

September 16, 2010

IA-10-035

Emery Plaza
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION (NRC Investigation Report No. 1-2009-053)

Dear Mr. Plaza:

This refers to the investigation completed on May 14, 2010, by the U.S. Nuclear Regulatory Commission's (NRC's) Office of Investigations (OI) at the Exelon Generation Company LLC (Exelon) Peach Bottom Atomic Power Station (Peach Bottom) located in Delta, PA, to determine whether you, a former security officer at Peach Bottom, deliberately attempted to subvert the licensee's fitness-for-duty (FFD) program. Specifically, the investigation was initiated after Exelon informed the NRC that it had identified that you attempted to subvert Exelon's FFD program by submitting a false urine specimen during a random test on September 14, 2009.

Based on the evidence obtained during the OI investigation, the NRC has concluded that you deliberately violated NRC requirements, as cited in the enclosed Notice of Violation (Notice) (Enclosure 1). The violation involved your deliberate submittal of information to Exelon that you knew to be inaccurate in some respect material to the NRC. Specifically, on September 14, 2009, while you were working as a security officer at Peach Bottom, you were selected for a random FFD test, and you provided a urine specimen which you certified to be your own on the Exelon custody and control form. Exelon identified, however, that the temperature of the urine specimen fell outside the acceptable limits for the test, and was higher than your body temperature, indicating that the specimen had been substituted. Exelon required you to provide an additional specimen under observation, and this observed specimen tested positive for an illegal substance.

The NRC concluded that your deliberate actions were in violation of 10 CFR 50.5(a)(1), which prohibits an employee of an NRC licensee from engaging in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of NRC regulations or its NRC license; and 10 CFR 50.5(a)(2), which prohibits an employee of an NRC licensee from deliberately submitting information to a licensee that the employee knows to be inaccurate in some respect material to the NRC. After considering the significance of the violation and its deliberate nature, the NRC has categorized this violation at Severity Level III, in accordance with the NRC Enforcement Policy.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the

circumstances of this case, I have decided to issue the enclosed Notice of Violation. In reaching this determination, the NRC considered that Exelon implemented the sanctions required by 10 CFR 26.75(b) for an individual who subverts or attempts to subvert the FFD testing process. These sanctions included Exelon immediately terminating your access authorization to Peach Bottom, and permanently denying you access authorization thereafter.

Because your access authorization has been permanently denied in accordance with the requirements of 10 CFR 26.75(b), you are not required to respond to the Notice of Violation at this time unless you contest the violation. Should you contest the Notice of Violation, a response is required within **30** days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406 and marked, "Open by Addressee Only - Response to a Notice of Violation; IA-10-035." To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction unless you provide a sufficient basis for withholding any portion of your response.

As an alternative, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC uses is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties (the NRC and you) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting the parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at Cornell University at (877) 733-9415 within **10** days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," records or documents compiled for enforcement purposes are made publicly available in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. A copy of this letter, with your address removed, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection **45** days after the date of this letter unless you request ADR within the 10 days specified above, or you provide sufficient basis to withdraw this violation within the 30 days specified above for a response to this Notice of Violation. If you do not submit a response within 30 days contesting the violation, or do not request an ADR within the time period specified, and an extension of time has not been granted by the NRC, the NRC will make the enclosed Notice of Violation publicly available. A copy of this enforcement action will also be provided to Peach Bottom at that time. The NRC also includes significant enforcement

actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>) and this letter will be included if/when it is made publicly-available. In addition, this letter will be maintained by the NRC's Office of Enforcement in a Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals - NRC." This system includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, may be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Also enclosed is a publicly-available letter to Exelon issued on this date regarding this matter.

Please feel free to contact Mr. Paul Krohn of my staff at 610-337-5120 if you have any questions.

Sincerely,

/RA/

Marc L. Dapas
Acting Regional Administrator

Enclosure: 1. Notice of Violation
2. NUREG/BR-0317
3. NRC letter to Exelon, dated September 16, 2010

cc: w/ enclosure:
Commonwealth of Pennsylvania
State of Maryland

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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State of Maryland

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After declaring this document "An Official Agency Record" it will be released to the Public.

DO NOT PLACE IN ADAMS UNTIL 45 DAYS HAVE PASSED, OR AFTER ADR IS COMPLETED OR A WRITTEN RESPONSE IS REVIEWED (AND THE VIOLATION IS UPHELD), WHICHEVER IS LATER (SEE M. MCLAUGHLIN PRIOR TO PLACING IN ADAMS)

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* see previous concurrence page

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D. Collins, DRP

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ROPreportsResource@nrc.gov

NOTICE OF VIOLATION

Emery Plaza
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-10-035

During an NRC investigation completed on May 14, 2010, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.5(a)(1) states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

10 CFR 50.5(a)(2) states, in part, that any employee of a licensee may not deliberately submit to a licensee, information that the person submitting the information knows to be inaccurate in some respect material to the NRC.

Contrary to the above, on September 14, 2009, while employed as a security officer at Exelon Generation Company LLC's (Exelon's) Peach Bottom Nuclear Power Station, you engaged in deliberate misconduct by deliberately submitting information to Exelon which you knew to be inaccurate in some respect material to the NRC. Specifically, during a random drug screen, you deliberately submitted a substituted urine sample, which you certified on the Exelon custody and control form to be your own and to have not been adulterated in any manner, in an effort to subvert the fitness-for-duty test to avoid detection of illegal drug usage, because you knew the sample was adulterated. The submittal of this urine sample was material to the NRC because random drug testing is required by NRC regulations in 10 CFR Part 26, Fitness-for-Duty Programs. Your deliberate misconduct, if not detected, would have caused Exelon to be in violation of the fitness-for-duty program requirements specified in 10 CFR Part 26.

This is a Severity Level III violation (Supplement VII).

Because your access authorization has been permanently denied in accordance with the requirements of 10 CFR 26.75(b), the NRC has determined that you are not required to respond to the Notice of Violation at this time unless you contest the violation. Should you choose to contest the Notice of Violation, a response is required within **30** days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406 and marked, "Open by Addressee Only - Response to a Notice of Violation; IA-10-035." Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

You may also request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving

conflict outside of court using a neutral third party. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Because your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 16th day of September, 2010