

EDO Principal Correspondence Control

FROM: DUE: 10/20/09

EDO CONTROL: G20090510

DOC DT: 09/04/09

FINAL REPLY:

David Lee Sebastian  
Virginia Beach, Virginia

TO:

Borchardt, EDO

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO:

Leeds, NRR

DESC:

ROUTING:

2.206 - Notice of Request for Issuance of an Order  
for Compliance - Prairie Island  
(EDATS: OEDO-2009-0541)

Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Burns/Gray  
Carpenter, OE  
Caputo, OI  
Satorius, RIII  
Zimmerman, NSIR  
Burns, OGC  
Mensah, NRR  
Marco, OGC  
Orders, OEDO

DATE: 09/11/09

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001

E-RIDS: EDO-01



**EDATS Number:** OEDO-2009-0541

**Source:** OEDO

**General Information**

**Assigned To:** NRR

**OEDO Due Date:** 10/20/2009 5:00 PM

**Other Assignees:**

**SECY Due Date:** NONE

**Subject:** 2.206 - Notice of Request for Issuance of an Order for Compliance - Prairie Island

**Description:**

**CC Routing:** NONE

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

**Other Information**

**Cross Reference Number:** G20090510

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** Allegations

**Agency Lesson Learned:** NO

**OEDO Monthly Report Item:** NO

**Process Information**

**Action Type:** 2.206 Review

**Priority:** Medium

**Signature Level:** NRR

**Sensitivity:** Allegations

**Urgency:** NO

**OEDO Concurrence:** NO

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:**

**Document Information**

**Originator Name:** David Lee Sebastian

**Date of Incoming:** 9/4/2009

**Originating Organization:** Citizens

**Document Received by OEDO Date:** 9/10/2009

**Addressee:** R. W. Borchardt, EDO

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter

David Lee Sebastian  
779 Sheraton Drive  
Virginia Beach, Virginia 23452

September 04, 2009

Mr. Bill Borchardt  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**Notice of Request for Issuance of an Order for Compliance**

Sir,

I, David Lee Sebastian (herein also "Sebastian"), make this request pursuant to 10 CFR §§ 2.2 *et. Seq.*, to exhaust any and all administrative remedy which may be available to me, and to respectfully request the Director institute a proceeding to order [ ]

[ ] and [ ]  
[ ] Northern States Power Company n/k/a Xcel Energy Inc., Minneapolis, Minnesota (herein "Xcel"), and their Prairie Island Nuclear Facility to cease and desist from their current arbitrary and capricious practices using the Access Authorization Program/Fitness for Duty Program for purposes other than their created intent, as they are being applied against Sebastian, and to Order compliance with 10 C.F.R. §73.56, 56 FR 18997, NEI 03-01 and other applicable Regulations and Directives.

**Summary**

(1) [Xcel] denied Sebastian unescorted access to the Prairie Island Nuclear Facility using the Access Authorization Program/Fitness for Duty Program, solely based upon the existence of a Federal Tax Lien. Upon a request for review, [Xcel] and the NSPM's internal review committee affirmed that decision based upon their Access Authorization Program/Fitness for Duty Program.

(2) The reason given by [Xcel] for Sebastian's access authorization denial is a disproportionately harsh penalty for having a lien filed or owing back taxes; fails to base the decision to grant, deny, revoke, or continue an unescorted access authorization on **review and evaluation of all pertinent information developed**, in violation of 10 C.F.R. § 73.56 as applied against Sebastian; fails to satisfy all three **elements of the unescorted access authorization program**, in violation of 56 FR 18997 as applied against Sebastian; **should not, by itself, be used to deny access authorization**, in violation of 56 FR 18997 as applied against Sebastian; fails to cite any authority or evidence indicating that either the NRC's regulations or any other federal mandate (or even the industry-developed NEI guidelines) *require* denial of unescorted access; thereby depriving Sebastian of life, liberty and property without due process of law; denies Sebastian the right to be informed of the full nature and cause of the accusation; denies

Sebastian the right to be confronted with the witnesses against him; inflicts cruel and unusual punishment upon Sebastian in violation of Amendments V, VI and VIII to the Constitution for The United States of America and Section Five, Seven and Eight of the Constitution of the State of Minnesota.

(3) By [Xcel]'s denial of Sebastian's unescorted access, thereby denial of employment, without justifiable regulatory authority or practice, [Xcel] has essentially damaged Sebastian by creating an impossibility to resolve the tax lien from employment anywhere within the nuclear industry, not able to work in the profession trained in and qualified for, to be able to afford to retain legal counsel to either argue the tax amount Sebastian disputes, negotiate or pay off the tax owed in order to clear the filed lien, now having to answer the question "Have you ever been denied unescorted access to a nuclear power facility?" in the affirmative. [Xcel]'s denial of Sebastian's access authorization is an abuse of discretion, or otherwise not in accordance with the regulation/law; and is arbitrary and capricious at the least.

(4) [Xcel] and the NSPM internal review committee's affirmation of the denial based upon the Access Authorization Program/Fitness for Duty Program, providing no other authority for said decision, evidences Xcel's Access Authorization Program/Fitness for Duty Program is being used in direct violation of, **10 C.F.R. § 73.56 requirements and intent.**

(5) [ ] [ ] NSPM internal review committee and Xcel are using the Access Authorization Program/Fitness for Duty Program, required by **10 C.F.R. § 73.56, for purposes other than what it is intended for by the NRC and Regulation/Law. The Scheduler position Sebastian was offered, and accepted, is an Employment-at-will position.** Carlson, Cleveland, NSPM internal review committee, and Xcel could have simply denied Sebastian employment until the tax lien was resolved based upon other Company policy, instead of using the "Access Authorization Program/Fitness for Duty Program" for purposes it is not intended for by Regulation and causing Sebastian to be damage at the Prairie Island Nuclear Station and in the industry through the industries access denial database for having been denied access to a Nuclear Facility based upon Access Authorization Program/Fitness for Duty Program reasons.

### **Background**

(6) Sebastian was a Nuclear Operator in the United States Navy on board a nuclear Submarine from Oct. 1981 to Oct. 1985 (USS Bergall SSN 667) (Attachment "A").

(7) Sebastian previously held an active Reactor Operator License (Lic.No. OP-21204) for Florida Power and Light's Turkey Point Nuclear Power Station, Units 3 and 4 and was granted unescorted access from Nov. 1987 to Dec. 1996. Sebastian has also been granted unescorted access to the Port St. Lucie Nuclear Power Station in 1997 and the Indian Point Nuclear Power Station in 1987 during a refueling outage (Attachment "B").

(8) Sebastian first learned about the federal tax lien which is in dispute this past November 20<sup>th</sup>, 2008 (Attachment "C"), and has made efforts to retain counsel to resolve the lien, but due to the costs involved, has not yet been able to (Attachment "D").

(9) On or about March 16, 2009 Sebastian was offered a position as Scheduler at the Prairie Island Facility and accepted the same (Attachment "E").

(10) On April 06, 2009, Sebastian traveled to Prairie Island Nuclear Station to complete the application and testing process. The screening included a background investigation, drug and alcohol testing, fingerprinting, a psychological evaluation and access training, which Sebastian passes all testing (Attachment "F").

(11) Sebastian is required to hold Unescorted Access Clearance to perform essential job functions, a condition of employment (Attachment "E").

(12) On or about April 17, 2009, Sebastian received notification of passing all drug screening tests (Attachment "G").

(13) On April 29, 2009 Sebastian was asked by [ ] [ ] Xcel, to provide additional information pertaining to a Federal Tax Lien which was disclosed within the NSPM INITIAL PERSONAL HISTORY QUESTIONNAIRE (PHQ), which said information was provided via fax May 01, 2009 (Attachment "H").

(14) On or about May 7, 2009, [ Xcel ] issued a letter whereby Sebastian was found ineligible for access authorization, which was sent Certified, Return Receipt, First Class Mail (Attachment "I").

(15) [ Xcel ] denied Sebastian unescorted access to the Prairie Island Nuclear Station stating the reason as: **"You disclosed a pending IRS tax lien in the amount of \$108,000 on the NSPM Initial Personal History Questionnaire completed April 6, 2009, in support of your request for access at the Prairie Island Nuclear Plant. When the tax lien has been resolved, you may resubmit your request for access."** (Attachment "I")

(16) On June 06, 2009. Sebastian submitted an Appeal - Request for Review, to the [ ] Xcel sent by Express Mail, received by C. BROWN for Xcel on June 08, 2009 (Attachment "J" and "I").

(17) On or about August 19, 2009, Sebastian received a letter, sent by regular First Class Mail, denying Sebastian's Appeal stating (Attachment "K"):

"Northern States Power Company – Minnesota has completed the review of your access authorization denial and at this time finds that you remain ineligible for NSPM nuclear access authorization.

NSPM's internal review committee found that the facts in your case were properly established and evaluated in accordance with NSPM's Access Authorization Program.

You may reapply for a NSPM nuclear access authorization upon satisfaction of tax lien, or providing documentation of an established payment plan."

### **Discussion**

(18) "The Company, as a licensed nuclear power plant operator, is subject to regulations promulgated by the NRC, ... Among those regulations is **10 C.F.R. § 73.56**, which requires a licensee to incorporate an 'access authorization plan' into its Physical Security Plan. This access authorization plan must ensure that 'individuals granted unescorted access are trustworthy and reliable' and 'do not constitute an unreasonable risk to the health and safety of the public.' **10 C.F.R. § 73.56(b)(1)**. A licensee's decision to grant or withhold access must be based on '**review and evaluation of all pertinent information developed.**' *Id.* § 73.56(b)(3)." (emphasis added) **LOCAL 97, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O. v. NIAGARA MOHAWK POWER CORPORATION**, 196 F.3d 117; 1999 U.S. App. LEXIS 28114; 162 L.R.R.M. 2708.

(19) **10 C.F.R. § 73.56** states in pertinent part:

(b) *General performance objective and requirements.*

(1) The licensee shall 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, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage. . . .

(3) The licensee shall base its decision to grant, deny, revoke, or continue an unescorted access authorization on review and evaluation of all pertinent information developed.

(20) "NEI 03-01 requires that NRC licensees conduct a background investigation and a psychological assessment for each employee prior to granting him or her unescorted access." **EXELON GENERATION COMPANY, LLC v. LOCAL 15, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO**, 2008 U.S. Dist. LEXIS 75099; 185 L.R.R.M. 2143; 156 Lab. Cas. (CCH) P11,107.

(21) "The regulations further direct the licensee to 'base its decision to grant, deny, revoke, or continue an unescorted access authorization on **review and evaluation of all pertinent information developed.**' *Id.* § 73.56(b)(3)." (emphasis added) **EXELON GENERATION COMPANY, *Supra.***

(22) NRC regulations state that “the decision as to access authorization and/or employment clearance is a comprehensive, common-sense judgment, **made after consideration of all the information.**” (emphasis added) 10 C.F.R. § 10.10(a).

(23) “The access authorization rule requires each licensee to establish and maintain a program designed to minimize the probability of authorizing unescorted access to protected vital areas for employees whose background, psychological profile, or changes in behavioral patterns indicate a potential for committing acts that are, or could be, detrimental to the public health and safety. The main features of the licensee's program must include:

1. The background investigation designed to identify past actions which would call into question an individual's trustworthiness and reliability to be permitted unescorted access to a protected or vital area of a nuclear power reactor.

2. The psychological assessment designed to evaluate the possible impact of any noted psychological characteristics which may have a bearing on trustworthiness and reliability.

3. Behavioral observation designed to detect individual behavioral changes which, if left unattended, could lead to acts detrimental to the public health and safety.

**These three elements of the unescorted access authorization program are not separate, stand-alone elements. Rather, they are mutually reinforcing segments of the overall program. The information developed in any one of these facets is combined with data from the other two to provide the best possible evaluation of an individual's trustworthiness and reliability. Any complete evaluation of an individual satisfies all three elements of the program by reviewing the relevant features of the past, examining the current psychological state, and then verifying the continued trustworthiness and reliability through observation.** Together, the synergism of these three elements provides the strength and value of the unescorted access authorization program and results in increased protection for the public health and safety. ...

[T]he Commission believes that a higher degree of assurance is obtained that applicants for unescorted access to nuclear power reactors are reliable, trustworthy and do not now have and have not had in the recent past any significant financial problems which would make them susceptible to pressures, blackmail or coercion to commit acts that might result in radiological sabotage. Therefore, the Commission believes that a credit check does have value within the total access authorization process but that **it should not, by itself, be used to deny access authorization.**” (emphasis added) Access Authorization Program for Nuclear Power Plants, RIN 3150-AA90, 56 FR 18997.

(24) [Xcel] failed to **review and evaluate all pertinent information developed applying all three elements of the program by reviewing the relevant features of the past, examining the current psychological state, and then verifying the continued trustworthiness and reliability through observation** in accordance with NRC Regulations 10 C.F.R. § 73.56, 56 FR 18997, other federal mandates or even the industry-developed NEI guidelines, but instead made the determination solely upon the existence of a tax lien which **it should not, by itself, be used to deny access**

**authorization.** If in fact [Xcel] has applied any other mandate or guideline, [Xcel] failed to reference such authority stating only **"When the tax lien has been resolved, you may resubmit your request for access."**

(25) The tax lien has nothing to do with Sebastian's **"trustworthiness"** and **"reliability,"** and does not constitute an unreasonable risk to the health and safety of the public. **The recently appointed Secretary of the Treasury, Timothy Geithner, failed to pay \$34,000 in taxes from 2001 to 2004, and was still appointed to a position of greater trustworthiness and reliability** directly affecting the health and safety of the public **without having to first completely pay all the past-due tax.** [Xcel]'s determination is prejudicial to Sebastian, an abuse of discretion, or otherwise not in accordance with the regulation/law; and is arbitrary and capricious at the least.

(26) Sebastian has a credit score of 746 and climbing. Sebastian adamantly denies having any significant financial problems which would cause susceptibility to pressures, blackmail or coercion to commit acts that might result in radiological sabotage. Sebastian owes back taxes which are disputed and can be litigated, negotiated and/or paid off through regular employment. Sebastian cannot fathom the thought the Government would pressure, blackmail or coerce Sebastian to do wrong to settle back taxes.

(27) "The NRC has set forth a specific policy to guide its enforcement program, which supports its 'safety mission in protecting the public and the environment.' See General Statement of Policy and Procedure for NRC Enforcement Actions, 63 Fed. Reg. 26,630 at 26,633 (1998). Acknowledging that violations of nuclear safety requirements 'have varying degrees of safety . . . significance,' the NRC categorizes violations into four levels of relative severity. 'Severity Level I,' which applies to the 'most significant' violations, is reserved for violations that are of 'very significant' regulatory concern and which 'involve actual or high potential impact on the public.' 63 Fed. Reg. at 26634. 'Severity Level IV,' in contrast, applies to the 'least significant' violations: violations that 'are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.' *Id.* In addition, **the NRC recognizes that there may be some violations of 'minor [\*128] safety . . . concern' that are 'not the subject of formal enforcement action.'** *Id.*" (emphasis added) **LOCAL 97, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O. v. NIAGARA MOHAWK POWER CORPORATION**, 196 F.3d 117; 1999 U.S. App. LEXIS 28114; 162 L.R.R.M. 2708.

(28) Having a tax lien is not a violation of NRC regulations, which regulations act with the full force and effect of law when enforced by the agency. To deny Sebastian access authorization for a tax lien is to claim Sebastian is in violation of NRC regulations.

(29) Furthermore, [Xcel]'s application of the access authorization program, being used to deny Sebastian unescorted access, has violated Sebastian's right to life, liberty and property, and the pursuit of happiness, without due process; Sebastian's right to be informed of the nature and cause of the accusation; Sebastian's right to be confronted with the witnesses against him; and Sebastian's right not to have cruel and unusual



punishment inflicted in violation of the V, VI and VIII Amendments to the Constitution for The United States of America; Sections 5, 7 and 8 of The Constitution of the State of Minnesota, and is an abuse of authority and misuse of **10 C.F.R. § 73.56** and 10 C.F.R. § 26.10.

(30) The Constitution for The United States of America, A.D. 1789, Amendment V, VI and VIII, A.D. 1791, state:

#### Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation. (emphasis added)

#### Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and **to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him**; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (emphasis added)

#### Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted**. (emphasis added)

(31) The Constitution of the State of Minnesota, Article 1, Bill of Rights, Section Five, Seven and Eight state:

“Sec. 5. **NO EXCESSIVE BAIL OR UNUSUAL PUNISHMENTS**. Excessive bail shall not be required, nor excessive fines imposed, **nor cruel or unusual punishments inflicted**. ...

Sec. 7. **DUE PROCESS; PROSECUTIONS; DOUBLE JEOPARDY; SELF-INCRIMINATION; BAIL; HABEAS CORPUS**. No person shall be held to answer for a criminal offense **without due process of law**, and no person shall be put twice in jeopardy of punishment for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be **deprived of life, liberty**

**or property without due process of law.** All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended unless the public safety requires it in case of rebellion or invasion.

**Sec. 8. REDRESS OF INJURIES OR WRONGS.** Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." (emphasis added)

(32) **10 C.F.R. § 73.56** and other mandates or guidelines as [Xcel] has used and applied them against Sebastian is a violation of Sebastian's Rights and a cause of action.

(33) **The NRC's approved NEI 03-01**, wherein it states "[t]he determination from this review is final." ... is repugnant to Amendments V, VI and VIII to the Constitution of the United States by denying Sebastian due process of law and is cruel and unusual punishment depriving Sebastian Life, Liberty and the pursuit of Happiness.

[ ] . [Xcel] **'s and NSPM internal review committee's Enforcement Action**

(34) The question pertaining to Sebastian reduces to: (1) whether a tax lien or owing of back taxes "rendered him an inherently untrustworthy person" within the meaning of the NRC regulations when **reviewed and evaluated with all pertinent information developed as a whole**; and (2) would the NRC conclude it "lacked the requisite reasonable [\*\*32] assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected' if the **offending individual** 'were permitted at this time to be involved in NRC-licensed activities.' See, e.g., *Barnhart*, 1997 WL 896225." (emphasis added) **LOCAL 97, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O. v. NIAGARA MOHAWK POWER CORPORATION**, 196 F.3d 117; 1999 U.S. App. LEXIS 28114; 162 L.R.R.M. 2708, incorporated herein by reference in entirety.

(35) Sebastian comes from a proven **position of being trustworthy and reliable** with more than sixteen years in total in the military and nuclear industry achieving the level of Licensed Reactor Operator with the NRC; and has not demonstrated any reason this trustworthiness and reliability should be questioned.

(36) Sebastian has **passed Xcel's drug screening process and received no comments of concern pertaining to the MMPI test**, nor comments of concern pertaining to the **background investigation** sufficient to evidence Sebastian is no longer trustworthy and reliable. Sebastian has also **passed all written testing required for unescorted access**.

(37) If [ Xcel ] has made the determination based upon only the tax lien and back taxes [ Xcel ] has failed to **satisfy all three elements of the program by reviewing the relevant features of the past, examining the current psychological state, and then verifying the continued trustworthiness and reliability through observation**, sufficient to justify banning Sebastian from employment for any period of time, and has arbitrarily and capriciously applied the NRC regulations and guidelines negatively affecting Sebastian's employment ability, not only with Xcel, but throughout the nuclear industry.

(38) If [ Xcel ] has made the determination based upon other sources not disclosed within the denial statement, then Sebastian has been denied substantial and procedural due process by not being informed of all the grounds for the denial and being denied access/disclosure to all of the pertinent information developed to reach the decision to deny access authorization, and again [ Xcel ] has arbitrarily and capriciously applied the NRC regulations and guidelines negatively affecting Sebastian's employment ability, not only with Xcel, but throughout the nuclear industry.

(39) [ Xcel ] has not established a pattern of behavior which may raise concerns as to Sebastian's trustworthiness and reliability as it relates to holding unescorted access authorization.

(40) [ Xcel ] has not established that Sebastian was not "trustworthy" or "reliable," or that employment would run contrary to NRC regulations requiring the Company to provide "high assurance" that employees were both "trustworthy" and "reliable" individuals.

(41) [ Xcel ] failed to establish any of the three required elements, let alone all, sufficient for the denial of access authorization: (1.) The background investigation designed to identify past actions which would call into question an individual's trustworthiness and reliability to be permitted unescorted access to a protected or vital area of a nuclear power reactor. (2.) The psychological assessment designed to evaluate the possible impact of any noted psychological characteristics which may have a bearing on trustworthiness and reliability. (3.) Behavioral observation designed to detect individual behavioral changes which, if left unattended, could lead to acts detrimental to the public health and safety.

(42) Additionally, [ Xcel ] has failed to cite any authority or evidence indicating that either the NRC's regulations or any other federal mandate (or even the industry-developed NEI guidelines) *require* denial of unescorted access for a tax lien or the owing of past taxes.

(43) Finally, [ Xcel ] 's and the NSPM internal review committee's affirmation of the denial claiming their decision is based upon the Access Authorization Program/Fitness for Duty Program, providing no other authority or support to Sebastian for said decision, evidences Xcel's Access Authorization Program/Fitness for Duty

Program is being misused and abused in direct violation of 10 C.F.R. § 73.56 requirements and intent and is in violation of Sebastian's due process rights.

(44) Denial of unescorted access and refusal to hire is a disproportionately harsh penalty for having a lien filed or owing back taxes and should be considered a cruel and unusual punishment because it brands Sebastian with a stigma of untrustworthiness and unreliability having been "denied unescorted access at a nuclear power facility."

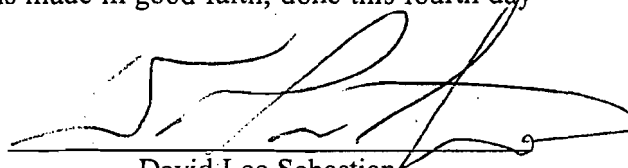
**Wherefore, Premises Considered**, for the reasons stated herein above, Sebastian states [Xcel]'s denial of nuclear access authorization; [Xcel]'s and the NSPM internal review committee's affirmation of the denial based upon the Access Authorization Program/Fitness for Duty Program, providing no other authority for said decision; and, Northern States Power Company n/k/a Xcel Energy Inc.'s Access Authorization Program/Fitness for Duty Program is in direct violation of 10 C.F.R. § 73.56 requirements and intent, and is not warranted and must be reversed *ab initio*; the Access Authorization Program/Fitness for Duty Program must be corrected to comply with 10 C.F.R. § 73.56 requirements and intent; and, Sebastian be granted access authorization without any further delay to perform his accepted job tasks with all record of said denial removed from any and all records wherever found.

In addition, Sebastian requests any other Order to be issued or other relief to be granted to which he may have shown himself entitled.

**Certification**

I certify that the information I have provided in this Notice is true, complete and accurate to the best of my knowledge and beliefs, and is made in good faith, done this fourth day of September, A.D. 2009.

Respectfully submitted,



David Lee Sebastian  
c/o 779 Sheraton Drive  
Virginia Beach, Virginia 23452  
(757) 831-8201

**Certificate of Service**

I certify that the "Notice of Request for Issuance of an Order for Compliance" was served by mailing a correct copy of same on this day by Certified United States Postal Service First Class Mail, postage prepaid, to the following parties:

Mr. Bill Borchardt  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

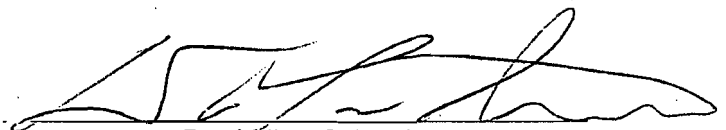
Mr. Richard C. Kelly  
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Mr. Benjamin G. S. Fowke III  
President and COO  
Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401-1993

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Done this day of September 04, A.D. 2009.

  
David Lee Sebastian