EDO Principal Correspondence Control

FROM: DUE: 12/21/07 EDO CONTROL: G20070869
DOC DT: 12/07/07
FINAL REPLY:

Lynne Bernabei
David M. Wachtel
Law Offices of Bernabei & Wachtel, PLLC

TO:

Chairman Klein

FOR SIGNATURE OF : ** PRI ** CRC NO: 07-0812

Chairman Klein

DESC:

Inattentiveness/Sleeping Guards at Peach Bottom Atomic Power Station (EDATS: SECY-2007-0564)

ROUTING:

Reyes
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Bell, OIG
Burns, OGC
Collins, RI
Caputo, OI
Carpenter, OE
Sosa, OEDO

DATE: 12/12/07

ASSIGNED TO: CONTACT:

NSIR Zimmerman

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate response with OGC and OE.

Template: SECY-017 E-RIDS: SECY-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2007-0564 **Source:** SECY

General Information

Assigned To: NSIR
OEDO Due Date: 12/21/2007 5:00 PM
Other Assignees:
SECY Due Date: 12/27/2007 5:00 PM
Subject: Inattentiveness/Sleeping Guards at Peach Bottom Atomic Power Station
Description:

CC Routing: Region I; OIG; OI; OGC; OE
ADAMS Accession Numbers - Incoming: NONE
Response/Package: NONE

Other Information

Cross Reference Number: G20070869, LTR-07-0812
Staff Initiated: NO
Related Task:
Recurring Item: NO
File Routing: EDATS
Agency Lesson Learned: NO
Roadmap Item: NO

Process Information

Action Type: Letter
Priority: Medium
Sensitivity: None
Signature Level: Chairman Klein
Urgency: YES
OEDO Concurrence: YES
OCM Concurrence: NO
OCA Concurrence: NO
Special Instructions: Coordinate response with OGC and OE.

Document Information

Originator Name: Lynne Bernabei and David M. Wachtel
Date of Incoming: 12/7/2007
Originating Organization: Law Offices of Bernabei & Wachtel, PLLC
Document Received by SECY Date: 12/11/2007
Addressee: Chairman Klein
Date Response Requested by Originator: NONE
Incoming Task Received: Letter

EDO

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Dec 11, 2007 17:07

PAPER NUMBER:	LTR-07-0812	**LOGGING DATE:**	12/11/2007
ACTION OFFICE:	EDO GC		

AUTHOR:	Lynne Bernabei
AFFILIATION:	DC
ADDRESSEE:	Dale Klein
SUBJECT:	Inattentiveness/sleeping within the security organization at Peach Bottom Atomic Power Station
ACTION:	Signature of Chairman
DISTRIBUTION:	RF, OIG, SECY to Ack.
LETTER DATE:	12/07/2007
ACKNOWLEDGED	No
SPECIAL HANDLING:	EDO..coordinate response with OGC
	Made publicly available in ADAMS via SECY/EDO/DPC
NOTES:	
FILE LOCATION:	ADAMS
DATE DUE:	12/27/2007 **DATE SIGNED:**

EDO --G20070869

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By Facsimile and First Class Mail
December 7, 2007

Chairman Dale E. Klein
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Re: Inattentiveness/Sleeping Within the Security Organization at Peach Bottom Atomic Power Station.

Dear Chairman Klein:

Our firm represents Kerry Beal, the Wackenhut Security employee who videotaped security guards sleeping while on duty at the Peach Bottom Atomic Power Station ("Peach Bottom") after his attempts to have his supervisors deal with the problem failed. His videotapes were the only reason that the Nuclear Regulatory Commission ("NRC") and Exelon Generation Company ("Exelon") focused on the problem, investigated the problem and began to take some corrective actions.

As is true in many cases, the NRC, Exelon, and Wackenhut retaliated against the messenger, Mr. Beal, and failed to acknowledge the depth of the problem or its causes. The NRC, in its public meetings and inspection reports, seems content to accept Exelon and Wackenhut's explanations for the problem and how to resolve it. Far from being independent and skeptical of two companies that have shown themselves to be untrustworthy and incapable of investigating Mr. Beal's reports of sleeping security officers, the NRC is happy to accept whatever Exelon and Wackenhut say. The reason may be that the NRC, like Exelon and Wackenhut, knew about this problem as early as 2005, and was informed of it again in a March 2007 letter from Mr. John Jasinski, and yet, like Exelon and Wackenhut, did nothing. In fact, the NRC, like Exelon and Wackenhut, said there was no problem. Now faced with irrefutable proof that guards were regularly sleeping at Peach Bottom, both the NRC and Exelon have tried to limit the problem to the ten guards that Mr. Beal actually videotaped, rather than look at the underlying safety problems.

As you know, the NRC knew about the problem of sleeping guards at least as early as March of this year, when it turned the problem over to Exelon. Not surprisingly, Exelon conducted only a cursory investigation, even though Exelon knew that its employees had misrepresented facts in past safety investigations. Two months later, at the very end of May, Exelon officials claimed that there was no problem. Two-and-a-half months later, in mid-August, the NRC reviewed and approved this see-no-evil report. It was not until Mr. Beal's videotape was broadcast on the CBS station in New York that the NRC was forced to acknowledge the problem and do something about it.

But even after the videotape was made public, NRC interviewed some but not all of the security officers, all of whom denied that they were inattentive and denied that they observed other security guards being inattentive. Even the ten security officers caught on tape deny that they were inattentive. Although NRC knew that the security officers would lie if asked about inattentiveness, the NRC nevertheless reported that the problem was restricted to Mr. Beal's security team. The NRC accepted at face value the statements of the security guards it interviewed, except for the ten who were caught on videotape. Why would NRC accept these statements when they are clearly false? And why would NRC accept Exelon's clearly inadequate investigation?

To make matters worse, Exelon then retaliated against Mr. Beal by suspending his access to the Plant in September, and refusing to hire him back in October. Exelon justified its suspension of Mr. Beal by claiming that Mr. Beal violated unspecified procedures. See NRC staff "Event Chronology," Attachment C1 to Regional Administrator Samuel Collins' November 5, 2007 letter to Exelon President Christopher M. Crane, entry for September 17, 2007. NRC investigators have insinuated that Mr. Beal violated procedures by videotaping sleeping security guards when plant procedures said he should not have. In other words, Exelon suspended Mr. Beal because he blew the whistle on significant safety violations when his superiors refused to respond to his initial complaints. Exelon justified its refusal to hire him back by claiming that he did not meet its standards because Wackenhut had written him up on two occasions. Of course, the same Wackenhut supervisors who refused to respond to Mr. Beal's complaints about sleeping guards also wrote him up for minor infractions like being eight minutes late for work. These supervisors clearly wrote Mr. Beal up in retaliation for his whistleblowing. Exelon's flimsy explanations come down to the same thing: Exelon suspended Mr. Beal and refused to rehire him because he forced Exelon and the NRC to deal with a serious safety issue.

Exelon's other employees have observed what happened to Mr. Beal. They know that despite Exelon's "new" safety procedures, and the additional NRC oversight, nothing has changed. The same people are in charge and they will not hesitate to ignore complaints and retaliate against employees who insist on publicizing safety problems. They know that NRC and Exelon have just been window dressing, and it will be back to business as usual when the media stops paying attention. They know that Kerry Beal is out of a job because he forced NRC and Exelon to deal with his reports of safety violations.

NRC and Exelon have also swept under the rug the issue of the thin resources Exelon

devotes to its security apparatus. The sleeping security guards may be a bunch of bad apples who somehow all ended up at Peach Bottom at the same time. Or security guard fatigue may be an issue that should have been dealt with years ago, in 2002, when the NRC examined such issues in depth.[1]

As stated above, on March 20, 2007, Mr. John Jasinski put the NRC on notice again of inattentiveness issues at Peach Bottom. Buried in the NRC staff's "Event Chronology," is an entry for April 18, 2007: "Plant review committee rejects $150K expense of further renovations to 'ready room.' PBAPS senior management notified of decision to not fund." Twelve days later, more than a month after the NRC received Mr. Jasinski's letter, the NRC gave Exelon management the letter and asked it to investigate. There is no indication that in the course of its investigation, Exelon justified its refusal to spend this paltry sum on improvements to combat fatigue. The NRC has thus far not released documents related to Exelon's May 30, 2007 supposed response or investigation, but all signs suggest that it was faulty.

Has anyone at the NRC investigated whether Exelon has devoted sufficient resources to its security organization? Has anyone investigated Exelon's decision to reject the $150,000 expense of renovating the "ready room"? Not according to any of the NRC inspection reports or public meetings.

It seems that the NRC and Exelon want to continue to ignore gross safety violations and claim that the ten security officers caught on Mr. Beal's videotape are the only "bad apples." Instead, we suggest that the NRC and Exelon look at the root cause of the problem: Exelon cutting corners on its security organization to save money.

Nuclear station employees are the first line of defense. If they continue to see how Exelon and the NRC treat conscientious employees like Kerry Beal, safety problems will never surface. If they see that Exelon is not devoting sufficient resources to its security apparatus, nothing will change.

Exelon and the NRC can continue their inspections, and the NRC OIG can continue its investigations, but none of this will matter as long as the manner in which Exelon and the NRC treat whistleblowers like Mr. Beal does not change.

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[1] See October 31, 2007 letter from Danielle Brian, Executive Director, Project on Government Oversight, to Chairman Dale E. Klein, U.S. Nuclear Regulatory Commission ("The late NRC Commissioner Edward McGaffigan championed emergency Orders, announced in April 2003, that attempted to rein in some of the abuses. One of those abuses was fatigue.").

We and our client would be happy to meet with you to discuss these very important safety issues at your convenience.

Sincerely,

Lynne Bernabei

David M. Wachtel
Attorneys for Kerry Beal

cc: Mr. Kerry Beal (by first class mail)
Mr. Samuel Collins, Regional Administrator (by facsimile and first class mail)

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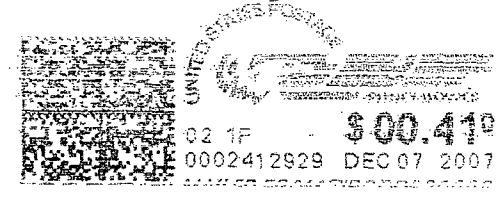

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