

June 23, 2003

EA-02-264
EA-02-265

Mr. John L. Skolds, President
Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$60,000, AND FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING [NRC INSPECTION REPORT NO. 50-237/01-21(DRS); 50-249/01-21(DRS)] [NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2001-054]

Dear Mr. Skolds:

This refers to the inspection conducted September 24 to October 16, 2001, at Dresden Nuclear Station, Unit 3. The inspection focused on your staff's response to the discovery of damage to a piping system support in the high pressure coolant injection (HPCI) system which was indicative of a hydraulic transient. The NRC inspection report was provided to you on November 16, 2001. The NRC Office of Investigations (OI) conducted an investigation into the circumstances surrounding apparent incomplete and inaccurate information furnished to the NRC by your staff regarding the hydraulic transient. The Office of Investigations concluded that members of your staff willfully provided false information concerning: (1) the condition of HPCI system support; (2) air in the HPCI system; and (3) HPCI system peak pressure on July 5, 2001. The synopsis from the OI report and a summary of that report were provided to you on January 30, 2003. In addition, you were notified on January 30, 2003, of our preliminary determination of a White finding and an apparent violation pertaining to your failure to promptly correct a nonconforming pipe support on that system resulting in the HPCI system being inoperable from July 5 to September 30, 2001.

In review, the Dresden Station Unit 3 reactor scrambled on July 5, 2001. A HPCI actuation signal was received at about the same time as the reactor scram and the reactor operators believed they intervened in time to prevent the HPCI system from injecting. However, on July 19, 2001, your staff identified that HPCI system pipe support M1187D-80 was damaged. No other damage was observed on the HPCI system at that time. In an operability evaluation dated July 24, 2001, your staff concluded that the HPCI system was operable. In the Apparent Cause Evaluation (ACE) report dated August 24, 2001, your staff stated the apparent cause of the damage to HPCI support M1187D-80 was likely a transient (water hammer) possibly associated with the scram on July 5, 2001. On September 26, 2001, in anticipation of a scheduled telephone conference call with the NRC to discuss operability of the HPCI system, members of your staff conducted a walk down of the HPCI system and found that HPCI support M1187D-83 was loose.

During the telephone call on September 27, 2001, your staff argued that the HPCI system was operable because: (1) they had not observed other evidence of water hammer during the walk down on September 26, 2001; (2) HPCI system pressure had not exceeded 193 psig on July 5, 2001; and (3) alignment of the HPCI system to the condensate storage tank would have prevented air from entering the system. The NRC was not told during the call that your staff had found HPCI support M1187D-83 loose.

The NRC inspectors were skeptical of the position presented by your staff during the September 27, 2001, call, and continued to question your staff's position. When NRC inspectors visually examined HPCI support M1187D-83 on September 28, 2001, they observed that the support was loose and that there were chips of spalled concrete beneath the support. Based on the concerns from the NRC, your staff vented the HPCI system numerous times from September 30 to October 3, 2001, and discovered that air was trapped in the system. On October 16, 2001, your staff was able to retrieve data from the Transient Analysis Data System (TADS) indicating HPCI system pressure on July 5, 2001, had reached approximately 1000 psig. You concluded this information was not provided to the NRC in a timely manner.

A closed, transcribed predecisional enforcement conference (PEC) was held on April 23, 2003, in the NRC Region III office with members of your staff to discuss the apparent violation, its significance, its root causes, and your corrective actions. At the PEC, your staff admitted that Exelon Nuclear, without willfulness, failed to provide the NRC with complete and accurate information, in violation of 10 CFR 50.9, "Completeness and Accuracy of Information," concerning: (1) the status of HPCI support M1187D-83; (2) HPCI system pressure during the July 5, 2001 event; and (3) the need for venting the HPCI system.

Based on information developed during the NRC inspection, the OI investigation, and at the PEC, the NRC determined that violations occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them were described in the previously provided inspection report, Licensee Event Report (LER) 2002-005-00, dated December 3, 2002, and the synopsis and summary of the OI report. The NRC recognizes that your staff admitted non-willful violations of 10 CFR 50.9 during the PEC. However, the NRC determined that the failure to describe the known condition of HPCI support M1187D-83 during the September 27, 2001, telephone conference call is a willful violation, representing at least careless disregard. During the telephone call, the NRC staff described bent and loose supports as well as spalled concrete as possible indications of water hammer, but your staff did not inform the NRC that HPCI support M1187D-83 was loose. Your staff, participating in the telephone call, stated that they had performed a walk down of the HPCI system, that support M1187D-83 was not damaged, and that no other signs of a water hammer were observed. However, on September 28, 2001, NRC inspectors found that HPCI support M1187D-83 was loose and did not carry any of its 4,000 pound design load. One of your employees commented during the PEC that he had said nothing during the September 27, 2001, conference call with the NRC about his observation that support M1187D-83 was loose on September 26, 2001. It was not brought up because, in the individual's opinion, water hammer did not cause the support to become loose, so the loose hanger was not relevant and the individual felt that discussion of the support would confuse the issue.

In assessing this violation, the NRC considered the training, education and experience of the Exelon employees involved and their knowledge that the ACE report documented that a transient (water hammer) had likely occurred. The inaccurate information was material to the NRC because the NRC staff was evaluating your operability determination for the HPCI system. It is essential that licensees disclose all pertinent information to the NRC particularly when technical disagreements arise. In this case, the condition of a specific support was being discussed and an accurate description of its condition was not provided to the NRC staff. Therefore, this violation is categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (NRC Enforcement Policy) NUREG-1600, at Severity Level III (EA-02-265).

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because this was a willful violation of NRC requirements, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the Enforcement Policy. Credit was not warranted for *Identification* because the NRC identified the violation. Credit was warranted for the *Corrective Action* civil penalty adjustment factor. Corrective actions included, but were not limited to: providing additional guidance and training on operability determinations and issue identification and management; providing written expectations to the technical staff on issue resolution; meeting with each involved individual on the need to provide complete and accurate information to the NRC; and informing the other Exelon Nuclear and AmerGen facilities of the lessons learned.

Therefore, to emphasize the importance of accurate and complete information, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$60,000 for the Severity Level III violation.

During the PEC, your staff admitted non-willful violations, concerning HPCI system pressure and venting, stating each represented poor performance by employees of Exelon Nuclear. No enforcement action is proposed for those two violations in accordance with Section IX of the NRC Enforcement Policy because your staff provided information they thought to be accurate at the time and provided the correct information after discovering their error. While enforcement action is not being proposed, each instance represents a failure by your staff to display the questioning attitude toward a safety issue that you should expect.

Licensee Event Report 2002-005-00 indicated that the HPCI system was inoperable for the period following the reactor scram on July 5, 2001, until September 30, 2001. On January 30, 2003, the NRC informed your staff that the NRC had preliminarily categorized the inspection finding for the inoperable HPCI system as White, in accordance with the NRC Significance Determination Process (SDP). The opportunity for a regulatory conference to discuss the White finding and associated violation was offered to Exelon Nuclear. On February 5, 2003, Mr. Keith Jury of your staff informed the NRC that a regulatory conference would not be requested. After considering the information developed during the inspection and in the LER, the NRC has concluded that the inspection finding is appropriately characterized as White, an issue with low to moderate increased importance to safety which may require additional

inspections by the NRC. You have 30 calendar days from the date of this letter to appeal the staff's determination of significance for the identified White finding. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.

The NRC also determined that the failure to promptly correct the damaged HPCI system support resulting in the equipment being inoperable for greater than the allowed outage time is a violation of Technical Specification 3.5.1 and of 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Action," as cited in the attached Notice. The circumstances surrounding the violation are described in detail in the subject inspection report. In accordance with the NRC Enforcement Policy, NUREG-1600, the violation is considered escalated enforcement action because it is associated with a White finding (EA-02-264).

Because plant performance for the corrective action issue was determined to be in the regulatory response band, we will use the NRC Action Matrix to determine the most appropriate NRC response for this event and notify you, by separate correspondence, of that determination.

You are required to respond to this letter and should follow the instructions in the enclosed Notice when preparing your response. The NRC will use that response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading_rm/adams.html. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,
 /RA/ James L. Caldwell for
 J. E. Dyer
 Regional Administrator

Docket No. 50-249
 License No. DPR-25

- Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
 2. NUREG/BR-0254 Payment Methods (Licensee Only)

DOCUMENT NAME: G:\eics\02-264 02-265 WHITE AND 50-9 OR FINAL.wpd

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Exelon Generation Company, LLC
Dresden Nuclear Station
Unit 3

Docket No. 50-249
License No. DPR-25
EA-02-264; EA-02-265

During an NRC inspection from September 24 to October 16, 2001, and an NRC investigation completed on April 22, 2002, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

A. Violation Assessed a Civil Penalty (EA-02-265)

10 CFR 50.9 provides, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

Contrary to the above, during a telephone conference call on September 27, 2001, Exelon Nuclear failed to provide complete and accurate information to the NRC Region III staff concerning the high pressure coolant injection (HPCI) system for Dresden Nuclear Station, Unit 3. Specifically, during the call, the NRC staff described various indications of a potential water hammer, including damaged, bent, or loose pipe supports and spalled concrete. In response during the call, Exelon Nuclear staff told the NRC that, had a water hammer occurred following a reactor scram on July 5, 2001, HPCI support M1187D-83 would have been damaged. They stated that they had conducted a walk down of the system on September 26, 2001, that HPCI support M1187D-83 was not observed to be damaged, and that no other signs of a water hammer existed. One employee of Exelon Nuclear found that HPCI support M-1187D-83 was loose during a visual examination on September 26, 2001, and did not provide that information to the NRC on September 27, 2001. The incomplete and inaccurate information provided to the NRC on September 27, 2001, was material to the NRC because the NRC staff was evaluating the licensee's operability determination for the Dresden Nuclear Station, Unit 3, HPCI system.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$60,000.

B. Violation Not Assessed a Civil Penalty (EA-02-264)

Dresden Nuclear Station Technical Specification 3.5.1 requires, in part, that for operating Mode 1, should the high pressure coolant injection (HPCI) system become inoperable, the HPCI system must be restored to an operable status within 14 days or the plant be placed in Mode 3 in 12 hours .

10 CFR Part 50, Appendix B, Criterion XVI, provides, in part, that conditions adverse to quality be promptly corrected, and in the case of a significant condition adverse to quality, that corrective action be taken to preclude repetition.

Contrary to the above, as of September 30, 2001, the licensee had not promptly corrected damaged pipe support M1187D-80 on the Dresden Nuclear Station Unit 3 HPCI system, after it was identified on July 19, 2001. The licensee did not take corrective action to preclude repetition of the damage to support M1187D-80, a significant condition adverse to quality, until prompted by the NRC on September 30, 2001. As a result, while the plant was operating in Mode 1, the HPCI system was inoperable from July 5, 2001, to September 30, 2001, a period in excess of 14 days.

This violation is associated with a White SDP finding.

Pursuant to the provisions of 10 CFR 2.201, Exelon Nuclear (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation: EA-02-264; EA-02-265" and should include for each of the alleged violations: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" 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 factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply

pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234(c) of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, EA-02-264; EA-02-265, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, and the Resident Inspector at the Dresden Nuclear Station.

Because 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 withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(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 23rd day of June 2003.