

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

COMMISSIONERS:

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Shirley Ann Jackson, Chairman  
Kenneth C. Rogers  
Greta J. Dicus

OFFICE OF SECRETARY  
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In the Matter of

INNOVATIVE WEAPONRY, INCORPORATED

Albuquerque, New Mexico

SERVED JUN 26 1996

Docket No. 030-30266 - HP  
License No. 30-23697-01E  
EA 96-170  
Confirmatory Order

ORDER

On May 15, 1996, the Director of the Nuclear Regulatory Commission's (NRC) Office of Enforcement ("the Director") issued a Confirmatory Order that modified the license of Innovative Weaponry, Inc. ("the licensee"). The Confirmatory Order required that the licensee develop and implement certain written procedures, and develop and submit for NRC approval two plans, one for training to assure that the licensee's personnel were familiar with all applicable NRC requirements, and the other for periodic audits of the licensee's operation by an independent auditor approved by the NRC.

The Order stated that the licensee had committed to these actions at a predecisional enforcement conference and licensing meetings on April 23, 1996, and that the licensee's attorney had agreed to the Confirmatory Order in a telephone call on May 8, 1996.

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The Order was made immediately effective. 61 *Federal Register* 25694-95 (May 22, 1996).

The Order directed the licensee to meet these requirements within 30 days of the date of the Order, and it gave affected persons other than the licensee 20 days to request a hearing on the Order. Such requests were to conform to the pleading requirements set forth in 10 CFR 2.714(d). 61 *Federal Register* 25695.

On June 14, 1996, the licensee filed, "pursuant to 10 C.F.R. Part 2, Subpart G," a Request for Hearing on the Confirmatory Order. As "basis" for the request, the licensee contended that the the NRC actions underlying the Order were "beyond the agency's jurisdiction", "anti-competitive", "unduly discriminatory", and "contrary to the public interest"; that the investigation reports relied on by the agency in issuing the Order were "biased" and "amount[ed] to a material false statement ..."; and that the "exercise of power" in the Order was "arbitrary and capricious" and "amount[ed] to unjustifiable regulatory duress." The Request for Hearing proffered no supporting material for these contentions.

The Request seeks, among other things, an order declaring the enforcement action null and void, defining NRC jurisdictional authority more precisely, and prohibiting the NRC staff from engaging in "certain" unethical practices. The licensee did not request a stay of the order pending a hearing.

Before there can be a ruling on whether the licensee is entitled to a hearing on its contentions, the licensee must provide

the bases for its contentions. A hearing cannot be granted on the basis of mere assertions of misconduct.


Therefore, the Commission directs the licensee to file the bases for its contentions within 15 days of the date of this Order. In providing these bases, the licensee must conform to the pleading requirements in 10 CFR 2.730(b), and should be guided by the specificity requirements in 10 CFR 2.714(b)(2), especially paragraph (b)(2)(ii). In the material provided in accordance with these requirements, the licensee should state whether the licensee consented to the Order, and if so, why such consent should not have the legal effect of waiving the licensee's hearing rights. The NRC staff may file an answer to the contentions; the answer must be filed within 15 days of the licensee's submittal. The licensee's attorney must also file a Notice of Appearance, as required by 10 CFR 2.713(b).

Pending the Commission's decision on the Request, and given that the licensee has not challenged, under 10 CFR 2.203(c)(2), the immediate effectiveness of the May 15 Order, the Director's Confirmatory Order remains in effect.

It is so ORDERED.



For the Commission,

  
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JOHN C. HOYLE  
Secretary of the Commission

Dated at Rockville, Maryland  
this 26<sup>th</sup> day of June, 1996

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

INNOVATIVE WEAPONRY, INCORPORATED

(Albuquerque, New Mexico)

Docket No.(s) 30-30266

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Leonard J. Callan, Administrator  
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Harris Tower  
611 Ryan Plaza Drive, Suite 400  
Arlington, TX 76011

Dated at Rockville, Md. this  
26 day of June 1996

  
Office of the Secretary of the Commission