

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of
Mr. Anthony Fortuna

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IA-07-069

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Mr. Anthony Fortuna was formerly employed as a contract electrician by General Electric Company at Southern Nuclear Company's Hatch Nuclear Plant from February 16 through March 27, 2006.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) session conducted on June 6, 2008.

II

An investigation was initiated by the NRC Office of Investigations (OI) on September 27, 2006, to determine whether Mr. Fortuna willfully provided materially inaccurate information to the Hatch Nuclear Plant in order to gain unescorted access to the Plant. Based on the evidence developed during the investigation, the NRC staff concluded that on February 6, 2006, in his response to a Personal History Questionnaire, Mr. Fortuna deliberately failed to disclose that he had previously tested positive on an employer's drug test. As a result, he gained unescorted access to the protected area of the Hatch Nuclear Plant from February 16 through March 27, 2006.

In a letter dated March 13, 2008, the NRC staff advised Mr. Fortuna that his actions, as described above, constituted an apparent violation of 10 CFR 50.5, "Deliberate misconduct." This regulation states, in relevant part, that an employee of a contractor for a licensee who provides goods or services that relate to a licensee's activities conducted under 10 CFR Part 50, may not deliberately submit to a licensee or a licensee's contractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The failure to disclose the prior, positive drug test was material because it prevented the licensee (Southern Nuclear Company) from taking the information from this disclosure into consideration when determining Mr. Fortuna's trustworthiness and reliability prior to granting him access to the Hatch Nuclear Plant. The letter also informed Mr. Fortuna that he could address the apparent violation by requesting a predecisional enforcement conference, submitting a response in writing or by requesting Alternative Dispute Resolution (ADR) with the NRC. Mr. Fortuna requested ADR.

III

On June 6, 2008, the NRC and Mr. Fortuna 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. Mr. Fortuna agrees that his actions, as described above, were in violation of 10 CFR 50.5, and he acknowledges the seriousness of this matter and the potential impact

his actions had on the ability of NRC licensees to establish and maintain an effective access authorization program.

2. Should he become involved in licensed activities in the future, Mr. Fortuna agrees to comply with all licensee and regulatory requirements, including the requirement to accurately complete documentation associated with gaining access authorization to NRC licensed facilities.
3. Although Mr. Fortuna acknowledges that his failure to disclose the prior positive drug test was a deliberate act undertaken for the purpose of obtaining employment at the Hatch plant, he also agrees to seek all necessary assistance in gaining clarification of questions contained in access authorization and other licensee supplied documentation required to be completed for employment at the licensee's facility, should he become involved in licensed activities in the future.
4. The NRC and Mr. Fortuna agree that the above elements will be incorporated into a Confirmatory Order.
5. In consideration of the above, the NRC agrees to exercise enforcement discretion to forego issuance of a Notice of Violation to Mr. Fortuna (IA-07-069).

On June 6, 2008, Mr. Fortuna consented to issuance of this Order with the commitments, as described in Section V below. Mr. Fortuna further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Fortuna has agreed to take actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Mr. Fortuna'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 Mr. Fortuna's commitments be confirmed by this Order. Based on the above and Mr. Fortuna's consent, this Order 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:

- a. Should he become involved in licensed activities in the future, Mr. Fortuna agrees to comply with all licensee and regulatory requirements, including the requirement to accurately complete documentation associated with gaining access authorization to NRC licensed facilities.
- b. Although Mr. Fortuna acknowledges that his failure to disclose the prior positive drug test was a deliberate act undertaken for the purpose of obtaining employment at the Hatch plant, he also agrees to seek all necessary assistance in gaining clarification of

questions contained in access authorization and other licensee supplied documentation required to be completed for employment at the licensee's facility, should he become involved in licensed activities in the future

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

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Fortuna, may request a hearing within 20 days of its issuance. 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 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 person other than Mr. Fortuna 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).

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 Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order may, within 20 days of the issuance of this order, in addition to requesting a hearing, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the

need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error. The motion must state with particularity the reasons why the Order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

A request for a hearing or to set aside the immediate effectiveness of this Order must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 Fed. Reg. 49,139) and was codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE 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 EIE system also distributes an e-mail notice that provides access to the document to the NRC 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, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 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. Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a 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. 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 works.

VII

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA Victor M. McCree for/
Luis A. Reyes
Regional Administrator

Dated this 3rd day of July, 2008.