

RS-03-085

April 28, 2003

Mr. F. J. Congel
Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Report of Results Related to Confirmatory Order

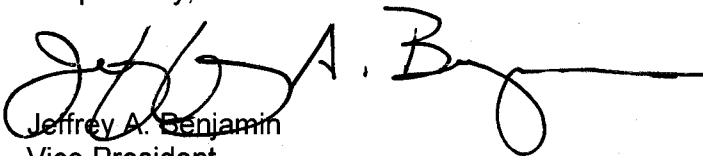
Reference: Letter from U. S. NRC to J. L. Skolds (Exelon Generation Company, LLC),
"Confirmatory Order," dated October 3, 2002

Dear Mr. Congel:

In the referenced letter, the NRC issued a Confirmatory Order to Exelon Generation Company, LLC (EGC) and AmerGen Energy Company, LLC (AmerGen), in order to confirm certain commitments made by EGC and AmerGen regarding compliance with 10 CFR 50.7, "Employee protection." The Confirmatory Order required that these commitments be completed within six months of the date of the referenced letter (i.e., April 3, 2003), and that EGC and AmerGen provide a written report of the results achieved related to these commitments within thirty days following completion (i.e., May 5, 2003). The attachment to this letter provides the required report.

Should you have any question concerning this letter, please contact me at
(630) 657-2809.

Respectfully,



Jeffrey A. Benjamin
Vice President
Licensing and Regulatory Affairs

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cc: W. D. Travers, Executive Director for Operations
W. F. Kane, Deputy Executive Director for Reactor Programs
S. Collins, Director – Office of Nuclear Reactor Regulation
H. J. Miller, Regional Administrator, NRC Region I
J. E. Dyer, Regional Administrator, NRC Region III
D. C. Dambly, Office of the General Counsel

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Introduction

In Reference 1, the NRC issued a Confirmatory Order (Order) to Exelon Generation Company, LLC (EGC) and AmerGen Energy Company, LLC (AmerGen), in order to confirm certain commitments made by EGC and AmerGen regarding compliance with 10 CFR 50.7, "Employee protection." The Order required that EGC and AmerGen complete these commitments within six months of the date of the Order (i.e., April 3, 2003) and provide a written report of the results achieved related to these commitments. This report provides a description of the actions EGC and AmerGen have taken to complete the commitments confirmed in the Order.

Summary of Commitments and Actions Completed

Each of the commitments contained in Section V of the Order is quoted below, followed by a description of the completed actions.

Order Section V.1

"Exelon will counsel and coach personnel involved in the violation of 10 CFR 50.7, which occurred on August 25, 2000, to emphasize the importance of a safety-conscious work environment and provisions of 10 CFR 50.7. The counseling will be conducted by a corporate Exelon executive not involved in the violation described herein and who shall be senior to those counseled."

Actions Completed

One EGC executive had significant involvement in the violation of 10 CFR 50.7 described in the Order. This individual made the decision not to select a former EGC employee for a new position. This individual acted principally on his own in making the decision.

On January 7, 2003, the President and Chief Nuclear Officer of Exelon Nuclear, together with the Vice President, Licensing and Regulatory Affairs, counseled the executive described above regarding employment discrimination. Neither of the individuals providing the counseling was involved in the violation described in the Order. The President and Chief Nuclear Officer is senior to the executive counseled. The counseling centered around the requirements of 10 CFR 50.7, Exelon Nuclear's expectations for maintaining a safety-conscious work environment, and the specific actions that the executive had taken which did not meet these requirements and expectations. During the counseling session, the executive acknowledged that he understood the violation and that his actions did not meet expectations.

Another EGC executive who had peripheral involvement in the matter was counseled. This executive was not involved in or responsible for the selection decision, but communicated with the executive making the selection decision regarding the performance of the former EGC employee who was not selected. This communication influenced the selection decision.

On February 20, 2003, the President and Chief Nuclear Officer of Exelon Nuclear, together with the Senior Vice President, Mid-Atlantic Regional Operating Group, counseled the executive described above regarding employment discrimination. Both of the individuals providing the counseling are senior to the executive counseled. The discussion centered around the requirements of 10 CFR 50.7, Exelon Nuclear's

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expectations for maintaining a safety-conscious work environment, and how the executive's actions had contributed to the employment decision and did not meet these expectations. During the counseling session, the executive acknowledged that he understood the violation and that his actions did not meet expectations.

The counseling of the executives discussed above completes item V.1 of the Order.

Order Section V.2

"An Exelon corporate executive will train and coach every executive-level employee (defined to include plant managers and all vice-president level personnel) throughout the licensed organizations, including every nuclear station and headquarters, on the employee protection provisions of 10 CFR 50.7. The sessions will be conducted by an Exelon executive knowledgeable about the issues involved in the August 25, 2000, violation and will be held in small groups to assure focus and interactive involvement of every executive. The sessions will include a case study of the selection decision that caused this enforcement action and a discussion of the lessons learned."

Actions Completed

EGC and AmerGen developed training presentation material geared toward nuclear executives regarding the requirements of 10 CFR 50.7. The presentation material was developed with input from legal counsel familiar with the application of the NRC's employee protection regulations. The presentation material covered the specific requirements and evolution of employee protection regulations, elements of a safety-conscious work environment, key factors in the NRC's application of employee protection regulations, the potential consequences of employment discrimination, and EGC's and AmerGen's expectations for addressing personnel issues when job performance and protected activity are intertwined. As required by the Order, a significant portion of the presentation material was devoted to a case study of the selection decision referred to in the Order and a discussion of the lessons learned.

Using the presentation material developed, the Vice President, Licensing and Regulatory Affairs, who was knowledgeable about the issues involved in the selection decision, led ten training sessions in order to deliver the training in small groups to all 35 executive-level employees (defined to include plant managers and all vice-president level personnel) within the EGC and AmerGen nuclear organizations holding these positions as of March 21, 2003. Each of the sessions resulted in significant interaction among those present regarding the topics discussed, and resulted in an enhanced understanding of the requirements of 10 CFR 50.7. The sessions were conducted during the period between January 17, 2003, and March 10, 2003. Completion of the training was documented using the standard training course attendance documentation process.

The training of the executives described above completes item V.2 of the Order.

Order Section V.3

"Each executive trained pursuant to Paragraph [V.] 2 above will be provided a communications package for use in training the managers in that executive's chain-of-command regarding these issues and the Licensees' expectations for handling employee interactions."

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Actions Completed

EGC and AmerGen developed a communications package geared toward training managers regarding the requirements of 10 CFR 50.7. The communications package covered the specific requirements of 10 CFR 50.7, elements of a safety-conscious work environment, key factors in the NRC's application of employee protection regulations, the potential consequences of employment discrimination, and EGC's and AmerGen's expectations for addressing personnel issues when job performance and protected activity are intertwined. Additionally, the package contained a case study of the selection decision referred to in the Order and a discussion of the lessons learned.

Using the communications package developed, the executives discussed in Section V.2 trained over 1,000 individuals. This included all personnel (approximately 600 individuals) that EGC identified as holding manager positions as of March 21, 2003. In addition, approximately 400 individuals not holding manager positions were trained in order to ensure wide distribution of the lessons learned from this situation. These training sessions began in late January 2003 and were completed by April 1, 2003. Completion of the training was documented using the standard training course attendance documentation process.

The training of the managers described above completes item V.3 of the Order.

Order Section V.4

"The Licensees will enhance training on the prevention of employment discrimination beyond that in its existing management training programs. Lesson plans and other materials used in management training programs on the prevention of employment discrimination will be reviewed and revised as appropriate to address maintaining a safety-conscious work environment and the employee protection provisions of 10 CFR 50.7. The on-going training will be conducted at a frequency consistent with the Licensees' existing policies, practices and procedures."

Actions Completed

The management training programs available to personnel within the nuclear organizations consist of a supervisory leadership program (SLP), an executive development program (EDP), and an Exelon leadership institute (ELI). The content of these programs was reviewed and revised as described in the following paragraphs.

The SLP is designed for first-line supervisors of both management and bargaining unit individuals. This program lasts approximately four weeks and covers a broad range of topics. The program includes a module entitled "Employee Concerns Program." This module has previously included topics on the role of the first line supervisor in addressing and managing employee concerns, definition of a safety-conscious work environment, protection against harassment or retaliation, the methods for addressing employee concerns, the mechanisms available for employees to raise concerns, and the employee concerns program. This module contained many of the appropriate concepts regarding prevention of employment discrimination. As a result of this review, the module was revised to include the following additional topics.

- Specific attributes of a safety-conscious work environment
- Evolution of employee protection requirements

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- Specific discussion of the requirements of 10 CFR 50.7, including the application of these regulations when protected activity and adverse employment action may be linked
- Example discrimination findings and potential consequences, including a brief case study of the selection decision that was the subject of the Order

The SLP module presentation materials were revised to include the above material, and the lesson plans were annotated to indicate that inclusion of the material regarding employee protection was related to an NRC commitment.

The EDP is designed for current and prospective department managers and directors. This program lasts approximately two weeks and covers a broad range of topics. The program includes a module entitled "The Importance of Creating and Sustaining a Safety Conscious Work Culture." This module has previously included topics on the attributes of a safety-conscious work environment, significant detail regarding the meaning and application of employee protection regulations, case studies from other utilities, discussion of chilling effects, employee concerns program, and methods for maintaining a safety-conscious work environment. This module contained most of the appropriate concepts regarding prevention of employment discrimination. The module was revised to include a brief case study of the selection decision that was the subject of the Order and additional guidance on seeking help from others in the organization before making employment decisions regarding individuals who may be involved in protected activity.

The EDP module presentation materials were revised to include the above material, and the program description was annotated to indicate that inclusion of the material was related to an NRC commitment. In the near future, the EDP will be revised and re-named as the Advanced Management Program (AMP), and will include participation from managers in business units outside the nuclear organizations of Exelon Corporation. The content of the revised program regarding employee protection will not be affected.

The topics added to the SLP and EDP were piloted during the November 2002 sessions of SLP and EDP. Based on these pilot presentations, the final revisions to the program materials were completed in March 2003.

The ELI is designed for selected high-potential candidates who currently occupy plant manager and vice president level positions throughout the entire Exelon Corporation. This program is conducted once per year by external faculty and lasts approximately two weeks. The program is designed to develop business acumen and personal leadership skills. Since the ELI serves a significant number of Exelon organizations outside of Exelon Nuclear, and since program attendance is limited to selected high-potential candidates, EGC determined that it was not an appropriate program in which to include a discussion of NRC employee protection requirements for purposes of complying with the intent of the Order.

There is no management training program specifically targeted to newly appointed plant managers and vice presidents within Exelon Nuclear. Nevertheless, it is virtually certain that individuals appointed to these positions from within the nuclear organizations of EGC or AmerGen will have been trained on the employee protection requirements in the

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EDP/AMP program discussed above or in the training sessions discussed in response to Order Section V.3. Personnel appointed to these positions from outside these organizations may not have been trained on these requirements. EGC and AmerGen have modified the current executive orientation checklist administered by the Human Resources organization to require that new plant managers and vice presidents receive the EDP/AMP employee protection module discussed above within six months of being appointed to the position, unless they have previously received this training within EGC or AmerGen.

The completion of revisions to the SLP and EDP programs and the revision to the executive orientation checklist completes item V.4 of the Order.

Order Section V.5

"The Licensees will review the internal candidate selection process to ensure that the process incorporates the principles of employee protection under 10 CFR 50.7."

Actions Completed

The Exelon Nuclear Human Resources organization identified the following written policies governing candidate selection and retention.

- HR-AA-05, "Staffing and Recruitment," provides guidance for filling open positions. This policy addresses posting of open positions, screening and interviewing of candidates, and final selection.
- HR-AA-2005, "Selection Board Process/Roles for Level 5 Positions," and HR-AA-2006, "Selection Board Process/Roles for Level 6 Positions," provide guidance for reviewing the qualifications of individuals recommended for promotion to key leadership positions. The selection board process is designed to ensure that these decisions are made with appropriate consultation and review of the reasons for selection.
- HR-AA-16, "Review and Approval of Involuntary Terminations," provides guidance for the review and control of decisions to terminate employment. This process is designed to ensure that termination decisions are made with appropriate consultation and review of the reasons for termination.

To ensure that the principles of employee protection are incorporated into these processes, the above policies were revised to include statements referring to the requirements of 10 CFR 50.7.

The policies described above were also modified to refer to a policy, HR-AA-17, "Protected Activities and Selection Processes," which was newly created as a result of this review. This policy defines protected activities in accordance with 10 CFR 50.7 and briefly discusses the application of these requirements.

Policies HR-AA-05, HR-AA-2005, HR-AA-2006, and HR-AA-16 were also revised to incorporate additional controls. Prior to finalizing a selection or retention decision, these policies now require an inquiry by Human Resources to determine if the selection or retention decision involved knowledge of protected activity. If knowledge of protected activity is involved, the selection or retention decision is further reviewed for compliance with the requirements of 10 CFR 50.7.

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The revised and newly created policies were annotated to indicate that inclusion of the additional guidance was related to an NRC commitment.

The revised and newly created policies were approved on April 3, 2003. These actions complete item V.5 of the Order.

Order Section V.6

"A communication will be distributed to all employees of the Licensees' organizations that strongly reaffirms management's commitment to fostering a safety-conscious work environment in all organizations at all sites and in its headquarters organization. The Licensees will also reaffirm to all employees the Licensees' commitments to a strong and viable Employee Concerns Program and will reiterate the various means that all employees may employ to raise issues that may be of concern to them."

Actions Completed

On December 17, 2002, the President and Chief Nuclear Officer of Exelon Nuclear issued a memorandum to all employees in the nuclear organizations of EGC and AmerGen, reaffirming the commitment to a safety-conscious work environment. This memorandum discussed the following topics.

- The need for a strong safety culture and the consequences of complacency regarding safety culture
- An affirmation that workers are free to raise issues concerning nuclear safety or quality without fear of negative repercussions
- A reference to the selection decision that is the subject of the Order, and a statement that Exelon Nuclear is taking actions to prevent recurrence
- A discussion of the various means to raise safety concerns and a commitment to a strong employee concerns program (ECP), including contact information for ECP representatives.

Senior managers throughout the EGC and AmeGen nuclear organizations distributed this memorandum to all employees during the period from December 17, 2002, through January 28, 2003.

The distribution of this memorandum completes item V.6 of the Order.

Order Section V.7

"Exelon will review all work environment surveys conducted since September 2000 at the Byron Station (where the former employee previously worked) to assure that management responses to any findings were implemented to assure that no residual effect exists in the safety-conscious work environment at the station as a result of the selection decision. Exelon will provide to the Regional Administrator, NRC Region III, Lisle, Illinois, a written description of the results of this review and any actions taken or planned to be taken to assure that a safety-conscious work environment exists at the Byron Station."

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Actions Completed

Reference 2 transmitted a report describing the actions taken for this item. The referenced report documents completion of a review of work environment surveys at the Byron Station. In summary, the review concluded that corrective actions in response to safety conscious work environment surveys have been implemented and there is no indication in the survey data that the selection decision has had a residual effect on employee willingness to raise safety issues. The review of these surveys was completed in February 2003. The review and the referenced report completes item V.7 of the Order.

Order Section V.8

"The Licensees will accomplish these actions within six months of the date of this Order and will furnish a written report of the results achieved to the Director, Office of Enforcement, within 30 days following completion."

Actions Completed

As noted in the sections above, EGC and AmerGen completed the actions required by the order on or before April 3, 2003. The completion of these actions, together with this report completes item V.8 of the Order.

Conclusion

As demonstrated by the above actions, EGC and AmerGen have made significant effort to prevent recurrence of the violation described in the Order. EGC and AmerGen are continuing to conduct reviews to ensure these actions have been effective in accomplishing their intended purpose.

References

1. Letter from U. S. NRC to J. L. Skolds (Exelon Generation Company, LLC), "Confirmatory Order," dated October 3, 2002
2. Letter from J. A. Benjamin (Exelon Generation Company, LLC) to J. E. Dyer (U. S. NRC), "Description of Results of Work Environment Review," dated April 11, 2003