

December 1, 2009

EA-09-007

EA-09-059

Mr. Charles G. Pardee
Senior Vice President, Exelon Generating Company, LLC
President and Chief Nuclear Officer, Exelon Nuclear
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
(NRC Office of Investigations Reports No. 1-2008-023, 1-2008-044)

Dear Mr. Pardee:

The enclosed Confirmatory Order is being issued to you to confirm recent commitments made to the NRC. Exelon Generating Company, LLC (Exelon) made these commitments as part of a settlement agreement with the NRC concerning the results of two NRC investigations conducted by the NRC Office of Investigations (OI), Region I Field Office at Exelon's Peach Bottom Atomic Power Station (Peach Bottom). The investigations were conducted to determine if two former Peach Bottom employees deliberately violated NRC requirements by reporting inaccurate information in one instance, and failing to inform Exelon of information required to be reported in the other. In an NRC letter dated June 5, 2009 (ADAMS Accession Number ML091560130), the NRC provided you with the results of these investigations and noted that, based on the evidence developed during the investigations, the staff had determined that two apparent violations of NRC regulations occurred, and that those violations resulted from the deliberate acts of the former Peach Bottom employees.

The first investigation (1-2008-023), initiated on February 12, 2008, determined that a former Peach Bottom maintenance supervisor deliberately provided incomplete and inaccurate information in a Personal History Questionnaire (PHQ) submitted to Exelon for unescorted access authorization (UAA), and subsequently gained access to the site. Specifically, the former maintenance supervisor provided incorrect information regarding the character of his military service, his history of misconduct in the military, and the nature of his discharge from the military. The NRC also determined that the former maintenance supervisor provided incomplete information on his employment application about who was his supervisor while in the military. The second investigation (1-2008-044), initiated on May 5, 2008, determined that a former Peach Bottom licensed Reactor Operator (RO) deliberately failed to report an arrest/criminal charges in accordance with the site security program procedures for UAA and the Behavioral Observation Program (BOP). Specifically, the RO was arrested and charged with driving under the influence on October 13, 2007, and did not report the incident to Exelon until April 28, 2008.

The June 5, 2009, NRC letter: (1) enclosed Factual Summaries of the OI investigations; (2) informed you that the two apparent violations involving former Peach Bottom employees were being considered for escalated enforcement action in accordance with the NRC Enforcement

Policy; and, (3) offered Exelon the choice to discuss the apparent violations at a Predecisional Enforcement conference or to request use of Alternate Dispute Resolution (ADR) with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the action.

At Exelon's request, on September 3, 2009, an ADR session was held in the Region I Office in King of Prussia, PA, between Exelon and the NRC. Based on the discussions during the ADR sessions, a settlement agreement was reached regarding this matter. The elements of the preliminary agreement formulated and agreed to at the mediation session are contained within the enclosed Confirmatory Order. While the NRC and Exelon agree to disagree on certain aspects of the violations, Exelon took several corrective actions and agreed to take additional actions to address the violations, to ensure that the corrective actions are effective, and to ensure that lessons learned from these events are extended to the Exelon fleet and to the industry. In light of the corrective actions that Exelon took, as well as the additional actions Exelon committed to complete, the NRC agreed to not issue a Notice of Violation or civil penalty for the two violations.

The enclosed Confirmatory Order (Effective Immediately) confirms the commitments made in the settlement agreement. In the signed "Consent and Hearing Waiver Form" (copy enclosed) received November 19, 2009, you agreed to issuance of this letter and the Confirmatory Order. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at Office of the Regional Administrator, US NRC, 475 Allendale Rd., King of Prussia, PA 19406. A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and its attached Confirmatory Order, on its website at www.nrc.gov; select, What We Do, Enforcement, Significant Enforcement Actions. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket Nos. 50-277/278
License Nos. DPR-44 & DPR-56

Enclosures:

1. Consent and Hearing Waiver Form
2. Confirmatory Order

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You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at Office of the Regional Administrator, US NRC, 475 Allendale Rd., King of Prussia, PA 19406. A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and its attached Confirmatory Order, on its website at www.nrc.gov; select, What We Do, Enforcement, Significant Enforcement Actions. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

If you have any questions or comments concerning this letter, please contact Mr. Karl Farrar of my staff at 610-337-5301.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

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cc w/encl:
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R1DRPMailResource

Region I OE Files (with concurrences)

Enclosure 1

Consent and Hearing Waiver Form

Exelon Generation Company, LLC (Exelon) hereby agrees with the attached, immediately effective Confirmatory Order. I recognize that by signing below, Exelon consents to the issuance of the Confirmatory Order, effective immediately, containing commitments agreed to as incorporated into the Confirmatory Order. The agreement was reached during the Alternative Dispute Resolution mediation session held in the NRC Region I Office in King of Prussia, PA, on September 3, 2009. By agreeing to the attached Confirmatory Order, pursuant to 10 CFR 2.202(a)(3) and (d), Exelon waives the right to request a hearing on all or any part of the Confirmatory Order.

Charles G. Pardo
Senior Vice President, Exelon Generation Company, LLC
President and Chief Nuclear Officer, Exelon Nuclear


Date:

Enclosure 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[7590-01-P]

In the Matter of) Docket Nos.: 50-277/278
Exelon Generating Company, LLC) License Nos: DPR-44 & DPR-56
Peach Bottom Atomic Power Station) EA-09-007 & EA-09-059

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Exelon Generating Company, LLC (Exelon or licensee) is the holder of Facility Operating License Nos. DPR-44 and DPR-56 issued by the U.S. Nuclear Regulatory Commission (NRC or agency) pursuant to 10 CFR Part 50. The licenses authorize the operation of Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom or facility), in accordance with conditions specified therein. The facility is located on the licensee's site in Delta, Pennsylvania.

This Confirmatory Order (Order) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 3, 2009. ADR is a process in which a neutral mediator with no decision-making authority assists parties in reaching an agreement on resolving any differences regarding the dispute.

II

Two investigations were initiated by the NRC Office of Investigations (OI) to determine if two former Peach Bottom employees deliberately violated NRC requirements by reporting inaccurate information in one instance, and failing to inform the licensee of information required to be reported in the other. An NRC letter to Exelon on June 5, 2009, transmitted factual summaries

of the OI investigations and informed Exelon that, based on the evidence developed during the investigations, OI had substantiated that apparent violations of NRC requirements had occurred as the result of deliberate actions of the former Peach Bottom employees. The first investigation, initiated on February 12, 2008, determined that a former Peach Bottom maintenance supervisor deliberately failed to provide complete and accurate information when completing a Personal History Questionnaire (PHQ) for unescorted access authorization (UAA), and subsequently gained access to the site. PHQs are a means by which licensees, including Exelon, collect information to make determinations about an individual's suitability for unescorted access, as required by 10 CFR 73.56 and the licensee's Physical Security Plan. Specifically, the former maintenance supervisor provided incorrect information regarding the character of his military service, his history of misconduct in the military, and the nature of his discharge from the military. The second investigation, initiated on May 5, 2008, determined that a former Peach Bottom licensed Reactor Operator (RO) deliberately failed to report an arrest/criminal charges in accordance with the site security program procedures for UAA and the Behavioral Observation Program (BOP). Specifically, the RO was arrested and charged with driving under the influence on October 13, 2007, and did not report the incident to Exelon until April 28, 2008.

III

The June 5, 2009, NRC letter informed Exelon that the agency was considering escalated enforcement against it for these apparent violations of NRC requirements and offered Exelon the opportunity to either attend a Predecisional Enforcement Conference or to request use of ADR, to resolve this matter. On June 12, 2009, Exelon requested the use of ADR. On September 3, 2009, the NRC and Exelon met in an ADR session mediated by a professional mediator, arranged through Cornell University's Scheinman Institute on Conflict Resolution. During that ADR session, a

settlement agreement was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. Exelon did not take issue with the NRC preliminary conclusion set forth in the June 5, 2009, letter that two violations occurred and that the actions by the former maintenance supervisor and the former RO regarding the violations were deliberate. The NRC concluded that both violations warranted Severity Level III classification and would normally be subject to a civil penalty in accordance with the NRC Enforcement Policy, because Exelon did not identify one of the two violations. Exelon did not take issue with the NRC conclusion that the violation involving the former RO constitutes a Severity Level III violation. Exelon, however, asserted that the maintenance supervisor applicant was not a fully qualified supervisor when incomplete and inaccurate information was provided. Therefore, this instance would not constitute a Severity Level III violation. The NRC and Exelon agreed to disagree on the severity level of this violation.

2. The NRC acknowledged that Exelon had taken several corrective actions in response to the violations, so as to preclude the occurrence of similar violations in the future. These actions include:
 - a. Completed Corrective Actions only affecting Peach Bottom:
 - i. Conducted training module, emphasizing the impact of deliberate misconduct on nuclear safety culture.
 - ii. Performed common cause evaluation on deliberate misconduct events at PBAPS and implemented resulting corrective actions.

 - b. Completed Corrective Actions affecting all Exelon operating nuclear facilities:
 - i. Revised Exelon fleet-wide PHQ to require applicants to review and acknowledge the expectation to provide complete and accurate

information and the consequences of providing false, incomplete, or misleading information.

- ii. Revised fleet-wide procedure/process for validating military background investigation element.
- iii. Implemented fleet-wide safety culture training and workshops.

c. Completed Corrective Actions affecting the nuclear industry:

- i. Incorporated lessons learned regarding validation of military background into industry guidance document Nuclear Energy Institute (NEI) 03-01 to strengthen industry process.
- ii. Presented lessons learned on military background falsification issue at July 2009 NEI industry Personnel Access Database System (PADS) workshop.

3. Exelon agreed to take additional actions to address the violations, to ensure that the corrective actions identified in Item 2 are effective, and to ensure that lessons learned from these events are extended to the Exelon fleet and to the industry. These actions consist of:

a. Planned Corrective Actions only affecting Peach Bottom:

- i. Review special obligations of licensed operators and supervisors in Peach Bottom licensed operator training program, including Peach Bottom operating experience.
- ii. Develop an assessment to verify the effectiveness of actions associated with deliberate misconduct training.
- iii. Perform Peach Bottom Site Employee Issues Advisory Council (SEIAC) reviews regarding employee conduct issues/concerns, including any

apparent trends in these areas; and ensure corporate EIAC emphasizes comparison of site data to identify trends or outliers.

- iv. Repeat Peach Bottom training module on deliberate misconduct for new employees and current Peach Bottom personnel in 2010, emphasizing the impact of deliberate misconduct on nuclear safety culture.

b. Planned Corrective Actions affecting all Exelon operating nuclear facilities:

- i. Include deliberate misconduct training in the fleet-wide Supervisory Development Program for new supervisors.
- ii. Implement Peach Bottom training module fleet-wide, emphasizing the impact of deliberate misconduct on nuclear safety culture. Exelon will also review its current contractor training on deliberate misconduct and add the training module, if necessary.
- iii. Provide additional information fleet-wide, to educate the workforce on BOP, Fitness-for-Duty requirements, and Employee Assistance Program services.

c. Planned Corrective Actions affecting the nuclear industry:

- i. Provide lessons learned-type article to Professional Reactor Operators Society (PROS) requesting consideration for inclusion in industry newsletter.
- ii. Provide lessons learned-type article to NEI requesting consideration for inclusion in its industry newsletter.
- iii. Discuss with the Institute of Nuclear Power Operations (INPO) the possibility of incorporating into its supervisor and operations development programs, a module regarding the significance and impact of deliberate misconduct.

4. Exelon agreed to complete the actions applicable only to Peach Bottom after issuance of an NRC Confirmatory Order, by June 30, 2010, and to send the NRC a letter informing the agency that the actions are complete, within 30 days of their completion, to facilitate NRC confirmatory reviews. Exelon also agreed to complete the remaining corrective actions after issuance of the NRC Confirmatory Order, by September 30, 2010, and to send the NRC a letter informing the agency that the actions are complete, within 30 days of their completion, to facilitate NRC confirmatory reviews.

5. In light of the corrective actions that Exelon took as noted in Item 2, as well as the additional actions Exelon committed to as described in Item 3, the NRC agreed to not issue a Notice of Violation or civil penalty for the two violations that are the subject of this ADR.

6. Exelon agreed to issuance of a Confirmatory Order confirming this agreement that describes the two violations and the classification of the violation involving the RO at Severity Level III. The NRC agreed that, for this violation, the date for the escalated enforcement and reactor oversight processes will be retroactive to the date that the individual's employment was terminated (August 17, 2008). In accordance with NRC practice, the Confirmatory Order and the letter forwarding it to Exelon will be publicly available and accompanied by a press release.

On November 19, 2009, Exelon consented to issuing this Order with the commitments, which are described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Exelon has agreed to take additional actions to address NRC concerns, as set forth in Section III, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Exelon's commitments, as set forth in Section III, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have also determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Exelon's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. §2.202 and 10 C.F.R. Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT EXELON SHALL:

- A. Complete the following actions by June 30, 2010, and send the NRC a letter informing the agency that the actions are complete within 30 days of their completion:

- a. Review special obligations of licensed operators and supervisors in Peach Bottom licensed operator training program, including Peach Bottom operating experience.
 - b. Develop an assessment to verify the effectiveness of actions associated with deliberate misconduct training.
 - c. Perform Peach Bottom Site Employee Issues Advisory Council (SEIAC) reviews regarding employee conduct issues/concerns, including any apparent trends in these areas; and ensure corporate EIAC emphasizes comparison of site data to identify trends or outliers.
 - d. Repeat Peach Bottom training module on deliberate misconduct for new employees and current Peach Bottom personnel in 2010, emphasizing the impact of deliberate misconduct on nuclear safety culture.
- B. Complete the following actions by September 30, 2010, and send the NRC a letter informing the agency that the actions are complete within 30 days of their completion:
- a. Include deliberate misconduct training in the fleet-wide Supervisory Development Program for new supervisors.
 - b. Implement Peach Bottom training module fleet-wide, emphasizing the impact of deliberate misconduct on nuclear safety culture. Exelon will also review its current contractor training on deliberate misconduct and add the training module, if necessary.
 - c. Provide additional information fleet-wide, to educate the workforce on BOP, Fitness-for-Duty requirements, and Employee Assistance Program services.
 - d. Provide lessons learned-type article to Professional Reactor Operators Society (PROS) requesting consideration for inclusion in industry newsletter.

- e. Provide lessons learned-type article to NEI requesting consideration for inclusion in its industry newsletter.
- f. Discuss with INPO the possibility of incorporating into its supervisor and operations development programs, a module regarding the significance and impact of deliberate misconduct.

The NRC Region I Regional Administrator may relax or rescind, in writing, any of the above conditions upon demonstration by Exelon of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Exelon, may request a hearing within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to 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 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) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory 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, this Order shall be final 20 days from the date of its 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 V shall be final when the extension expires if a hearing request has not been received.

A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins

Regional Administrator

Dated this the 1st day of December 2009