



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
LISLE, IL 60532-4352**

April 13, 2011

Mr. Brian E. Burza
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

SUBJECT: POSITIVE FITNESS-FOR-DUTY EVENT NOTIFICATION

Dear Mr. Burza:

This letter refers to an Event Notification (EN 45314) made by Exelon Generation Company, LLC, (Byron Station) on August 31, 2009, to the U.S. Nuclear Regulatory Commission (NRC). The event notification was to inform the NRC that you had tested positive for alcohol during a random breathalyzer Fitness-for-Duty (FFD) test conducted on that date while you were attempting to regain access to the Byron nuclear power plant. The NRC received additional information from Exelon, dated October 16, 2009, about your confirmed positive FFD test for alcohol and the subsequent actions that were taken. On January 29, 2010, we received a letter informing us that Exelon Generation Company, LLC, no longer had a need to maintain your operator license for the Byron Station effective January 15, 2010. Therefore, on April 15, 2010, the NRC notified you that in accordance with 10 CFR 55.55(a), the determination by the facility licensee that you no longer need to maintain a license has caused your license (OP-30951-2) to expire.

Based on confirmed positive test results for alcohol and being an NRC licensed operator, the NRC evaluated the circumstances of your actions for enforcement consideration. Title 10 CFR 55.53 (j) states, in part, that a licensee (licensed operator) shall not perform activities authorized by a license while under the influence of alcohol that could adversely affect his ability to safely and competently perform his licensed duties. We understand that at the time of the positive test you were attempting to regain access to the Byron Nuclear Station, but you were prevented from gaining site access because your positive FFD test for alcohol exceeded the facility's allowed cutoff level pursuant to 10 CFR Part 26, "Fitness for Duty Programs." Although you were prevented access to the plant, as a licensed operator, your actions with respect to gaining access to the plant under the influence of alcohol represented an impairment that may have impacted safety. The NRC takes the safe operation of nuclear power plants very seriously, as operational errors of the station's controls caused by personnel under the influence of drugs or alcohol may impact the health and safety of the general public. Had you been able to regain access to the plant and assume responsibility of the controls of the plant under the influence of alcohol, a significant violation of 10 CFR 55.53 (j) would have occurred.

The NRC holds Licensed Operators to a higher standard than other persons holding unescorted access to a nuclear power plant because of the nature of their responsibilities. Title 10 CFR 26.4(a)(1) specifically states, in part, that personnel who operate or direct the operation of risk-significant plant equipment are subject to the station's FFD program. Furthermore, 10 CFR 55.53(k) specifically requires licensed operators to participate in the drug and alcohol testing program established pursuant to 10 CFR Part 26. The purpose of the Commission's FFD requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of alcohol such that an operator exceeds the cutoff limits specified in 10 CFR Part 26, Appendix A, or in the licensee's FFD program, is a serious matter.

Title 10 CFR 55.61 (b)(5) states, in part that, "Any license may be revoked, suspended, or modified, in whole or in part: For the sale, use or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites, or alcohol in violation of the conditions and cut-off levels established by §55.53(j)." However, taking into account that, at the time of testing, your access to the plant was restricted and that you were not directly performing duties or had responsibilities with respect to your senior operator license, the NRC concluded that no violation of 10 CFR 55.53(j) had occurred. Therefore, no action will be taken against your operator license at this time, and no response to this letter is required.

In accordance with a request from Exelon Nuclear your NRC operator license was expired on January 15, 2010, and therefore, no further action will be taken against your operator license. However, should you reapply for an operator license at the Byron Station, or apply for an operator license at any other facility where there is nuclear fuel, you will need to satisfactorily address the requirements of 10 CFR 55.31 and 55.33, medical and health conditions, by addressing any actions taken to prevent recurrence in order to ensure your ability and willingness to carry out significant duties and responsibilities authorized as a licensed reactor operator; and to abide by all FFD and other license requirements and conditions. If you obtain a license in the future, you should also be aware that NRC may take action against your license if you test positive for alcohol while occupying a control room watchstation, or if you are found unfit for scheduled work as a result of the consumption of alcoholic beverages as noted above from 10 CFR 55.61(b)(5). A copy of this letter will be placed in your 10 CFR Part 55 docket file.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter with your home address removed will be available electronically for public inspection in the NRC Public

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Document Room or from the Publicly Available Records (PARS) component of the NRC's Agency wide Documents Access and Management System (ADAMS). ADAMS is accessible from the Electronic Reading Room page of the NRC's public Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Should you have any questions concerning this action, please contact Mr. Hironori Peterson of my staff. Mr. Peterson can be reached at either the address listed above or 630-829-9707.

Sincerely,

/RA by Gary Shear Acting for/

Steven A. Reynolds, Director
Division of Reactor Safety, Region III

Docket No. 55-33295
License No. OP-31465

cc: Mr. Michael J. Pacilio, Senior Vice President
Exelon Generation Company, LLC, Byron Station

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/RA by Gary Shear Acting for/

Steven A. Reynolds, Director
Division of Reactor Safety, Region III

Docket No. 55-33295
License No. OP-31465

cc: Mr. Michael J. Pacilio, Senior Vice President
Exelon Generation Company, LLC, Byron Station

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