

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	Docket No. 50-395
South Carolina Electric & Gas Company)	License No. NPF-12
Virgil C. Summer Nuclear Station)	
Unit 1)	EA-12-140

CONFIRMATORY ORDER

I

South Carolina Electric & Gas Company (SCE&G or Licensee) is the holder of License No. NPF-12, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on August 6, 1982, and renewed on April 23, 2004. The license authorizes the operation of Virgil C. Summer Nuclear Station (SNS), Unit 1, in accordance with the conditions specified therein. The facility is located on the Licensee's site in Jenkinsville, South Carolina.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on October 8, 2013.

II

On January 16, 2013, the NRC's Office of Investigations (OI), Region II, completed an investigation regarding a security matter at SNS. The purpose of the investigation was to: (1) review the facts and circumstances surrounding the actions of a former Environmental Health and Safety Specialist, Stone & Webster, Inc. (Shaw) employee, who in approximately

September of 2010 falsified an SNS Unit 1 Personnel History Questionnaire (PHQ) and provided a fictitious court record to deliberately conceal potentially disqualifying criminal history information in order to obtain employment at the

site, and (2) determine whether the SNS access officials properly adjudicated potentially disqualifying information in this individual's PHQ, and supporting materials, prior to granting him unescorted access authorization (UAA) during the September 2010 time frame.

Based on the investigation and NRC staff review, two apparent violations were identified, as documented in the NRC's letter to SCE&G dated June 4, 2013.

The first apparent violation involved the willful actions of the licensee's access authorization staff, which caused the licensee's access authorization program to fail to provide high assurance that individuals granted unescorted access are trustworthy and reliable such that they do not constitute an unreasonable risk to public health and safety, as required by Title 10 of the *Code of Federal Regulations* at 10 CFR 73.56(c). Specifically, on September 14, 2010, licensee access authorization reviewing officials reviewed, adjudicated, and granted an individual unescorted access authorization by relying unreasonably on a falsified PHQ and fabricated court record to determine his trustworthiness and reliability.

The second apparent violation involved the willful failure to comply with the requirements of 10 CFR 50.9(a) which, in part, states that "information required by statute or Commission regulations to be maintained shall be complete and accurate in all material respects." In part, 10 CFR 73.56(o)(2) requires the licensee to retain records of information that must be collected under subparts (d) and (e) of 73.56 that result in the granting of unescorted access for at least 5 years after the licensee terminates, or denies an individual's unescorted access or unescorted

access authorization. On September 14, 2010, the licensee collected and maintained a criminal history record to support the granting of unescorted access that was inaccurate and incomplete in a material respect. Specifically, a fabricated court document was accepted by the Licensee to reflect a favorable disposition of a criminal matter (i.e., dismissal of arson charges) that, in fact, was not favorably resolved. This information was material because it was relied upon to provide the requisite high assurance that the individual who submitted the document was trustworthy and reliable, and to support the granting of unescorted access to SNS.

III

On October 8, 2013, the NRC and SCE&G 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 SCE&G agree that the issues described above resulted in an individual inappropriately being granted unescorted access to SNS, which was inconsistent with the requirements of 10 CFR 73.56(c) and 10 CFR 50.9. SCE&G does not agree that the violations were committed willfully, and on this point, the parties agree to disagree.
2. During the ADR, SCE&G described the corrective actions and enhancements completed in response to the issues described in the NRC's letter of June 4, 2013. These actions included but were not limited to the following:

- a. Following the event, SCE&G held a stand down with the access control staff to discuss the event (completed on March 3, 2011).
- b. SCE&G performed a root cause analysis of the event (completed on April 28, 2011).
- c. SCE&G shared operating experience involving the event with the industry through the Nuclear Energy Institute's database, Advanced Taskforce Operations Management (ATOM) (completed on July 18, 2013).
- d. SCE&G performed an extent of condition review of favorably adjudicated files over the last five years which contained documents used to grant unescorted access. SCE&G performed an additional review of a sample of 17 files randomly selected from 2010 (the year of the event). No issues requiring corrective actions were identified (completed on April 28, 2011).
- e. SCE&G performed industry benchmarking of the issues including expectations for access officials in reviewing and adjudicating documents having raised seals (completed in July 2013).
- f. SCE&G established an immediate interim requirement that in all cases where adjudication of a criminal history is required for making an access decision, the applicant must provide documentation having an official raised seal from the judicial source (e.g., court of law) or a telephonic authentication from the appropriate judicial entity (completed on March 3, 2011).
- g. SCE&G made program improvements to its access authorization procedure, SAP-1005, including requiring a second, independent review of significant derogatory information, defining the term "independent", incorporating an in-process checklist, adding a method for making

corrections to the Personal History Questionnaire (PHQ) information and ensuring information is marked as corrected, including a requirement that copies/faxes of official documents used to adjudicate criminal history must be sent directly to access officials (completed on August 4, 2011). SCE&G also defined in SAP-1005 a process for management involvement in the adjudication of derogatory information and required official documents with raised seals or copies/faxes of official documents used to adjudicate criminal history be sent directly to and authenticated with the person or entity that created the document by access officials without passing through the applicant's possession (completed on September 26, 2013).

- h. SCE&G provided training on the revised SAP-1005 to Reviewing Officials (completed on September 9, 2011).
- i. SCE&G developed a management observation template in accordance with SAP-1354, Management Observations and Worker Interface, for performing observations of Reviewing Officials (completed on September 13, 2011).
- j. SCE&G added a requirement for a periodic self-assessment of the Access Control pre-employment screening process; this tasking was added to the station's self-assessment backbone schedule and is required to be performed at a three year frequency (completed on September 28, 2011).
- k. SCE&G performed a snap shot self-assessment to serve as an effectiveness review for the root cause analysis (completed on March 14, 2012).
- l. SCE&G developed a training and qualification program for initial and continuing training of Reviewing Officials. Training included conservative decision making and human performance tools such as maintaining a challenging and questioning attitude (Qualification program developed on

November 3, 2011; Reviewing Officials completed qualification requirements on December 1, 2011).

- m. SCE&G added warnings, cautions, and case studies to the PHQ which describes the consequences of not properly disclosing information (completed on August 4, 2011).
- n. SCE&G emphasized applicant responsibility by requiring all applicants for access authorization to sign a statement attesting that they have read and understand the warnings and cautions on the PHQ which state that falsification/intentional omission of information are grounds for denial of unescorted access authorization (completed on August 4, 2011).
- o. SCE&G performed an additional snapshot self-assessment of SA12-NP-04S, Review of Adjudication Records (completed on March 13, 2012).
- p. SCE&G has conducted ongoing management observations of Reviewing Officials.

- 3. Based on SCE&G's review of the incident and NRC's concerns with respect to precluding recurrence of the violations, SCE&G agrees to the following corrective actions and enhancements:

- a. By December 31, 2014, SCE&G will share operating experience (i.e., discuss the lessons learned and resulting enhancements) regarding this event during the NEI Access Authorization/Fitness for Duty Conference, and will maintain a copy of related presentation material for the purposes of NRC verification via follow-up NRC inspection. In lieu of sharing operating experience during the NEI Access Authorization/Fitness for Duty Conference, SCE&G may share lessons learned at a similar event, with

prior verbal approval from the NRC Region II Regional Administrator, or Region II Deputy Regional Administrator, Operations.

- b. By June 30, 2014, SCE&G will conduct annual training on completeness and accuracy of information, 10 CFR 50.9; deliberate misconduct, 10 CFR 50.5 and violations committed with careless disregard or reckless indifference to requirements as part of initial and continuing plant access training.
 - c. By June 30, 2014, SCE&G will provide one-time training to SCE&G supervisors and long-term contract supervisors on the topics in Section III.3.b above including detailed case studies.
- 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 June 4, 2013.
- 5. The NRC and SCE&G agree that the above elements will be incorporated into issuance of a Confirmatory Order.
- 6. In consideration of the commitments delineated above, the NRC agrees to fully mitigate a civil penalty and issue a Notice of Violation (NOV) for all matters discussed in the NRC's letter to SNS of June 4, 2013 (EA 12-140). The NOV is incorporated into the resulting Confirmatory Order as Paragraph III.7, below. The Confirmatory Order will only be considered an escalated enforcement action by the NRC for future assessment of violations occurring at SNS within one year of the date of the Confirmatory Order.

7. As referenced in Paragraph III.6 of this Confirmatory Order, the following two violations are documented below:

- a. 10 CFR 73.56(c) requires a licensee's access authorization program to provide high assurance that the individuals specified in paragraph (b)(1), and, if applicable, paragraph (b)(2) of this section are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

Contrary to the above, on September 14, 2010, the licensee's access authorization program failed to provide high assurance that individuals granted unescorted access to nuclear power plants are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or common defense and security, including the potential to commit radiological sabotage. Specifically, the licensee's access authorization reviewing officials granted an individual unescorted access authorization by relying on deliberate misstatements made in a PHQ and on a falsified court record to adjudicate potentially disqualifying information.

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

10 CFR 73.56(o)(2) requires licensees to retain records of the information that must be collected under paragraphs (d) and (e) of this section related to the granting of unescorted access or verifying of unescorted access authorization. These records must be retained for at least five years after the licensee grants, terminates, or denies an individual's unescorted access or unescorted access authorization or until the completion of all related legal proceedings, whichever is later.

Contrary to the above, on September 14, 2010, the licensee collected and maintained a criminal history record supporting the granting of unescorted access to an individual. This information was inaccurate and incomplete in a material respect. Specifically, a fabricated court document stating that arson charges had been dismissed was accepted by the licensee. In fact, the charges had not been dismissed and the charges were before a grand jury. This information was material to the NRC because it was relied upon to provide high assurance that the individual who submitted the document was trustworthy and reliable when this was not the case, and allowed the improper granting of unescorted access.

8. This agreement is binding upon successors and assigns of SCE&G.

On February 28, 2014, SCG&E 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

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

I find that SCE&G'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 SCE&G's commitments be confirmed by this Order. Based on the above and SCE&G'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 and 52, IT IS HEREBY ORDERED, THAT LICENSE NO. NPF-12 IS MODIFIED AS FOLLOWS:

- a. By December 31, 2014, SCE&G will share operating experience (i.e., discuss the lessons learned and resulting enhancements) regarding this event during the NEI Access Authorization/Fitness for Duty Conference, and will maintain a copy of related presentation material for the purposes of NRC verification via follow-up NRC inspection. In lieu of sharing operating experience during the NEI Access Authorization/Fitness for Duty Conference, SCE&G may share lessons learned at

a similar event, with prior verbal approval from the NRC Region II Regional Administrator, or Region II Deputy Regional Administrator, Operations.

- b. By June 30, 2014, SCE&G will conduct annual training on completeness and accuracy of information, 10 CFR 50.9; deliberate misconduct, 10 CFR 50.5 and violations committed with careless disregard or reckless indifference to requirements as part of initial and continuing plant access training.
- c. By June 30, 2014, SCE&G will provide one-time training to SCE&G supervisors and long-term contract supervisors on the topics in Section III.3.b above including detailed case studies.
- d. SCE&G will implement the continuing actions and activities as previously discussed in the following sections of this Order: Section III.2.g (management involvement in the adjudication of derogatory information); Section III.2.j (self-assessment at a three year frequency); and Section III.2.l, (training and qualification program for initial and continuing training of Reviewing Officials).

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

VI

Any person adversely affected by this Order, other than SCE&G, 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 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 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 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 10th day of March 2014.