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AUTHOR:	Thomas Saporito
AFFILIATION:	FL
ADDRESSEE:	NRC ExecSec
SUBJECT:	Whistleblower ERA case....
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LETTER DATE:	09/20/2009
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FILE LOCATION:	ADAMS
DATE DUE:	

DATE SIGNED:

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From:	Thomas Saporito [saporito3@gmail.com]
Sent:	Sunday, September 20, 2009 9:47 AM
Cc:	NRCExecSec Resource; Gody, Tony; Paige, Jason; Hamman, Jeffrey; Wert, Leonard; Sykes, Marvin; Checkle, Melanie; DeMiranda, Oscar; R2ORA_EICSMailCenter Resource; Ninh, Son; Orf, Tracy; Kugler, Andrew; Starefos, Joelle; Whited, Ryan; Coffin, Stephanie
Subject:	<<< Notice of ERA Complaint Against Exelon et. al >>>
Attachments:	2009-09-20 Complainant's Whistleblower Complaint.pdf

Please find the attached PDF document - an ERA whistleblower complaint filed with OSHA against Exelon et. al.

Kind regards,
--

Thomas Saporito
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OSHA CASE NO.   Issue Date: 20 SEP 2009

In the Matter of:

THOMAS SAPORITO,
      Complainant,

V.

EXELON CORPORATION,
EXELON ENERGY, and
EXELON GENERATION,
      Respondents.

COMPLAINANT'S WHISTLEBLOWER COMPLAINT

COMES NOW, Thomas Saporito, Complainant pro se and hereby files a Whistleblower Complaint ("Complaint") under the Energy Reorganization Act of 1974 as amended 42 U.S.C.A. §5851, ("ERA") against the Exelon Corporation, Exelon Energy, and Exelon Generation ("Respondents") and states as follows:

BACKGROUND

This case arises under the employee protection provisions of the ERA which expressly prohibits an employer, defined under the ERA, from discriminating against or otherwise taking unfavorable personnel action against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee engaged in protected whistleblower activity. On May 8, 2009, Complainant made application at Respondents for the position of Production Technician I (Job ID 6381 and for the position of Production Technician 1&2 (Job ID

6026; and on June 27, 2009, the Complainant made application at Respondents for the position of Instrument Maintenance First Line Supervisor-Exelon Braidwood Station, Braceville, IL-Chicago SWS (Job ID 7094) and Instrument and Controls Maintenance Supervisor (Job ID 7121). Despite Complainant's education, work experience, and qualifications, Respondents failed to hire the Complainant or offer Complainant employment for any of the jobs that [h]e made application for at Respondents.

JURISDICTION

The Occupational Safety and Health Administration (OSHA) is the government agency within the U.S. Department of Labor (DOL) charged with the responsibility for receiving and for investigating ERA whistleblower complaints. *See*, 29 C.F.R. §§29.3 and 29.4 (2000).

ELEMENTS AND BURDEN OF PROOF

The complainant has the initial burden of proof in an ERA proceeding to make a prima facie case which shows that: (1) the complainant engaged in a protected activity under the ERA; (2) the complainant was subjected to adverse action; (3) the respondent was aware of complainant's protected activity when it took adverse action; (4) the evidence raises a reasonable inference that the protected activity was the likely reason for the adverse action. *See*, *Glenn*, 1988 ERA at 7. If the complainant establishes a prima facie case, then the respondent

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is required to produce evidence of a legitimate, nondiscriminatory reason for the adverse action. *See, Frady v. Tennessee Valley Authority,* 92-ERA-19 (Sec'y Oct. 23, 1995).

In the instant action, the Complainant alleges that (1) [h]e engaged in protected activity at one or more companies who owned and/or operated nuclear power plants licensed by the U.S. Nuclear Regulatory Commission ("NRC") by raising safety concerns to management at those facilities and raising the same safety concerns directly to the NRC regarding operations at those nuclear facilities; (2) that [h]e was subjected to adverse action by Respondents when Respondents failed to hire Complainant for the open positions that [h]e was qualified and made application; (3) that Respondents were aware of Complainant's protected activity when it took adverse actions against [h]im because Complainant's protected activity was clearly illustrated in the resume that Complainant submitted to Respondents; and (4) the evidence raises a reasonable inference that the protected activity was the likely reason for the adverse action.

To establish a prima facie case of discriminatory refusal to hire, the complainant must show: (1) that he applied and was qualified for a job for which the employer was seeking applicants; (2) that, despite his qualifications, he was rejected; and (3) that, after his rejection, the position
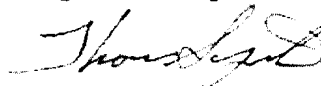
3

remained open and that the employer continued to seek applicants from persons of complainant's qualifications. *See, McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973); *Webb v.Carolina Power & Light Co.,* 93-ERA-42, 12 (ALJ July 24, 1996)(aff'd, ARB August 26, 1977).

In the instant action, Complainant avers that [h]e made applications for employment at Respondents for positions that [h]e was qualified to hold; and despite [h]is qualifications, Respondents rejected [h]is applications solely because of [h]is engagement in ERA protected activities for which Respondents had knowledge; and that after [h]is employment rejection by Respondents, the positions remained open; and that Respondents continued to seek applicants from persons of Complainant's qualifications.

CONCLUSION

The Complainant has satisfied all of the required elements of [h]is prima facie case including the fourth element through sufficient evidence to raise a reasonable inference that [h]is protected activity was the likely reason for Respondents adverse 'action in not hiring [h]im. *See,* 29 C.F.R. §24.5(a)(2) and Fed.R.Civ.P 12(b)(6).
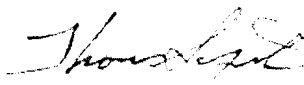
Respectfully submitted,

Thomas Saporito
Complainant pro se
Post Office Box 8413
Jupiter, Florida 33468-8413
Phone: (561) 283-0613

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original copy of Complainant's

Whistleblower Complaint was served by means indicated below on

this 20th day of September, 2009 to:

Darlene Fossum
Area Director
U.S. Department of Labor - OSHA
8040 Peters Road, Building H-100
Ft. Lauderdale, Florida 33324
{Sent via Regular U.S. Mail}
{Sent via Electronic Mail}

By:

Received: from mail2.nrc.gov (148.184.176.43) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.393.1; Sun, 20 Sep 2009
09:46:49 -0400
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X-SBRS: 3.9
X-MID: 7214704
X-IronPort-Anti-Spam-Filtered: true
X-IronPort-Anti-Spam-Result:
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with ESMTP; 20 Sep 2009 09:46:47 -0400
Received: by yxe38 with SMTP id 38so7547295yxe.6   for <multiple
recipients>; Sun, 20 Sep 2009 06:46:47 -0700 (PDT)
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Return-Path: <saporito3@gmail.com>
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Message-ID: <4AB63240.2030202@gmail.com>
Date: Sun, 20 Sep 2009 09:46:40 -0400
From: Thomas Saporito <saporito3@gmail.com>
Reply-To: saporito3@gmail.com
User-Agent: Mozilla/5.0 (Windows; U; Windows NT 5.1; en-US; rv:1.9.1.1) Gecko/20090715
Thunderbird/3.0b3
MIME-Version: 1.0
CC: "Annette L. Vietti-Cook" <NRCExecSec@nrc.gov>,
   "Anthony T. Gody" <Tony.Gody@nrc.gov>,
   Jason Paige <Jason.Paige@nrc.gov>,
   Jeffrey Hamman <Jeffrey.Hamman@nrc.gov>,
   "Leonard D. Wert, Jr. - NRC-RII" <Leonard.Wert@nrc.gov>,

Marvin Sykes <Marvin.Sykes@nrc.gov>,
Melanie Checkle <Melanie.Checkle@nrc.gov>,
"Oscar.DeMiranda@nrc.gov" <Oscar.DeMiranda@nrc.gov>,
"R2ORA_EICSMailCenter.Resource@nrc.gov"
<R2ORA_EICSMailCenter.Resource@nrc.gov>,
Son Ninh <Son.Ninh@nrc.gov>, Tracy Orf <Tracy.Orf@nrc.gov>,
Andrew Kugler <andrew.kugler@nrc.gov>,
Joelle Starefos <joelle.starefos@nrc.gov>,
Ryan Whited <ryan.whited@nrc.gov>,
Stephanie Coffin <stephanie.coffin@nrc.gov>
Subject: <<< Notice of ERA Complaint Against Exelon et. al >>>
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