



**NUCLEAR REGULATORY COMMISSION**

**[NRC-2012-0164]**

<b>In the Matter of</b>	)	
	)	
<b>Indiana Michigan Power Company</b>	)	<b>Docket Nos. 50-315; 50-316</b>
<b>D. C. Cook Nuclear Power Plant</b>	)	<b>License Nos. DPR-58; DPR-74</b>
	)	<b>EA-12-005</b>

**Confirmatory Order Modifying License  
(Effective Immediately)**

I

Indiana Michigan Power Company (Licensee) is the holder of Reactor Operating License Nos. DPR-58 and DPR-74 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, on October 25, 1974, for Unit 1 and on December 23, 1977, for Unit 2. Both licenses were renewed on August 30, 2005. The licenses authorize the operation of the D. C. Cook Nuclear Power Plant in accordance with conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on May 23, 2012.

II

On June 1, 2011, the NRC Office of Investigations (OI) began an investigation (OI Report No. 3-2011-011) at the D. C. Cook Nuclear Power Plant. Based on the evidence developed during its investigation, the NRC identified one apparent violation of NRC requirements in 10 CFR Part 26, Sections 4(b) and 31(d)(2)(v) by failing to ensure that an

individual, who was offsite when selected for Fitness-for-Duty (FFD) testing, was tested at the earliest reasonable and practical opportunity when both the donor and collectors were available. The results of the investigation, completed on December 28, 2011, were sent to Indiana Michigan Power Company in a letter dated March 6, 2012.

On May 23, 2012, the NRC and Indiana Michigan Power Company 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 on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

### III

In response to the NRC's offer, Indiana Michigan Power Company requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. The licensee has stated that it has completed the following actions, which will be acknowledged in the Confirmatory Order (CO):
  - a. Benchmarked nine different nuclear utilities for firm definition of "available" in regard to random drug testing;
  - b. Conducted unannounced FFD testing of the high level individual, who was not tested on May 3, 2011;

c. Revised site procedure SPP-2060-SFI-411, "Fitness-for-Duty (FFD) Random Selection and Notification Process," to include a definition of "available" for testing as it relates to the FFD random testing process based on the benchmarking results;

d. Performed a gap analysis and revised the FFD collector training material;

e. Briefed the FFD collectors on the changes to the training material; and

f. Reviewed and revised all FFD program implementing procedures to ensure they contain the level of detail necessary for the least-experienced FFD staff member to successfully complete their tasks.

2. Within 90 days of the effective date of the CO, Indiana Michigan Power Company will develop a lessons-learned presentation of the events that gave rise to the CO, which highlights not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors. Indiana Michigan Power Company will present these lessons learned within 180 days to all available first-line supervisors and above at the D. C. Cook Nuclear Power Plant. Plant supervisors who may not be available at the time of the presentation(s) will review the presentation materials and acknowledge (e.g., by signature) the review of the materials.

3. Within 365 days of the effective date of the CO, Indiana Michigan Power Company will develop and make a presentation based on the facts and lessons learned from the events that gave rise to the CO. The presentation will highlight not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make this presentation at

an industry FFD forum and a broader industry forum, such that industry personnel in all four NRC regions would have the opportunity to receive the material. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors.

4. Indiana Michigan Power Company will inform the NRC Regional Administrator, Region III, in writing within 30 days of the completion of all of the actions described in the CO.

5. The NRC will describe the violation in the CO without a severity level. The NRC will not issue a separate Notice of Violation or a civil penalty. The NRC will close the currently open unresolved item (URI 05000315/2011404-01; URI 05000316/2011404-01) with a green finding without any further enforcement.

6. The NRC agrees not to pursue any further enforcement action in connection with the NRC's March 6, 2012, letter to Indiana Michigan Power Company. This does not prohibit NRC from taking enforcement action in accordance with the NRC Enforcement Policy if Indiana Michigan Power Company commits a similar violation in the future or fails to meet the terms of the CO.

On June 18, 2012, the Licensee consented to issuing this Order with the commitments, as described in Section V below. Indiana Michigan Power Company 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 additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this CO.

I find that the Indiana Michigan Power Company'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 Indiana Michigan Power Company commitments be confirmed by this Order. Based on the above and Indiana Michigan Power Company's consent, this CO is immediately 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 Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NOS. DPR-58 AND DPR-74 ARE MODIFIED AS FOLLOWS:

1. Within 90 days of the effective date of the CO, Indiana Michigan Power Company will develop a lessons-learned presentation of the events that gave rise to the CO, which highlights not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident

inspectors. Indiana Michigan Power Company will present these lessons learned within 180 days of the effective date of the CO to all available first-line supervisors and above at the D. C. Cook Nuclear Power Plant. Plant supervisors who may not be available at the time of the presentation(s) will review the presentation materials and acknowledge (e.g., by signature) the review of the materials.

2. Within 365 days of the effective date of the CO, Indiana Michigan Power Company will develop and make a presentation based on the facts and lessons learned from the events that gave rise to the CO. The presentation will highlight not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make this presentation at an industry FFD forum and a broader industry forum, such that industry personnel in all four NRC regions would have the opportunity to receive the material. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors.

3. Indiana Michigan Power Company will inform the NRC Regional Administrator, Region III, in writing within 30 days of the completion of all of the actions described in the CO.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Indiana Michigan Power Company of good cause.

Any person adversely affected by this Confirmatory Order, other than Indiana Michigan Power Company, may request a hearing within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing 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.

All documents filed in the NRC adjudicatory proceedings, including a request for 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 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](mailto: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 ID certificate). Based upon 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 agency'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 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 documents 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 agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 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 exemption 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 that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://adams.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 submission.

If a person (other than Indiana Michigan Power Company) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this CO and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

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 hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this CO should be sustained.

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 20 days from the date this Confirmatory Order is published in the Federal Register 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.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY  
COMMISSION

**/RA/**

Cynthia D. Pederson  
Deputy Regional Administrator  
Region III

Dated this 28<sup>th</sup> day of June 2012

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