Title: BYRON NUCLEAR GENERATING STATION

DELIBERATE DISCRIMINATION AGAINST AN
FOR RAISING SAFETY CONCERNS RELATING
TO A

RELATING TO AN
OF HARASSMENT AND INTIMIDATION

Licensee:

Exelon Generation
4300 Winfield Road
Warrenville, IL 60555

Docket No.: 50-454

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SYNOPSIS

This investigation was initiated on January 29, 2001, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if a former [redacted] at the Byron Nuclear Generating Station had been discriminated against for raising safety concerns.

Allegation 1: Deliberate Discrimination Against an [redacted] for Raising Safety Concerns Relating to a [redacted]

Based on the evidence developed, the investigation did substantiate the allegation of deliberate employment discrimination against the former [redacted] by a former Nuclear Oversight Vice President.

Allegation 2: Discrimination Against an [redacted] for Raising Safety Concerns Relating to an [redacted] of Harassment and Intimidation

Based on the evidence developed, the investigation did not substantiate the allegation of employment discrimination against the former [redacted]

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LIST OF INTERVIEWEES

Exhibit No.

[redacted]

Byron Nuclear Generating Station (Byron) 2

BOOK, Raymond R., Jr., Corporate Employee Concerns Investigator, Exelon Generation (Exelon) 26

BROCCOLO, Eugene A. (Tony), Jr., Director, Nuclear Oversight for the Midwest Regional Operating Group (ROG), Exelon 19

[redacted] 9

DEPPI, Robert, former Manager, Nuclear Oversight, Byron 18

HEFFLEY, J. Michael, Site Vice President, Clinton Nuclear Generating Station (former Vice President, Nuclear Oversight, Exelon) 14

HELWIG, David R., Executive Vice President of Operations for ComEd Energy Delivery, Exelon (former Vice President Nuclear Support and Services) 28

LANDY, Richard J., Vice President, Human Resources, Exelon 21

LAWSON, Steve, former BWR Outage Manager, Byron 12

LEVIS, Bill, Vice President, Limerick Nuclear Generating Station, Exelon (former Plant Manager and Site Vice President, Byron) 22

MARINI, Thomas R., Corporate Employee Concerns Investigator for Midwest ROG, Exelon 25

MOSER, Karl, Manager, Chemistry Department, Quad Cities Nuclear Generating Station, (former Nuclear Oversight Supervisor, Exelon) 29

SNOW, William M., Outage Management Consultant, Framatome (former Director of Outage Management and Services, Exelon) 27

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WINCHESTER, Dennis A., Director, Nuclear Oversight Programs, Exelon (former Executive Assistant to the Nuclear Oversight Vice President) 20

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DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 50.7: Employee Protection
10 CFR 50.5: Deliberate Misconduct
42 U.S.C. 5851: Section 211 of the Energy Reorganization Act of 1974

Purpose of Investigation

This investigation was initiated on January 29, 2001, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region III (RIII), to determine if a former Employee Concerns Administrator at the Byron Nuclear Generating Station (Byron) had been discriminated against for raising safety concerns.

Background (Exhibit 1)

On June 26, 2000, [redacted] at Byron, notified the NRC that he was [redacted] was the result of his [redacted] identification of negative findings regarding the safety conscious work environment in the Byron [redacted] felt he wasn't selected for an [redacted] This issue is identified as Allegation 1.

Agent's Note: Mike HEFFLEY, former Vice President of Nuclear Oversight, was subsequently determined to have been the selecting official for the [redacted] position [redacted] applied for.

[redacted] also felt David HELWIG, Senior Vice President, whom [redacted] may have been instrumental in [redacted] not being selected for a [redacted] position within the Commonwealth Edison Company (ComEd) (now Exelon) system. This issue is identified as Allegation 2.

On January 29, 2001, an Allegation Review Board (ARB) requested that OI initiate an investigation to determine whether [redacted] was discriminated against for raising safety concerns by preventing his placement in another employment position within ComEd, in violation of 10 CFR 50.7.

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Interview of Alleger (Exhibit 2)

[redacted] former [redacted] Byron, held this position from [redacted] His former supervisor was [redacted] (Exhibit 2, pp. 5, 7-9).

Agent's Note: [redacted]

Regarding the first allegation, [redacted] (Exhibit 2, pp. 25, 27-28; Exhibit 3, p. 1; Exhibit 4, p. 1; Exhibit 5, p. 1; Exhibit 6, p. 1).

[redacted] said he had known for about a year prior to the [redacted] position being eliminated that this was going to occur (due to Exelon's merger with Philadelphia Electric Company (PECO) and their joint subsequent reorganization). As a result, [redacted] began to pursue other employment opportunities within the company, including formally applying for one of the two [redacted] positions on [redacted] which the company was going to keep [redacted] applied for this position with HEFFLEY. [redacted] said he was interviewed for this position by HEFFLEY, but HEFFLEY said he did not have to sit down and talk with him. [redacted] said HEFFLEY questioned [redacted] on why didn't he [redacted] (Exhibit 2, pp. 10-11, 39, 61-62; Exhibit 7, p. 1).

Agent's Note: HEFFLEY's comment referred to by [redacted] appears out of place, since [redacted] never reported to HEFFLEY, but to [redacted] while [redacted]

Regarding the second allegation, [redacted] said [redacted] spoke with Steve LAWSON, Corporate Project Manager, Turbine Services, who asked [redacted] to have [redacted] send in a resume, which [redacted] did on [redacted] said, however, there was no position posted at that particular time. As [redacted] understood from LAWSON, HELWIG, Ted JENNINGS, Vice President, Business Services, and LAWSON's supervisor, Bill SNOW, may have been involved in the job selection process. Subsequently [redacted] said the last

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time he spoke with LAWSON, he told [redacted], "you might want to just keep looking in your area." What bothered [redacted] about this was that he had [redacted] on HELWIG [redacted] HELWIG, [redacted] had no evidence to support that because of this [redacted] HELWIG took any action against [redacted] getting selected for a [redacted] position (Exhibit 2, pp. 41, 44, 46, 48-51, 54; Exhibit 8, pp. 1-3). 7C

[redacted] said he never received anything back in writing regarding either the [redacted] position (Exhibit 2, p. 65). 7C

Coordination with NRC Staff

On January 29, 2001, an ARB was held and requested that OI investigate the employment discrimination complaint to determine if [redacted] had been discriminated against. 7C

Coordination with the Regional Counsel

This investigation was initiated with [redacted] 5

Document Review

Review of [redacted] Assessment Reviews

[redacted] mid-year review of [redacted] (Exhibit 16, p. 1). 7C

[redacted] (Exhibit 16, pp. 2-4). 7C

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Event Log

[redacted] provided an "Event Log" that has a time line from his perspective relevant to his employment discrimination complaint. [redacted] was interviewed by HEFFLEY for the [redacted] position on [redacted] was contacted by Dennis WINCHESTER, former Executive Assistant to HEFFLEY, on [redacted] informing [redacted] why he was not selected for the [redacted] position. The reasons given where [redacted] was lacking included: (1) past or previous manager experience; (2) maturity and managerial experience to deal with executives; (3) interface with high level managers/officials of the NRC; and (4) willingness to move to the Mid-Atlantic ROG (Exhibit 10, pp. 1, 3, 8; Exhibit 30, pp. 1-3).

> Agent's Note: [redacted] that [redacted] has experience in working with three Site Vice Presidents; and has appraised senior and executive management of options to remedy programmatic weaknesses, including communicating significant issues and trends in a timely and thorough manner (Exhibit 7, pp. 1-3; Exhibit 16, pp. 1-3).

Narrative Report

[redacted] provided a "Narrative" report that included details about the concerns he had regarding his employment discrimination complaint. By letter dated [redacted] this [redacted] and reported the results to the Byron Site Vice President, LEVIS, on or about [redacted] The results were [redacted] LEVIS was reluctant to accept the results based on the [redacted] and discussion [redacted] and LEVIS had [redacted] more questioning and obtained more documentation to support [redacted] learned that [redacted] was going to "look into the [redacted] issue." [redacted] was asked to cooperate with and to meet with Bob DEPPI and Karl MOSER, which he did on or about [redacted] was questioned in great depth as to the number of people who would [redacted] After about 2 to 2½ hours of meeting with DEPPI and MOSER, [redacted] felt this meeting was like an "interrogation" of him. Subsequently, WINCHESTER filled in for DEPPI and met with [redacted] along with MOSER. MOSER was new to this type of assessment and quality area. On [redacted] was asked to provide a briefing on the [redacted] to Rich LANDY, Vice President of Human Resources and Administration, Rod KRICH, Regulatory Services Vice President, and Bob HELFRICH, Attorney. At the end of

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the briefing, LANDY agreed with the [redacted] (Exhibit 4; Exhibit 11, pp. 1-2, 5-6). 7C

[redacted] 7E

Comparison of Resumes of [redacted] and [redacted] 7C

[redacted] was the candidate selected for the [redacted] position. OI's review of [redacted] and [redacted] resumes indicates the following:

[redacted] had been employed with [redacted] 7C

[redacted] Prior to [redacted] current position of [redacted] that became effective on [redacted] he had been the [redacted] since [redacted] held other manager/supervisor positions beginning in [redacted] (Exhibit 23, pp. 9-11; Exhibit 25, p. 7).

In comparison, [redacted] began his employment with [redacted] held the position of [redacted] was an [redacted] was assigned various [redacted] 7C

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[redacted] (Exhibit 7, pp. 1-3).

Agent's Note: [redacted]

Chilled Environment Concerns at Byron

By letter dated September 2, 1999, the NRC documented the results of a May 27, 1999, public meeting held between ComEd and the NRC. The NRC stated in the letter, "We agree that there was a chilled environment within the operations department that was not conducive to a safety conscious work environment." The NRC documented that ComEd staff stated there had been significant management personnel changes at Byron and the new management team was committed to maintaining a work environment conducive to raising nuclear safety issues. Corrective actions included performing an additional assessment of the safety conscious work environment. In ComEd's letter dated January 24, 2000, ComEd provided the results of their assessment, changes to the licensee Corrective Action program, and also provided an historical perspective of safety conscious work environment/chilled environment concerns that had been of issue to the NRC. By NRC letter dated March 31, 2000, Exelon was advised that the NRC continued to have concerns with Byron's safety conscious work environment and will continue to monitor this area (Exhibit 32, p. 3; Exhibit 33, pp. 1-9; Exhibit 34, p. 2).

Review of [redacted] Candidate Summary Forms

Exelon interviewers of prospective job candidates complete a "Candidate Summary" form on each candidate interviewed. Exelon contracted with an outside firm to assist in evaluating and/or providing insight on prospective [redacted] candidates. OI requested the Candidate Summary forms filled out by the interviewers of [redacted] position, however, Exelon was unable to produce these records (Exhibit 30).

[redacted] was interviewed by an outside contract representative, Rebecca PIGOTT, RHR International. PIGOTT completed a Candidate Summary form on [redacted], dated [redacted] recommending [redacted] for selection to the [redacted] position. For each Core Leadership Competency category, PIGOTT rated [redacted] as having a "Strength" in seven categories, and as "Competent" in eight other categories. PIGOTT did not rate [redacted] as "Needs Development" in any category, which was the remaining and lowest rating (Exhibit 30, p. 3).

HEFFLEY's completed Candidate Summary form of [redacted] dated [redacted] shows he did not recommend [redacted] for selection to the [redacted] position.

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HEFFLEY marked [redacted] as "Competent" in seven categories; "Needs Development" in seven categories; one category was not rated; and did not rate [redacted] as having any "Strengths" (Exhibit 30, pp. 1-2).

U.S. Department of Labor Information

[redacted] did not file an employment discrimination complaint with the U.S. Department of Labor.

Evidence

The individuals shown in the List of Interviewees section of this report were interviewed concerning the employment discrimination complaint(s) filed by [redacted]

Analysis of Evidence

Allegation 1: Deliberate Discrimination Against an [redacted] for Raising Safety Concerns Relating to a [redacted]

1. Protected Activity

[redacted] at Byron during approximately [redacted] Reports of the [redacted] (Exhibit 2, pp. 25, 27-30; Exhibit 5, p. 1; Exhibit 6, p. 1; Exhibit 17).

2. Knowledge of [redacted]'s Protected Activity

[redacted] discussed the [redacted] with LEVIS and [redacted] In addition, HEFFLEY learned of thi [redacted] and mentioned it to [redacted] during his (HEFFLEY's) interview with [redacted] on [redacted] (Exhibit 2, pp. 31-33).

LEVIS asked [redacted] (Exhibit 22, pp. 10, 12).

HEFFLEY noted that he was aware of the [redacted] when he stated, "There was [redacted]

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[redacted] HEFFLEY said he personally read the [redacted] report. HEFFLEY said he spoke with LEVIS about the [redacted] (Exhibit 14, pp. 13, 17-19).

LANDY received a call from LEVIS asking LANDY to go over the [redacted] questioning whether the facts and statistical information supported the conclusions. LANDY read the report and had trouble understanding it. LANDY thought [redacted] did his best to do a good review. LANDY's recommendation was that a deeper, more comprehensive review was necessary, that the [redacted] "was sort of superficial." LANDY wanted to bring in a team of really experienced people (Exhibit 21, pp. 21-25).

DEPPI worked with [redacted] for the first time at Byron when DEPPI was asked (believed to be by HEFFLEY or LEVIS) to follow-up on the [redacted] completed, maybe 6-8 weeks after DEPPI arrived on-site at Byron (approximately [redacted]) DEPPI said he felt the report was superficial and needed to be more in depth to get to whether it was a perception or a reality (Exhibit 18, pp. 14-16, 46-47).

Agent's Note: [redacted] (Exhibit 4).

WINCHESTER received a phone call from HEFFLEY around the end of May to early July time frame. During this phone call, HEFFLEY told WINCHESTER that he (WINCHESTER) had been requested by LEVIS to follow-up on [redacted] at Byron. WINCHESTER said when LEVIS looked at the report, there were still open questions in his mind (Exhibit 20, pp. 12-14).

MOSER was assigned to conduct an independent assessment of the [redacted] to determine if, [redacted] as was raised by [redacted] MOSER talked to [redacted] and saw [redacted] "somewhere, midway through [redacted] (Exhibit 29, pp. 6-7, 9).

Agent's Note: [redacted]'s recollection of the meeting with MOSER and DEPPI was documented in a "Narrative Report," which indicated [redacted] met with them on either [redacted] was questioned in great depth as to the number [redacted] stated, "After about 2-2½ hours of what turned out to feel like an interrogation, I left the meeting at approximately 4:00 PM" (Exhibit 11, pp. 5-6).

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BROCCOLO had no real involvement relating to the [redacted] conducted, since this was not his area of responsibility until BROCCOLO took over the position of Director of Nuclear Oversight in September/October 2000. He then became aware of [redacted] (Exhibit 19, pp. 9-11).

3. Unfavorable Action Taken Against [redacted]

[redacted] believed that because he [redacted] he was retaliated against and not selected for the [redacted] position (Exhibit 2, pp. 5, 48-51, 103; Exhibit 3, pp. 1-2; Exhibit 23, pp. 13-16).

4. Did the Unfavorable Action Result from [redacted] Engaging in a Protected Activity

[redacted] which was a result of the PECO/Exelon merger reorganization. [redacted] was not involved in the decision-making process (Exhibit 9, pp. 11-12, 31-32).

HEFFLEY held the Nuclear Oversight position for about a year, from about January 2000 until January 2001. HEFFLEY put the Nuclear Oversight organization [redacted] reported to Human Resources, so HEFFLEY had a couple of discussions with LANDY (Vice President, Human Resources), but he (LANDY) was not involved in making the selection. HEFFLEY was the selecting official with recommendations from BROCCOLO (former Independent Assessment Manager), who was his direct assistant in that ROG, and the Nuclear Oversight Managers, including specifically DEPPI (former Manager, Nuclear Oversight, Byron). BROCCOLO denied providing any performance input on [redacted] to any of his supervisors, including HEFFLEY. BROCCOLO was not involved in the decision making or interviewing process for selecting the [redacted] but indicated that HEFFLEY was the selecting official. BROCCOLO did not look through the candidates' resumes to determine if he would have also selected [redacted] HEFFLEY said DEPPI gave him feedback on what he saw, even though it was poor timing and DEPPI hadn't been at Byron long. DEPPI reported directly to BROCCOLO and indirectly to the Site Vice President, Station Manager (LEVIS). DEPPI came to the Byron site around April 2000, and had no involvement in the selection process or of being involved in any conversations that discussed the candidates' attributes for the [redacted] DEPPI denied providing any

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input to HEFFLEY relating to the selection to fill these positions, but said he did have a couple of discussions with HEFFLEY and/or BROCCOLO about [redacted] DEPPI said he felt the [redacted] was superficial and needed to be more in depth to get to whether it was a perception or a reality, and needed recommendations. According to DEPPI, in June 2000, [redacted] admitted not seeing [redacted] or of having any discussions with [redacted] on overseeing his [redacted] DEPPI said he was not aware of any other Nuclear Oversight Managers who had input into the selection process. The selection criteria for the [redacted] according to HEFFLEY. HEFFLEY said input on the selection of the [redacted] was also obtained from an outside contractor looking for promotability and "concerns about people being employed in those different positions" (Exhibit 14, pp. 3-13, 25; Exhibit 18, pp. 10-11, 38-41, 47-48, 52; Exhibit 19, pp. 9, 14, 16-19).

> Agent's Note: Contrary to DEPPI's testimony that [redacted] admitted not seeing [redacted] or of having any discussions with [redacted] on overseeing the [redacted] testified [redacted] had discussions with [redacted] so as to have a clear understanding of [redacted] testified [redacted] not only provided input to [redacted] this investigation, but made some changes to what was going to be asked during the [redacted] said it was determined that [redacted] because it was felt to be necessary (Exhibit 9, pp. 36-37).

LEVIS wanted to know what the specific issues in the [redacted] LEVIS felt there were perceptions that [redacted] had, but he was trying to get to the specifics so the proper corrective actions could be formulated and taken. LEVIS didn't think [redacted] contained what LEVIS called "actionable items" that could be fixed, so LEVIS was interested in an [redacted] LEVIS discussed this [redacted] with HEFFLEY, about needing more information to figure out what action to take. LEVIS received three or four distinct corrective actions to take, [redacted] LEVIS did not disagree with the data that was presented in [redacted] but wanted to find out what it meant. LEVIS didn't understand how the conclusion was reached without more information. LEVIS stated, "The fixes lie in understanding the issues, [redacted] (Exhibit 22, pp. 21-22, 25, 28-30, 32, 37).

According to LEVIS, a [redacted] or not was, "would [redacted] When LEVIS was asked the difference between using the terminology of undesirable precursors (used in LEVIS'

September 18, 2000, letter to the NRC) versus saying a LEVIS stated, "we found in a follow-up look by that there were some specific communication issues in the department that needed to be addressed. Given where we were at that time, we felt that those issues were unchecked. In fact, some issues could result in LEVIS noted that past periodic didn't agree directly with so it was another piece of conflicting data that LEVIS had to resolve. LEVIS was asked if there was a concern that the actions that the company had been taking to were not effective if conclusion were to stand. LEVIS responded, ". . . I mean, would I be at all surprised if someone could draw that conclusion? I don't think so, but you know, from where I sit and my responsibilities, I've got to go fix this" (Exhibit 22, pp. 25, 28-30, 32, 37).

LEVIS and WINCHESTER were not involved at all in the process of selecting the positions. LEVIS did not provide any input to anyone on this matter or on performance. LEVIS did not make any recommendation to HEFFLEY not to select for an position (Exhibit 20, pp. 39-40; Exhibit 22, pp. 33-36, 38).

LANDY said he received a phone call from LEVIS questioning whether had sufficient facts to support his conclusions and asked LANDY to look the over. According to LANDY, this was not unusual since to him. LANDY said he had trouble understanding and met with and to discuss the LANDY said brought more data, which was helpful, and they met for about 1-2 hours to discuss the LANDY said it was hard to get comfortable with some of the conclusions with certain of the data that was used. In the end, LANDY concluded a "deeper . . . and more comprehensive" review was necessary. LANDY wanted experienced people from "to sort of take this data and then add to that by getting some more data, it's a to help us find out what's going on and what we should do to sort of get this thing turned around" (Exhibit 21, pp. 21-24).

> Agent's Note: Rather than review the with a "more comprehensive" overall review and "add to that . . . data'" the , and of most significance, changed conclusion that a [redacted] to the [redacted] was not [redacted] A review of the questions asked versus the questions asked by in the did not appear all that different. The questions asked do not appear any more in-depth in comparison to the questions asked by

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WINCHESTER was contacted by HEFFLEY, his boss, at the request of LEVIS, requesting that [redacted] determine what specific actions need to occur involving a [redacted] issue. WINCHESTER, in about the end of May to early July (2000), worked with DEPPI and MOSER "to really mentor them through this and help them determine the focus, get the scope, point them in the right direction." The message WINCHESTER received was LEVIS "didn't know what to go after to fix. It was just this grandiose statement there's a [redacted] MOSER and WINCHESTER met with [redacted] to understand how [redacted] the statement that a [redacted] WINCHESTER did not question [redacted] nor intend to discredit [redacted] WINCHESTER stated the [redacted] was questioning, "Where do we need to focus this assessment at? We don't want to have to go back in there and do everybody in training." MOSER's understanding was that LEVIS "had . . . great concern (with [redacted] because it talked about a [redacted] MOSER was asked to go out and add more detail, "validate that the conclusions that [redacted] had was accurate or not." WINCHESTER was given a [redacted] without the findings of fact section (summary and recommendations were also not included) that he thought was from the [redacted] that [redacted] had presented to LEVIS. According to WINCHESTER, [redacted] was able to get the numbers to substantiate the population and the percentage that showed how he reached those kinds of conclusions (Exhibit 20, pp. 7, 12-25, 27-28, 44; Exhibit 29, pp. 12-13).

WINCHESTER said as a result of the meeting with [redacted] it was decided to focus on the [redacted] MOSER was tasked with conducting the interviews of the [redacted] WINCHESTER identified a [redacted] memo from MOSER to HEFFLEY as the [redacted] results of the [redacted] MOSER indicated that the "operations group" was focused on because that was the [redacted] WINCHESTER indicated MOSER and DEPPI were the ones who did the assessment and wrote the [redacted] and he (WINCHESTER) commented on the [redacted] at the end. MOSER felt his questions went deeper than those of [redacted] The [redacted] concluded that the [redacted] listed in the [redacted]

[redacted]
(Exhibit 20, pp. 18-25, 27-28, 44; Exhibit 24, p. 1; Exhibit 29, pp. 10, 12-13, 33).

Agent's Note: A review of the recommendations and conclusions in [redacted] shows similarities to three of the five [redacted] significant bulleted issues as follows: [redacted]

MOSER thought "the conclusions he [redacted] arrived at and the conclusions I (MOSER) arrived at were not that different, so I thought he did a fairly good job." MOSER characterized his results of the findings as "management" issues, whereas MOSER characterized [redacted] MOSER denied there was any intent to come to a different conclusion in the [redacted] than the [redacted] (Exhibit 29, pp. 17-19, 34).

WINCHESTER denied the [redacted] questioned any of the data that was in the [redacted] When WINCHESTER was asked if he took exception to any portion of the [redacted] (he reviewed), WINCHESTER stated, "No. Our charter was not to challenge or question the [redacted] It was like where do we go focus . . . We were not there under any pretense to challenge that [redacted] results or conclusions. It was merely find out what we can bring back to Byron Management to fix this issue" (Exhibit 20, pp. 26, 30).

Ray BOOK, Corporate Employee Concerns Investigator, Exelon, was interviewed on his last day with Exelon after 21 years of employment. BOOK said he was being terminated. BOOK said he has known [redacted] for 20 years, from when BOOK started to work at Dresden and [redacted] BOOK denied reviewing any of [redacted] from the [redacted] at Byron or of any involvement related to the [redacted] that was done at Byron during the [redacted] BOOK said he was involved in a [redacted]

[redacted] done at Byron that cut across all the disciplines at the site, beyond just the [redacted] The [redacted] was geared toward the safety conscious work environment to look at what the culture was across the site. BOOK said MOSER was the leader of the [redacted] team and the team reported to WINCHESTER at that time, who reported to HEFFLEY. The [redacted] conclusion basically was that there wasn't a problem with the safety conscious work environment (Exhibit 26, pp. 5-6, 9-14).

BOOK indicated interviewing was the only method used to gather data for this assessment. BOOK said he was the one who did the analysis and prepared the report. BOOK denied having any concerns about the data for that report being manipulated in any way, especially since he was the individual who completed the data analysis. BOOK said this was the only [redacted] he had compiled the data for. BOOK denied being aware of anyone manipulating data on any [redacted] (Exhibit 26, pp. 15, 22-24).

Agent's Note: [redacted] had claimed he learned that BOOK was pressured and knew of [redacted] that occurred to a [redacted] that came to a [redacted] than [redacted] on the same [redacted]

When WINCHESTER was questioned about the licensee's [redacted] letter to the NRC, that indicated [redacted] and Human Resource management determined there were "undesirable precursors" identified in the [redacted] WINCHESTER stated, [redacted] (Exhibit 20, pp. 30-32; Exhibit 31; p. 4).

[redacted]

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WINCHESTER informed that he wasn't selected for either of the positions and why he wasn't selected, based on the reasons HEFFLEY told WINCHESTER. WINCHESTER also advised (Quad Cities) and (Braidwood), two other applicants for the positions. WINCHESTER identified the criteria that HEFFLEY was looking for was recent managerial experience, because these positions were going to be like self-directed positions; another criteria was diversity; and the last was the willingness to go to the east coast. did not have the recent requisite managerial experience, nor were they willing to relocate, according to WINCHESTER. WINCHESTER said, had recently held the manager positions at (Exhibit 20, pp. 38, 42, 46-48).

> Agent's Note: testified he told HEFFLEY that due to family concerns at the time of interview, he wasn't able to relocate, but would like to at some time (Exhibit 2, p. 107).

WINCHESTER believed everyone in the would no longer exist under the new organization plan, but that was going to take their place (Exhibit 20, pp. 58-59).

In June 2000, DEPPI was asked to look into report, so DEPPI reviewed the report and interviewed DEPPI said the validated some of initial statistics, however, in his opinion did not go to the second or third level with his questioning and methodology to determine

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DEPPI said the [redacted] concluded that there were communication issues that could be improved. DEPPI said if a [redacted] had been determined to exist, it would have been necessary to replace the responsible individuals and perform a reorganization. When DEPPI was asked why the [redacted] only included [redacted] whereas [redacted] DEPPI stated in part, "We [redacted] looked at their basically [redacted]. We looked at where we believed, based on [redacted] the problem may lie, and wanted to get specific and get deeper into, say, is it a perception or is it a reality, and would people raise issues, not raise issues, that kind of thing. So there was a specific part of the organization that we went and looked at [redacted] DEPPI estimated that the [redacted] took up to about [redacted] to perform, maybe a little [redacted] (Exhibit 18, pp. 14-15, 27-29, 32-33, 35-36).

HEFFLEY, without prompting, stated, "There was an [redacted] about that time period . . . There was a [redacted] going on at Byron specifically on some issues associated, I think, with [redacted] However, HEFFLEY denied that [redacted] was not selected for the [redacted] position because of [redacted] When HEFFLEY was asked what input he received from DEPPI specifically, HEFFLEY stated, "Would have been like I said, mostly feedback on [redacted] himself, again I'm, you're trying to go through, you know you have people acting in these roles right now." HEFFLEY said DEPPI was very negative about [redacted]'s performance associated with the way that he handled and communicated [redacted] When HEFFLEY was asked to articulate what specifically was negative, HEFFLEY stated, "Yes, I think the [redacted] came in again fairly early, but read the [redacted] I didn't think his [redacted] HEFFLEY said he personally either read a draft or one of the [redacted] HEFFLEY spoke to LEVIS, who "made them (not further identified) go back and look at some of the evidence and information again because you couldn't get there from [redacted] HEFFLEY offered to have an [redacted] which WINCHESTER came from the Mid-Atlantic ROG to do. HEFFLEY said WINCHESTER was an experienced manager and had been in quality assurance for years. HEFFLEY said WINCHESTER disagreed with the concept of what [redacted] had done and "seemed to have a lot of problems with the inability to understand [redacted] communicate." HEFFLEY said WINCHESTER gave him information about how poorly he thought the [redacted] had been done. HEFFLEY said he thought CALFA was giving [redacted] "poor advice" (Exhibit 14, pp. 13, 15-20, 43, 49).

Agent's Note: Contrary to HEFFLEY's testimony that WINCHESTER gave him information about how poorly [redacted]'s investigation was done, WINCHESTER denied the [redacted] questioned any of the data that was in the

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[redacted] When WINCHESTER was asked if he took exception to any portion of the [redacted] WINCHESTER stated, "No. [redacted] was not to challenge or [redacted] It was like where do we go focus . . . We were not there under any pretense to challenge that [redacted] results or conclusions. It was merely find out what we can bring back to Byron Management to fix this issue" (Exhibit 20, p. 30).

HEFFLEY thought [redacted] (Exhibit 14, pp. 21, [redacted] This reference is believed to be referring to the [redacted] Site Vice President.

HEFFLEY said [redacted] decided to leave Exelon, and he thought he interviewed several individuals for the [redacted] positions, including [redacted] individuals from Braidwood and Quad Cities. HEFFLEY said [redacted] went through the interview process like they all did, including [redacted] HEFFLEY thought there were about three individuals who wished to stay in that [redacted] position. HEFFLEY said PAVEY was selected for the [redacted] position, and [redacted] was selected for the [redacted] position in the [redacted] HEFFLEY said [redacted] was selected because "he'd been the [redacted] so his experience showed up a whole lot more than when you compared him to the other individuals. He had a big QA (Quality Assurance) background, good safety background," and also due to his broad experience having worked at [redacted] HEFFLEY said [redacted] had worked for him indirectly for about a year in [redacted] (Exhibit 14, pp. 16-17, 29-32, 34).

MARINI, Corporate Employee Concerns Investigator, Exelon Midwest ROG, has held this position since August 2000 and has been with the company for about 26 years. MARINI's former position was Nuclear Oversight Manager. [redacted]

(Exhibit 25, pp. 7-14; Exhibit 35).

Agent's Note: In reviewing Event Log, noted that remarked to him that he did not really have an interview for the position, but was hand picked. OI requested the "Candidate Summary" forms filled out by the interviewers, LANDY and HEFFLEY, of position, however, Exelon was unable to produce these records (Exhibit 10, p. 11).

HEFFLEY said he thought he told that "he'd gotten himself into real poor notoriety because of that he didn't need. And he'd done, well, he'd done a lousy job I thought, poor job, inappropriate job, those kind of things and that thing just showed up" (Exhibit 14, p. 43).

said during the May/June 2000 time frame, HEFFLEY told that based on the Byron issue , HEFFLEY remarked to that he "wasn't so sure" that was the right individual for the permanent position. said it was fairly benign, just an off-handed comment and that was it. stated, "It seemed, well, he (HEFFLEY) tied it with the Byron issue which was the issue that we had just completed. It was still ongoing in some respects" (Exhibit 9, pp. 33-35).

said in discussions with the other managers, there were never any negative references to involving the findings he made. said had no facts to support that because of the made at he was not able to find a new position within the company (Exhibit 9, pp. 64-66).

HEFFLEY indicated a key reason he did not select for an position was because of performance, including poor communication on the and that his conclusion was not supported by the evidence he presented. The is dated and was issued

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again on Consequently, an . who were selected for the positions, were selected on respectively (Exhibit 5, p. 1; Exhibit 6, p. 1; Exhibit 13, p. 7; Exhibit 14, pp. 17-18; Exhibit 17, p. 1; Exhibit 23, pp. 20, 26).

Agent's Note: With regard to the concern of

said as a result of informing that DEPPI had commented negatively to about him not being visible and proactive, called some individuals to gain more feedback and determine the validity of DEPPI's alleged comments (Rick ROTON, Assistant Nuclear Oversight Manager, Byron, was the only name she could recall). said the individuals that spoke to told something completely different, that was more visible than the prior said never heard anything negative from anybody else, including LEVIS. said questioned DEPPI as to who the individuals were that felt performance was lacking and asked DEPPI to give specific examples on where he was getting his feedback, but DEPPI wasn't able to provide any and apologized for not first discussing these issues with (Exhibit 9, pp. 58-60, 62-63).

said and discussed the and got a clear understanding of what the investigation should encompass. received a written memo, dated documenting what the scope would be. said was to and it was discussed who should be interviewed, so it was decided that a hundred percent of the population of both supervisors and employees in the felt did a "good job" on this (as documented in In addition, said during the about the time HEFFLEY was interviewing personnel for the positions was interviewed on was having a conversation with

HEFFLEY about whether [redacted] should provide another copy of [redacted]'s resume for HEFFLEY to review, and he (HEFFLEY) stated, "that no he had it and just made an off-hand comment . . . that based on the Byron issue and feedback from Rich LANDY and Bob DEPPI he wasn't so sure . . . and that was it" (Exhibit 4, p. 1; Exhibit 9, pp. 33-34, 37-39; Exhibit 10, p. 3).

HEFFLEY indicated his training in the employment discrimination area has included required reading, which he believed was done annually. He also recalled on-the-job training he's received from his different former jobs as a manager (Exhibit 15).

Agent's Analysis

[redacted]'s interview with the Exelon contract representative, PIGOTT, shows PIGOTT checked the box recommending [redacted] for selection to the [redacted] position on [redacted] PIGOTT marked [redacted] as having either a "Strength" or "Competent" rating, the two highest of three ratings, in each of the category areas rated during his interview with her. Exelon was unable to provide any of the Candidate Summary forms completed for [redacted] by the individuals who interviewed [redacted] position.

HEFFLEY was aware of the [redacted] and documented in [redacted] said during his [redacted] interview with HEFFLEY on [redacted] HEFFLEY questioned [redacted] on why he didn't [redacted] HEFFLEY receives annual refresher training in the employment discrimination area.

The evidence indicates that [redacted] was arguably as qualified as [redacted] However, HEFFLEY's own testimony that he did not select [redacted] because of the [redacted] conclusion, and because of [redacted] related to the [redacted] of the [redacted], is contrary to [redacted]'s 1997 through mid-year 2000 performance review assessments. [redacted] mid-year 2000 review of [redacted] includes the time period when the [redacted] of the [redacted] occurred. HEFFLEY's testimony is contrary to [redacted]'s testimony and written appraisals of [redacted]'s performance abilities. [redacted]'s performance reviews were completed by multiple supervisors, corroborating the overall accuracy of the performance review information.

Therefore, since [redacted]'s mid-year 2000 performance review contradicts the deficiencies proffered, and [redacted] and his immediate supervisor, [redacted], had never been advised of these so-called performance deficiencies, an inference can be drawn coupled with the temporal

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proximity between the [redacted] and [redacted] not being selected for an [redacted] position (HEFFLEY recommended not selecting [redacted] that the proffered reasons may not have been the true reason for [redacted] not getting selected.

Further, no evidence obtained during the [redacted] immediate supervisor since about 1998, said she never heard anything negative from anybody about [redacted] including from LEVIS, who [redacted] had regular contact with, as LEVIS was the Byron Site Vice President.

When the evidence is reviewed in it's entirety, there is an inference that it is more likely than not that because [redacted] within the [redacted] and that this information was learned by HEFFLEY, it was considered, at least in part, as a contributing factor in his decision on or about [redacted] to not select [redacted] for an [redacted] position. [redacted] reports issued [redacted] challenged the [redacted] actions Exelon had been taking in this regard at the time. As a result of [redacted] not getting selected for a new position within the merged Exelon/PECO company, [redacted] was separated from the company after nearly [redacted] years of employment.

Conclusion

Based on the evidence developed, the investigation did substantiate the allegation of deliberate employment discrimination against [redacted] by HEFFLEY.

Allegation 2: Discrimination Against an [redacted] for Raising Safety Concerns Relating to an [redacted] of Harassment and Intimidation

1. Protected Activity

[redacted] on HELWIG at [redacted] HELWIG (Exhibit 2, pp. 49-51).

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2. Knowledge of [redacted] Protected Activity

[redacted] understood HELWIG may have been involved in the selection process of the [redacted] job [redacted] provided a resume for, and [redacted] thought HELWIG knew [redacted] had [redacted] (Exhibit 2, pp. 46, 51-52, 60-61; Exhibit 10, p. 3).

[redacted] was aware of [redacted] of HELWIG [redacted] SNOW, former Director of Outage Management and Services (Corporate position), Exelon, denied having any direct or specific knowledge of [redacted] said [redacted] impression was that this [redacted] position was not posted at the time, but discussions were ongoing to create a couple of [redacted] positions (Exhibit 9, pp. 24, 28-29, 40; Exhibit 27, pp. 9-10).

LAWSON, Senior Outage Specialist, Exelon, denied knowing of any specific [redacted] had been involved in (Exhibit 12, pp. 5, 8-9).

HELWIG recalled an [redacted] at Byron involving the [redacted] but did not recall any [redacted] HELWIG knew [redacted] s name, but claimed that was it (Exhibit 28, pp. 9-12).

Agent's Analysis

Since the element of knowledge of [redacted] s protected activity was not established, no further analysis of the other elements was necessary.

Regardless, [redacted] said there was no position posted at the time he sent his resume, rather LAWSON was canvassing for who would be interested in a [redacted] position. SNOW indicated the position of [redacted] relevant to [redacted], was never filled due to not being able to find a qualified candidate for the position. SNOW testified that due to the merger between PECO and ComEd, that position was not included in the merger organization. SNOW said [redacted] was not qualified for the [redacted] position. SNOW denied HELWIG mentioned anything about [redacted] work to him. HELWIG denied being involved in the interviewing, evaluation or selection process for any of the positions applicable to [redacted] HELWIG rationalized his lack of involvement would have been because the [redacted] position would have reported to SNOW. HELWIG stated his only input to SNOW and JENNINGS was to seek outside experience from the companies that actually performed the work, believing that they were the most knowledgeable individuals. There was a lack of evidence to indicate HELWIG was involved in affecting [redacted] s chances for a [redacted] position (Exhibit 27, pp. 6, 8, 11-13; Exhibit 28, pp. 6, 13-16, 20-21).

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Conclusion

Based on the evidence developed, the investigation did not substantiate the allegation of employment discrimination against [redacted]

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SUPPLEMENTAL INFORMATION

On March 8, 2002, William P. SELLERS, Senior Litigation Counsel, Criminal Division, Fraud Section, U.S. Department of Justice, Washington, D.C., 20005, advised that in his view the case did not warrant prosecution and rendered an oral declination.

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LIST OF EXHIBITS

Exhibit No.	Description	
1	Investigation Status Record, OI Case No. 3-2001-005, dated January 29, 2001.	
2	Transcript of Interview of [redacted] dated February 15, 2001.	7C
3	Letter from [redacted] dated January 9, 2001.	7C
4	Memo from B. ADAMS, Regulatory Assurance Manager, Byron, to [redacted] dated [redacted]	7C
5	Memo from [redacted] to LEVIS, dated [redacted]	7C
6	Memo from [redacted] to LEVIS, dated [redacted]	7C
7	Letter from [redacted] to HEFFLEY, dated [redacted]	7C
8	E-mails between [redacted] and LAWSON, dated June 29, 2000, including an enclosure.	7C
9	Transcript of Interview of [redacted] dated March 20, 2001.	7C
10	Event Log from [redacted] to J. HELLER, RIII, dated [redacted]	7C
11	Narrative report written by [redacted] undated.	7C
12	Transcript of Interview of LAWSON, dated June 26, 2001.	
13	[redacted]	7E
14	Transcript of Interview of HEFFLEY, dated July 2, 2001.	
15	Interview Report with HEFFLEY, dated July 3, 2001.	

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16 [redacted]'s overall results rating sheets from his annual performance reviews for the years 1997-1999, dated October 28, 1997, February 16, 1999, and March 26, 2000, and his mid-year performance review for the year 2000, dated August 23, 2000.

17 [redacted]

18 Transcript of Interview of DEPPI, dated August 22, 2001.

19 Transcript of Interview of BROCCOLO, dated August 30, 2001.

20 Transcript of Interview of WINCHESTER, dated August 28, 2001.

21 Transcript of Interview of LANDY, dated August 30, 2001.

22 Transcript of Interview of LEVIS, dated August 28, 2001.

*23 Exelon response to OI:RIII request for information, dated including internal job description for the [redacted] position, dated May 15, 2000; [redacted] job data sheet and resume; [redacted]'s separation letter, dated [redacted] and [redacted] profile, dated

24 Memo from MOSER to HEFFLEY, dated [redacted]

25 Transcript of Interview of MARINI, dated December 14, 2001.

26 Transcript of Interview of BOOK, dated December 14, 2001.

27 Transcript of Interview of SNOW, dated December 19, 2001.

28 Transcript of Interview of HELWIG, dated December 17, 2001.

29 Transcript of Interview of MOSER, dated January 25, 2002.

30 Two Candidate Summary forms for [redacted], completed by HEFFLEY, dated [redacted] and completed by PIGOTT, dated

31 Letter from LEVIS to H. Brent CLAYTON, NRC:RIII Enforcement Officer, dated September 18, 2000.

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32 Letter from J. E. DYER, NRC:RIII, to O. KINGSLEY, ComEd, dated September 2, 1999.

33 Letter from KRICH to DYER, dated March 1, 2000.

34 Letter from M. JORDAN, NRC:RIII, to KINGSLEY, dated March 31, 2000.

35 Letter from HEFFLEY to MARINI, dated August 15, 2000.

*Due to the voluminous size of the submittal, the full documentation is not included in the Report of Investigation, but will be maintained in the OI:RIII files.

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