

May 2, 2005

EA-04-170

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$60,000 [NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2004-009] AND NON-CITED VIOLATION [NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2004-005 AND NRC INSPECTION REPORT NOS. 05000373/2004002 AND 05000374/2004002]

Dear Mr. Crane:

This refers to information provided to the U.S. Nuclear Regulatory Commission (NRC) by Exelon Nuclear (Exelon) on January 29, 2004, indicating that four contract employees improperly entered a high radiation area at the LaSalle County Station (LaSalle) on January 25, 2004. The NRC Office of Investigations (OI) investigated the matter and concluded that three contract employees willfully violated radiation protection procedures associated with entry into high radiation areas (HRA).

In a letter dated November 19, 2004, transmitting the Summary of Investigation associated with OI Report No. 3-2004-009, we provided you an opportunity to address the apparent violations identified in the letter and previously documented in NRC Inspection Report Nos. 05000373/2004002 and 05000374/2004002 by either attending a pre-decisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated December 17, 2004, you provided a response to the apparent violations.

Based on the information developed during the NRC inspection and investigation and based on information that you provided in your December 17, 2004, letter, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in the subject inspection and OI investigation report. In summary, on January 25, 2004, a contract foreman and three contract workers were assigned to conduct outage work associated with a valve located in the reactor building. In preparation for the work, the foreman signed in on a radiation work permit (RWP) associated with entry into HRAs located in the turbine and auxiliary buildings but not for entry into the Unit 1 reactor building raceway described below. The three contract workers signed in on a pre-outage RWP associated with minor maintenance activities which did not permit entry into HRAs. During a walk down of the work, the contract workers could not locate the valve, and the foreman took the contract workers into a posted HRA in the Unit 1 reactor

building raceway to locate the valve. Prior to entering the HRA, at least one of the contract workers told the foreman that the contract workers were not signed in on an RWP that permitted entry into HRAs. Before entering the HRA, two of the contract workers were aware that they had not received a briefing by radiation protection personnel for the HRA, a prerequisite for entry into HRAs. Therefore, the actions of the foreman and two contractor workers¹ are considered a willful violation, representing careless disregard of requirements, and the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

In a December 17, 2004, letter, you acknowledged that a willful violation occurred, presented information indicating that the violation should be categorized at Severity Level IV, and indicated that you believed that the violation met the NRC criteria to be categorized as a Non-Cited Violation (NCV). Specifically, you contended that the foreman was a low-level individual and should not be considered a licensee official as defined in Section IV.A of the Enforcement Policy. You also referenced three previous NRC enforcement actions² involving a first-line supervisor willfully causing an NRC licensee to be in violation of regulatory requirements where each prior action was individually categorized as a Severity Level IV violation. In making our decision, we determined that the foreman at LaSalle was responsible for the actions of himself and the contractor employees and that the foreman willfully failed to ensure that both he and the three employees complied with the licensee's radiation protection procedures associated with entry into an HRA. Two of the workers also were aware that entry into an HRA was prohibited prior to completing the licensee's radiation protection procedural requirements.

Regarding the three prior enforcement cases referenced in your letter, we determined that each of the cases involved the willful actions of a supervisor; however, none caused other individuals to violate licensee procedures. In the current case, the foreman's actions caused three other individuals to violate licensee procedures. Additionally, two contract workers were aware of licensee prerequisites for entry into an HRA but did not complete the requirements prior to entering the HRA. As a result, this violation cannot be considered an isolated act of an employee since four employees, one of whom was a foreman, were involved in the violation. After reviewing the information presented in your December 17, 2004, letter and the Enforcement Policy, the NRC concluded that you did not provide a sufficient basis for the NRC to re-categorize the violation at Severity Level IV or issue an NCV. Therefore, this willful violation is appropriately categorized, in accordance with the Enforcement Policy, as a Severity Level III violation.

¹ Information developed by OI indicated that a third contract worker improperly entered the HRA at the same time as the others; however, OI concluded that the actions of the third contractor were not willful.

² The previous enforcement actions referenced by the licensee were: (1) EA-00-057 at Duane Arnold Energy Center, (2) EA-00-075 at the Braidwood Station, and (3) EA-03-153 at the Beaver Valley Power Station.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because the violation was willful, the NRC considered whether credit was warranted for the civil penalty adjustment factors of *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy.

The violation was self-revealed through an event, an alarming dosimeter. While a licensee can be given credit for the *Identification* civil penalty adjustment factor in some circumstances for a self-revealing event, the Enforcement Policy also provides that consideration must be given to, among other things, prior opportunities to identify the problem requiring corrective action and a licensee's efforts to determining the root cause. On balance, credit is not warranted for the civil penalty adjustment factor for *Identification* as three, similar, non-willful violations of radiation protection requirements occurred during the period of December 30, 2003, to January 21, 2004. Specifically, on December 30, 2003, contract workers entered an HRA in the 1A turbine-driven reactor feedwater pump room without receiving a briefing from radiation protection personnel (see also the discussion below). On January 20, 2004, two technicians entered the 1B residual heat removal room HRA without receiving a pre-job briefing from radiation protection personnel and without reviewing and signing the RWP for that area. On January 21, 2004, a craft worker entered the Unit 1 heater bay HRA and had not received a pre-job briefing from radiation protection personnel prior to entering that HRA. These violations constituted sufficient prior notice that employees were not following radiation protection procedures and demonstrated that your staff did not fully address the root cause for the continuing violations.

Credit was warranted for the *Corrective Action* civil penalty adjustment factor. Corrective actions consisted of but were not limited to the following: (1) implementing a requirement for all workers to stop at a radiation protection desk to receive a radiation protection briefing prior to logging onto an RWP that allowed access to an HRA; (2) adding radiation protection control points to challenge workers on their understanding of RWP requirements, HRA compliance, work area understanding, and response to dosimetry alarms; (3) revising the initial radiation worker training to highlight HRA entry requirements and to add worker acknowledgment warnings on computer screens during the access control process; and (4) requiring all transient refueling outage workers to attend and pass a dynamic learning activity on proper HRA entry. Additionally, the contractor emphasized radiological and personnel safety to its craft workers and assigned employees to monitor the preparedness of workers to enter into HRAs.

Therefore, to emphasize the significance of willful violations and the need for prompt identification of and corrective action for 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 base amount of \$60,000 for the Severity Level III violation.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation, and the date when full compliance was achieved, is already addressed on the docket in your December 17, 2004, letter. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 unless the description in your letter does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the

enclosed Notice. However, you are required to either pay the proposed civil penalty or respond in accordance with the instructions in the enclosed Notice.

If you disagree with this enforcement action, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. Alternative Dispute Resolution is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317). Additional copies can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Mr. Nick Hilton, Office of Enforcement, at 301-415-3055 for additional information.

With regard to the prior non-willful violations described above for application of the civil penalty adjustment factor associated with *Identification*, two issues were dispositioned as NCVs in Inspection Report Nos. 05000373/2004002 and 05000374/2004002 as NCV Nos. 05000373/2004-004 (event on January 20, 2004) and 05000373/2004-005 (event on January 21, 2004). NRC OI also investigated the similar issue that occurred on December 30, 2003, when three contract workers entered a posted HRA in the 1A turbine-driven reactor feedwater pump room (OI Report No. 3-2004-005, synopsis enclosed), and concluded that a willful violation of NRC requirements did not occur in that instance. The issue was also described in Inspection Report Nos. 05000373/2004002 and 05000374/2004002 as Unresolved Item No. 05000373/2004002-03. The NRC concluded that the actions of contract workers on December 30, 2003, represented a violation of the LaSalle Technical Specification 5.4.1.b and Section 4.7 of Exelon Procedure No. RP-AA-460, "Controls for High and Very High Radiation Areas." This was evaluated under the risk significance determination process as having very low safety significance (Green). Since the violation was identified by Exelon and entered into the corrective action system as Condition Report No. 192902, the violation is being treated as an NCV consistent with Section VI.A of the Enforcement Policy. If you contest the violation or significance of the NCV, you should provide a response within 30 days of the date of this letter, with the basis for your denial, to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region III, and the NRC Resident Inspector at the LaSalle County Station.

If you have any questions, please contact Steven Orth, Health Physics Team Leader at 630-829-9827.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to respond, should not include any personal privacy, proprietary, or safeguards

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 www.nrc.gov: select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA by Geoffrey Grant Acting for/

James L. Caldwell
Regional Administrator

Docket No. 50-373
License No. NPF-11

- Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
2. Synopsis of OI Report No. 3-2004-005
3. NUREG/BR-0254, Payment Methods (Licensee only)
4. NUREG/BR-0317, Post-Investigation ADR Program (Licensee only)

See Attached Distribution

FILE NAME: G:\EICS\LaSalle EA-04-170 SLIII 60K CP.wpd

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DATE	04/26/05		4/27/05		4/27/05		04/28/05		04/25/05			04/19/05
OFFICE	OE ⁶	E	RIII		RIII	N	RIII	N				
NAME	Nolan		Berson		O'Brien		GGrant for Caldwell					
DATE	04/26/05		04/29/05		4/29/05		5/2/05					

³ Concurrence limited to approving release of synopsis from OI report.

⁴ NRR concurrence provided by Rani Franovich, NRR, on April 25, 2005.

⁵ No legal objection provided on April 14, 2005, by Tyson Smith, OGC

⁶ OE concurrence provided by Chris Nolan, OE, on April 26, 2005.

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Exelon Nuclear
LaSalle County Station, Unit 1

Docket No. 50-373
License No. NPF-11
EA-04-170

During an NRC investigation completed on July 27, 2004, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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 violation and associated civil penalty are set forth below:

LaSalle County Station Technical Specification 5.4.1.a provides, in part, that written procedures shall be established, implemented, and maintained covering the applicable procedures recommended in Regulatory Guide 1.33, Revision 2, Appendix A, February 1978.

Section 7.e.(1) of Appendix A to Regulatory Guide 1.33, "Quality Assurance Program Requirements (Operations)," Revision 2, February 1978, provides, in part, that the licensee establish written procedures to control access to radiation areas including a radiation work permit (RWP) system.

Section 4.7. of Exelon Nuclear Procedure No. RP-AA-460, "Controls for High and Very High Radiation Areas," Revision 4, December 2003, a procedure that implements Regulatory Guide 1.33, provides, in part, that an individual requesting entry into a high radiation area (HRA) review survey data for the applicable area, review and sign the appropriate RWP, and receive a briefing from radiation protection personnel concerning dose rate and low dose area information, tasks allowed to be performed in the area, required dosimetry, alarm set points and maximum stay-times, and proper control of barricades and postings upon entering and exiting the area.

Contrary to the above, on January 25, 2004, four employees (a foreman and three contract workers) of The Venture, a contractor at the LaSalle County Station, entered a posted HRA on the 694-foot elevation of the Unit 1 reactor building raceway, and each employee failed to review the survey data for the specific HRA, review and sign the RWP appropriate to the area, and receive a briefing from radiation protection personnel prior to entering the HRA.

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$60,000. (EA-04-170)

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation, and the date when full compliance was achieved, is already addressed on the docket in your December 17, 2004, letter. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the

Notice of Violation and Proposed
Imposition of Civil Penalty

description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-04-170," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the LaSalle County Station, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

The licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 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. Should the licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. Should the licensee 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-04-170," and may: (1) deny the violation 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 factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply 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. The attention of the licensee 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 due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, 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 response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator and Enforcement Officer, U.S. Nuclear Regulatory Commission, Region III, and a copy to the NRC Resident Inspector at the LaSalle County Station.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days.

Dated this 2nd day of May 2005

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, on January 27, 2004, to determine if three contract workers for The Venture and their foreman deliberately entered areas of the LaSalle Nuclear Station without obtaining the appropriate radiation protection (RP) briefing.

Based upon the evidence developed, this investigation did not substantiate the allegation that three contract workers for The Venture and their foreman deliberately entered areas of the LaSalle Nuclear Station without obtaining the appropriate RP briefing.