

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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IA-09-025

Daniel Culver

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ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Daniel Culver (Mr. Culver) was previously employed as a maintenance supervisor at Exelon Generating Company, LLC's (Exelon or licensee) Peach Bottom Atomic Power Station (Peach Bottom or the facility). Exelon holds License Nos. DPR-44 and DPR-56 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on October 25, 1973, and July 2, 1974, respectively. The license authorizes the operation of Peach Bottom Units 2 and 3 in accordance with the conditions specified therein. The facility is located on the licensee's site in Delta, Pennsylvania. Mr. Culver worked for Exelon from June 11, 2007, to July 29, 2008.

II

In a letter dated June 5, 2009, the NRC provided Mr. Culver the results of an investigation initiated by the NRC Office of Investigations (OI). The letter informed Mr. Culver that the NRC was considering escalated enforcement action against him for an apparent violation due to his failure to provide complete and accurate information to Exelon when completing a Personal History Questionnaire (PHQ) for unescorted access to Peach Bottom. Specifically, the NRC

determined that Mr. Culver had deliberately provided incomplete and inaccurate information regarding: (1) the character of his military service, (2) his history of conduct in the military, and (3) the nature of his military discharge. The NRC offered Mr. Culver a choice to attend a Predecisional Enforcement Conference (PEC) or to request Alternate Dispute Resolution (ADR) to resolve any disagreement over: (1) whether a violation occurred, and (2) the appropriate enforcement action. At his request, a PEC was held between Mr. Culver and the NRC on July 17, 2009. During the PEC, Mr. Culver presented information about the reasons he failed to provide certain information on the PHQ and why he did not believe he acted deliberately:

- 1) The character of his military service – Mr. Culver listed his US Navy (USN) rank as Machinist Mate 1 (MM1) on the PHQ, however, the NRC investigation identified that he had served as a MM2 and had been demoted to a MM3 prior to his discharge, as a result of a non-judicial punishment (NJP) related to a misconduct incident. At the PEC, Mr. Culver stated that listing his naval rank as MM1 was a typographical error, and the result of attempting to complete the PHQ and other in-processing paperwork quickly so as to begin working.
- 2) His history of conduct in the military – Mr. Culver was subject to an NJP during his USN service; however, the NRC investigation identified that he failed to report the NJP as required on the PHQ, even though the PHQ specifies that all arrests, including NJPs, must be listed. At the PEC, Mr. Culver stated that he had read on the PHQ that he was required to report all arrests, but had failed to read the subsequent explanation of the circumstances that constitute an arrest, including NJP. Therefore, he failed to recognize that the NJP had to be disclosed. He also stated that he had received counsel in the USN that he did not have to disclose the NJP unless he applied for a government job.

- 3) The nature of his military discharge – Mr. Culver was released from the USN under a “General Discharge, Under Honorable Conditions,” however, the NRC investigation identified that he listed his discharge type on the PHQ as “Honorable.” At the PEC, Mr. Culver stated that, in his previous experience with applying for jobs, potential employers asked him to only state if he had received either an Honorable or a Dishonorable discharge because most did not understand the distinction with a General discharge. Consequently, on the Exelon PHQ, he listed his discharge as “Honorable,” which he felt to be the closest fit to “General.”

During the PEC, Mr. Culver also discussed certain information in the Application for Employment with Exelon that he submitted on April 12, 2007. Specifically, Mr. Culver provided information regarding why he listed a certain individual as his supervisor on the employment application, even though that individual was not Mr. Culver’s supervisor at the time he submitted his application.

III

The NRC has concluded that Mr. Culver violated 10 CFR 50.5(a)(2), by deliberately submitting to a licensee (Exelon) information that he knew to be incomplete or inaccurate in some respect material to the NRC. The NRC concluded that Mr. Culver’s actions were deliberate in that his stated reasons for providing the inaccurate information did not comport with the evidence gathered during the OI investigation:

- 1) The character of his military service – Mr. Culver stated that listing his naval rank as MM1 was a typographical error; however, he completed the PHQ by hand. Additionally, the NRC investigation identified that Mr. Culver’s Exelon job application and submitted resume also did not accurately reflect his MM3 naval rank. At the PEC, Mr. Culver informed the NRC that he had subsequently provided Exelon a corrected copy of his resume. However, based on the evidence obtained during the OI investigation, the NRC concluded that Exelon was provided no such correction.

- 2) His history of misconduct in the military – Mr. Culver stated that he had failed to recognize that his NJP had to be disclosed, along with any arrests, on the PHQ. However, the PHQ provided an explanation of what constituted an arrest, which included military NJP. Additionally, the NRC considered that Mr. Culver had served in the USN for more than four years and, as such, should have been aware of the consequences of his NJP.

- 3) The nature of his military discharge – Mr. Culver stated that he had listed his discharge on the PHQ as “Honorable” because he had expected that Exelon, like other previous potential employers, was only interested in knowing if his discharge was “Honorable” or “Dishonorable.” However, the NRC investigation identified that the PHQ requested that an applicant list the “Type of Discharge” and did not limit the options to only “Honorable” or “Dishonorable.” Additionally, the PHQ provided additional space for the applicant to provide additional information “if TYPE of Discharge is anything BUT ‘Honorable.’”

Additionally, the NRC has concluded that Mr. Culver provided incomplete information on the employment application he submitted to Exelon on April 12, 2007. Specifically, Mr. Culver cited his USN service under "Employment History," and listed a particular Leading Petty Officer as his supervisor. However, the NRC has determined that this individual only temporarily acted as Leading Petty Officer while Mr. Culver and he served together, and that the individual was not Mr. Culver's supervisor at the time of his application for employment with Exelon. Further, when Exelon's background investigation contractor contacted the individual to verify Mr. Culver's service, the individual stated that Mr. Culver was eligible for re-enlistment and did not have a history of disciplinary action. However, Mr. Culver had received the NJP and, as a result, was not eligible to re-enlist. The NRC concludes that Mr. Culver provided incomplete information in his application when he failed to identify his current supervisor and instead listed as his supervisor an individual under whom he served on only an interim basis. This individual did not state that he was aware Mr. Culver had received disciplinary action that rendered him ineligible to re-enlist in the USN, information that should have been known to any individual in the USN who was actually supervising Mr. Culver.

10 CFR 73.56(b)(1) requires, in part, that licensees establish and maintain an access authorization program granting individuals unescorted access to protected and vital areas with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable. Mr. Culver's deliberate submittal of incomplete and inaccurate information regarding his military service impacted Exelon's ability to determine his suitability for unescorted access to Peach Bottom.

As a result, I do not have the necessary assurance that Mr. Culver, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with NRC requirements. Therefore, the public health, safety, and interest

require that Mr. Culver be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Daniel Culver is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC. Activities licensed by the NRC are those activities licensees are authorized to conduct pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If Daniel Culver is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this order to the employer.
3. Daniel Culver shall, within 20 days following acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Culver of good cause.

V

In accordance with 10 CFR 2.202, Mr. Culver must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Mr. Culver and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID

certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737. Participants who believe that they have good cause for not submitting documents electronically must file a

motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Culver requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. 2.309(d).

If a hearing is requested by Mr. Culver or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is

held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order's publication in the *Federal Register* without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman
Director, Office of Enforcement

Dated this 1st day of December 2009