

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Exelon Generation Company, LLC) Docket Nos. 50-237; 50-249
Dresden Nuclear Power Station) License Nos. DPR-19; DPR-25
) EA-13-068

[NRC-2013-0245]

CONFIRMATORY ORDER MODIFYING LICENSE

I

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of Reactor Operating License Nos. DPR-19 and DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 on February 20, 1991, for Unit 2 and on January 12, 1971, for Unit 3. Both licenses were renewed on October 28, 2004. The licenses authorize the operation of the Dresden Nuclear Power Station (Dresden Station) in accordance with conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 18, 2013.

II

On June 6, 2012, the U.S. Nuclear Regulatory Commission's Office of Investigations (OI), Region III Field Office, initiated an investigation to determine if a Senior Reactor Operator (SRO), an Equipment Operator (EO), or any other personnel at the Dresden Station knew that a SRO planned to commit an off-site crime and failed to report that SRO for aberrant behavior. The investigation was completed on March 29, 2013, and was documented in the OI Report

No. 3-2012-020. At the time of this investigation, both the SROs, who plotted the off-site crime and the EO whom they were trying to recruit, had their site access revoked and all three employees were subsequently terminated by the licensee. Based on the evidence developed during its investigation, the NRC identified an apparent violation of NRC requirements in Title 10 of the *Code of Federal Regulations*, Part 73, Sections 56(a)(2), 56(f)(1), and 56(f)(3) with multiple examples in that:

1. An EO, who had unescorted access to the Dresden Station, failed to report concerns to a supervisor regarding an observed change in behavior of two individuals who had unescorted access to the Dresden Station when the other individuals attempted to recruit him in their plans to commit a violent crime off-site.
2. A SRO, who had unescorted access to the Dresden Station, failed to report concerns to a supervisor regarding an observed change in behavior of another individual who had unescorted access to the Dresden Station when the other individual attempted to recruit him in his plans to commit a violent crime off-site.
3. A SRO, who had unescorted access to the Dresden Station, failed to report concerns to a supervisor regarding an observed change in behavior of another individual who had unescorted access to the Dresden Station when the other individual went along with his plans to commit a violent crime off-site.
4. An SRO, with unescorted access to the Dresden Station, failed to promptly contact a reviewing official upon learning of questionable behavior when the SRO was informed by two reactor operators about the questionable behavior of an EO.

On September 18, 2013, Exelon and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. 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 dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Exelon requested use of the NRC's ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

- A. The licensee stated that it has completed the following actions, which are hereby acknowledged in the Confirmatory Order:
 - Revised Exelon procedure SY-AA-103-513, "Behavioral Observation Program" to indicate that the behavioral observation program includes an expectation to report offsite illegal activity;
 - Conducted an Exelon-wide briefing of the issue and the expectation to report unusual behavior observed either on or offsite;
 - Trained Dresden Station personnel of the changes to the procedure and the expectations for reporting aberrant offsite activities; and

- Verified that Dresden Station personnel understood the procedural requirements and guidance.

In addition, the licensee stated that the general employee training program, which is used at Exelon and at other reactor utilities, was revised to include guidance on reporting offsite aberrant activities.

B. Responsibility to Report Offsite Aberrant Behavior or Credible Information:

- B.1. Within 90 days of the effective date of the Confirmatory Order, revise Exelon procedure SY-AA-103-513, "Behavioral Observation Program": (1) to provide additional guidance on the types of offsite activities, if observed, or credible information that should be reported to reviewing officials, and (2) to ensure that procedural requirements to pass information forward without delay are clearly communicated.
- B.2. Within 90 days of the revision to the procedure described in B.1., provide training to Exelon staff of the revision.
- B.3. Within 18 months of the effective date of the Confirmatory Order, develop and conduct an effectiveness assessment of its revised procedure and of the general employee training to determine if Exelon personnel remain aware of the need to report observed offsite aberrant behavior or credible information.
- B.4. These terms and conditions apply to the current Exelon fleet of operating reactors existing as of the date of the Confirmatory Order.

C. Recognition within Reactor Community:

Within 90 days of the effective date of the Confirmatory Order, Exelon will develop and make a presentation based on the facts and lessons learned from the events that gave rise to the Confirmatory Order. Exelon agrees to make this presentation at an appropriate industry forum and to submit an operating experience summary to an industry-wide organization. Exelon will make the presentation materials available to the onsite NRC resident inspectors at the Dresden Station.

D. Informing NRC when Actions Are Complete:

Unless otherwise specified, Exelon will submit written notification to the U.S. NRC Region III Director of Reactor Safety at one year from the date of the Confirmatory Order, and annually thereafter, as actions are completed until total completion.

- E. The resulting Confirmatory Order will not be considered an escalated enforcement action by the NRC for any future assessment of the Dresden Station.
- F. In consideration of the commitments above, the NRC agrees to not issue a finding, a Notice of Violation, a civil penalty, or to take any further enforcement action in the matter of EA-13-068 discussed in the NRC's letter to Exelon dated July 3, 2013.

On October 4, 2013, Exelon consented to issuing this Order with the commitments as described in Section V below. Exelon further agreed that this Order is to be effective upon issuance and that the licensee has waived its right to a hearing.

IV

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

I find that Exelon's commitments as set forth in Section V 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 determined that public health and safety require that Exelon's commitments be confirmed by this Confirmatory Order. Based on the above and Exelon's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 161 b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, THAT THE ACTIONS DESCRIBED BELOW WILL BE TAKEN AT DRESDEN NUCLEAR POWER STATION AND OTHER NUCLEAR PLANTS IN EXELON'S FLEET AND THAT LICENSE NOS. DPR-19 AND DPR-25 ARE MODIFIED AS FOLLOWS WITH RESPECT TO THE ACTIONS TAKEN OR TO BE TAKEN AT DRESDEN NUCLEAR POWER STATION:

A. Responsibility to Report Offsite Aberrant Behavior or Credible Information:

- A.1. Within 90 days of the effective date of the Confirmatory Order, revise Exelon procedure SY-AA-103-513, "Behavioral Observation Program": (1) to provide

additional guidance on the types of offsite activities, if observed, or credible information that should be reported to reviewing officials, and (2) to ensure that procedural requirements to pass information forward without delay are clearly communicated.

- A.2. Within 90 days of the revision to the procedure described in A.1., provide training to Exelon staff of the revision.
- A.3. Within 18 months of the effective date of the Confirmatory Order, develop and conduct an effectiveness assessment of its revised procedure and of the general employee training to determine if Exelon personnel remain aware of the need to report observed offsite aberrant behavior or credible information.
- A.4. These terms and conditions apply to the current Exelon fleet of operating reactors existing as of the date of the Confirmatory Order.

B. Recognition within Reactor Community:

Within 90 days of the effective date of the Confirmatory Order, Exelon will develop and make a presentation based on the facts and lessons learned from the events that gave rise to the Confirmatory Order. Exelon agrees to make this presentation at an appropriate industry forum and to submit an operating experience summary to an industry-wide organization. Exelon will make the presentation materials available to the onsite NRC resident inspectors at the Dresden Station.

C. Informing NRC when Actions Are Complete:

Unless otherwise specified, Exelon will submit a written status of the Confirmatory Order action items to the U.S. NRC Region III Director of Reactor Safety by October 31, 2014, and annually thereafter, until all actions are completed.

The Regional Administrator, Region III, may, in writing, relax or rescind 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 30 days of the date of this Order. 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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software. If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the 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, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. 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 submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a 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, the provisions specified in Section V above shall be final 30 days from the date this Confirmatory Order 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 HEARING SHALL NOT STAY THE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY
COMMISSION

/RA/

Cynthia D. Pederson
Regional Administrator
Region III

Dated this 28th day of October 2013