent public examples, including those documented in EA-12-240 and EA-12-230, and the impacts when there is a loss of integrity and trustworthiness.
- f. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, the senior management communication will be followed by a Fleet-wide stand-down with all employees to address integrity and trustworthiness. A similar stand-down will be conducted for operating fleet contractors. For Vogtle 3 and 4, the briefing will be tailored to the unique management structure of the construction project.
- g. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, SNC will modify its guidance involving investigations based on allegations to include an initial evaluation of potential nuclear safety implications and to identify any appropriate immediate mitigating measures to be taken while the investigation is ongoing.
- h. By August 31, 2014, SNC will conduct an effectiveness review of all corrective actions taken under the Confirmatory Order.
- i. By October 30, 2013, SNC will evaluate and implement appropriate actions to reinforce the messages of Paragraph III.3.e and III.3.f above annually until December 31, 2015.
- j. Upon completion of the terms of Paragraph III.3.a through III.3.h of the Confirmatory Order, SNC will provide the NRC with a letter discussing its basis for concluding that the Order has been satisfied.

4. The NRC considers the corrective actions and enhancements discussed in Paragraph III.2 and III.3 above to be appropriately prompt and comprehensive to address the causes which gave rise to the incident discussed in the NRC's letter of January 9, 2013.
5. In consideration of the commitments delineated above, the NRC agrees to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to FNP of January 9, 2013 (EA-12-145). The resulting Confirmatory Order will not be considered an escalated enforcement action by the NRC for any future assessment of FNP.
6. This agreement is binding upon successors and assigns of SNC.

On April 29, 2013, the Licensee 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 upon issuance and that it has waived its right to a hearing.

IV

Since the Licensee has agreed to take actions to address the violation as set forth in Section V, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the Licensee'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 the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is effective upon 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 and 52, IT IS HEREBY ORDERED, THAT LICENSE NOS. NPF-2 AND NPF-8 IS MODIFIED AS FOLLOWS:

- a. SNC's Licensing Department conducted an assessment of opportunities for improvement for all proctored exams. As a result, SNC initiated a Condition Report for Fleet Security to evaluate the testing environment for the Security Departments at all three sites. SNC will assess the results of this evaluation to determine whether corrective actions need to be implemented.
- b. As a result of the review conducted in Paragraph V.a, SNC also issued a Fleet-wide Condition Report to evaluate the testing environment and compliance with NMP-TR-208 at Corporate and the three operating sites. SNC will assess the results of this evaluation to determine whether corrective actions need to be implemented.
- c. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, SNC will review other procedures referenced in NMP-TR-208 that relate to proctoring and determine whether revisions are needed to clarify any aspects of the procedures pertaining to proctoring.
- d. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, SNC will issue a company-wide communication regarding the revisions and clarifications that have been made to NMP-TR-208 and other

procedures referenced in NMP-TR-208 to the extent there were revisions to any procedure identified in Paragraph V.c.

- e. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, senior management will communicate through various effective means such as, but not limited to, video, on a fleet-wide basis. Messages will clearly articulate that willful misconduct is incompatible with safe nuclear construction and operation. The communication will provide recent public examples, including those documented in EA-12-240 and EA-12-230, and the impacts when there is a loss of integrity and trustworthiness.
- f. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, the senior management communication will be followed by a Fleet-wide stand-down with all employees to address integrity and trustworthiness. A similar stand-down will be conducted for operating fleet contractors. For Vogtle 3 and 4, the briefing will be tailored to the unique management structure of the construction project.
- g. By the later of either June 15, 2013, or 90 days after the date of issuance of the Confirmatory Order, SNC will modify its guidance involving investigations based on allegations to include an initial evaluation of potential nuclear safety implications and to identify any appropriate immediate mitigating measures to be taken while the investigation is ongoing.
- h. By August 31, 2014, SNC will conduct an effectiveness review of all corrective actions taken under the Confirmatory Order.
- i. By October 30, 2013, SNC will evaluate and implement appropriate actions to reinforce the messages of Paragraph V.e and V.f above annually until December 31, 2015.

- j. Upon completion of the terms of Paragraph V.a through V.h of the Confirmatory Order, SNC 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 SNC of good cause.

VI

Any person adversely affected by this Order, other than SNC, may submit a written answer and/or request a hearing on this Order within 30 days from the date of this Order. 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 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 (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 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 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 contracting the NRC Meta System Help Desk thorough 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 using 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 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 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/

Frederick D. Brown
Deputy Regional Administrator for Construction

Dated this 6th day of May 2013