



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PA 19406-1415

September 16, 2010

EA-10-093
EA-10-121

Mr. Michael J. Pacilio
Senior Vice President, Exelon Generation Company, LLC
President and Chief Nuclear Officer, Exelon Nuclear
4300 Winfield Rd.
Warrenville, IL 60555

SUBJECT: NRC INVESTIGATION REPORT NOS. 1-2009-053 and 1-2009-046

Dear Mr. Pacilio:

This letter refers to two investigations by the U. S. Nuclear Regulatory Commission's (NRC's) Office of Investigations (OI) that were conducted at Exelon Generation Company LLC's (Exelon's) Peach Bottom Atomic Power Station (Peach Bottom). The investigations, the results of which are discussed below, were conducted to determine whether two individuals separately engaged in deliberate misconduct while employed at Peach Bottom. Both occurrences were initially reported to the NRC by Exelon.

The first investigation (1-2009-053), completed on May 14, 2010, examined whether a former Exelon security officer at Peach Bottom deliberately attempted to subvert Exelon's fitness-for-duty (FFD) testing process. Based on the evidence obtained during the investigation, the NRC concluded that the individual had deliberately attempted to provide a substituted urine specimen during a random FFD test on September 14, 2009. Based on its review, the NRC also concluded that Exelon implemented its FFD program in accordance with NRC requirements. Specifically, Exelon promptly identified the attempted subversion and subsequently required the individual to provide a second, observed sample, which tested positive for an illegal substance. Afterwards, in accordance with 10 CFR 26.75(b), Exelon immediately terminated the individual's access authorization and permanently denied access authorization thereafter. Therefore, given that Exelon properly implemented its Part 26 program, the NRC plans no action against Exelon for this issue.

The second investigation (1-2009-046), completed on June 3, 2010, examined whether a former contract outage employee at Peach Bottom deliberately failed to disclose on a Personal History Questionnaire (PHQ), a previous, non-nuclear employment from which he had been terminated for a positive FFD test, in order to gain unescorted access (UA) to Peach Bottom. As a result of the investigation, the NRC determined that, on September 8, 2008, the contract employee did fail to disclose his prior employment with the non-nuclear company on the PHQ, and also failed to provide information about the positive FFD test. However, after considering the information developed during the investigation, the NRC concluded that it did not have sufficient evidence to conclude that the individual's failures were deliberate. Nonetheless, as a result of these failures by the contract employee, Exelon granted the individual UA to Peach Bottom from September 11, 2008, until September 28, 2008. Exelon learned of the individual's positive FFD in August 2009, when the contract employee attempted to gain UA to Progress Energy's Crystal

River Nuclear Generating Plant 3 (Crystal River). In submitting a PHQ to Crystal River to gain UA at that time, the individual described another subsequent period of employment with the non-nuclear company that occurred after the employee had worked at Peach Bottom. When Progress Energy contacted the non-nuclear company to verify the contract employee's employment there, the non-nuclear company informed them of the individual's previous period of employment and positive FFD test result. As a result, Progress Energy denied the contract employee UA to Crystal River and notified Exelon of the issue.

Although the contract employee did not enter any Vital Areas at Peach Bottom and also did not perform work on any safety-related equipment during the time he was granted access, the contract employee's actions caused Exelon to be in violation of NRC requirements, specifically: 1) 10 CFR 50.9, which states in part that information required by the Commission's regulations, orders, or license conditions to be maintained by the licensee shall be complete and accurate in all material respects; and, 2) 10 CFR 73.56(c) and Section 9.1 of the Peach Bottom Physical Security Plan, both of which state, in part, that the licensee's access authorization program must provide high assurance that the individuals who are granted unescorted access are trustworthy and reliable. Although Exelon was unaware of the contract employee's omission of information regarding the positive FFD test, Exelon is responsible for the adequacy of its Physical Security Plan and background checks to identify past actions and appropriately evaluate the trustworthiness and reliability of applicants for UA.

Because you are responsible for the actions of your employees, and because the violation involved the failure to provide complete and accurate information, the violation was evaluated under the NRC traditional enforcement process as set forth in Section IV.A.3 of the NRC Enforcement Policy. The NRC has categorized this violation in accordance with the NRC Enforcement Policy at Severity Level IV. Because this violation was of very low safety significance and was entered into Peach Bottom's corrective action program as AR 00956017, this violation is being treated as a non-cited violation, consistent with Section VI.A.1 of the NRC Enforcement Policy. The current NRC Enforcement Policy is included on the NRC's website at <http://www.nrc.gov>; select **About NRC, Regulation, Enforcement**, then, **Enforcement Policy**.

Because the violation is not being cited, a response to this letter is not required. However, if you contest this NCV or its significance, you should provide a response within 30 days of the date of this letter, with the basis for your denial, to the U.S. Nuclear Regulatory Commission, ATTN.: Document Control Desk, Washington, D.C. 20555-0001, with copies to the Regional Administrator, Region I and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, if you choose to provide one, will be 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, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

M. Pacilio

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Should you have any questions regarding this letter, please contact Mr. Paul Krohn at 610-337-5120.

Sincerely,


James W. Clifford, Acting Director
Division of Reactor Projects

Docket No. 50-277; 50-278
License No. DPR-44; DPR-56

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Should you have any questions regarding this letter, please contact Mr. Paul Krohn at 610-337-5120.

Sincerely,

/RA/

James W. Clifford, Acting Director
Division of Reactor Projects

Docket No. 50-277; 50-278
License No. DPR-44; DPR-56

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SUNSI Review Complete: MMM (Reviewer's Initials)

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