

November 27, 2007

EA-07-200

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

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF DISCRETION FOR PROPOSED IMPOSITION OF CIVIL PENALTY - \$65,000 (NRC INSPECTION REPORT NO. 05000010/2007405; 05000237/2007405; 05000249/2007405) DRESDEN NUCLEAR POWER STATION, UNITS 1, 2, AND 3

Dear Mr. Crane:

This refers to an inspection conducted from June 25 through August 15, 2007, by the U.S. Nuclear Regulatory Commission (NRC) at the Dresden Nuclear Power Station, Units 1, 2, and 3. The purpose of the inspection was to review your material control and accounting (MC&A) safeguards program. An apparent violation of 10 CFR 74.19, Recordkeeping, with four examples, was identified. Details regarding the apparent violation were provided in NRC Inspection Report No. 05000010/2007401; 05000237/2007401; 05000249/2007401, dated September 2, 2007.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated October 2, 2007, you provided a written response to the apparent violation.

Based on the information developed during the inspection and the information provided in your written response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and is described in detail in the subject inspection report. The violation includes four licensee-identified examples of failure to comply with 10 CFR 74.19 between 1959 and 2007. In summary, the licensee failed to (a) keep complete records showing the inventory (including location and unique identity), transfer, and disposal of all special nuclear material (SNM) in its possession; (b) establish, maintain, and follow written MC&A procedures that were sufficient to enable the licensee to account for SNM in its possession; and (c) conduct a physical inventory of all SNM in its possession at intervals not to exceed 12 months. This resulted in the failure to account for two fuel pellets and a number of incore detectors containing SNM.

You determined that the violation occurred because Exelon Generating Company, LLC (EGC) and its predecessor, Commonwealth Edison Company, historically did not adequately implement the MC&A program at Dresden in accordance with NRC requirements, nor did EGC effectively maintain the Dresden MC&A program to reflect NRC guidance, as discussed in NRC generic communications. Although there was no evidence of theft or diversion of SNM, this violation represents a significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM; and therefore, has been categorized in accordance with the NRC Enforcement Policy as a Severity Level III problem.

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 your facility has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit is warranted for your corrective actions which included, but were not limited to, revising the Dresden MC&A procedures, and revising corporate procedures to ensure that visual verification of SNM items is performed on an annual basis for all required locations, and that the required SNM receipt, inventory, and disposal records are retained for the lifetime of the plant. The outcome of the normal civil penalty assessment process would result in no civil penalty. Notwithstanding, discretion is warranted, in accordance with Section VII.A.1(c) of the Enforcement Policy, to propose imposition of a base civil penalty for your particularly poor performance, as evidenced by the length of time during which Dresden failed to adequately implement its MC&A program.

Therefore, to emphasize the importance of implementing an MC&A program which meets NRC requirements, I have been authorized, after consultation with the Deputy Executive Director for Reactor and Preparedness Programs, and the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$65,000 for the Severity Level III problem.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report No. 05000010/2007401; 05000237/2007401; 05000249/2007401 and in your letter dated October 2, 2007. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 unless the description therein does not accurately reflect your corrective actions or position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. However, you are required to either pay the proposed civil penalty or respond in accordance with the instructions in the enclosed Notice.

Please contact Christine Lipa, Chief, Projects Branch 4, with any questions regarding this matter. Ms. Lipa can be reached at (630) 829-9619.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and your response, if you choose to respond, 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>.

Sincerely,

*/RA/*

James L. Caldwell  
Regional Administrator

Docket Nos. 50-010; 50-237; 50-249  
License Nos. DPR-02; DPR-19; DPR-25

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

cc w/encl 1: Site Vice President - Dresden Nuclear Power Station  
Dresden Nuclear Power Station Plant Manager  
Regulatory Assurance Manager - Dresden  
Chief Operating Officer  
Senior Vice President - Nuclear Services  
Senior Vice President - Mid-West Regional  
Operating Group  
Vice President - Mid-West Operations Support  
Vice President - Licensing and Regulatory Affairs  
Director Licensing - Mid-West Regional  
Operating Group  
Manager Licensing - Dresden and Quad Cities  
Senior Counsel, Nuclear, Mid-West Regional  
Operating Group  
Document Control Desk - Licensing  
Assistant Attorney General  
Illinois Emergency Management Agency  
State Liaison Officer  
Chairman, Illinois Commerce Commission

DOCUMENT NAME: G:\EICS\ENFORCEMENT\Enforcement Cases 2007\EA-07-200 Dresden\07-200 Dresden NOV and Imposition of CP Final.doc

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OFFICE	RIII	E	RIII	N	D:OE <sup>1</sup>	E	RIII	N	OGC	N	RIII	N
NAME	Pelke		Pederson		Hilton for Carpenter		Heck		Jones		Caldwell	
DATE	11/27/07		11/27/07		11/26/07		11/27/07		11/19 /07		11/27/07	

**OFFICIAL RECORD COPY**

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<sup>1</sup> HQ/OE concurrence received on 11/26/2007 per E-mail from D. Starkey.

Letter from J. Caldwell to C. Crane dated November 27, 2007

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF DISCRETION FOR PROPOSED IMPOSITION OF CIVIL PENALTY - \$65,000 (NRC INSPECTION REPORT NO. 05000010/2007405; 05000237/2007405; 5000249/2007405) DRESDEN NUCLEAR POWER STATION, UNITS 1, 2, AND 3

DISTRIBUTION:

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SECY

OCA

L. Reyes, EDO

W. Kane, DEDR

C. Carpenter, OE

N. Hilton, OE

M. Burrell, OE

D. Starkey, OE

R. Correia, NSIR

M. Williams, NSIR

B. Westrich, NSIR

D. Furst, Enforcement Coordinator, NSIR

J. Caldwell, RIII

M. Satorius, RIII

C. Pederson, RIII

G. Shear, RIII

J. Moore, OGC

B. Jones, OGC

J. Dyer, NRR

D. Holody, Enforcement Officer, RI

C. Evans, Enforcement Officer, RII

J. Heck, Acting Enforcement Officer, RIII

K. Fuller, Enforcement Officer, RIV

M. Ashley, Enforcement Coordinator, NRR

Resident Inspector

E. Brenner, OPA

H. Bell, OIG

G. Caputo, OI

J. Schlueter, FSME

L. Tremper, OCFO/DAF/LFARB

M. Ring, RIII

C. Lipa, RIII

P. Pelke, RIII

V. Mitlyng, RIII:PA

R. Lickus, RIII

J. Lynch, RIII

OEWEB/OEMAIL

DRPIII/DRSIII

PLB1/TXN

PST/TEB

RidsNrrDirslrib

LSL/CAA1

RAG1/JFW1/MMT

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Exelon Generation Company, LLC  
Dresden Nuclear Power Station,  
Units 1, 2, and 3

Docket Nos. 50-010; 50-237; 50-249  
License Nos. DPR-02; DPR-19; DPR-25  
EA-07-200

During an NRC inspection conducted from June 25 through August 15, 2007, a violation of NRC requirements was 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. The particular violation and associated civil penalty are set forth below:

10 CFR 74.19 requires, in part, that (a) each licensee shall keep records showing the receipt, inventory (including location and unique identity), acquisition, transfer, and disposal of all special nuclear material (SNM) in its possession; (b) each licensee shall establish, maintain, and follow written material control and accounting (MC&A) procedures that are sufficient to enable the licensee to account for SNM in its possession; and (c) each licensee shall conduct a physical inventory of all SNM in its possession under license at intervals not to exceed 12 months.

Contrary to the above:

- (a) Prior to June 2005, the licensee failed to establish and maintain an adequate inventory procedure and conduct annual physical inventories of incore detectors containing SNM that consisted of Unit 1 local power range monitors (LPRMs). These specific incore detectors remained stored onsite in open containers in the Unit 3 spent fuel pool (SFP).
- (b) Between 1973 and August 2007, the licensee did not keep complete records showing the inventory (including location and unique identity), transfer, and disposal of two fuel pellets; did not establish, maintain, and follow written MC&A procedures that were sufficient to enable the licensee to account for and control SNM; and did not conduct adequate physical inventories of two fuel pellets. These pellets could not be located by the licensee.
- (c) Between 1959 and August 2007, the licensee did not keep records showing the receipt, inventory (including location and unique identity), transfer, and disposal of a number of incore detectors containing SNM; did not establish, maintain, and follow written MC&A procedures sufficient to enable the licensee to account for and control SNM; and did not conduct physical inventories of incore detectors. These specific detectors could not be located by the licensee.
- (d) Between 1998 and June 2005, the licensee failed to perform adequate physical inventories of incore detectors that consisted of Unit 1 LPRMs and a Unit 3 LPRM that was hanging inside the Unit 3 SFP.

This is a Severity Level III Problem (Supplement III).  
Civil Penalty - \$65,000 (EA-07-200)

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 05000010/2007401; 05000237/2007401 and 05000249/2007401, and a letter from the licensee dated October 2, 2007. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201, if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-07-200," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer, Region III, and a copy to the NRC Resident Inspector at the Dresden Nuclear Power Station, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

The licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an Order imposing the civil penalty will be issued. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation, EA-07-200" 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, if provided, by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

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

The response noted above (statement as to payment of civil penalty and Answer to a Notice of Violation) should be addressed to: Cynthia A. 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 and Enforcement Officer, U.S. Nuclear Regulatory Commission, Region III and a copy to the NRC Resident Inspector at the Dresden Nuclear Power Station.

Because your response, if you choose to provide one, 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, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. 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 2.390(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 27<sup>th</sup> day of November 2007