

January 6, 2009

EA-08-298

Mr. Charles G. Pardee
President and Chief Nuclear Officer, Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Rd.
Warrenville, IL 60555

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$65,000 (Peach Bottom Atomic Power Station - NRC Investigation Report No. 1-2008-001 and NRC Inspection Report Nos. 05000277/2007404; 05000278/2007404 and 05000277/2007405; 05000278/2007405)

Dear Mr. Pardee:

This refers to an investigation completed by the NRC's Office of Investigations (OI) on July 25, 2008. The purpose of the investigation was to determine if security officers employed by Wackenhut Nuclear Services (WNS) at Exelon Generation Company's (Exelon) Peach Bottom Atomic Power Station (Peach Bottom) were willfully inattentive to duty and failed to adhere to behavioral observation program requirements on multiple occasions during 2007.

In addition to the investigation, the NRC previously inspected and confirmed security officer inattentiveness during an Augmented Inspection Team (AIT) inspection conducted between September 21 and 28, 2007. Your immediate corrective actions for this performance deficiency were also inspected during an AIT Follow-Up inspection conducted between November 5 and 9, 2007. The AIT and AIT Follow-Up inspection reports were issued on November 5, 2007 (ML073090061), and December 21, 2007 (ML073550590), respectively. Based on the results of the inspections, the NRC informed Exelon on February 12, 2008 (ML080440012), of a final White significance determination for the finding identified in the AIT Follow-Up report. The finding involved multiple inattentive security officers in the ready room (a room where security officers not on patrol are allowed to read, study, or eat, but must remain ready to immediately respond), as well as an ineffective behavior observation program, including the failure by a number of the same security officers to report their observations of inattentive or fatigued security officers at your Peach Bottom facility on multiple occasions during 2007. Specific details of the issue and its preliminary significance determination were provided to you in our December 21, 2007, letter transmitting the results of the AIT Follow-Up report. Our February 12, 2008, letter communicating the final White finding noted that you did not contest the significance characterization of the finding and that you declined the opportunity to discuss the matter in a Regulatory Conference or via a written response.

Our February 12, 2008, letter also informed you that the NRC was still reviewing this matter to determine if violations of NRC requirements occurred, and that any enforcement actions associated with these potential violations would be handled by separate correspondence at a later date. This letter forwards the results of that determination and the associated enforcement action.

In a telephone conversation on November 4, 2008, I informed Mr. Ron DeGregorio, Senior Vice President, Mid-Atlantic Operations, that the NRC had completed the subject OI investigation, and based on review of the evidence gathered during the investigation, the NRC had determined that violations occurred involving multiple security officers on multiple occasions who: (1) were inattentive and/or (2) observed inattentive officers and failed to report those officers to management. I also informed Mr. DeGregorio that we concluded that the actions of the WNS security officers placed Exelon in violation of NRC requirements, that some of the officers' actions were deliberate, and that the NRC was considering escalated enforcement action for these violations. Further, I informed Mr. DeGregorio that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from you; but informed you that you may choose to participate in those processes or alternative dispute resolution (ADR). On November 6, 2008, Mr. Keith Jury of your staff informed Mr. Marc Dapas of my staff that Exelon did not believe that a PEC, written response, or ADR was needed.

Therefore, based on the information gathered during the investigation and the referenced inspections, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in this letter, the attached Notice, and the referenced inspection reports. The violations involved failures by the security officers to: (1) be capable of maintaining continuous communication with the security alarm stations, as required by 10 CFR 73.55(f)(1), and be immediately available to respond, as required by 10 CFR 73.55(h)(1), because of their inattentiveness; and (2) report observations of behavior that constituted an unreasonable risk to the health and safety of the public, in accordance with your Operating License and your physical security plan.

The evidence supporting the violations, as well as the determination that the violations, in part, resulted from deliberate acts by the security officers, included a review of video records of activities in the Peach Bottom ready room on March 12, June 6, June 20, and August 10, 2007, and testimony provided by the security officers in the ready room on those dates, as well as testimony of other security officers and station employees. Because Exelon is responsible for the actions of its employees and its contractor's employees, the NRC found Exelon to be in violation of the requirements listed above. Given the underlying security significance and deliberate nature of these violations, they have been categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$65,000 is considered for a Severity Level III problem. Because the violations were determined to be willful, the NRC considered whether credit is warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC concluded that credit is not warranted for *Identification* because the violations were identified after the NRC received information from an external source that the inattentiveness was occurring, resulting in the NRC inspections and OI investigation. In evaluating your corrective actions, we noted that once Exelon was informed of these violations, prompt and comprehensive corrective actions were initiated in order to restore compliance. These actions, in part, included: (1) increased oversight of security performance through direct observations by supervisors and management; (2) transition from a contract security force to a proprietary security force; and (3) expanded extent-of-condition reviews to evaluate other

departments and contractors for safety culture, issue reporting, and attentiveness aids. These actions, and additional corrective actions, are described in detail in previously docketed correspondence, including: (1) our letter, dated August 28, 2008, closing Confirmatory Action Letter 1-07-005 (ML082410183); (2) NRC Deviation Memorandum Inspection Report No. 05000277/2008404, 05000278/2008404, issued April 18, 2008 (ML081090161); (3) NRC Supplemental Inspection Report No. 05000277/2008406, 05000278/2008406, issued August 29, 2008 (ML082420606); and (4) Exelon's response to NRC Bulletin 2007-001, issued February 11, 2008 (ML080440085). As a result, the NRC has determined that credit for *Corrective Action* is warranted in this case.

Therefore, to emphasize the importance of management: (1) assuring that security officers remain attentive to duties at all times and take appropriate action to report others observed to be inattentive; (2) taking actions to preclude deliberate violations of NRC requirements; and (3) taking prompt and comprehensive corrective actions 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 in the base amount of \$65,000 for the Severity Level III problem.

You are required to respond to this letter and the attached Notice pursuant to 10 CFR 2.205 regarding the proposed civil penalty, and should follow the instructions in the enclosed brochure (NUREG/BR-0254). However, you are not required to respond to this letter pursuant to 10 CFR 2.201 regarding your corrective actions, since the NRC has concluded that the information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in this letter; our letter, dated August 28, 2008, closing CAL 1-07-005; and, Inspection Report Nos. 05000277/2007405; 05000278/2007405 (ML073550590) and 05000277/2008406; 05000278/2008406. However, if you choose to provide additional information pursuant to 10 CFR 2.201 regarding your corrective actions, you should follow the instructions specified in the enclosed Notice.

If you disagree with this enforcement sanction, you may also request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's ADR program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral party. 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, 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>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Should you have any questions concerning this letter, please contact Ms. Marsha Gamberoni, Director, Division of Reactor Safety, Region I, at (610) 337-5126.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket Nos.: 05000277, 05000278

License Nos.: DPR-44, DPR-56

Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254
3. NUREG/BR-0317

cc w/encl:

Chief Operating Officer, Exelon Generation Company, LLC
Site Vice President, Peach Bottom Atomic Power Station
Plant Manager, Peach Bottom Atomic Power Station
Regulatory Assurance Manager - Peach Bottom
Manager, Financial Control & Co - Owner Affairs
R. DeGregorio, Senior Vice President, Mid-Atlantic
Senior Vice President - Operations Support
Director, Licensing and Regulatory Affairs
J. Bradley Fewell, Assistant General Counsel, Exelon Nuclear
Manager Licensing, PBAPS
Director, Training
Correspondence Control Desk
D. Allard, Bureau of Radiation Protection, Department of Environmental Protection
R. McLean, Power Plant and Environmental Review Division (MD)
S. Pattison, Maryland Department of Environment
A. Lauland, Maryland Department of Environment
T. Snyder, Maryland Department of Environment
Public Service Commission of Maryland, Engineering Division
Board of Supervisors, Peach Bottom Township
B. Ruth, Council Administrator of Harford County Council
R. Ayers, Harford County Emergency Management
E. Crist, Harford County Emergency Management
L. Ploener, Harford County Emergency Management
Chief R. K. Brooks, Cecil County Emergency Management
Mr. & Mrs. Dennis Hiebert, Peach Bottom Alliance
E. Epstein, TMI - Alert
J. Johnsrud, National Energy Committee, Sierra Club
Mr. & Mrs. Kip Adams
R. Fletcher, Department of Environment, Radiological Health Program
J. Powers, Director, PA Office of Homeland Security
R. French, Dir, PA Emergency Management Agency
D. Lochbaum, Union of Concerned Scientists

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Sincerely,

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Samuel J. Collins
Regional Administrator

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2. NUREG/BR-0254
3. NUREG/BR-0317

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OFFICE	RI/OI		RI/RC		RI/ORA		HQ/NSIR		HQ/NRR	
NAME	*EWilson		*KFarrar		*DHolody				*FBrown	
DATE	11/19/08		11/19/08		12/17/08		12/17/08		11/26/08	
OFFICE	HQ/OGC		HQ/OE						RI/RA	
NAME	*MBarkman		*CCarpenter						SCollins	
DATE	12/16/08		12/17/08						01/06/08	

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*see previous concurrence page

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Exelon Generation Company, LLC
Peach Bottom Atomic Power Station

Docket No. 50-277, 50-278
License No. DPR-44, DPR-56
EA-08-298

As a result of an NRC Office of Investigations (OI) investigation completed on July 25, 2008, and NRC inspections completed on September 28 and November 9, 2007, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, 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. These particular violations and the associated civil penalty are set forth below:

- A. 10 CFR 73.55 provides requirements for the physical protection of licensed activities in nuclear power reactors against radiological sabotage.

10 CFR 73.55(f)(1), Communications requirements, requires that each guard, watchman, or armed response individual on duty shall be capable of maintaining continuous communication with an individual in each continuously manned alarm station required by paragraph (e)(1) of this section, who shall be capable of calling for assistance from other guards, watchman, and armed response personnel and from local law enforcement authorities.

10 CFR 73.55(h)(1), Response requirement, requires that each licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage. The Peach Bottom safeguards contingency plan requires armed responders to be immediately available to respond.

Contrary to the above, on multiple occasions prior to August 2007, armed response individuals on duty were, at times, not capable of maintaining continuous communication with an individual in each continuously manned alarm station and were not capable of following the NRC-approved safeguard contingency plan in that they were not immediately available to respond. Specifically, multiple security officers at Exelon's Peach Bottom Atomic Power Station, who were posted as members of the response team in the ready room, were inattentive to duty, some deliberately.

- B. License Condition, 2.C(3) of the Peach Bottom Atomic Power Station Operating License states, in part, that the Exelon Generation Company shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans.

The Peach Bottom Atomic Power Station Security Plan, Section 4, states, in part, that facility procedures document the structure of the security organization and detail the duties of armed security officers, unarmed security officers, and other individuals implementing the security plans.

Exelon Procedure SY-AA-103-513, "Behavioral Observation Program," Revision 6, Section 3.1, states, in part, that individuals are responsible for reporting to their supervisor instances where a fellow worker's actions are observed to be unsafe or any

observed behavior indicating degradation in performance or impairment which may constitute an unreasonable risk of the health and safety of the public. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.

Contrary to the above, on multiple occasions prior to August 2007, Exelon did not fully implement all provisions of the Commission-approved physical security plan. Specifically, at various times, multiple security officers observed behaviors in themselves or fellow officers who were inattentive, indicating degradation in performance or impairment, in the Peach Bottom Atomic Power Station ready room, and did not report the observed behavior to their supervisor, some deliberately.

This is a Severity Level III problem (Supplement III).
Civil Penalty - \$65,000 (EA-08-298)

The NRC has concluded that the information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in the letter transmitting this Notice, in Inspection Report Nos. 05000277/2007405; 05000278/2007405 and 05000277/2008406; 05000278/2008406, and in the NRC letter dated August 28, 2008, closing Confirmatory Action Letter 1-07-005. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation under 10 CFR 2.201 describing your position or actions. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation (EA-08-298)," and send it to the 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, U.S. Nuclear Regulatory Commission, Region I, and a copy to the NRC Resident Inspector at Peach Bottom.

Exelon 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 Exelon fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should Exelon 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" and may: (1) deny the violations 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 response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided 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 Exelon 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 which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, 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 responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, 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, U.S. Nuclear Regulatory Commission, Region I, and a copy to the NRC Resident Inspector at Peach Bottom.

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), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 6th day of January 2009.