

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 Web site 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 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.

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.

If a person other than the Dhiraj Soni 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 Dhiraj Soni or 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.

Pursuant to 10 CFR 2.202(c)(2)(i), Dhiraj Soni, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, 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.

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 IV 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 IV 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.

Dated this 10th day of February 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9-3627 Filed 2-19-09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[IA-08-023; NRC-2009-0068]

In the Matter of Himat Soni; Order Prohibiting Involvement in NRC-Licensed Activities

I

Himat Soni is the President and part owner of Eastern Testing and Inspection, Inc. (ETI) (Licensee) in Thorofare, New Jersey. ETI holds License No. 29-09814-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 in 1964. The license authorizes possession and use of sealed radioactive sources for use in radiographic exposure devices and in portable gauge devices, and possession and use of radioactive material for shielding for radiographic and source changer equipment in accordance with the conditions specified therein. Himat Soni is listed on the license as the Radiation Safety Officer.

II

An investigation of licensed activities was conducted by the NRC Office of Investigations (OI) at ETI's facility at Thorofare, New Jersey. The OI investigation was completed on October 26, 2007. The investigation was conducted, in part, to determine whether a deliberate violation of an NRC Order issued to ETI (ETI Order), required to be met by May 13, 2006, occurred. Based on information from the investigation, inspection, and after review of a written response from Himat Soni, the NRC concluded that Himat Soni deliberately caused ETI to be in violation of the ETI Order, from May 13, 2006 to November 17, 2006.

As required by the ETI Order, Himat Soni signed an ETI letter that acknowledged the requirements of the ETI Order and specifically addressed the status and anticipated compliance date of May 1, 2006 for those requirements where ETI was only in partial compliance, which included the requirement at issue. In addition, in sworn testimony by Himat Soni, he stated that he understood the ETI Order requirements and date of compliance. He was also informed by a Department of Energy contractor, in a letter dated April 20, 2006, about necessary actions to meet compliance by the May 13, 2006 date. Additionally, Himat Soni was informed by an NRC inspector, in September 2006, of the need to achieve compliance with the requirement found to be in violation. However, Himat Soni deliberately caused ETI, on May 13,

2006, to be in non-compliance, and he deliberately caused ETI to continue to remain in violation of the ETI Order until November 17, 2006, when licensed radioactive material was removed from the ETI licensed facility.

III

Based on the above, the NRC concluded that Himat Soni, President and RSO of the Licensee, engaged in deliberate misconduct that caused the Licensee to be in violation of an NRC Order issued to ETI, and as such, Himat Soni was in violation of 10 CFR 30.10, which states, in part, that any Licensee or employee of a Licensee may not engage in deliberate misconduct that causes a Licensee to be in violation of any rule, regulation, or order issued by the Commission.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to comply with NRC orders. Himat Soni's action in causing the Licensee to violate an NRC Order raises serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health, safety, and interest of the public will be protected if Himat Soni were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Himat Soni be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. Himat Soni is prohibited for one year from the date of the effectiveness of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Himat Soni is currently involved with another entity involved in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone

number of that entity, and provide a copy of this Order to the entity.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Himat Soni of good cause.

V

In accordance with 10 CFR 2.202, Himat Soni must submit an answer to this Order within 20 days of its issuance. If sensitive, security-related information is included in the response, please mark the entire response, "Security-Related Information—Withhold Under 10 CFR 2.390." If the response does not contain any sensitive, security-related information, the NRC will make the response publicly available. Further, to the extent possible, any response provided should not include any personal privacy or proprietary information. In addition, Himat Soni and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. 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.

The answer shall be in writing and under oath and affirmation. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Himat Soni or other person adversely affected relies on the reasons as to why the Order should not have been issued. Any answer shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, *Attn:* Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies shall also be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; Region Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415. A copy of the answer shall be provided to Himat Soni, if the answer is provided by a person other than Himat Soni.

If a hearing request is submitted, the NRC will make the request publicly available. Therefore, the request should not include any security-related, personal, proprietary, or other sensitive information in the hearing request, or, in the alternative, provide a redacted copy of the hearing request that does not

include such information. A copy of the hearing request shall be provided to Himat Soni by the requester, if the request is made by a person other than Himat Soni.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49,139 (Aug. 28, 2007). 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 Web site 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 Web site 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.

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not to include copyrighted materials in their works.

If a person other than Himat Soni 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 Himat Soni or 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.

Pursuant to 10 CFR 2.202(c)(2)(i), Himat Soni, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, 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.

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 IV 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 IV 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.*

Dated this 10th day of February 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9-3625 Filed 2-19-09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-012 and 52-013; NRC-2008-0091]

South Texas Project Nuclear Operating Company Application for the South Texas Project Units 3 and 4; Notice of Order, Hearing, and Opportunity To Petition for Leave To Intervene

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants," notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated September 20, 2007, filed by South Texas Project Nuclear Operating Company (STPNOC) on behalf of itself and its joint applicants, pursuant to Subpart C of 10 CFR Part 52 for a combined license (COL). The application, which was supplemented or revised by letters dated September 26, 2007; October 15, 2007; October 18, 2007; November 8, 2007; November 12, 2007; November 13, 2007; November 21, 2007; January 31, 2008; and September 24, 2008, requests approval of a COL for South Texas Project Units 3 and 4 located in Matagorda County, Texas. The application was accepted for docketing on November 29, 2007. The docket numbers established for this application are 52-012 and 52-013. The South Texas Unit 3 and 4 COL application incorporates by reference, Revision 4, Advanced Boiling Water Reactor (ABWR) design approved in 1997 by the NRC in Appendix A to 10 CFR Part 52.

On December 19, 2007, the staff forwarded, to the Office of the Federal Register, a Notice of Hearing and Opportunity for Leave to Intervene on a Combined License for the South Texas Project Units 3 and 4. By Order dated February 13, 2008, the Commission withdrew that Notice stating that, "the Commission will republish a notice of opportunity for hearing on the Application when the staff is informed, as requested in its January 15, 2008, correspondence to Mr. Mark [McBurnett], Vice President Regulatory Affairs, that South Texas Nuclear