



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

March 25, 2019

EA-18-155

Mr. Doug Bauder, Vice President
and Chief Nuclear Officer
Southern California Edison Company
San Onofre Nuclear Generating Station
P.O. Box 128
San Clemente, CA 92674-0128

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$116,000 AND NRC SPECIAL INSPECTION REPORT 050-00206/2018-005,
050-00361/2018-005, 050-00362/2018-005, 072-00041/2018-001

Mr. Bauder:

This letter refers to the special inspection conducted on September 10-14, 2018, at your facility in San Clemente, California. The inspection was conducted in response to the misalignment of a loaded spent fuel storage canister as it was being downloaded into the storage vault at the San Onofre Nuclear Generating Station (SONGS) on August 3, 2018. A final exit briefing was conducted telephonically with Mr. Thomas Palmisano and members of your staff on November 1, 2018, and the details regarding two apparent violations were provided in the subject inspection report dated November 28, 2018, NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML18332A357. An errata to this inspection report was issued on December 19, 2018, ADAMS Accession ML18341A172.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference (PEC) or requesting alternative dispute resolution (ADR). On December 10, 2018, SONGS staff informed the NRC that they requested a PEC. On January 24, 2019, a public PEC was conducted in the Region IV office with you and members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions.

Based on the information developed during the inspection and the information that you provided during the PEC, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in Enclosure 1, Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding them are described in the subject inspection report. Violation A involved the failure to ensure that important-to-safety equipment was available to provide redundant drop protection features for a loaded spent fuel canister during downloading operations. Violation B involved the failure to make a timely notification to the NRC Headquarters Operations Center for the August 3, 2018, disabling of important-to-safety equipment.

The NRC considers that Violation A could have resulted in a significant safety consequence because an important-to-safety feature was disabled during a spent fuel canister downloading operation. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level II. The NRC considers that Violation B impacted the NRC's ability to perform its regulatory oversight function. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

Because Violation A was associated with a Severity Level II violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC determined that *Identification* credit was not warranted because Violation A was identified through a self-revealing event.

Your corrective actions included: (1) a revised corrective action program that encompasses all dry cask storage operations at SONGS with a defined threshold for problem identification and entry; (2) additional staff training and resources to implement Southern California Edison Company's (SCE's) revised and more intrusive contractor oversight of dry cask storage operations; (3) additional equipment to provide load indications and visual indications for defense-in-depth to prevent a future disabling of important-to-safety downloader slings during spent fuel canister downloading operations; (4) a revised SONGS-specific training program for all dry cask storage workers to ensure that workers understand and know how to perform their assigned roles and responsibilities; (5) revised procedures that provide qualitative and quantitative means to ensure that important steps for dry cask storage operations have been accomplished; and (6) a commitment to enhance future management and executive management oversight through the above programs, policies, and procedures.

During the NRC's follow-up inspections, several weaknesses were identified by the inspection team related to the above-noted corrective actions. The three most significant weaknesses included failures to: (1) establish measures to ensure appropriate quality standards were specified in design documents for the new load monitoring equipment used in the downloading process; (2) ensure that newly-installed load monitoring equipment conformed to the procurement documents; and (3) conduct spent fuel handling operations within established design basis seismic criteria when moving loaded transfer casks from the site's spent fuel buildings to the independent spent fuel storage installation.

In addition, SCE's corrective actions did not adequately address a change to the design and performance requirements for certain structures, systems, and components described in the Holtec UMAX Final Safety Analysis Report (FSAR). At the time of the August 3, 2018, incident, the version of the Holtec UMAX FSAR in effect (i.e., Revision 4) stated that "there is no risk of scratching or gouging" on a canister during downloading operations into the UMAX vault. Following the special inspection, the FSAR was revised to allow scratches on the canisters during downloading operations. Southern California Edison Company used the Title 10 of the *Code of Federal Regulations* (10 CFR) 72.48 process to implement the FSAR change. The NRC determined that SCE's calculations and evaluation did not contain an adequate basis to support the change to the FSAR. As a result, SCE initiated corrective actions to reperform the 10 CFR 72.48 evaluation. The NRC will review SCE's subsequent evaluation to determine if the FSAR design change to allow scratches is acceptable.

Based on the overall assessment of SCE's corrective actions, the NRC has concluded that *Corrective Action* credit is not warranted for Violation A.

Since neither *Identification* credit nor *Corrective Action* credit are warranted for Violation A, the NRC Enforcement Policy provides for a civil penalty that is twice the base civil penalty amount of \$58,000 for a total of \$116,000.

Because Violation B was associated with a Severity Level III violation and your facility has not been the subject of an escalated enforcement action within the last 2 years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. Your corrective actions included: (1) making the required notification to the NRC; (2) providing training to shift managers on the NRC reporting requirements; (3) revising your reporting procedures; and (4) establishing biennial refresher training on reportability. We have determined that these actions are sufficiently comprehensive and appropriate. Therefore, the NRC determined that *Corrective Action* credit was warranted, which would not result in a civil penalty for this Severity Level III violation.

Given the above, to emphasize the importance of identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$116,000 for the Severity Level II violation (Violation A). In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request ADR with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC employs is mediation. Mediation is a voluntary informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found in Enclosure 3 and at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

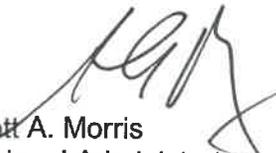
The Institute on Conflict Resolution at Cornell University facilitates the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the Institute on Conflict Resolution at 877-733-9415, and (2) Dr. Janine F. Katanic at 817-200-1151 within 10 days of the date of this letter. You may also contact the Institute on Conflict Resolution for additional information about ADR. Your submitted signed agreement to mediate using the NRC's ADR program will stay the 30-day time period for payment of the civil penalties and the required written response, as identified in the enclosed Notice, until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In particular, you should address actions you have taken or plan to take to improve your corrective actions. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

If you have any questions concerning this matter, please contact Dr. Janine F. Katanic of my staff at 817-200-1151.

Sincerely,



Scott A. Morris
Regional Administrator

Docket Nos. 50-206; 50-361; 50-362; 72-041
License Nos. DPR-13; NPF-10; NPF-15

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, Payment Methods
3. NUREG/BR-0317, Enforcement Alternate Dispute Resolution Program

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Southern California Edison Company
San Clemente, California

Docket Nos. 050-00206, 050-00361,
050-00362, 072-00041
License Nos. DPR-13; NPF-10; NPF-15
EA-18-155

During an NRC inspection conducted September 10-14, 2018, two violations of NRC requirements were identified that were considered for escalated enforcement. (Note: three other Severity Level IV violations were identified and documented in the NRC special inspection report.) In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

- A. 10 CFR 72.212(b)(3) requires, in part, that each cask used by the general licensee conforms to the terms, conditions, and specifications of a Certificate of Compliance listed in 10 CFR 72.214. 10 CFR 72.214 includes a list of all the approved spent fuel storage casks that can be utilized under the conditions specified in a specific Certificate of Compliance, including Amendment 2 of Certificate of Compliance 072-01040. Certificate of Compliance 072-01040, Amendment 2, Condition 4, "HEAVY LOADS REQUIREMENTS," requires, in part, that lifting operations outside of structures governed by 10 CFR Part 50 must be in accordance with Technical Specifications, Appendix A, Section 5.2.

Technical Specifications, Appendix A, Section 5.2.c.3 requires, in part, that the transfer cask, when loaded with spent fuel, may be lifted and carried at any height during multi-purpose canister transfer operations provided the lifting equipment is designed with redundant drop protection features which prevent uncontrolled lowering of the load.

Contrary to the above, on August 3, 2018, the licensee failed to ensure that the redundant drop protection features were available to prevent uncontrolled lowering of the load during multi-purpose canister transfer operations. Specifically, the licensee inadvertently disabled the redundant important-to-safety downloading slings while lowering canister 29 into the storage vault. During the approximately 45-minute time-frame, the canister rested on a shield ring unsupported by the redundant downloading slings at approximately 18 feet above the fully seated position. This failure to maintain redundant drop protection placed canister 29 in an unanalyzed condition because the postulated drop of a loaded spent fuel canister is not analyzed in the final safety analysis report.

This is a Severity Level II violation (NRC Enforcement Policy Section 6.3.b.2).
Civil Penalty - \$116,000 (EA-18-155)

II. Violation Not Assessed a Civil Penalty

- B. 10 CFR 72.75(d)(1) requires, in part, that each licensee shall notify the NRC within 24 hours after the discovery of an event involving spent fuel in which important-to-safety equipment is disabled or fails to function as designed when: (i) the equipment is required by Certificate of Compliance to be available and operable to mitigate the consequences of an accident; and (ii) no redundant equipment was available and operable to perform the required safety function.

Contrary to the above, from August 6 to September 14, 2018, the licensee failed to notify the NRC within the required time period after the discovery of an event involving spent fuel in which important-to-safety equipment was disabled or failed to function as designed when: (i) the equipment was required by Certificate of Compliance to be available and operable to mitigate the consequences of an accident; and (ii) no redundant equipment was available and operable to perform the required safety function.

Specifically, the licensee failed to notify the NRC within the required time period after an event that occurred on August 3, 2018, in which the licensee inadvertently disabled the redundant important-to-safety downloading slings while lowering spent fuel canister 29 into the storage vault, which resulted in the canister resting on a shield ring unsupported by the redundant downloading slings at approximately 18 feet above the fully seated position for approximately 45 minutes. These slings are required by Certificate of Compliance 072-01040, Amendment 2, Condition 4, and Technical Specification 5.2.c.3 to be available and operable during canister transfer operations, and no redundant equipment was available and operable to perform the required safety function.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.9.c.2).

Pursuant to the provisions of 10 CFR 2.201, Southern California Edison Company (SCE) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-18-155" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

You may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 (Enclosure 2) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may

protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice.

Should SCE fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should SCE elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation; EA-18-155" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. Your attention is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with a copy to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511. Your response will be made available electronically for public inspection in the NRC Public Document Room or in 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>. To the extent possible, it should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 25th day of March 2019.

QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at FEE.Resource@nrc.gov, by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001



Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DC/ARB
Mail Stop T-9-E10
Washington, DC 20555-0001
PH (301) 415-7554



NUREG/BR-0254, Rev. 8
February 2018



ENCLOSURE 2

Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about to burden estimate to the Records Management Branch (76-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse / Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

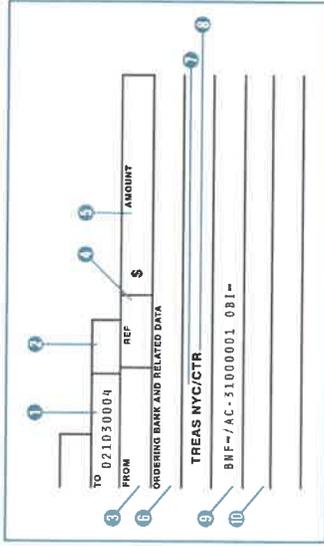


You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.



- RECEIVER-DFI#** – Treasury's routing number for deposit messages is 021030004.
- TYPE-SUBTYPE-CD** – The sending bank will provide the type and subtype code.
- SENDER-DFI#** – The sending bank will provide this number.
- SENDER-REF#** – The sending bank will insert this 16-character reference number at its discretion.
- AMOUNT** – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.
- SENDER-DFI-NAME** – The Federal Reserve Bank will automatically insert this information.
- RECEIVER-DFI-NAME** – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.
- PRODUCT CODE** – A product code of "CTR" for customer transfer should be the first item in the receiver text field. Other values may be entered, if appropriate, using the American Bankers Association's options. A slash must be entered after the product code.
- AGENCY LOCATION CODE (ALC)** – THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=/AC-31000001
- THIRD-PARTY INFORMATION** – The Originator to Beneficiary Information (OBI) field tag "OBI=" signifies the beginning of the free-form third-party text. All other identifying information intended to enable the NRC to identify the deposit—for example, NRC annual fee invoice number, description of fee, 10 CFR 171 annual fee, and licensee name—should be placed in this field.

The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=/AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank
P.O. Box 979051
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

Mediation Location and Duration

The parties usually hold the mediation at or near one of the NRC's offices. However, the parties may agree on any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer with the mutual consent of the parties.

The NRC Mediation Team

The responsible NRC senior manager (i.e., Office Director, Regional Administrator, or his or her designee) will serve as the principal negotiator for the NRC in cases that involve wrongdoing and technical issues. When a case involves discrimination, the Director of the Office of Enforcement will serve as the principal negotiator. The other members of the NRC mediation team typically include an enforcement specialist, an attorney, and a staff representative who is familiar with any technical issues under discussion.

The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. The NRC will issue a CO only with the prior written consent of the other party and with a waiver of the right to a hearing. After the entity or the individual has completed the terms of the CO, the NRC will verify that the terms of the CO have been satisfied in a timely manner. Because the CO is legally binding, failing to comply with its terms exposes the entity or individual to additional enforcement action.

Although the substance of the mediation session remains confidential, the details of the settlement will normally be made public via a press release and the publication of the CO in the *Federal Register*.

Timeliness Goals

The timely resolution of issues is one of the goals of the enforcement ADR program. Accordingly, the NRC expects timely progress of a case at each stage of the mediation process. In cases where the parties achieve settlement, the NRC expects to issue a CO within 90 calendar days of the date of the agency's letter offering the ADR option to the other party.

Additional Sources of Information

More information about the NRC's ADR program is available from the following:

- Cornell University's Scheinman Institute on Conflict Resolution
Toll-Free Number: (877) 733-9415

- The NRC's ADR Program Manager in the Office of Enforcement
Toll-Free Number: (800) 368-5642 or (301) 287-9527

- The NRC enforcement ADR program on the agency's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html



Enforcement Alternative Dispute Resolution Program



NUREG/BR-0317 Rev. 2
May 2018

ENCLOSURE 3

The Program

The U.S. Nuclear Regulatory Commission's (NRC's) enforcement alternative dispute resolution (ADR) program, formerly referred to as "post-investigation ADR," provides an amicable process for resolving enforcement matters. It is intended to produce more timely and effective outcomes for the NRC and an entity (e.g., an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action, through mediation.

The NRC established the post-investigation ADR program in 2004. In 2015, the NRC expanded its scope to include certain types of enforcement cases that do not involve an investigation. Accordingly, the name of this program was changed from "post-investigation ADR" to "enforcement ADR."

Enforcement ADR includes two distinct case types: (1) discrimination cases or other wrongdoing and, (2) nonwillful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process). For discrimination cases or other wrongdoing, mediation is used after the completion of an investigation by the NRC Office of Investigations.

As long as the enforcement matter is within the scope of the program, the NRC normally offers enforcement ADR at each of the following stages of the enforcement process: (1) before an initial enforcement action, (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation, and (3) when a civil penalty is imposed but before a hearing request.

Mediation is an informal process in which a trained and experienced mediator works with the parties to help them reach a resolution. The parties are the NRC and the entity or individual in the mediation. The mediator focuses the attention of the parties on their needs and interests rather than on their stated positions. Mediation gives the parties an opportunity to discuss issues, clear up misunderstandings, identify creative ways to address issues, find areas of agreement, and resolve their dispute.

Participation in the program is entirely voluntary. The NRC and the entity or the individual may withdraw from the mediation process at any time.

The Program Administrator

The NRC has a contract with the Cornell University Scheinman Institute on Conflict Resolution (Cornell) to serve as the program administrator for the enforcement ADR program. Cornell manages the logistics associated with enforcement ADR, including working with the parties to select a mediator from Cornell's roster of mediators. Cornell uses a network of independent and experienced mediators who help the parties find areas of agreement and settle their dispute.

The Mediator

The mediator is an experienced neutral individual who is mutually selected by the parties. He or she has no stake in the outcome of the mediation or any power to make decisions that may bind either party. The role of the mediator is to facilitate communication between the parties and to provide an environment where the parties can address their differences. The mediator uses consensus-building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and find areas of agreement. The mediator does not act as legal counsel or provide legal advice. Each party should consult an attorney for legal advice as appropriate.

The Mediation Process

Historically, most enforcement ADR mediations have occurred at the first stage of the enforcement process (i.e., before an initial enforcement action). In those cases, the NRC presents the entity or the individual with the opportunity to engage in mediation with the agency before it makes an enforcement decision. If the entity or the individual elects ADR, Cornell will help the NRC and the entity or the individual, jointly select a mediator. After selecting a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically,

the mediator holds a premediation teleconference with the parties to discuss logistics or any special needs.

During the mediation, the mediator will give the parties an opportunity to discuss their views on the issue. Often, the mediator will meet privately with each party to develop a clear understanding of the party's perspective and explore and assess options. Although the mediator does not have any power to make decisions that may bind either party, he or she may ask questions intended to help the parties assess the merits of their positions, help them converse in a respectful atmosphere, and identify potential settlement options.

If the parties reach a settlement agreement during the mediation session, they will typically document the terms of their agreement in writing by developing an agreement in principle (AIP) document. The AIP is not enforceable by either party against the other, but it is the basis on which the NRC drafts a confirmatory order (CO). The CO is a legally binding document used to confirm the commitments made in the AIP. However, if the parties do not reach a settlement agreement, the traditional enforcement process resumes—that is, the enforcement process continues as it would have if the parties had not engaged in ADR.

Confidentiality

Although the terms of an ADR settlement become publicly available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential. The mediator is prohibited from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting a report on the substance of the discussions.

Cost

The NRC and the entity or individual, equally share the fees and travel expenses of the mediator and any meeting room fees. However, each party is responsible for its own expenses, such as travel, lodging, and legal representation.

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$116,000 AND NRC SPECIAL INSPECTION REPORT 050-00206/2018-005, 050-00361/2018-005, 050-00362/2018-005, 072-00041/2018-001 DATED - MARCH 25, 2019

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SUNSI Review: ADAMS: Non-Publicly Available Non-Sensitive Keyword:
 By: JGK Yes No Publicly Available Sensitive

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