

two weeks before the stakeholder meeting.

#### *Authority and Signature*

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on May 23, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2012-0117; Docket Nos. 50-259, 50-260, and 50-296; License Nos. DPR-33, DPR-52, and DPR-68; EA-12-071]**

### **Tennessee Valley Authority (Browns Ferry Units 1, 2, and 3); Confirmatory Order Modifying License (Effective Immediately)**

#### **I**

The Tennessee Valley Authority (TVA, the licensee) is the holder of Renewed Facility Operating License Nos. DPR-33, DPR-52, and DPR-68 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, "Domestic Licensing of Production and Utilization," on May 4, 2006. The licenses authorize the operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3 (facility), in accordance with conditions specified therein. The facility is located on the licensee's site in Limestone County, Alabama.

#### **II**

On March 4, 2009, TVA notified the NRC of its intent to transition the BFN facility to the National Fire Protection Association (NFPA) Standard 805 fire protection program in accordance with 10 CFR 50.48(c). Under this initiative, the NRC has exercised enforcement discretion for most fire protection noncompliances that are identified during the licensee's transition to NFPA 805, and for certain existing identified noncompliances that reasonably may be resolved at the completion of transition. NFPA 805 was adopted in 10 CFR 50.48(c) as an alternative fire protection rule, which is one path to resolving longstanding fire protection issues. To receive enforcement discretion for these noncompliances, the licensee must meet the specific criteria as stated in Section 9.1, "Enforcement Discretion for Certain

Fire Protection Issues (10 CFR 50.48)," of the "NRC Enforcement Policy," dated July 12, 2011, and submit an acceptable license amendment application by the date as specified in the licensee's commitment letter.

#### **III**

In a public meeting held on December 8, 2011 between the NRC and TVA, the licensee described its strategy for transitioning BFN to NFPA 805, which is intended to address the corrective actions for previously-cited fire protection violations along with other noncompliances identified during the transition period. TVA also notified the NRC that the development of a high-quality application will require more time than originally anticipated.

In a letter dated January 13, 2012, TVA reiterated the current transition strategy for BFN, and notified the NRC that TVA will submit its license amendment request (LAR) no later than March 29, 2013. The newly proposed submittal date is beyond the 3-year timeframe and, thus, exceeds TVA's enforcement discretion (i.e., until March 4, 2012) that was granted to BFN for certain fire protection noncompliances. However, if provided with adequate justification, the NRC may revise the submittal date through the use of an order that would continue the enforcement discretion provided in Section 9.1 of the Enforcement Policy.

In a letter dated February 17, 2012, TVA provided a list of planned fire risk reduction modifications at BFN and the associated planned implementation schedules. The NRC held a public teleconference with TVA on February 29, 2012, to discuss the planned modifications and their associated fire risk reductions, and TVA's schedule for completing its LAR. During the teleconference, TVA expressed a desire to continue enforcement discretion, and a willingness to commit to the new submittal date.

By letter dated March 9, 2012, the NRC requested that TVA provide additional justification for the proposed submittal date. TVA provided the requested information in a letter dated March 20, 2012. Based on the licensee maintaining acceptable compensatory measures and the NRC's review of the licensee's transition status, planned key activities to complete its NFPA 805 LAR, and planned fire risk reduction modifications, the NRC staff has determined that the licensee has provided adequate justification for revising the LAR submittal date.

Therefore, the NRC has determined that the date for submitting an acceptable NFPA 805 LAR should be

extended. This Order is being issued to revise the original TVA LAR submittal date of March 4, 2012, until March 29, 2013. The new submittal date supports TVA's continued progress in activities related to the transition to NFPA 805 and the correction of other previously-identified fire protection noncompliances consistent with regulatory commitments provided in letters dated January 13 and February 17, 2012, and the activities described in the letter dated March 20, 2012.

TVA may, at any time, cease its transition to NFPA 805 and comply with the regulations set forth in 10 CFR Part 50, Appendix R. As indicated in the Enforcement Policy, if TVA decides not to complete the transition to 10 CFR 50.48(c), it must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). If TVA fails to meet the new LAR submittal date and fails to comply with its existing licensing basis, the NRC will take appropriate enforcement action consistent with its Enforcement Policy.

On May 16, 2012, TVA consented to issuing this Order, as described in Section V below. TVA further agreed that this Order will be effective upon issuance and that it has waived its rights to a hearing.

#### **IV**

Based on the licensee maintaining acceptable compensatory measures, and a review of the licensee's status and planned key activities, including the intended NFPA 805 modifications, the NRC has determined that the licensee has provided adequate justification for its commitment given in Section V, and, thus, for the extension of enforcement discretion. Because the licensee will perform modifications, with associated procedure updates, to reduce current fire risk in parallel with the development of their NFPA 805 LAR, the staff finds this acceptable to ensure public health and safety. Based on the above and TVA's consent, this Order is immediately effective upon issuance.

#### **V**

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202, "Orders," *it is hereby ordered, effective immediately, that license nos. DPR-33, DPR-52, and DPR-68 are modified as follows:*

A. TVA will submit an acceptable license amendment request for Browns Ferry Nuclear Plant, Units 1, 2, and 3, to adopt NFPA Standard 805 by no later

than March 29, 2013. TVA will continue to receive enforcement discretion until March 29, 2013. If the NRC finds that the LAR is not acceptable, the NRC will take steps consistent with the Enforcement Policy. The Director of the Office of Enforcement, in consultation with the Director of the Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

## VI

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. 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, 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 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 email 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 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 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 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 email notice confirming receipt of the document. The

E-Filing system also distributes an email 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 agency's adjudicatory E-Filing system may seek assistance by contracting 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 email 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 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, MD 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://www.nrc.gov>.

*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 20 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.

*An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th of May 2012.

**Roy P. Zimmerman,**

*Director, Office of Enforcement.*

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## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2012-0118; Docket No.: 030-37780/030-37868; License No.: 42-29303-01; EA-10-102]**

### **Texas Gamma Ray, LLC, Pasadena, TX; Confirmatory Order (Effective Immediately)**

#### **I**

Texas Gamma Ray, LLC (TGR or Licensee), is the former holder of License No. 42-29303-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 34, on January 6, 2009. The license authorized industrial radiographic operations in accordance

with conditions specified therein. On July 25, 2011, TGR terminated its NRC materials license. Texas Gamma Ray, LLC, holds an Agreement State license authorized by the state of Texas. Therefore, pursuant to 10 CFR 150.20(a)(1), TGR is granted a general license by the NRC to conduct the same activities authorized by its Texas license in areas where the NRC maintains regulatory jurisdiction for the use of radioactive material. Prior to obtaining its NRC materials license, TGR performed licensed activities in offshore Federal waters under its general NRC license at various times during calendar years 2007 and 2008.

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

#### **II**

From June 4, 2009, through November 30, 2010, the NRC conducted a safety and security inspection of the use of byproduct material for industrial radiographic operations conducted under TGR's former NRC license. On July 20, 2009, the NRC's Office of Investigations (OI), Region IV, began an investigation (Case No. 04-2009-066) to determine if TGR willfully failed to provide complete and accurate information to the NRC by: (1) Not disclosing the locations of radioactive materials stored in excess of 180 days at temporary job site, and (2) not disclosing accurate information on the location of where radiography work was dispatched to the field. Also, the investigation was initiated to determine if TGR failed to comply with NRC security requirements, in violation of its license requirements. OI concluded the investigation on May 20, 2010. The NRC did not substantiate that willfulness was associated with the apparent violations.

By letter dated December 22, 2010 (ML103560822), the NRC transmitted the results of the inspection and investigation in NRC Inspection Report 030-37780/2009-001 and Investigation Report 4-2009-066 (ML103560822) to TGR. Enclosure 2 of the letter was not made publicly available because it contained Security-Related Information. Based on the results of the NRC inspection and the evidence developed during the investigation, three apparent violations of NRC requirements were identified. The apparent violations involved the storage of licensed material at a location in Rock Springs, Wyoming, that was not authorized on the license and failures to comply with NRC security requirements that are described in the Appendix to this Order

(Appendix). The Appendix includes Security-Related Information; therefore, it is not publicly available.

On March 2, 2011, the NRC and TGR met in a predecisional enforcement conference (PEC) in Arlington, Texas. During the PEC, TGR provided supplemental information regarding two of the apparent violations. Because of the NRC's concern that willfulness may be associated with these two apparent violations, OI initiated a second investigation (Case No. 4-2011-034) on March 31, 2011. During the second investigation, concluded on November 18, 2011, OI did not identify additional apparent violations. However, based on the information developed during this second investigation, the NRC determined that a TGR radiographer deliberately failed to implement NRC security requirements and deliberately stored radioactive materials at a location not authorized by the license.

By letter dated February 23, 2012, the NRC informed TGR that the NRC was considering escalated enforcement action for the apparent violations. The NRC offered TGR the opportunity to respond in writing, request a PEC, or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with this matter. In response, on March 5, 2012, TGR requested ADR to resolve this matter with the NRC.

On April 23, 2012, the NRC and TGR representatives met in an ADR session with a professional mediator, arranged through the Cornell University 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, Texas Gamma Ray, LLC (TGR), 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 that preliminary agreement are described below, except for those portions of the agreement that include Security-Related Information and, therefore, are not publicly available. The security-related elements of the agreement, as well as those portions of this Order that address those security-related elements, are described in the Appendix to this Order. The following description of the preliminary ADR agreement, and the required actions described in Section V of this Order