

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-237-EA
EXELON GENERATION COMPANY, LLC)	50-249-EA
)	
(Dresden Nuclear Power Station)	ASLBP No. 14-930-01-EA-BD01
Confirmatory Order Modifying License))	

**REPLY OF LOCAL UNION NO. 15, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO TO NRC STAFF AND EXELON ANSWERS
OPPOSING LOCAL 15'S PETITION TO INTERVENE
AND REQUEST FOR HEARING**

In accordance with 10 C.F.R § 2.309(i)(2) and pursuant to the Board’s January 31, 2014 Order,¹ Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO (“Local 15” or “Union”), submits its Reply to NRC Staff and Exelon Answers Opposing Local 15’s Petition to Intervene and Request for Hearing. Local 15, as a union representing a licensee’s employees, is clearly situated differently from the vast majority of individuals and organizations who ordinarily seek intervention in such proceedings. That fact is reinforced by the dearth of NRC case law dealing with intervention of unions. But the relative novelty of Local 15’s posture does not mean the Union’s Petition should be dismissed out of hand. To the contrary, the uniqueness of this situation coupled with the Commission’s mandate to include meaningful public participation² demands careful consideration of the merits of Local 15’s position and

¹ That order, granting Local 15’s unopposed motion, extended the time for Local 15 to file this Reply until February 14, 2014.

² See *Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2)*, CLI-75-1, 1 N.R.C. 1, 2 (1975) (“...we wish to underscore the fundamental importance of meaningful public participation in our adjudicatory process. Such participation, performed in the public interest, is a vital ingredient in the open and full consideration of licensing issues and in establishing public confidence in the sound discharge of the important duties which have been entrusted to us...”).

flexibility in applying standards developed almost exclusively to apply to entities of a different nature.

The Confirmatory Order (“CO”) entered by the Commission in this case has caused an injury to Local 15 and its members which is within the zone of interests regulated by the Commission and is subject to redress by this Board. Thus, Local 15 has demonstrated its standing to challenge the Order. Even if the Board were to conclude Local 15 had not satisfied requirements of standing pursuant to 10 C.F.R. §2.309(d), it has the discretion to permit intervention pursuant to 10 C.F.R. §2.309(e). Local 15 contends the Order should not be sustained because it imposes on the members of Local 15 observation and reporting obligations more extensive than those set forth in either the AEA or federal regulations and unbounded by the nuclear safety concerns that animate the statute and regulatory guidance. In addition to the harm they directly cause Local 15 and its members, these deficiencies result in decreased public safety and an improper delegation of authority to the Licensee.

Although Staff and Exelon dispute Local 15’s claims, in determining standing the Board must “accept as true all material allegations of the petition, and must construe the petition in favor of the petitioner.”³ While a petitioner is required to “state[] the bases of the contention[s] proffered with reasonable specificity...whether or not the contention is true is left to litigation on the merits in the proceeding.”⁴ This is similar to the inquiry a court makes in a challenge to

³ *Georgia Institute of Technology, Georgia Tech Research Reactor (Renewal of Facility License No. R-97)*, LBP-95-6, 41 N.R.C. 281, 305 (1995) *vacated in part and remanded on other grounds and aff’d in part*, CLI-95-10, 42 NRC 1, and CLI-95-12, 42 NRC 111 (1995) (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975) and *Kelley v. Selin*, 42 F.3rd 1501, 1507-08 (6th Cir. 1995)). *See also Southern Nuclear Operating Co.*, LBP-09-03, 69 N.R.C. 139, 149 (2009); *See also Arizona Public Service Co., (Palo Verde Nuclear Station, Unit Nos. 1, 2 and 3)*, CLI-91-12, 34 N.R.C. 143, 155 (1991).

⁴ *Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, LBP-86-21, 23 N.R.C. 849, 851 (1986). *See also Nuclear Innovation N. Am. LLC (South Texas Project Units 3 and 4)*, LBP-11-07, 73 N.R.C. 254, 292-293 (2011) (“at the contention admissibility stage of a proceeding, Intervenors need not marshal their evidence as though preparing for an evidentiary hearing”).

jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), in which the court accepts well-pleaded facts as true and draws all reasonable inferences in favor of the pleader.⁵ In that context, where jurisdictional facts are “inextricably intertwined with the merits of the case,” the court “may defer resolution of the jurisdictional issue until the time of trial.”⁶ To the extent the Board believes there is a factual dispute concerning the facts that would either establish Local 15’s standing and/or govern the admissibility of its contentions (both of which are essentially jurisdictional inquiries), those disputes should be resolved in favor of Local 15 at this stage with their ultimate resolution left to the hearing.

I. Local 15 Has Established Standing Pursuant to 10 CFR §2.309(d).

A. Local 15 and its members are directly and adversely affected by the Confirmatory Order.

Although the CO is nominally directed to the Licensee and it is the Licensee that bears the burden of revising its Behavioral Observation Program (“BOP”) consistent with the terms of the order, it is the Licensee’s employees, including those represented by Local 15, who are directly and adversely affected by the ordered changes. In response to the CO, Exelon has made sweeping changes to its BOP;⁷ these changes in the BOP directly affect the working conditions and employment of the employees represented by Local 15. While Local 15, unfortunately, was not included in the ADR process the results of which are memorialized in the CO and is not yet, strictly speaking, a party to the NRC’s action, it and its members are not strangers to the operation of Licensee’s fleet. Nor, as Staff asserts, are their rights “tangential” to the agency’s

⁵ See, e.g., *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 365 (1st Cir. 2001).

⁶ *Id.* at 364 n.3 (citing *Bell v. United States*, 127 F.3d 1226, 1228 (10th Cir. 1997) and *Foster-Miller, Inc. v. Babcock & Wilcox*, 46 F.3d 138, 146-47 (1st Cir. 1995)).

⁷ Copies of the two most recent revisions, Numbers 9 and 10, revised July 15, 2013 and January 24, 2014 respectively, are attached as Exhibits 2 and 3. The previous revision, Number 8, which Exelon has marked as Attachment 4 to its Answer opposing Local 15’s Petition to Intervene, was put in place in 2010, well before the events that led to the investigation in this matter.

decision-making. In fact, it is difficult to conceive of a group of stakeholders with a more direct interest in the matters addressed by the CO than the Local 15 members who are employed by Exelon at the Dresden Facility and the other plants in Exelon's fleet.

Further, it is undisputed that the Exelon employees represented by Local 15 are expected to abide by the terms of the CO itself. Clearly the CO imposes additional obligations on those employees.⁸ And yet, those employees have been entirely excluded from the process of developing the settlement agreement between Exelon and the NRC that is memorialized by the CO. It is axiomatic that "parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party's agreement." *Local No. 93, Int'l Assoc. of Firefighters v. Cleveland*, 478 U.S. 501, 529 (1986) (citing cases). As the Court noted in *Firefighters*, "of course, a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree." Here, unless the Union is permitted to intervene, the NRC will be doing just that: imposing, in the form of what amounts to a consent decree, obligations that go beyond those set forth in the statute or NRC regulations upon employees who have not consented and not even been permitted to voice their views on this matter.

⁸ Contrary to the assertions of both Staff and Exelon, the CO does, in fact, impose additional obligations on Exelon employees. If Staff's and Exelon's assertions in this regard were true, it would appear that the NRC had engaged in a vacuous exercise by entering a formal order, published in the Federal Register, that actually accomplishes nothing. Surely neither Staff nor Exelon actually believe the NRC would enter such an order unless it actually did something to improve safety and how else can safety be improved without imposing additional obligations and/or restrictions on those entities and individuals regulated by the order? In this case, in order for the CO to have actually rendered the Dresden Facility (and the rest of the Exelon fleet) safer than it was before, it has to have imposed new obligations and/or restrictions on the licensee and, by extension, the Exelon employees who are represented by Local 15. If it did not impose such new obligations and/or restrictions then, as a logical matter, it would have accomplished nothing in the way of improving safety or effecting change of any kind at the facility. In the event the former is true, then it is clear Local 15 and its members have, in fact, suffered a change in circumstances that amounts to an injury in fact flowing from the order. In the event the latter is true, the CO is a nullity and its rescission will have no impact on safety.

B. The injuries to Local 15 and its members are within the zone of interests regulated by the AEA.

Further, the employee conduct that is at the heart of the CO and Exelon's resulting policy revisions is well within the zone of interests regulated by the NRC. As Staff points out, citing generally to 42 U.S.C. §2013, the AEA authorizes the NRC to "license the development, use, and control of civilian nuclear materials in such a way that provides adequate protection for the health and safety of life and property, and promotes the common defense and security;" in doing so, it inherently vests the NRC with the authority to regulate the conduct of the licensee employees who actually perform the day to day tasks necessary to ensure adequate protection for the health and safety of life and property.⁹ Moreover, those employees spend enormous amounts of time within the very facilities regulated by the NRC and more closely exposed to any potential nuclear risk associated with those facilities than any member of the general public. Accordingly, the actions the NRC takes to regulate those employees' conduct and working conditions necessarily fall within the "zone of interests" protected by the statute. But the NRC's authority to regulate employee conduct cannot be unbounded. Just as the NRC affords licensees the opportunity to be heard when it contemplates the imposition of additional requirements, so it should afford the same opportunity to licensee employees and their legal representatives. Absent the intervention of Local 15 in this matter, those employees would have no voice, even though they will bear the consequences of the NRC's actions. More importantly, these employees and their representatives are uniquely placed to provide insights into the most effective means of regulating the conduct that is of concern to the NRC; their exclusion from the process leaves the NRC without a critical source of informed input. Because of the direct impact the CO has and

⁹ 42 U.S.C. §2137, which vests the Commission with authority to issue licenses to individuals as operators of nuclear facilities and to impose conditions on the issuance of such licenses provides another example of the NRC's ability to reach the conduct of licensee employees.

will have on the working conditions of the bargaining unit members represented by Local 15 and the fact that these employees' working conditions clearly fall within the zone of interests governed by the AEA and the NRC, Local 15's petition to intervene should be granted.

C. The injury Local 15 and its members have suffered is most properly redressable by this Board.

The injury suffered by Local 15 and its members is of a type that is properly cognizable and susceptible to remedy in this forum in the form of a favorable decision by this Board.

Contrary to Exelon's assertions, a petitioner is not limited to alleging a potential public health or safety concern in order to establish injury in fact. Thus, for example, standing can be supported by an injury to a purely legal interest. *See Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), LBP-90-15, 31 NRC 501, 506 (1990), reconsid. denied, LBP-90-25, 32 N.R.C. 21 (1990).*¹⁰ Further, as the *Consumers Power Co. (Palisades Nuclear Power Facility)*¹¹ Appeals Board decision demonstrates, it may be appropriate to allow intervention even where the petitioner does not allege that a CO makes conditions at the facility less safe.¹²

Contrary to the assertions of the other parties, the injury Local 15 claims and seeks to redress in this forum is not a violation of labor law. Local 15 does believe the Company's refusal to bargain concerning the implementation of sweeping changes to its BOP amounts to a violation of the National Labor Relations Act and Region 13 of the National Labor Relations Board, which has indicated it will issue a complaint on the Union's unfair labor practice charge absent a settlement agreement with Exelon, apparently agrees. However, this injury to Local 15 arises

¹⁰ In that case, Ohio Citizens for Responsible Energy was permitted to intervene in a license amendment proceeding on the basis that the amendment could have the effect of depriving its members of due process hearing rights with regard to future changes in the subject matter of the amendment. *Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), LBP-90-15, 31 N.R.C. 501, 506 (1990), reconsid. denied, 32 N.R.C. 21 (1990).*

¹¹ *Consumers Power Co. (Palisades Nuclear Power Facility), ALAB-670, 15 N.R.C. 493 (1982).*

¹² *Id.* at *24.

within the context of the NRC proceeding and can only be fully remedied if the order memorializing Exelon's agreement with the NRC is rescinded. Even if the Board cannot order Exelon to bargain with Local 15, it can rescind the CO and include Local 15 in a renewed ADR process to address the apparent violations in this matter.

Exelon claims that rescission of the CO would not remedy Local 15's injuries because the regulations would still require reporting of off-site and off-duty conduct. However, as discussed further herein, the CO, and, thus, Exelon's "authority" under the imprimatur of the NRC, goes farther than the regulations in that, on its face, it is not cabined by any nexus to nuclear safety. Local 15 has no concrete assurances that (as both Staff and Exelon seem to suggest) despite this facial defect, enforcement of the order would necessarily be limited by the scope of the regulations. Local 15's complaint in this forum is not with the licensee but rather with the NRC which entered a Confirmatory Order which far exceeds the scope of the regulations it purports to enforce and did so without adequate investigation because it excluded the input of the very employees it directly affects. Because it is the NRC that has damaged Local 15 and its members by both sanctioning Exelon's actions and ordering additional unilateral changes to Exelon procedures, it is entirely appropriate for Local 15 to seek a remedy for these actions in this forum.

II. The Board May Grant Discretionary Intervention

This Board has the discretion to permit intervention even if it finds Local 15 has not met the requirements for standing pursuant to 10 C.F.R. §2.309(d). Both parties note that 10 C.F.R. §2.309(e) makes discretionary intervention available only when intervention has already been granted to another party. However, the Commission "has broad authority to hold hearings as it 'may deem necessary or proper to assist it in exercising any authority provided in the AEA' or to

define the scope of public participation in its proceedings *beyond that which is required by statute.*” *Sequoyah Fuels Corporation (Gore, Oklahoma Site)*, CLI-94-12, 40 NRC 64 slip op. at 6, (August 23, 1994) (emphasis added) (citing 42 USC §2201(c); *Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2)*, CLI-76-27, 4 NRC 610, 614 (1976); and *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, CLI-80-10, 11 NRC 438, 440-41 (1980)). Further, the Commission has broad discretion to allow intervention where it is not a matter of right. *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2)*, 11 NRC at 442. It is worth noting that in *Consumers Power (Palisades)*, which was decided before 10 CFR §2.309(e) made discretionary intervention available only when intervention has already been granted to another party, the Appeals Board allowed discretionary intervention for the union even though no other party had intervened. *Consumers Power Co. (Palisades Nuclear Facility)*, ALAB-670, 15 N.R.C. 493 at *24.¹³ It did so because it believed the union’s participation was in the public interest. *Id.*¹⁴ There is nothing to prevent this Board from reaching a similar conclusion. In 2004, when 10 C.F.R. §2.309(e) codified the standards for discretionary intervention, the agency noted that the most important criterion weighing in favor of discretionary intervention is “whether the person seeking discretionary intervention has demonstrated the capability and willingness to contribute to the development of

¹³ Local 15 respectfully suggests that Exelon characterization of the procedural history of the *Consumers Power* case is somewhat misleading. While Exelon is correct that the *Consumers Power* Licensing Board decision was reversed on appeal, Local 15 believes it goes too far to suggest the Licensing Board’s standing analysis was not reversed; in reality the Appeals Board “eschew[ed] the opportunity to resolve the standing question” because it held “considerable doubt that, as presented, this issue is likely to arise again in Commission proceedings.” *Consumers Power Co. (Palisades Nuclear Facility)*, ALAB-670, 15 N.R.C. 493 at *3. Moreover, resolution of the standing question was obviated by the Appeals Board’s grant of discretionary intervention to the union, thereby achieving the same result as if the standing decision had been reversed. Both Licensing Board and Appeals Board decisions were vacated on mootness grounds after the parties, including the union, settled their differences. *Consumers Power Co. (Palisades Nuclear Facility)*, CLI-82-18, 10 NRC 50 at *2 (July 30, 1982).

¹⁴ Although that case may not be used as controlling precedent, the rationale applied to permit union intervention is persuasive and directly on point here.

the evidentiary record, even though they cannot show the traditional interest in the proceeding.” 69 Fed. Reg. 2182, 2220 (January 14, 2004). Here, even if the Board were to determine that Local 15 cannot show a “traditional interest” in this proceeding, Local 15 has clearly demonstrated its capability and willingness to contribute to the development of the evidentiary record and should be allowed to participate.

Finally, allowing Local 15’s intervention will not turn a “focused regulatory proceeding[] into [an] amorphous public extravaganza.” *Bellotti v. NRC*, 725 F.2d 1380, 1382 (D.C. Cir. 1983). Local 15’s interest in this proceeding is narrowly focused on the order itself; permitting Local 15 to voice its concerns about the Confirmatory Order clearly will not convert the hearing into a “freewheeling examination of all possible discontents.” *Id.* As the *Bellotti* dissent noted, the Commission has extensive discretion to manage its hearings consistent with “a host of limiting principles,” and the “responsible use of that discretion should make unnecessary the complete exclusion of public participation.” *Bellotti*, 725 F.2d at 1389 (Wright, J., dissenting).

III. Local 15’s Contentions Are Admissible Because They Directly Challenge the Substance and Effect of the Confirmatory Order and Do Not Seek a Hypothetical Alternative Order.

Local 15 believes the CO is seriously flawed, for reasons set forth in its Petition to Intervene and further discussed herein. Because of the order’s defects, it has the cumulative effect of rendering Exelon’s operations less safe than they were before the order¹⁵ in addition to

¹⁵ While Local 15 believes this to be the case, it also does not believe such an allegation is necessary to clear the hurdle to intervention. Local 15 need not allege solely that the CO makes conditions at the Dresden facility and the remainder of Exelon’s fleet less safe. As the *Consumers Power (Palisades)* Appeals Board decision teaches, a union may also bring something of value to the discussion where its assertion is that “an agency decision goes too far without an adequate factual foundation or safety justification.” *Consumers Power Co. (Palisades Nuclear Facility)*, ALAB-670, 15 N.R.C. 493 at *24. While *Consumers Power*, in addition to having been vacated as moot, is a pre-*Bellotti* decision, the language of *Bellotti* and its progeny does not mandate a different result. *Bellotti* did not hold that public participation must be denied when a petitioner fails to allege that an order reduces safety, only that it “may be denied only when the Commission is seeking to make a facility’s operation safer.” *Bellotti*, 725

imposing new and onerous obligations on Exelon's employees. As the NRC very recently noted, in post-*Bellotti* enforcement proceedings, "a petitioner may obtain a hearing only if the measures to be taken under the order would *in themselves* harm the petitioner."¹⁶ This is, essentially, a narrowing of the NRC's already-restrictive pleading standards for contentions. Local 15's contentions all concern whether the order, as written, should be sustained because it causes harm to Local 15, its members and the public. Accordingly, Local 15's position is clearly distinguishable from that of petitioners in cases cited by Exelon and the NRC, including *All Operating Boiling Water Reactor Licensees, Maine Yankee*,¹⁷ and *Bellotti*. Local 15's view is not that the Commission should enter some alternate hypothetical order but rather that the order should be rescinded and the apparent violations uncovered in the investigation and documented in OI Report No. 3-2012-020 addressed through enforcement proceedings (potentially to include ADR), this time including the essential participation of Local 15.¹⁸

A. The Confirmatory Order's Vagueness and Overbreadth Render It Ineffective and Exelon's Facilities Less Safe.

The CO's failure to confine itself to the statutory and regulatory framework results in an order that is both overbroad and vague with the result that it is rendered ineffective. Staff makes Local 15's point when it asserts that the examples of activities put forward by Local 15 as

F.2d at 1383 (emphasis added). Public participation is "automatic with respect to all Commission actions that are potentially harmful to the public health and welfare." *Id.* Clearly, this Board would have discretion to grant Local 15's intervention even if the Union did not allege that the CO rendered Exelon's facilities less safe.

¹⁶ *All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents*, CLI-13-02, 2013 NRC LEXIS 2 at *10 (Jan. 31, 2013).

¹⁷ *Maine Yankee Atomic Power Co. (Maine Yankee Power Station)*, CLI-04-05, 58 NRC 396 (2003).

¹⁸ Given the other parties' argument that the order does not provide anything other than what the regulations already require, rescission of the order pending a reworking of the ADR or other resolution process with the union's participation certainly should not result in less safety within the Exelon fleet just as sustaining the order will not result in increased safety.

arguably reportable (e.g., jaywalking and minor traffic infractions) are “speculative” and “may not have the requisite nexus to health and safety or common defense and security issues.”¹⁹ One of the CO’s most problematic aspects is the fact that it leaves room for speculation as to what may and may not be reportable and leaves open the question of whether such activities may or may not be required to have a nexus to nuclear safety. Regardless of how Exelon might choose to interpret the order, the fact remains that it is drafted in such a way as to allow interpretation that departs radically from the parameters of 10 C.F.R. §73.56.

In the analogous context of injunctions and restraining orders, Federal Rule of Civil Procedure 65(d) requires such an order to “state its terms specifically” and to “describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.” FED. R. CIV. P. 65(d).²⁰ The specificity requirement is intended, *inter alia*, “to prevent uncertainty and confusion on the part of those faced with injunctive orders in order to avoid a possible contempt citation on a decree too vague to be understood.” *See* 13 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 65.60, 65-108 (3d ed. 2013); *Schmidt v. Lessard*, 414 U.S. 473, 475-76 (1974) (citing MOORE’S). As Moore’s teaches, “[a] court must frame its injunctions or restraining orders so that those who must obey them will know precisely what the court intends to forbid or require.” MOORE ET AL., at ¶ 65.60[3] (citing *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 75 (1967)). Injunctive relief may be ineffectual where the order is insufficiently specific. *Id.* Similarly here, because the

¹⁹ Staff Answer at 8.

²⁰ As the Supreme Court noted in *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, Rule 65(d) has been applied broadly to orders of various kinds: “Consistent with the spirit and purpose of its statutory predecessor, we have applied Rule 65(d) in reviewing a judgment enforcing an order of the National Labor Relations Board, and the courts of appeals have applied the rule not only to prohibitory injunctions but to enforcement orders and affirmative decrees as well.” *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 75 (1967) (citing cases).

CO is so broad and non-specific as to the types of conduct required to be reported and silent with regard to a nexus between such conduct and nuclear safety, it creates uncertainty and confusion with regard to precisely what conduct is required to be reported. This uncertainty renders the order ineffectual and the public less safe.

Exelon asserts that 10 C.F.R. §73.56 does not, on its face, distinguish between on- and off-duty conduct and that off-duty conduct is clearly relevant to the initial access authorization determination.²¹ To be clear, Local 15 is not alleging that the NRC regulations do not reach and allow consideration of certain off-duty conduct, including criminal background checks and required self-reporting of legal actions. However, to the extent the regulations reach off-duty conduct, they clearly limit that reach to conduct which “may adversely affect the safety or security of the licensee’s facility” or “may constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential threat to commit radiological sabotage.” 10 C.F.R. §73.56(f)(2). Local 15 respectfully submits that federal regulations requiring employees to self-report their own legal actions where the regulation further spells out precisely what types of legal actions are and are not required to be reported (*see* 10 C.F.R. §73.56(g)) are qualitatively different from a confirmatory order requiring employees to observe and report off-duty illegal, unusual and aberrant conduct of co-workers especially where, as here, the order contains no limiting language concerning either the precise conduct that is required to be reported or any required nexus with nuclear safety.

Staff asserts that “reporting of off-site, off-duty conduct has always been within NRC’s regulatory purview *so long as the observed conduct has a nexus to public health and safety or*

²¹ Exelon Answer at 12-13.

the common defense and security.”²² Assuming, *arguendo*, that Staff’s reading of the requirements of 10 C.F.R. §73.56 is correct and that the changes to Exelon policy memorialized in the CO are mere clarifications of previously existing obligations, the CO is deficient because it fails, on its face, to connect even these reporting “clarifications” with the public health and safety or common defense and security concerns that Staff admits *should* limit any such obligations. The CO does nothing to tie the “clarified” reporting obligations to nuclear safety or employee trustworthiness and fails to confine Exelon’s actions taken in compliance with the order to requiring reporting of just those behaviors that are required by statute and regulation to be reported because they “may adversely affect the safety or security of the licensee’s facility” or “may constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential threat to commit radiological sabotage.” 10 C.F.R. §73.56(f)(2). The CO imposes obligations on Exelon (and, by extension, the members of Local 15) that are not limited as they must be in order to be consistent with 10 C.F.R. §73.56.

In a related vein, Exelon claims that “the actions endorsed in the Confirmatory Order do not represent any material change to NRC requirements for the scope of Exelon’s BOP” and asserts that “[a]berrant behavior reflecting on the trustworthiness and reliability of personnel with unescorted access has long been the subject of required reporting—whether it occurs on-site or off, or relates to conduct on-site, or off.”²³ However, the facts show that until the NRC investigation into the incident that prompted the CO, Exelon itself did not believe that its

²² Staff Answer at 8 (emphasis added).

²³ Exelon Answer at 10. Even this statement of Exelon’s acknowledges that to be reportable, aberrant behavior must reflect on the trustworthiness and reliability of unescorted personnel—a requirement which the CO omits.

employees had an obligation to report on each others' off-duty conduct.²⁴ Exelon acknowledged this fact in a November 21, 2013 meeting with the Union and has admitted that the changes it made to its BOP in July 2013, subsequent to the issuance of the results of the NRC's investigation into the carjacking incident, were substantive and imposed on bargaining unit employees new reporting obligations that had never before been the subject of Exelon policy.²⁵ Moreover, whatever the scope of Exelon's BOP may have been or what Exelon believed it to be prior to the investigation in this matter, Local 15's complaint in this forum concerns the scope of the CO itself, which, as discussed herein, exceeds that of the statute and federal regulations.

²⁴ See November 21, 2013 notes of Local 15 Business Representative Bill Phillips (attached as Exhibit 4), taken during a meeting in which Exelon attorney Tamra Domyer admitted that Exelon's policy prior to that investigation did not require off-duty employees to report their observations of other off-duty employees and stated that it was only during the NRC investigation that Exelon discovered the NRC's position to the contrary. *See also* November 26, 2013 letter from Marilyn Teitelbaum to Tamra Domyer, attached as Exhibit 5.

²⁵ *Id.* Nor has Local 15 waived its right to bargain with Exelon concerning its BOP, which clearly concerns the terms and conditions of employment for Exelon employees—mandatory subjects of bargaining. An employer wishing to assert a union has waived its statutory right to bargain concerning modifications to the terms and conditions of employment for the employees it represents bears the burden to prove the union has “clearly and unequivocally” waived the right. *See, e.g., Ohio Power Co.*, 317 NLRB 135, 136 (1995) (citing *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983)). Such a waiver is not lightly inferred; in fact, the presumption is that the union has not waived such rights. *See, e.g., Pertec Computer*, 284 NLRB 810, 817 (1987). Here, there has been no such unequivocal waiver. Exelon does not routinely supply its policies and procedures, including its BOP, to Local 15 and therefore Local 15 generally does not know what they contain until an incident arises concerning the application or enforcement of such a policy or procedure. In such a case, Local 15 will ordinarily request copies of any policies and/or procedures alleged to have been violated and the company is obligated to provide them necessary and relevant to the union's investigation of potential and/or pending grievances concerning the company's actions. When the Union has found such policies and/or procedures to be objectionable, it has demanded bargaining concerning them. Under these circumstances any alleged failure on the Union's part to challenge Exelon's implementation of these policies cannot be interpreted to waive its right to demand bargaining, a conclusion supported by the fact that, absent a settlement with Exelon, Region 13 of the NLRB intends to issue a complaint concerning Exelon's failure to bargain with the Union.

B. The CO's remedial measures are not reasonably calculated to address the apparent violations uncovered in the investigation.

Nor are the changes to Exelon's BOP ordered by the CO confined to measures calculated to directly address the apparent violations that prompted the CO. Again, Staff's own characterization supports this point:

Although the Confirmatory Order ultimately led to changes (both current and pending) to Exelon's program, the apparent violation in this case did not claim that Exelon's program was entirely deficient. Rather, the apparent violation alleged that Exelon employees failed to report behaviors of an SRO that involved the planning of a violent crime.²⁶

Staff also acknowledges that "in crafting an enforcement order to address a regulatory concern, the Staff has an obligation to ensure that its order directly and promptly addresses the problem."²⁷ It is difficult to see how the CO here fulfills that mandate. As the United States Supreme Court has made clear in another analogous context, that of the consent decree, a court order memorializing parties' settlement of a dispute "must spring from and serve to resolve a dispute within the court's subject-matter jurisdiction" and "must come within the general scope of the case made by the pleadings." *Local No. 93, Int'l Assoc. of Firefighters v. Cleveland*, 478 U.S. 501, 525 (1986). Here, although the unreported conduct that prompted the investigation and which was found to have been in apparent violation of 10 C.F.R. §73.56 was entirely criminal in nature, the CO sweeps a range of undefined conduct within the scope of what must be reported. As such, the CO memorializing the settlement agreement between Exelon and the NRC clearly exceeds the scope of the dispute that precipitated the investigation and subsequent ADR.²⁸ Sustaining such an order would be inconsistent with sound jurisprudential principles.

²⁶ Staff Answer at 14.

²⁷ *Id.* at 14-15.

²⁸ Exelon suggests that Local 15's position in this regard is undercut by case law holding that intervenors' challenges to facts established in a confirmatory order are inadmissible. Exelon Answer at 26 n.119. This

C. Local 15's contentions do not challenge any Commission rule or regulation but do challenge an improper delegation of authority to Exelon.

Contrary to the rather puzzling assertions of both Staff and Exelon, Local 15 does not challenge any NRC rule or regulation; in fact, Local 15 directly asserts that the CO should not be sustained because it goes beyond the scope of the federal regulations. While the NRC regulations do commit to each licensee the authority to develop an access authorization program, the parameters of that program must lie within statutory and regulatory confines. Here, however, the NRC has ordered the licensee to implement changes to its BOP without apparent limitation to those confines.

IV. No Other Procedural Vehicle Provides As Efficient or Complete a Remedy As the Instant Proceeding.

Staff points out that in the event intervention is denied here, Local 15 may have other avenues to challenge the CO. Specifically, Staff notes that pursuant to the APA, a reviewing court may set aside agency actions under certain circumstances.²⁹ It also notes, apparently suggesting that if Exelon were to bargain with Local 15 and arrive at a result different from that embodied in the CO, that a licensee that cannot fulfill the requirements of a confirmatory order “may submit a written request to the NRC to relax or rescind its order.”³⁰ While both of these avenues arguably provide additional means to challenge or, ultimately, re-draw the terms of the CO, both are fraught with delay and uncertainty that need not be introduced if the Board were to grant Local 15's petition. Bringing the Union into the process at an early stage would allow the parties to avoid conflicting obligations and the delay that would necessarily flow from resolving

assertion misses the point of Local 15's contention. Local 15 does not challenge the accuracy of the facts recited in the confirmatory order; rather it challenges those facts' sufficiency to support the ordered remedy.

²⁹ Staff Answer at 16.

³⁰ *Id.* at 9.

them. In fact, dealing with this issue through this proceeding is the most direct and expedient way to resolve these issues. The very fact that these other avenues are available (i.e., that the NRC's actions in entering the CO are clearly not immune from challenge) should militate in favor of granting intervention in this proceeding.

V. Conclusion

For all of the reasons discussed in detail in Local 15's Petition and elaborated upon herein Local 15 has established standing and proffered admissible contentions. Accordingly, Local 15 respectfully requests that the Board grant its Petition to Intervene; admit its contentions; order a hearing; and grant such other relief as may be warranted by all the facts and circumstances.

Respectfully submitted,

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BEHAVIORAL OBSERVATION PROGRAM

1. **PURPOSE**

- 1.1. This procedure provides information and guidance for all individuals who are required to participate in a Behavioral Observation Program (BOP). The BOP is the primary means for determining continued trustworthiness and reliability of individuals with Unescorted Access Authorization (UAA). The objective of the BOP is to detect illegal drug use, alcohol/legal drug abuse and other behaviors such as fatigue and physical or mental illness that may constitute an unreasonable risk to the health and safety of the public, including a potential threat to commit radiological sabotage.
- 1.2. This procedure is applicable to all individuals with UAA and all individuals granted unescorted access (UA) to Exelon Nuclear Power Stations and Decommissioned Reactors (with spent fuel in the spent fuel pool) and Independent Spent Fuel Storage Installation facilities, to licensee, vendor, or contractor personnel required to physically report to a facility's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with Exelon Emergency Plans and Procedures and all individuals responsible for administration of the Access Authorization Program activities and Fitness For Duty Testing Program activities (Including critical group individuals).

2. **TERMS AND DEFINITIONS**

- 2.1. **Annual** – A twelve (12) month cycle.
- 2.2. **Annual Supervisor Review** – A supervisory review conducted on a nominal annual basis for each individual with UAA/UA, maintained for 365 consecutive days, by the individual's immediate supervisor.
- 2.3. **Behavioral Observation Program (BOP)**—An awareness program that meets requirements of both the access authorization and fitness-for-duty programs. Personnel are trained to report legal actions; to possess certain Knowledge and Abilities (K&A's) related to drugs and alcohol and the recognition of behaviors adverse to the safe operation and security of the facility by observing the behavior of others in the workplace and detecting and reporting aberrant behavior or changes in behavior that might adversely impact an individual's trustworthiness or reliability, and undergo an annual supervisory review.

2.4. **Critical Group** – Individuals:

1. Who have extensive knowledge of defensive strategies and design and/of implementation of the plant's defense strategies. The positions include:
 - A. Site security supervisors,
 - B. Site security managers,
 - C. Security training instructors,
 - D. Corporate security managers;
2. In a position to grant an applicant unescorted access or unescorted access authorization, including site access authorization managers;
3. Assigned a duty to search for contraband or other items that could be used to commit radiological sabotage (i.e., weapons, explosives, incendiary devices). The positions include:
 - A. Security personnel who have been trained to perform that task.
4. Who have access, extensive knowledge, or administrative control over plant digital computer and communication systems and networks as identified in 10 CFR 73.54 including:
 - A. Plant network systems administrators
 - B. IT personnel who are responsible for securing plant networks.

The term IT personnel includes:

1. Any individual who has the **combination** of electronic access AND the administrative control (e.g., system administrator rights) to alter one or more security controls associated with one or more Critical Digital Assets (CDA) should be in the critical group.
2. Also, any individual with extensive knowledge of the site-specific cyber defensive strategy should be in the critical group.
3. For this section access, extensive knowledge and administrative control are defined as:

Access – Access is defined as having electronic access.

Extensive Knowledge – having 1) knowledge of the cyber security controls in

place for a CDA, or 2) knowledge of how the configuration of a CDA or the cyber security controls can be modified or leveraged in a manner that could result in an adverse impact to Safety, Important to Safety, Security or Emergency Preparedness (SSEP) functions, or 3) knowledge of vulnerabilities of the site specific cyber security defensive strategy.

Administrative control – A person with administrative control has the electronic access and rights to independently change either the configuration of a CDA or the cyber security controls in place for a CDA, in a manner that could result in an adverse impact to the SSEP functions.

Individuals performing the following functions should be included in the critical group:

1. Site Cyber Security Supervisors
2. Site Cyber Security Managers
3. Site Cyber Security Training Manager
4. Corporate Cyber Security Managers
5. Cyber Security Engineers and Administrators
6. IT Personnel who are responsible for authorizing access to CDAs
7. CDA System Administrators
8. Personnel who can change independently the configuration of CDAs or can alter cyber security controls
9. Members of Cyber Security Assessment Team (CSAT) and Cyber Security Incident Response Team (CSIRT).
10. Plant network system administrators who meet the requirements above.

When additional individuals are identified during the implementation of 73.54, they shall be placed in the critical group in accordance with the implementation milestone schedule completion date committed to in the Nuclear Regulatory Commission approved Exelon Cyber Security Plan. See SY-AA-103-510, Insider Mitigation Program step 3.3.

Qualified for and assigned duties as: armed security officers, armed responders, alarm station operators, and response team leaders, and armorers as defined in the licensee's Physical Security Plan; and reactor operators, senior reactor operators and non-licensed operators. Non-licensed operators include those individuals responsible for the operation of plant systems and components, as

directed by a reactor operator or senior reactor operator. A non-licensed operator also includes individuals who monitor plant instrumentation and equipment and principally perform their duties outside of the control room.

- 2.5. **Immediate Supervisor** – The person responsible for behavior observation reviewing and reporting requirements of individuals who directly report to them that have been granted unescorted access authorization (UAA) or UA and has been trained in techniques related to recognition of behaviors adverse to the safe operation and security of the facility in observing the behavior of others in the workplace and to detect and report aberrant behavior or changes in behavior that might reflect negatively on an individual's trustworthiness and reliability.
- 2.6. **Legal action** - A formal action taken by a law enforcement authority or court of law, including being held, detained, taken into custody, charged, arrested, indicted, fined, forfeited bond, cited, or convicted for a violation of any law, regulation or ordinance. This includes felony, misdemeanor, summary offenses, serious traffic offenses, serious civil charges or military charges to include court martial or non-judicial punishment, guilty pleas, nolle contend ere, any suspended sentences, pre-trial diversions, dismissals, nolle prosequere or first offender cases and traffic tickets and includes the mandated implementation of a plan for treatment or mitigation in order to avoid a permanent record of an arrest or conviction in response to the following activities:
1. The use, sale or possession of illegal drugs;
 2. The abuse of legal drugs or alcohol; or
 3. The refusal to take a drug or alcohol test.

ALL drug and alcohol related legal action must be reported.

- A. This **does not include** minor misdemeanor charges such as parking tickets, non-injury traffic and speeding tickets or minor civil actions such as zoning violations, city ordinances and citations or minor traffic violations such as moving violations when the individual was not physically taken into custody and a court appearance is not required.
- B. Examples of serious civil charges, that must be reported includes, but is not limited to, a summons to appear in court; filing for bankruptcy; claims of negligence, wrongful death, discrimination or harassment; any claim with intentional or willful conduct as a component; and any civil claim or action in which a party seeks a judgment against you of at least (or the damages to be awarded could amount to at least) \$40,000.00.
- C. Examples of minor civil actions that do not need to be reported includes, but is not limited to, zoning violations, small claims actions, garnishments, child support payments, property disputes, and other civil actions where the money, debt, or damages sought is less than \$40,000 and divorce actions/decrees (unless the divorce action or decree seeks or includes a

restraining order or requires the employee or contractor to pay at least \$40,000 out of pocket).

- 2.7. **Nominal** - The limited flexibility that is permitted in meeting a scheduled due date for completing a recurrent activity that is required under this part, such as the nominal annual 12-month frequency required for FFD refresher training in 10 CFR 26.29(c)(2) and the nominal annual 12-month frequency required for certain audits in 10 CFR 26.41(c)(1). Completing a recurrent activity at a nominal frequency means that the activity may be completed within a period that is 25 percent longer or shorter than the period required in this part. The next scheduled due date would be no later than the current scheduled due date plus the required frequency for completing the activity.
- 2.8. **Observation** – The process used when coming into contact with others, including personal contact, telephone contact (although this is not the preferred method and should not be used to extend an individual's unescorted access when the individual has not been observed in person for a period of 30 days or more), video-conference, monitoring of work output, attendance, and consultation with or feedback from supervisors and co-workers.

3. **RESPONSIBILITIES**

- 3.1. **Individuals who sign a personal history questionnaire** in order to obtain UAA/UA but have not been granted UAA/UA but are in the process, are responsible for reporting to their supervisor and security any legal actions as defined in this procedure. Individuals are required to report this on their first day back to in-processing activities subsequent to any legal action.
- 3.2. **Individuals with UAA/UA** are responsible for reporting to their supervisor and Site Security/Fitness For Duty Lead any legal actions as defined in this procedure. Individuals are required to report this on their first day back to work and subsequent to any legal action.
- 3.2.1. Shall report any observed behavior indicating degradation in performance, impairment or change in behavior to a supervisor. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.
1. Are responsible for evaluating their own personal fitness-for-duty based on impairment from fatigue by:
- A. Managing their work hours consistent with the objective of preventing impairment from fatigue;
 - B. Verifying their work hours are correctly documented regardless of whether they are paid for the hours worked;

- C. Making a self-declaration of fatigue when fatigue or reduced mental alertness could negatively affect their job performance and discussing these concerns with supervision;
- D. Monitoring and reporting concerns related to individuals' Fitness-For-Duty (FFD) based on impairment from fatigue (i.e., Behavior Observation Program); and
- E. Being aware of the total hours worked in the previous 14 days and notifying management if work hour limits will be exceeded if asked to work additional hours.

3.2.2. Shall report to their supervisor when an individual is exhibiting unusual or aberrant behavior that may adversely affect the safety or security of a licensee facility, or that may constitute an unreasonable risk to the health and safety of the public or the common defense and security, including a potential threat to commit radiological sabotage. If an individual is exhibiting signs of fatigue refer to LS-AA-119, Fatigue Management and Work Hours Limit, for further direction.

1. Each employee (contractor or Exelon) must rely upon some signs or indications to look for that may indicate their co-workers, employees, or visitors are exhibiting unusual or aberrant behavior. Possible signs of unusual or aberrant behavior, issues or events include:
 2. Unusual interest in or predisposition towards security or operations activities outside the scope of their normal work assignments.
 3. Uncharacteristic absences from work.
 4. Frequent unexplained absence from work assignments.
 5. Unusual or inadequate response when confronted about being in a plant or office location outside of the worker's usual scope of work.
 6. Unusual views or opinions that might be directly or indirectly threatening to a nuclear facility.
 7. A worker in an area outside of their usual scope of activities, who can't provide an appropriate explanation.
 8. Abnormalities such as vandalism and/or tampering. Examples include but are not limited to:
 - A. Misaligned breakers or valves,
 - B. Cut wires or cables,
 - C. Foreign objects in machinery, reservoirs or tanks,

- D. Inappropriate holes drilled, punched or cuts in pipes, tubes or hoses, and
- E. Damage to a component such that its safety or security function is impeded.

3.2.3. Shall report a leave of absence, or any situation if you are not in a behavior observation program, to your supervisor, Security and Human Resources prior to leaving. Some examples may include:

1. Medical/Personal/Military leave of absence (immediate upon discovery)
2. Extended vacation (Greater than 30 days)
3. Working remotely (Greater than 30 days)
4. Training at other work locations-e.g., Supervisory Development Program (Greater than 30 days)

3.2.4. Attending and successfully completing annual Fitness For Duty training.

3.3. **Supervisors and Management** are responsible for familiarizing themselves with their employee's behavior patterns in order to enable the supervisor to recognize when an employee is exhibiting unusual or aberrant behavioral traits and patterns that may reflect adversely on their trustworthiness or reliability and constitute an unreasonable risk to the health and safety of the public, including a potential threat to commit radiological sabotage. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.

1. Although everyone is trained to the same level, Managers and Supervisors have additional actions to implement parts of the FFD and Behavioral Observation Program. This includes:
 - A. Observing assigned individuals' behavior patterns over time.
 - B. Documenting behavioral problems.
 - C. Acting proactively to address behavior problems.
 - D. Conducting and documenting a supervisory review on a nominal annual basis for each individual with unescorted access authorization/unescorted access, maintained for 365 consecutive days.

3.3.2. Acting in a timely manner when an Access Authorization or Fitness for Duty concern has been identified. If someone's behavior is questionable, the supervisor shall immediately notify security and remove the person from work activities. The person shall be escorted at all times until the concern is satisfactorily resolved or until the

person exits the protected area. This may include testing for cause or a determination of fitness.

- 3.3.3. Acting in a timely manner when an individual has an unusual interest in or predisposition towards security or operations activities outside the scope of ones normal work assignments, or frequent unexplained absences from work assignments. The supervisor shall immediately remove the person from work activities. The person shall be escorted at all times until the concern is satisfactorily resolved or until the person exits the protected area. This may include testing for cause or a determination of fitness.
- 3.3.4. Notifying the cognizant Department Head in cases of observed aberrant behavior or unusual interest in or predisposition towards security or operations activities outside the scope of ones normal work assignments, or frequent unexplained absences from work assignments.
- 3.3.5. Ensuring that individuals report all legal actions as defined in this procedure to Site Security/Fitness For Duty Lead and if assistance is needed, the local Human Resources Department for Exelon employees or to the cognizant Exelon manager for contractor employees.
- 3.3.6. Act as the primary person to report a leave of absence, or any situation if you or any of your direct reports are not in a behavior observation program, to your supervisor, Security and Human Resources as soon as possible and prior to leaving. Some examples may include:
 1. Medical/Personal/Military leave of absence (immediate upon discovery)
 2. Extended vacation (Greater than 30 days)
 3. Working remotely (Greater than 30 days)
 4. Training at other work locations-e.g., Supervisory Development Program (Greater than 30 days)
- 3.3.7. Referring employees to the Employee Assistance Program (EAP) made available by the applicable employer.
 1. If the employee continues to show signs of behavior changes or problems, contact EAP staff to make a supervisor referral. The supervisor should continue to document changes in the employee's current performance.
 2. If behavior continues to deteriorate, contact Security and the Medical Review Officer (MRO).
 3. Advise your management of the steps you have taken and the documentation collected.

- 3.3.8. If you are upgraded or promoted to a supervisory position you are **obligated** to carry out the supervisory responsibilities as defined in the Exelon Fitness for Duty Program.
- 3.3.9. If you have any concerns or are in doubt about handling a Fitness For Duty concern, call Station Security.
- 3.3.10. Attending and successfully completing annual Fitness For Duty training.
- 3.4. **Fitness for Duty Personnel** in coordination with access authorization personnel are responsible for the adjudication of potentially disqualifying information to determine if an individual is trustworthy and reliable.
 - 3.4.1. Oversees and assures satisfactory quality performance of the laboratory contracted to conduct specimen testing.
 - 3.4.2. Maintains confidentiality of the Access Authorization and Fitness For Duty Records.
 - 3.4.3. Assists in coordinating Appeals to the Appeal Reviewer.
- 3.5. **Human Resource personnel** are responsible for the immediate notification to appropriate management personnel, to include Exelon Corporate Nuclear Security to place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could affect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.
 - 3.5.1. Serving as the confidential communication link between Exelon Nuclear Security and Company employees for Access and Fitness For Duty issues.
 - 3.5.2. Promptly report any Access and Fitness For Duty concerns or program violations to Station Security and Station Management.
 - 3.5.3. Ensuring that employees notify Site Security Access/Fitness For Duty Lead when the employee makes them aware of a legal action.
 - 3.5.4. Ensuring that Site Security Badging offices and/or Exelon Corporate Nuclear Security are notified when an individual is on a leave of absence from the company or will be away from the BOP for greater than 30 days.
 - 3.5.5. Notify Security when an employee has been terminated "For Cause" so Security can make an evaluation concerning the individual's trustworthiness and reliability. This includes situations when an employee is allowed to resign prior to termination.

- 3.6. **Occupational Health and Safety (OHS) Personnel** are responsible for the immediate notification to appropriate management personnel, to include Exelon Corporate Nuclear Security, the recommendation to place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could effect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.
- 3.6.1. Ensuring that individuals who are on a medical and/or disability leave of absence are reported to applicable Site Security immediately.
- 3.6.2. **The Medical Review Officer (MRO)** is responsible for the immediate notification to appropriate management personnel, to include Exelon Corporate Nuclear Security, the recommendation to deny or place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could effect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. Reviewing reported legal action, medical assessments and supervisory reviews, when appropriate, and make recommendations for any needed requirements and/or to deny or place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could effect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. This may include the taking of medication, dietary conditions, signs of fatigue, mental stress, illness, or any other condition.
1. Interviews donors with laboratory confirmed positive test results to determine if a positive test could have resulted from over-the-counter and/or legally prescribed medication or dietary condition.
 2. Authorizes re-analysis of the original specimen by a Health and Human Services (HHS) Certified Laboratory.
 3. Evaluates the need for testing of individuals as identified in the Testing For Cause procedure.
 4. Identifies any issues associated with collecting and testing specimens, and advises and assists the FFD program management in planning and overseeing the overall FFD program.
 5. Recommends individuals to the EAP.
 6. Evaluates documentation provided by EAP and Access Authorization group to recommend to Security if an individual can be considered trustworthy and reliable for the purpose of granting and/or maintaining unescorted access authorization.
 7. Recommends follow-up testing and reviews the treatment plan as a result of a positive drug or alcohol test or for any other concern to verify continued abstinence from the use of substances.

8. Directs the MRO Staff and their activities while they are performing those functions.
- 3.7. **EAP Staff** is responsible for providing confidential assessment, short-term counseling, referral services and treatment monitoring for FFD related issues.
- 3.7.1. Provide early intervention for individuals who may have problems that could adversely affect their ability to safely perform their duties.
- 3.7.2. Notify company management (even if individual is a self-referral) if they determine that an individual's condition constitutes a hazard to themselves or to others, or have been impaired as a result of using drugs or alcohol while in a work status and have a continuing substance abuse disorder as required by 10CFR Part 26.
- 3.7.3. The following EAP services are available to receive confidential help in dealing with any of the following concerns or possibly other problems that may be troubling an individual:
- | | |
|-----------------------------------|-----------------------------|
| •Dealing with Change / Transition | •Stress |
| •Family / Relationship Concerns | •Depression |
| •Dual Careers | •Anxiety |
| •Job Burnout | •Workplace Problems |
| •Marital / Relationship | •Work / Life Balance |
| •Fitness For Duty | •Alcohol / Drug Problems |
| •Compulsive Gambling | •Aging Parents / Elder Care |
| •Death / Dying | •Financial Concerns |
| •Sexual Problems | •Retirement Concerns |
| •Eating Disorder Problems | •Physical Abuse |
- 3.7.4. Only Exelon employees are eligible for the EAP. Employees may request assistance from the EAP (self-referral) or be referred by their Supervisor, Security, the MRO or the company Medical staff. Contractors can check with their supervision on the availability of an EAP in their company.
- 3.7.5. For additional information on the company's EAP, see your Supervisor, Human Resources or the company Medical staff. To obtain information or get help, contact the EAP staff directly.
- 3.8. **Exelon Nuclear Security Individuals** are responsible for ensuring that the annual supervisor review is completed.

3.9. **Reviewing Official** – will evaluate any notification of observed behaviors or conditions identified in this procedure to determine continued UAA/UA.

3.9.1. If the Reviewing Official has a reason to believe that the reported individual's trustworthiness or reliability is questionable, the reviewing official shall either administratively withdraw or terminate the individual's unescorted access or unescorted access authorization while completing the re-evaluation or an investigation.

4. **MAIN BODY**

4.1. **Behavior Observation Program**

4.1.1. After an individual's emotional stability, reliability, **and** trustworthiness has been determined so that they can safely and competently perform assigned duties, **and** the individual has UAA or has been granted UA to Exelon's nuclear power stations, Decommissioned Reactors (with spent fuel in the spent fuel pool), Independent Spent Fuel Storage Installation facilities, personnel required to physically report to a facility's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with Exelon Emergency Plans and Procedures, all individuals responsible for administration of the Access Authorization Program activities and Fitness For Duty Testing Program activities (Including critical group individuals), this must be maintained and his/her behavior must be observed **and** evaluated not to exceed a 30 day timeframe.

4.1.2. Individuals are required to be fit-for-duty by getting sufficient rest to ensure they are not subject to fatigue. Individuals who make choices that result in less than adequate sleep to remain alert and avoid fatigue are not meeting their obligations to safely and competently perform assigned duties.

4.1.3. Methods used to manage fatigue include training, behavioral observation, fatigue countermeasures and work hour limitations.

4.1.4. The BOP shall include behavioral observation training, a legal action reporting program, and annual supervisory reviews. To maintain UAA/UA an individual must be covered under a BOP and is required to comply with access authorization and fitness for duty program policies and procedures.

4.1.5. The BOP is conducted by supervisors, management personnel **and** all who are trained **and** is intended to "detect individual behavioral changes which, if left unattended, could lead to acts detrimental to the public health **and** safety."

4.1.6. The BOP is **not** intended to be used as a means of reporting what might be considered inadequate **or** marginal job performance. Established methods available to supervisors should continue to be used in these cases.

- 4.1.7. Individuals who are on a leave of absence **and/or** are **not** in a BOP for greater than 30 days, shall have their unescorted access terminated **and** will be required to complete the appropriate Personnel History Questionnaire (PHQ) **and/or** any other Access Authorization **and** Fitness for Duty requirements depending on when the individual returns from the absence, prior to reinstatement of unescorted access.
- 4.1.8. If unusual behavior, suspected drug use, the detected odor of alcohol, or any conditions adverse to station safety for any individuals **escorted** and **unescorted** is observed, notify your supervisor and/or department head, and Security immediately.
1. This can include but is not all inclusive, the violation of company policy, an ethics concern, theft of company property and off-site illegal activity.
- 4.1.9. If the sale, use, or possession of drugs in the station or on company property is observed, report this IMMEDIATELY to your supervisor and Security.
- 4.1.10. When it is identified that an individual may be impaired **and** such impairment could affect the safe operation of the plant **or** negatively reflect the individual's trustworthiness **or** reliability, that individual shall be escorted at all times, while within the protected area.
- 4.1.11. Although the BOP is the primary methodology for determining continued trustworthiness and reliability, clinical interviews may be used to provide added assurance.
- 4.2. **Training**
- 4.2.1. The BOP training presented in Exelon's Fitness For Duty Program satisfies both the Access Authorization Rule **and** the Fitness For Duty Rule. This training provides reasonable assurance that individuals have sufficient awareness and sensitivity to detect degradation in performance which may be the result of being under the influence of any substance, legal or illegal, fatigued, physical or mental impairment which in any way may adversely affect their ability to safely and competently perform their duties.
- 4.2.2. The program also provides techniques related to recognition of behaviors adverse to the safe operation and security of the facility, e.g., unusual interest in or predisposition towards security or operations activities outside the scope of ones normal work assignments, or frequent unexplained absence from work assignments. Individuals will be trained to the supervisory level on their responsibilities for remaining trustworthy and reliable.

- 4.2.3. The program also includes; recognition that changes in emotional state can happen quickly; typical conditions which trigger behavioral anomalies; the need for early intervention after recognition of changes in behavior which typically indicate changes in emotional state; the recognition of uncharacteristic deviations in collegial interactions, uncharacteristic absences from work, or uncharacteristic inattention to detail, or suspected alcohol or drug abuse; and the need to report the above conditions to the employee's assigned supervisor or fitness-for-duty program manager.
- 4.2.4. The training program shall address the knowledge and abilities necessary to detect behavior or activities that have the potential to constitute an unreasonable risk to the public health and safety and common defense and security, including the potential to commit radiological sabotage.
- 4.2.5. Personnel are trained to possess the following Knowledge and Abilities (K&A's):
1. Knowledge of the policy and procedures that apply to the individual, the methods that will be used to implement them, and the consequences of violating the policy and procedures;
 2. Knowledge of the individual's role and responsibilities under the FFD program;
 3. Knowledge of the roles and responsibilities of others, such as the MRO and the human resources, FFD, and EAP staffs;
 4. Knowledge of the EAP services available to the individual;
 5. Knowledge of the personal and public health and safety hazards associated with abuse of illegal and legal drugs and alcohol;
 6. Knowledge of the potential adverse effects on job performance of prescription and over-the-counter drugs, alcohol, dietary factors, illness, mental stress, and fatigue;
 7. Knowledge of the prescription and over-the-counter drugs and dietary factors that have the potential to affect drug and alcohol test results;
 8. Ability to recognize illegal drugs and indications of the illegal use, sale, or possession of drugs;
 9. Ability to observe and detect performance degradation, indications of impairment, or behavioral changes;
 10. Knowledge of the individual's responsibility to report an FFD concern and the ability to initiate appropriate actions, including referrals to the EAP and person(s) designated by the licensee or other entity to receive FFD concerns;

11. Knowledge of the contributors to worker fatigue, circadian variations in alertness and performance, indications and risk factors for common sleep disorders, shift-work strategies for obtaining adequate rest, and the effective use of fatigue countermeasures; and
 12. Ability to identify symptoms of worker fatigue and contributors to decreased alertness in the workplace.
- 4.2.6. All individuals identified herein shall undergo initial BOP training. The initial training shall include a comprehensive examination addressing these requirements. BOP Refresher training shall be completed on a nominal annual basis and shall be documented as required by licensee or C/V procedures. In lieu of refresher training a comprehensive examination may be administered.
- 4.2.7. Remedial training and re-testing are required for individuals who fail to satisfactorily complete the comprehensive examination.
- 4.2.8. Initial and refresher training may be delivered using a variety of media (including, but not limited to, classroom lectures, required reading, video, or computer-based training systems). The licensee or C/V shall monitor the completion of training.
- 4.3. **Worker Stress**
- 4.3.1. Individuals should be knowledgeable of causes of worker stress in the workplace.
1. Daily stress is normal.
 2. Stress is derived from events that occur throughout life e.g., marriage and family life, job changes, job performance, etc.
 3. Chronic stress the worker is at risk for adverse impact on day-to-day living, e.g., behavior changes.
- 4.3.2. Contributors to worker stress may include:
1. Increased irritability, feelings of depression, chronic fatigue (fatigue that has set in over several weeks or months), overreacting to any single situation, impulsiveness, excessive use of alcohol or drugs, and constant sense of worry.
- 4.3.3. Worker fatigue can also have an adverse effect on job performance.
- 4.4. **Dietary Factors**
- 4.4.1. Certain available food products such as poppy seeds, hemp oil, energy drinks containing alcohol, marijuana-flavored lollipops and coca leaf tea, some liquid or inhalant cold and cough preparations containing alcohol or codeine although not all inclusive, may cause positive test results.

- 4.4.2. Marijuana-flavored lollipops have such names as *Purple Haze*, *Acapulco Gold* and *Rasta*. They are legal because they are made with hemp oil, a common ingredient in some health food, beauty supplies and other household products. The oil imparts marijuana's grassy taste but not the high. Merchants are calling them as a harmless novelty item for adults. Health food stores are also selling more and more products made from hemp. Though consuming products containing hemp oil create no psychoactive effect, they will cause a positive urinalysis test for marijuana. The Medical Review Officer will not accept hemp product ingestion as an alternative medical explanation for a positive marijuana test.
- 4.4.3. There is an herb named Kava Kava that is found in health food stores and has been used, like valerian root, as an over the counter "prescription" for stress relief and can make you appear impaired.
- 4.4.4. Energy drinks containing alcohol are prohibited while on company property. Individuals who consume these drinks are impaired because of the alcohol in their system. These drinks contain alcohol in quantities sufficient to cause a positive test for alcohol and the MRO **will not** accept an energy drink product ingestion as an alternative medical explanation for a positive alcohol test.
- 4.4.5. Coca leaf tea contains cocaine in quantities sufficient to cause a positive test for cocaine, and the MRO **will not** accept coca leaf product ingestion as an alternative medical explanation for a positive cocaine test.
- 4.4.6. It is an employee's responsibility to maintain fitness for duty and be aware of the effects of each drink, food, or drug you ingest. Although a substance, food, or health supplement is reported "safe" for you and is legal, it does not mean it is wise or safe to ingest these items because they can result in a positive alcohol or drug test. Remember to read labels and ask questions before you purchase and use a new product.
- 4.5. **Illegal Drugs**
- 4.5.1. Some of the drugs which are illegal under federal, state, or local laws include, among others, marijuana, heroin, hashish, cocaine and hallucinogens. Depressants, stimulants, and other controlled substances not prescribed for current personal treatment by an accredited physician also fall under this rule.
- 4.5.2. Drugs can have a significant impact on job performance. Those individuals using drugs or other chemicals can have:
1. Impaired judgment and vision;
 2. Changes in reflexes; and
 3. Reduced analytical ability
- 4.5.3. Common drugs that may be used are:

1. **Cannabis**: Cannabis (e.g., marijuana, THC) is brilliant green in color with an odd number of saw-tooth edged leaves. Some signs of Cannabis use include:
 - A. Bloodshot eyes, dilated (wide) pupils
 - B. Appearance of intoxication or disorientation
2. **Stimulants**: Stimulates the central nervous system. Some examples of stimulants include: caffeine, nicotine, amphetamines, methamphetamine, some over-the-counter diet pills, and cocaine. Some signs of Stimulant use include:
 - A. Increased alertness or excitation
 - B. Euphoria
3. **Depressant**: Depresses the central nervous system. Some examples of depressants include: barbiturates, Valium, Quaaludes, and alcohol.
 - A. Some signs of Depressant use include:
 - B. Slurred speech
 - C. Odor on breath (alcohol)
4. **Narcotic**: Used medically to relieve pain and to treat diarrhea. Some examples include: opium, heroin, codeine, morphine, and paregoric.
 - A. Some signs of Narcotic use include:
 - B. Constricted or narrow pupils of the eyes
 - C. Nausea
5. **Hallucinogen**: Synthetic or natural drugs that distort the perception of objective reality. Use may lead to delusions and visual hallucinations. Some examples of hallucinogens include: psilocybin, LSD, phencyclidine (PCP) and mescaline.
 - A. Some signs of Hallucinogen use include:
 - B. Blank stare or rapid eye movement
 - C. Delusions and visual hallucinations

4.6. **Principle Factors that Contribute to Worker Fatigue**

- 4.6.1. Individuals should be knowledgeable of causes and the impact of fatigue in the workplace as well as the effective use of counter measures. Knowledge of these topics is necessary to ensure that individuals are able to:

1. Self-manage fatigue that is caused by shift work and factors other than work hours;
2. Take actions to maintain their alertness at work; and
3. Recognize and seek treatment for sleep disorders that might be creating fatigue or making their own fatigue more severe.

4.6.2. **Physical Fatigue is Present:**

1. When an individual's diminished physical capability is due to overexertion; or
2. Excessive time of exertion; or
3. A brief physical workload that is excessive and the resulting fatigue degrades physical task performance.

4.6.3. **Circadian Variations in Alertness and Performance:**

1. The normal, inherent, unavoidable, 24-hour rhythms in human information processing and physical performance.
2. Most of these circadian rhythms fluctuate between a high point late in the day to a low point in the pre-dawn hours and are mostly exemplified by:
 - A. Night work; and
 - B. Shift work

4.6.4. **Acute Fatigue** – can either be physical or mental and builds up normally and unavoidably within one waking period.

4.6.5. **Cumulative Fatigue** – can either be physical or mental and builds up across major waking periods when there is inadequate recovery (due to inadequate sleep) between the waking periods.

4.6.6. **Chronic Fatigue** – may set in after several weeks or months of cumulative fatigue. Its symptoms are similar to those of Chronic Fatigue Syndrome (CFS):

1. The desire to sleep;
2. Apathy;
3. Substantial impairment in short-term memory or concentration;
4. Muscle pain;

5. Multi-joint pain without swelling or redness;
6. Headaches of a new type, pattern or severity;
7. Un-refreshing sleep; and
8. Post-exertional malaise lasting more than 24 hours.

4.6.7. **Physiological Changes that Follow a Daily Pattern**

1. An individual's ability to perform and remain alert is influenced by physiological changes that follow a daily pattern.
2. Humans are hard-wired with a genetically-determined biological need for sleep and with a circadian pacemaker that programs us to sleep at night and to be awake during the day, on a 24-hour schedule.
3. Sleep is a complex, active physiological state that is vital to human survival.
4. When an individual is deprived of sleep, the response is sleepiness, which is the brain's signal to prompt an individual to obtain sleep.
5. When deprived of sleep (acutely or chronically), the human brain can spontaneously, in an uncontrolled fashion, shift from wakefulness to sleep in order to meet its physiological need for sleep.
6. Twenty-four hour operations challenge these basic physiological principles.
7. Individuals may be trying to work when the brain is programmed to be asleep, during the circadian low-point in alertness and performance capacity.
8. Conversely, individuals may be trying to sleep when the brain is programmed to be awake; leading to sleep loss and poor sleep quality, which further degrades alertness and performance capacity.
9. Shift work, altered and changing work schedules, crossing time zones, long hours of continuous wakefulness, and sleep loss can create sleep and circadian disruptions that degrade waking function.
10. This results in fatigue and sleepiness while driving, monitoring equipment; degraded vigilance and decision making; and a wide range of other performance effects that can erode the safety margin in operational settings.

4.6.8. **Two Common Sleep Disorders:**

1. Sleep Apnea - A temporary suspension of breathing occurring repeatedly during sleep that often affects overweight people or those having an obstruction in the breathing tract, an abnormally small throat opening, or a neurological disorder.

2. Insomnia - Chronic inability to fall asleep or remain asleep for an adequate length of time.

4.6.9. **Indications and Risk Factors for Common Sleep Disorders:**

1. Extended work and/or Commuting Periods;
2. Split-Shift Work Schedules
3. Sleep/Work Periods Conflicting with Circadian Rhythms;
4. Changing or Rotating Work Schedules;
5. Lack of Rest or Nap Periods;
6. Sleep Disruptions;
7. Inadequate Exercise Opportunities;
8. Poor Diet; and
9. Environmental Stressors

4.6.10. **Shift-Work Strategies to Optimize Sleep Periods to Obtain Adequate Rest:**

1. Minimize sleep loss; it is important *not* to begin a new work schedule with an existing sleep debt (normally requires 2 nights of unrestricted sleep);
2. Take naps; minimize to 30 minutes (only allowed during non-paid work time in designated areas when in a work status);
3. Develop good sleep habits; a regular pre-sleep routine can condition relaxation in preparation for falling asleep (physical and mental relaxation techniques such as meditation, yoga and progressive muscle relaxation can be used); and
4. Understand the affects of food, alcohol and exercise; being hungry or eating too much may interfere with falling asleep as well as the use of nicotine or caffeine; alcohol produces easily disrupted, lighter sleep and suppresses REM (rapid eye movement); regular exercise may enhance deep sleep but avoid strenuous exercise within 6 hours of going to bed.

4.6.11. **Countermeasures that can be used at Home:**

1. Adequate Sleep is the best way to prevent or resolve fatigue;
2. Create a comfortable sleep environment at home; get a comfortable mattress; adjust heating and cooling as needed and get in habit of sleeping 8 hours per night;

3. Napping (only allowed during non-paid work time in designated areas) and should be less than 30 minutes. Longer naps produce sleep inertia, which is counterproductive;
4. Anchor sleep is 4 hours of sleep at the same time each day used when a normal 8-hour sleep cannot be achieved (effect when changing from shift to shift); and
5. Being mindful of effects of medications

4.6.12. **Countermeasures that can be used at Work:**

1. Strategic caffeine use to help work through decreased alertness;
2. Social interaction and active involvement in conversation;
3. Physical activity such as stretching and isometric exercises; and
4. Consume well-balanced meals and plan ahead for nutritious snack food (simple carbohydrates can cause “sugar highs” followed by lows that cause decreased alertness)

4.6.13. **Symptoms of fatigue include:**

1. Yawning
2. Red eyes
3. Prolonged/excessive blinking
4. Irritability
5. Sleepiness
6. Difficulty concentrating
7. Apathy
8. Feeling of isolation
9. Annoyance
10. Increased reaction time to stimulus
11. Slowing of higher level mental functioning
12. Decreased vigilance
13. Memory problems
14. Increased errors while performing tasks

4.6.14. **Contributors to Decreased Alertness and Increased Worker Fatigue:**

1. Task demands such as:
 - A. Repetitiveness
 - B. High cognitive demands
 - C. High level of required attention
 - D. Sedentary
 - E. Lack of social interaction
2. Environmental conditions such as:
 - A. High heat and humidity
 - B. Poor lighting
 - C. Low frequency noise

4.7. **Legal Action Reporting**

- 4.7.1. Any individual who signs a personal history questionnaire in order to obtain UAA/UA but has not been certified UAA or granted UA and individuals with UAA/UA who have had any legal action, as defined in this procedure, are required to report this on their first day back to work subsequent to the incident. Any incident involving drugs or alcohol **must** be reported. If there is any question as to whether an incident is reportable, individuals should contact their Supervisor, Department Head, and/or Site Security Access/Fitness For Duty Lead for a determination.
- 4.7.2. The Supervisor, **or** Department Head shall ensure the individual reports the incident to Site Security Access/Fitness For Duty Lead and the local Human Resources Department for Exelon employees.
- 4.7.3. The Site Security Access/Fitness For Duty Lead shall complete Attachment 1, Exelon Legal Action Self-Reporting Form, page 1, Section 1, and promptly forward the information to the corporate reviewing official.
- 4.7.4. The Site Security Access/Fitness For Duty Lead shall immediately request the individual reporting the legal action to complete Attachment 1, page 2. The narrative shall include specific details of the ongoing legal action. When section 1 of page 1 and page 2 of Attachment 1 are completed, immediately forward to Exelon Nuclear Corporate Security along with any supporting documentation (court order, copies of tickets, etc).
- 4.7.5. Exelon Nuclear Corporate Security will review Attachment 1 on the day that the report is received and shall evaluate the circumstances related to the reported legal

action(s) and re-determine trustworthiness and reliability and track legal action until closure.

- 4.7.6. When the employee notifies Exelon Site Security Access/Fitness For Duty Lead, Human Resources **or** the cognizant Exelon manager will be included in the notification process if required or if requested by the employee.
1. As a minimum, the employee should be prepared to provide the date of the incident, the charge, final disposition **and/or** court date, if known.
- 4.7.7. Failure to report any legal action could result in unescorted access being denied. In addition to the potential denial of unescorted access, Exelon personnel who fail to report an incident could receive disciplinary action up to **and** including termination. Exelon Generation Corporate Security will discuss the legal action with the individual **and** evaluate the incident for appropriate action. The reporting of any legal action may initially result in unescorted access being placed on administrative hold or temporary hold pending further review. A decision regarding the status of his/her unescorted access will be made **and** the employee advised.
- 4.7.8. Upon receipt of information of a felony issue, unescorted access will be immediately placed on administrative hold plus any felony conviction of a licensed operator, Exelon Generation Corporate Security will notify Human Resources. The site has 30 days to notify the Nuclear Regulatory Commission about the Operator's conviction for a felony per the requirements of 10CFR 55.53(g).
- 4.7.9. Upon receipt of information of a domestic violence legal action on a member of the Security organization, Site Security Access/Fitness For Duty Lead will notify the Security Manager.
- 4.7.10. Upon receipt of a drug or alcohol-related legal action the Site Access/Fitness for Duty Lead shall notify corporate access authorization security so a determination of fitness can be initiated, if applicable. If the individual is a licensed operator or armed security then unescorted access will be immediately placed on administrative hold and the station nurse must be notified.
1. If drug related this is considered credible information and a for cause drug and alcohol test shall be completed in accordance with SY-AA-102-202, For Cause Testing. The fatigue assessment is not required.
- 4.7.11. It is imperative that this information be kept confidential **and** all individuals **and** departments involved are responsible for maintaining confidentiality.
- 4.7.12. Exelon Corporate Nuclear Security will notify the individual in writing of the final disposition. Human Resources will also be notified for Exelon employees.

4.8. Supervisor Review

CAUTION

If the annual supervisory review is not completed by the expiration date, UAA/UA will be terminated.

- 4.8.1. A supervisory review shall be conducted on a nominal annual basis for each individual in the critical group with UAA/UA, utilizing the Behavior Observation Program – Annual Supervisory Review form in NEI 08-06, Nuclear Power Plant Access Authorization and Fitness for Duty Program Forms, or equivalent including an electronic process or form.
- 4.8.2. A supervisory review shall be conducted on a nominal annual basis for all other individuals with UAA/UA, maintained for 365 consecutive days. Supervisory reviews are not required for an individual where UAA/UA is terminated prior to the anniversary date of granting UAA/UA. The status of supervisory reviews is not required to be provided to other licensees.
- 4.8.3. The review shall be conducted by the individual's immediate supervisor. The review shall be based on interactions with the individual over the review period, is not intended to be face to face or replace daily responsibilities as discussed within this procedure and shall include:
1. A description of any condition that may have resulted in the employee acting or behaving in an unconventional manner;
 2. Any circumstances which may indicate the need to refer the employee for additional medical or psychological review; and any information developed over the review period, regarding the behavioral characteristics of the employee supervised. This information would typically include behavioral norm deviations which have been reported to the supervisor through implementation of the BOP, as well as those behavioral norm deviations personally observed by the supervisor.
- 4.8.4. If the supervisor does not have the frequent interaction with the individual throughout the review period needed to form an informed and reasonable opinion regarding the individual's behavior, trustworthiness, and reliability, the individual is also subject to a supervisory interview in accordance with the requirements of the licensee's or C/V's BOP.
- 4.8.5. For Exelon employees, in cases where the individual's position is one of the highest ranking positions of authority, or the individual does not physically report to the same permanent work location as the individual's immediate supervisor, the supervisory review may be completed by another supervisor who works directly with the

individual on a regular basis and is aware/trained on their responsibilities for behavior observation.

- 4.8.6. When potential disqualifying information is identified, the Annual Supervisory Review shall be evaluated by an access authorization program reviewing official to determine if additional action is required concerning the individual's trustworthiness, reliability, and fitness for duty. The completed review shall be included as part of the licensee's access authorization files.

4.9. **Record Retention**

- 4.9.1. Annual Supervisor Reviews and Legal action Reporting documentation for an individual must be retained for a minimum of five years following access termination from the authorizing licensee's program.

5. **DOCUMENTATION**

6. **REFERENCES**

- 6.1. Commitments - None

- 6.2. User's References

- 6.2.1. SY-AA-102, Exelon's Nuclear Fitness For Duty Program

SY-AA-102-202, For Cause Testing.

- 6.2.2. SY-AA-103-510, Insider Mitigation Program

- 6.3. Writer's References

- 6.3.1. Nuclear Regulatory Commission 10CFR 73.56, Access Authorization Program for Nuclear Power Plants

- 6.3.2. Nuclear Regulatory Commission 10CFR 26, Fitness For Duty Program

- 6.3.3. Nuclear Regulatory Commission, 10CFR 55.53, Operator Licenses

- 6.3.4. NEI 03-01, Nuclear Power Plant Access Authorization Program

- 6.3.5. NEI 03-04, Guideline for Plant Access Training

- 6.3.6. LS-AA-119, Fatigue Management and Work Hours Limit

7. **ATTACHMENTS**

- 7.1 Attachment 1 - Exelon Legal Action Self Reporting Form

**ATTACHMENT 1
EXELON LEGAL ACTION SELF-REPORTING FORM
PAGE 1 OF 2**

Section 1: (To be completed by Site Security Access/Fitness For Duty Lead/Designee)

NAME: (Individual making self-report): _____

PHONE NUMBER: _____

ADDRESS: _____

S.S.#: _____

STATION: _____

COMPANY/DEPT: _____

DATE OF SELF-REPORT: _____

DATE RETURNED TO WORK: _____

DATE OF LEGAL ACTION: _____

CURRENT CHARGES: _____

COURT DATE: _____

FELONY YES NO (if felony unescorted access must be immediately placed on administrative hold) MISDEMEANOR YES NO

IS THE CHARGE DRUG OR ALCOHOL RELATED? YES NO (if drug related unescorted access must be immediately placed on administrative hold and a "For Cause" test must be conducted)

REVIOUS LEGAL ACTIONS (Must list all legal action even if previously reported) :

LOCATION OF INDIVIDUAL (in Custody or Jail): _____

You must provide copies of any supporting documentation (court order, tickets, etc.)

Are you a Supervisor? YES NO Are you a Licensed Operator? YES NO

Immediate Supervisor Notified? YES NO Are you an Armed Security Officer/Responder? YES NO

Site Nurse Notified, if applicable? YES NO Are you a member of the Critical Group? YES NO

On page 2 of this attachment, request individual to provide a statement with a detailed narrative description of the events leading up to, during and following the Legal Action (who, what, when, where, how and why). For a DUI/DWI/DWAI etc., list the Blood Alcohol Concentration or write, "**Refused**" if the Breathalyzer or blood test was refused. Ensure the individual signs, prints and dates the attachment.

Site Security Access/FFD Lead: _____ Date: _____

Section 2: (To be completed by Corporate Security) **Immediately forward to Corporate Security**

LOG NUMBER: _____

TEMP HOLD: _____

DENIED: _____

REVIEWED BY: _____

CLOSED DATE: _____

COMMENTS: _____

BEHAVIORAL OBSERVATION PROGRAM

1. **PURPOSE**

- 1.1. This procedure provides information and guidance for all individuals who are required to participate in a Behavioral Observation Program (BOP). The BOP is the primary means for continually assessing trustworthiness and reliability of applicable individuals. The objective of the BOP is to detect illegal drug use, alcohol/legal drug abuse, fatigue, physical or mental illness, and other unusual, questionable or aberrant behaviors that may adversely affect plant operations or the safety or security of a licensee facility or constitute an unreasonable risk to the health and safety of employees, the public, or the common defense and security, including a potential threat to commit radiological sabotage.
- 1.2. This procedure is applicable to:
 1. All individuals with Unescorted Access Authorization (UAA) and all individuals granted unescorted access (UA) to Exelon Nuclear Power Stations and Decommissioned Reactors (with spent fuel in the spent fuel pool) and Independent Spent Fuel Storage Installation facilities;
 2. Licensee, vendor, or contractor personnel required to physically report to a facility's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with Exelon Emergency Plans and Procedures;
 3. All individuals responsible for administration of the Access Authorization Program activities and Fitness For Duty Testing Program activities; and
 4. Critical group individuals.

2. **TERMS AND DEFINITIONS**

- 2.1. **Aberrant Behavior** – Behavioral or performance indicators (including deteriorating performance over time) occurring which deviate from the norms of behavior which have been established by society and/or the Company; or, isolated conduct or action which is a significant departure from the prior behavior of the individual.
- 2.2. **Annual** – A twelve (12) month cycle.

- 2.3. **Annual Supervisor Review** – A supervisory review conducted on a nominal annual basis for each individual with UAA/UA, maintained for 365 consecutive days, by the individual’s immediate supervisor.
- 2.4. **Behavioral Observation Program (BOP)**— An awareness program that meets requirements of both the access authorization and fitness-for-duty programs. Personnel are:
1. Trained to report legal actions;
 2. Trained to possess certain knowledge and abilities (K&A’s) related to drugs and alcohol and the recognition of behaviors adverse to the safe operation and security of the facility by observing the behavior of others and detecting and reporting aberrant behavior that might adversely impact an individual’s trustworthiness or reliability; and
 3. Undergo an annual supervisory review.
- 2.5. **Critical Group** – Individuals:
1. Who have extensive knowledge of defensive strategies and design and/or implementation of the plant’s defense strategies. The positions include:
 - A. Site security supervisors,
 - B. Site security managers,
 - C. Security training instructors,
 - D. Corporate security managers;
 2. In a position to grant an applicant unescorted access or unescorted access authorization, including site access authorization managers;
 3. Assigned a duty to search for contraband or other items that could be used to commit radiological sabotage (i.e., weapons, explosives, incendiary devices). The positions include:
 - A. Security personnel who have been trained to perform that task.
 4. Who have access, extensive knowledge, or administrative control over plant digital computer and communication systems and networks as identified in 10 CFR 73.54 including:

- A. Plant network systems administrators
- B. IT personnel who are responsible for securing plant networks.

The term IT personnel includes:

1. Any individual who has the **combination** of electronic access AND the administrative control (e.g., system administrator rights) to alter one or more security controls associated with one or more Critical Digital Assets (CDA) should be in the critical group.
2. Also, any individual with extensive knowledge of the site-specific cyber defensive strategy should be in the critical group.
3. For this section access, extensive knowledge and administrative control are defined as:

Access – Access is defined as having electronic access.

Extensive Knowledge – having 1) knowledge of the cyber security controls in place for a CDA, or 2) knowledge of how the configuration of a CDA or the cyber security controls can be modified or leveraged in a manner that could result in an adverse impact to Safety, Important to Safety, Security or Emergency Preparedness (SSEP) functions, or 3) knowledge of vulnerabilities of the site specific cyber security defensive strategy.

Administrative control – A person with administrative control has the electronic access and rights to independently change either the configuration of a CDA or the cyber security controls in place for a CDA, in a manner that could result in an adverse impact to the SSEP functions.

Individuals performing the following functions should be included in the critical group:

1. Site Cyber Security Supervisors
2. Site Cyber Security Managers
3. Site Cyber Security Training Manager
4. Corporate Cyber Security Managers
5. Cyber Security Engineers and Administrators
6. IT Personnel who are responsible for authorizing access to CDAs
7. CDA System Administrators

8. Personnel who can change independently the configuration of CDAs or can alter cyber security controls
9. Members of Cyber Security Assessment Team (CSAT) and Cyber Security Incident Response Team (CSIRT).
10. Plant network system administrators who meet the requirements above.

When additional individuals are identified during the implementation of 73.54, they shall be placed in the critical group in accordance with the implementation milestone schedule completion date committed to in the Nuclear Regulatory Commission approved Exelon Cyber Security Plan. See SY-AA-103-510, Insider Mitigation Program step 3.3.

5. Qualified for and assigned duties as: armed security officers, armed responders, alarm station operators, and response team leaders, and armorers as defined in the licensee's Physical Security Plan; and reactor operators, senior reactor operators and non-licensed operators. Non-licensed operators include those individuals responsible for the operation of plant systems and components, as directed by a reactor operator or senior reactor operator. A non-licensed operator also includes individuals who monitor plant instrumentation and equipment and principally perform their duties outside of the control room.
- 2.6. **Immediate Supervisor** – The Supervisor responsible for the behavior observation, reviewing and reporting requirements, for individuals who directly report to them (this may include a supervisor that may have individuals required to be in a BOP who report directly to them but may not be in a BOP themselves).
- 2.7. **Legal action** - A formal action taken by a law enforcement authority or court of law, including being held, detained, taken into custody, charged, arrested, indicted, fined, forfeited bond, cited, or convicted for a violation of any law, regulation or ordinance. This includes felony, misdemeanor, summary offenses, serious traffic offenses, serious civil charges or military charges to include court martial or non-judicial punishment, guilty pleas, nolle contend ere, any suspended sentences, pre-trial diversions, dismissals, nolle prosequere or first offender cases and traffic tickets and includes the mandated implementation of a plan for treatment or mitigation in order to avoid a permanent record of an arrest or conviction in response to the following activities:

1. The use, sale or possession of illegal drugs;
2. The abuse of legal drugs or alcohol; or
3. The refusal to take a drug or alcohol test.

ALL drug and alcohol related legal action must be reported.

- A. This **does not include** minor misdemeanor charges such as parking tickets, non-injury traffic and speeding tickets or minor civil actions such as zoning violations, city ordinances and citations or minor traffic violations such as moving violations when the individual was not physically taken into custody and a court appearance is not required.
 - B. Examples of serious civil charges, that must be reported includes, but is not limited to, a summons to appear in court; filing for bankruptcy; claims of negligence, wrongful death, discrimination or harassment; any claim with intentional or willful conduct as a component; and any civil claim or action in which a party seeks a judgment against you of at least (or the damages to be awarded could amount to at least) \$40,000.00.
 - C. Examples of minor civil actions that do not need to be reported includes, but is not limited to, zoning violations, small claims actions, garnishments, child support payments, property disputes, and other civil actions where the money, debt, or damages sought is less than \$40,000 and divorce actions/decrees (unless the divorce action or decree seeks or includes a restraining order or requires the employee or contractor to pay at least \$40,000 out of pocket).
- 2.8. **Nominal** - The limited flexibility that is permitted in meeting a scheduled due date for completing a recurrent activity that is required under this part, such as the nominal annual 12-month frequency required for FFD refresher training in 10 CFR 26.29(c)(2) and the nominal annual 12-month frequency required for certain audits in 10 CFR 26.41(c)(1). Completing a recurrent activity at a nominal frequency means that the activity may be completed within a period that is 25 percent longer or shorter than the period required in this part. The next scheduled due date would be no later than the current scheduled due date plus the required frequency for completing the activity.
- 2.9. **Observation** – The process used when coming into contact with others, including personal contact, telephone contact (although this is not the preferred method and should not be used to extend an individuals unescorted access when the individual has not been observed in person for a period of 30 days or more), video-conference, monitoring of work output, attendance, and consultation with or feedback from supervisors and co-workers.

3. **RESPONSIBILITIES**

- 3.1. **Individuals who sign a personal history questionnaire** in order to obtain UAA/UA but have not been granted UAA/UA but are in the process, are responsible for reporting any legal actions as defined in this procedure when completing the personal history questionnaire and for reporting any subsequent legal actions prior to being granted UAA/UA to inprocessing and their supervisor and security on their first day back to in-processing activities immediately following the legal action.
- 3.2. **Individuals with UAA/UA or are required to be covered under a BOP** are responsible for reporting to their Supervisor and Site Security/Fitness For Duty Lead any legal actions as defined in this procedure. Individuals are required to report this on their first day back to work and subsequent to any legal action.
- 3.2.1. Must attend or take and successfully complete annual Fitness For Duty training and be trained:
1. In techniques related to recognition of behaviors adverse to the safe operation and security of the facility;
 2. In observing the behavior of others in the workplace; and
 3. To detect and report questionable or aberrant behavior or changes in behavior that might reflect negatively on an individual's trustworthiness and reliability.
- 3.2.2. Shall report any observed behavior indicating degradation in performance, impairment or change in behavior to a supervisor and/or department head **immediately**. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition. If an individual is exhibiting signs of fatigue refer to LS-AA-119, Fatigue Management and Work Hours Limit, for further direction.
1. Are responsible for evaluating their own personal fitness-for-duty based on impairment from fatigue by:
 - A. Managing their work hours consistent with the objective of preventing impairment from fatigue;
 - B. Verifying their work hours are correctly documented regardless of whether they are paid for the hours worked;
 - C. Making a self-declaration of fatigue when fatigue or reduced mental alertness could negatively affect their job performance and discussing these concerns with supervision; and
 - D. Being aware of the total hours worked in the previous 14 days and notifying management if work hour limits will be exceeded if asked to work additional hours.

2. Monitoring and reporting concerns related to individuals' Fitness-For-Duty (FFD) based on impairment from fatigue (i.e., Behavior Observation Program).
- 3.2.3. Shall report the detected odor of alcohol on site or within five hours of reporting for duty and suspected drug use, or any conditions adverse to station safety for any individuals escorted and unescorted to their Supervisor and/or department head and site security, **immediately**.
 - 3.2.4. Shall report to their Supervisor and/or department head and site Security **immediately** when an individual is exhibiting other forms of questionable, unusual or aberrant behavior either **on-site or off-site** that may adversely affect the individual's trustworthiness and/or reliability, including behaviors that may adversely impact plant operations or the safety or security of a licensee facility, or that may constitute an unreasonable risk to the health and safety of employees, the public or the common defense and security, including a potential threat to commit radiological sabotage.
1. Each employee (contractor or Exelon) must rely upon some signs or indications to look for that may indicate their co-workers, employees, or visitors are exhibiting questionable, unusual or aberrant behavior.
 2. Possible signs or indicators of questionable, unusual or aberrant behavior, issues or events, **whether occurring on-site or off-site**, that must be reported include, but are not limited to:
 - A. The violation of company policy, an ethics concern and/or theft of company property.
 - B. Questionable, or unusual interest in or predisposition towards security or operations activities outside the scope of their normal work assignments.
 - C. Uncharacteristic absences from work.
 - D. Frequent unexplained absence from work assignments.
 - E. Questionable, or unusual or inadequate response when confronted about being in a plant or office location outside of the worker's usual scope of work.
 - F. Questionable, or unusual views or opinions that might be directly or indirectly threatening to a nuclear facility, including extreme opposition to or distrust of the government or membership in anti-government groups or other groups that promote the overthrow of the government.
 - G. Membership in clubs, groups, or organizations that promotes or advocates violence or that engage in violent activities.

- H. Abnormalities such as vandalism and/or tampering. Examples of vandalism to plant equipment or facilities that may occur on-site or remotely through electronic access or other means, include but are not limited to:
1. Misaligned breakers or valves;
 2. Cut wires or cables;
 3. Foreign objects in machinery, reservoirs or tanks;
 4. Inappropriate holes drilled, punched or cuts in pipes tubes or hoses; and
 5. Damage to or incapacity or modification of a component such that its safety or security function is impeded.
- I. Signs of mental stress or illness, including thoughts of committing suicide or suicidal ideations or harming others.
- J. Engaging in criminal activity, or having discussions about engaging in criminal activity, or making plans to commit a crime, including credible information of such activity, or discussions, or plans. This requirement applies to serious criminal offenses, including but not limited to:
1. Burglary, armed robbery, manslaughter, murder, assault, domestic violence;
 2. Embezzlement or other forms of theft;
 3. Conspiracy to commit a crime;
 4. Terrorist activity or known terrorist associations;
 5. The use, sale, distribution or possession of illegal drugs, including prescription drugs taken or distributed without a valid prescription;
 6. Efforts to recruit others to be involved in criminal activities.
 7. (This requirement does not apply to minor misdemeanor charges, such as parking tickets, non-injury traffic and speeding tickets, moving violations when an individual is not physically taken into custody and a court appearance is not required).

3. If you are made aware of any felony charges, pending or otherwise, against an individual who is maintaining UAA/UA or is required to be in a BOP, you must report this **immediately**.
- 3.2.5. Shall report a leave of absence, or any situation if you are not in a behavior observation program, to your Supervisor, Security and Human Resources prior to leaving. Some examples may include:
1. Medical/Personal/Military leave of absence (immediate upon discovery)
 2. Extended vacation (Greater than 30 days)
 3. Working remotely (Greater than 30 days)
 4. Training at other work locations-e.g., Supervisory Development Program (Greater than 30 days)
- 3.3. **Supervisors and Management** are responsible for the same responsibilities as Individuals (See Section 3.2) and in addition, familiarizing themselves with their employee's behavior patterns in order to enable the Supervisor to recognize when an employee is exhibiting questionable, unusual or aberrant behavioral traits and patterns **either on-site or off-site** that may adversely affect the individual's trustworthiness and/or reliability, including behaviors that may adversely impact plant operations or the safety or security of a licensee facility and/or may constitute an unreasonable risk to the health and safety of the employees, the public, or the common defense and security including a potential threat to commit radiological sabotage.
- 3.3.1. Although everyone is trained to the same level, Managers and Supervisors have additional actions to implement parts of the FFD and Behavioral Observation Program. This includes:
1. Observing assigned individuals' behavior patterns over time.
 2. Documenting behavioral problems.
 3. Acting proactively to address behavior problems.
 4. Conducting and documenting a supervisory review on a nominal annual basis for each individual with unescorted access authorization/unescorted access, maintained for 365 consecutive days.
 5. Acting in a timely manner when an Access Authorization or Fitness for Duty concern has been identified. If someone's behavior is questionable, the supervisor shall **immediately notify Security** and remove the person from work activities. The person shall be escorted at all times until the concern is satisfactorily resolved or until the person exits the protected area. This may include testing for cause or a determination of fitness.

6. Shall report to their department head and site Security **immediately** when an individual is exhibiting questionable, unusual or aberrant behavior either **onsite or offsite** that may adversely affect the individual's trustworthiness and/or reliability, including behaviors that may adversely impact plant operations or the safety or security of a licensee facility, or may constitute an unreasonable risk to the health and safety of employees, the public or the common defense and security, including a potential threat to commit radiological sabotage.
 7. Ensuring that individuals report all legal actions as defined in this procedure to Site Security/Fitness For Duty Lead and if assistance is needed, the local Human Resources Department for Exelon employees or to the cognizant Exelon manager for contractor employees.
- 3.3.2. Act as the primary person to report a leave of absence, or any situation if you or any of your direct reports are not in a behavior observation program, to your Supervisor, Security and Human Resources as soon as possible and **prior** to leaving. Some examples may include:
1. Medical/Personal/Military leave of absence (immediate upon discovery)
 2. Extended vacation (Greater than 30 days)
 3. Working remotely (Greater than 30 days)
 4. Training at other work locations-e.g., Supervisory Development Program (Greater than 30 days)
- 3.3.3. Referring employees to the Employee Assistance Program (EAP) made available by the applicable employer.
1. If the employee continues to show signs of behavior changes or problems, contact EAP staff to make a supervisor referral. The supervisor should continue to document changes in the employee's current performance.
 2. If behavior continues to deteriorate, contact Security and the Medical Review Officer (MRO).
 3. Advise your management of the steps you have taken and the documentation collected.
- 3.3.4. If you are upgraded or promoted to a supervisory position you are **obligated** to carry out the supervisory responsibilities as defined in the Exelon Access Authorization and Fitness for Duty Programs.
- 3.3.5. If you have any concerns or are in doubt about handling an Access Authorization or Fitness For Duty concern, call Site Security.
- 3.3.6. Attending and successfully completing annual Fitness For Duty training.

- 3.4. **Fitness for Duty Personnel** have the same responsibilities as Individuals (see Section 3.2) and, in addition, are responsible, in coordination with access authorization personnel, for the adjudication of potentially disqualifying information to determine if an individual is trustworthy and reliable.
- 3.4.1. Oversees and assures satisfactory quality performance of the laboratory contracted to conduct specimen testing.
- 3.4.2. Maintains confidentiality of the Access Authorization and Fitness For Duty Records.
- 3.4.3. Assists in coordinating Appeals to the Appeal Reviewer.
- 3.5. **Human Resource personnel** have the same responsibilities as Individuals (see Section 3.2) and, in addition, are responsible for the immediate notification to appropriate management personnel, to include Exelon Corporate Nuclear Security to place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could affect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.
- 3.5.1. Serving as the confidential communication link between Exelon Nuclear Security and Company employees for Access and Fitness For Duty issues.
- 3.5.2. Promptly report any Access and Fitness For Duty concerns or program violations to Station Security and Station Management.
- 3.5.3. Ensuring that employees notify Site Security Access/Fitness For Duty Lead when the employee makes them aware of a legal action.
- 3.5.4. Ensuring that Site Security Badging offices and/or Exelon Corporate Nuclear Security are notified when an individual is on a leave of absence from the company or will be away from the BOP for greater than 30 days.
- 3.5.5. Notify Security when an employee has been terminated "For Cause" so Security can make an evaluation concerning the individual's trustworthiness and reliability. This includes situations when an employee is allowed to resign prior to termination.
- 3.6. **Occupational Health and Safety (OHS) Personnel** have the same responsibilities as Individuals (see Section 3.2) and, in addition, are responsible for the immediate notification to appropriate management personnel, to include Exelon Corporate Nuclear Security, the recommendation to place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could affect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. This may include the taking of medication, signs of fatigue, mental stress, illness, or any other condition.

- 3.6.1. Ensuring that individuals who are on a medical and/or disability leave of absence are reported to applicable Site Security immediately.
- 3.7. **The Medical Review Officer (MRO)** have the same responsibilities as Individuals (see Section 3.2) when on-site at a licensee facility and, in addition, is responsible for the immediate notification to appropriate management personnel, to include Exelon Corporate Nuclear Security, the recommendation to deny or place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could affect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. MRO is responsible for reviewing reported legal action, medical assessments and supervisory reviews, when appropriate, and make recommendations for any needed requirements and/or to deny or place a hold on an individual's unescorted access, whenever there is concern that an employee may be impaired and such impairment could affect safe operation of the plant or the administration of the Access Authorization and Fitness for Duty Programs. This may include the taking of medication, dietary conditions, signs of fatigue, mental stress, illness, or any other condition.
1. Interviews donors with laboratory confirmed positive test results to determine if a positive test could have resulted from over-the-counter and/or legally prescribed medication or dietary condition.
 2. Authorizes re-analysis of the original specimen by a Health and Human Services (HHS) Certified Laboratory.
 3. Evaluates the need for testing of individuals as identified in the Testing For Cause procedure.
 4. Identifies any issues associated with collecting and testing specimens, and advises and assists the FFD program management in planning and overseeing the overall FFD program.
 5. Recommends individuals to the EAP.
 6. Evaluates documentation provided by EAP and Access Authorization group to recommend to Security if an individual can be considered trustworthy and reliable for the purpose of granting and/or maintaining unescorted access authorization.
 7. Recommends follow-up testing and reviews the treatment plan as a result of a positive drug or alcohol test or for any other concern to verify continued abstinence from the use of substances.
 8. Directs the MRO Staff and their activities while they are performing those functions.
- 3.8. **EAP Staff** is responsible for providing confidential assessment, short-term counseling, referral services and treatment monitoring for FFD related issues.

- 3.8.1. Provide early intervention for individuals who may have problems that could adversely affect their ability to safely perform their duties.
- 3.8.2. Notify company management (even if individual is a self-referral) if they determine that an individual's condition constitutes a hazard to themselves or to others, or have been impaired as a result of using drugs or alcohol while in a work status and have a continuing substance abuse disorder as required by 10CFR Part 26.
- 3.8.3. The following EAP services are available to receive confidential help in dealing with any of the following concerns or possibly other problems that may be troubling an individual:
- | | |
|-----------------------------------|-----------------------------|
| •Dealing with Change / Transition | •Stress |
| •Family / Relationship Concerns | •Depression |
| •Dual Careers | •Anxiety |
| •Job Burnout | •Workplace Problems |
| •Marital / Relationship | •Work / Life Balance |
| •Fitness For Duty | •Alcohol / Drug Problems |
| •Compulsive Gambling | •Aging Parents / Elder Care |
| •Death / Dying | •Financial Concerns |
| •Sexual Problems | •Retirement Concerns |
| •Eating Disorder Problems | •Physical Abuse |
- 3.8.4. Only Exelon employees are eligible for the EAP. Employees may request assistance from the EAP (self-referral) or be referred by their Supervisor, Security, the MRO or the company Medical staff. Contractors can check with their supervision on the availability of an EAP in their company.
- 3.8.5. For additional information on the company's EAP, see your Supervisor, Human Resources or the company Medical staff. To obtain information or get help, contact the EAP staff directly.
- 3.9. **Exelon Nuclear Security Individuals** are responsible for ensuring that the annual supervisor review is completed.
- 3.10. **Reviewing Official** – will evaluate any notification of observed behaviors or conditions identified in this procedure to determine continued UAA/UA.
- 3.10.1. If the Reviewing Official has a reason to believe that the reported individual's trustworthiness or reliability is questionable, the reviewing official shall either

administratively withdraw or terminate the individual's unescorted access unescorted access or unescorted access authorization while completing the re-evaluation or an investigation.

4. **MAIN BODY**

4.1. **Behavior Observation Program**

- 4.1.1. After an individual's emotional stability, reliability, **and** trustworthiness has been determined so that they can safely and competently perform assigned duties, **and** the individual has UAA or has been granted UA to Exelon's nuclear power stations, Decommissioned Reactors (with spent fuel in the spent fuel pool), Independent Spent Fuel Storage Installation facilities, personnel required to physically report to a facility's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with Exelon Emergency Plans and Procedures, all individuals responsible for administration of the Access Authorization Program activities and Fitness For Duty Testing Program activities (Including critical group individuals), this must be maintained and his/her behavior must be observed **and** evaluated not to exceed a 30 day timeframe. See Section 3.2 regarding Individual responsibilities.
- 4.1.2. Individuals are required to be fit-for-duty by getting sufficient rest to ensure they are not subject to fatigue. Individuals who make choices that result in less than adequate sleep to remain alert and avoid fatigue are not meeting their obligations to safely and competently perform assigned duties.
- 4.1.3. Methods used to manage fatigue include training, behavioral observation, fatigue countermeasures and work hour limitations.
- 4.1.4. The BOP shall include behavioral observation training, a legal action reporting program, and annual supervisory reviews. To maintain UAA/UA an individual must be covered under a BOP and is required to comply with access authorization and fitness for duty program policies and procedures.
- 4.1.5. The BOP is **not** intended to be used as a means of reporting what might be considered inadequate **or** marginal job performance. Established methods available to supervisors should continue to be used in these cases.
- 4.1.6. Individuals who are on a leave of absence **and/or** are **not** in a BOP for greater than 30 days, shall have their unescorted access terminated **and** will be required to complete the appropriate Personnel History Questionnaire (PHQ) **and/or** any other Access Authorization **and** Fitness for Duty requirements depending on when the individual returns from the absence, prior to reinstatement of unescorted access.
- 4.1.7. If drug use is suspected, or alcohol abuse or the odor of alcohol is detected while on route to work or on company property or the sale, use, distribution or possession of drugs in the station or on company property or offsite is observed, report this immediately to your Supervisor and Security.

- 4.1.8. When it is identified that an individual may be impaired **and** such impairment could affect the safe operation of the plant **or** negatively reflect the individual's trustworthiness **or** reliability, that individual shall be escorted at all times, while within the protected area.
- 4.1.9. Although the BOP is the primary methodology for determining continued trustworthiness and reliability, clinical interviews may be used to provide added assurance.
- 4.2. **Training**
- 4.2.1. The BOP training presented in Exelon's Fitness For Duty Program satisfies both the Access Authorization Rule **and** the Fitness For Duty Rule. This training provides reasonable assurance that individuals have:
1. Sufficient awareness of the requirement to report questionable, unusual or aberrant behavior of individuals with escorted access, UAA/UA or are required to be under a BOP based on their job duties, whether the behaviors occur on site or off site; and
 2. Sensitivity to detect degradation in performance which may be the result of being under the influence of any substance, legal or illegal, being fatigued, or a physical or mental impairment which in any way may adversely affect their ability to safely and competently perform their duties.
- 4.2.2. The program also provides techniques related to recognition of behaviors adverse to the safe operation and security of the facility, e.g., questionable or unusual interest in or predisposition towards security or operations activities outside the scope of one's normal work assignments, or frequent unexplained absence from work assignments. Individuals will be trained to the supervisory level on their responsibilities for remaining trustworthy and reliable.
- 4.2.3. The program also includes; recognition that changes in emotional state can happen quickly; typical conditions which trigger behavioral anomalies; the need for early intervention after recognition of changes in behavior which typically indicate changes in emotional state; the recognition of uncharacteristic deviations in collegial interactions, uncharacteristic absences from work, or uncharacteristic inattention to detail, or suspected alcohol or drug abuse; and the need to report the above conditions to the employee's assigned supervisor or fitness-for-duty program manager.
- 4.2.4. The training program shall address the knowledge and abilities necessary to detect behavior or activities on-site or off-site that may impact an individual's trustworthiness and reliability, including behaviors that may adversely affect plant operations or the safety and security of a licensee facility or have the potential to constitute an unreasonable risk to employees, the public health and safety and common defense and security, including the potential to commit radiological sabotage.

- 4.2.5. Personnel are trained to possess the following Knowledge and Abilities (K&A's):
1. Knowledge of the policy and procedures that apply to the individual, the methods that will be used to implement them, and the consequences of violating the policy and procedures;
 2. Knowledge of the individual's role and responsibilities under the FFD program;
 3. Knowledge of the roles and responsibilities of others, such as the MRO and the human resources, FFD, and EAP staffs;
 4. Knowledge of the EAP services available to the individual;
 5. Knowledge of the personal and public health and safety hazards associated with abuse of illegal and legal drugs and alcohol;
 6. Knowledge of the potential adverse effects on job performance of prescription and over-the-counter drugs, alcohol, dietary factors, illness, mental stress, and fatigue;
 7. Knowledge of the prescription and over-the-counter drugs and dietary factors that have the potential to affect drug and alcohol test results;
 8. Ability to recognize illegal drugs and indications of the illegal use, sale, or possession of drugs;
 9. Ability to observe and detect performance degradation, indications of impairment, or behavioral changes;
 10. Knowledge of the individual's responsibility to report an FFD concern and the ability to initiate appropriate actions, including referrals to the EAP and person(s) designated by the licensee or other entity to receive FFD concerns;
 11. Knowledge of the contributors to worker fatigue, circadian variations in alertness and performance, indications and risk factors for common sleep disorders, shift-work strategies for obtaining adequate rest, and the effective use of fatigue countermeasures; and
 12. Ability to identify symptoms of worker fatigue and contributors to decreased alertness in the workplace.
- 4.2.6. All individuals identified herein shall undergo initial BOP training. The initial training shall include a comprehensive examination addressing these requirements. BOP Refresher training shall be completed on a nominal annual basis and shall be documented as required by licensee or C/V procedures. In lieu of refresher training a comprehensive examination may be administered.
- 4.2.7. Remedial training and re-testing are required for individuals who fail to satisfactorily complete the comprehensive examination.

4.2.8. Initial and refresher training may be delivered using a variety of media (including, but not limited to, classroom lectures, required reading, video, or computer-based training systems). The licensee or C/V shall monitor the completion of training.

4.3. **Worker Stress**

4.3.1. Individuals should be knowledgeable of causes of worker stress in the workplace.

1. Daily stress is normal.
2. Stress is derived from events that occur throughout life e.g., marriage and family life, job changes, job performance, etc.
3. Chronic stress the worker is at risk for adverse impact on day-to-day living, e.g., behavior changes.

4.3.2. Contributors to worker stress may include:

1. Increased irritability, feelings of depression, chronic fatigue (fatigue that has set in over several weeks or months), overreacting to any single situation, impulsiveness, excessive use of alcohol or drugs, and constant sense of worry.

4.3.3. Worker fatigue can also have an adverse effect on job performance.

4.4. **Dietary Factors**

4.4.1. Certain available food products such as poppy seeds, hemp oil, energy drinks containing alcohol, marijuana-flavored lollipops and coca leaf tea, some liquid or inhalant cold and cough preparations containing alcohol or codeine although not all inclusive, may cause positive test results.

4.4.2. Marijuana-flavored lollipops have such names as *Purple Haze*, *Acapulco Gold* and *Rasta*. They are legal because they are made with hemp oil, a common ingredient in some health food, beauty supplies and other household products. The oil imparts marijuana's grassy taste but not the high. Merchants are calling them as a harmless novelty item for adults. Health food stores are also selling more and more products made from hemp. Though consuming products containing hemp oil create no psychoactive effect, they will cause a positive urinalysis test for marijuana. The Medical Review Officer will not accept hemp product ingestion as an alternative medical explanation for a positive marijuana test.

4.4.3. There is an herb named Kava Kava that is found in health food stores and has been used, like valerian root, as an over the counter "prescription" for stress relief and can make you appear impaired.

4.4.4. Energy drinks containing alcohol are prohibited while on company property. Individuals who consume these drinks are impaired because of the alcohol in their system. These drinks contain alcohol in quantities sufficient to cause a positive test

for alcohol and the MRO **will not** accept an energy drink product ingestion as an alternative medical explanation for a positive alcohol test.

- 4.4.5. Coca leaf tea contains cocaine in quantities sufficient to cause a positive test for cocaine, and the MRO **will not** accept coca leaf product ingestion as an alternative medical explanation for a positive cocaine test.
- 4.4.6. It is an employee's responsibility to maintain fitness for duty and be aware of the effects of each drink, food, or drug you ingest. Although a substance, food, or health supplement is reported "safe" for you and is legal, it does not mean it is wise or safe to ingest these items because they can result in a positive alcohol or drug test. Remember to read labels and ask questions before you purchase and use a new product.

4.5. **Illegal Drugs**

- 4.5.1. Some of the drugs which are illegal under federal, state, or local laws include, among others, marijuana (including medical marijuana), heroin, hashish, cocaine and hallucinogens. Depressants, stimulants, and other controlled substances not prescribed for current personal treatment by an accredited physician also fall under this rule.
- 4.5.2. Drugs can have a significant impact on job performance. Those individuals using drugs or other chemicals can have:
1. Impaired judgment and vision;
 2. Changes in reflexes; and
 3. Reduced analytical ability
- 4.5.3. Common drugs that may be used are:
1. **Cannabis**: Cannabis (e.g., marijuana, medical marijuana, THC) is brilliant green in color with an odd number of saw-tooth edged leaves. Some signs of Cannabis use include:
 - A. Bloodshot eyes, dilated (wide) pupils
 - B. Appearance of intoxication or disorientation
 2. **Stimulants**: Stimulates the central nervous system. Some examples of stimulants include: caffeine, nicotine, amphetamines, methamphetamine, some over-the-counter diet pills, and cocaine. Some signs of Stimulant use include:
 - A. Increased alertness or excitation
 - B. Euphoria

3. **Depressant**: Depresses the central nervous system. Some examples of depressants include: barbiturates, Valium, Quaaludes, and alcohol.
 - A. Some signs of Depressant use include:
 - B. Slurred speech
 - C. Odor on breath (alcohol)
4. **Narcotic**: Used medically to relieve pain and to treat diarrhea. Some examples include: opium, heroin, codeine, morphine, and paregoric.
 - A. Some signs of Narcotic use include:
 - B. Constricted or narrow pupils of the eyes
 - C. Nausea
5. **Hallucinogen**: Synthetic or natural drugs that distort the perception of objective reality. Use may lead to delusions and visual hallucinations. Some examples of hallucinogens include: psilocybin, LSD, phencyclidine (PCP) and mescaline.
 - A. Some signs of Hallucinogen use include:
 - B. Blank stare or rapid eye movement
 - C. Delusions and visual hallucinations

4.6. **Principle Factors that Contribute to Worker Fatigue**

- 4.6.1. Individuals should be knowledgeable of causes and the impact of fatigue in the workplace as well as the effective use of counter measures. Knowledge of these topics is necessary to ensure that individuals are able to:
 1. Self-manage fatigue that is caused by shift work and factors other than work hours;
 2. Take actions to maintain their alertness at work; and
 3. Recognize and seek treatment for sleep disorders that might be creating fatigue or making their own fatigue more severe.
- 4.6.2. **Physical Fatigue is Present:**
 1. When an individual's diminished physical capability is due to overexertion; or
 2. Excessive time of exertion; or

3. A brief physical workload that is excessive and the resulting fatigue degrades physical task performance.

4.6.3. **Circadian Variations in Alertness and Performance:**

1. The normal, inherent, unavoidable, 24-hour rhythms in human information processing and physical performance.
2. Most of these circadian rhythms fluctuate between a high point late in the day to a low point in the pre-dawn hours and are mostly exemplified by:
 - A. Night work; and
 - B. Shift work

4.6.4. **Acute Fatigue** – can either be physical or mental and builds up normally and unavoidably within one waking period.

4.6.5. **Cumulative Fatigue** – can either be physical or mental and builds up across major waking periods when there is inadequate recovery (due to inadequate sleep) between the waking periods.

4.6.6. **Chronic Fatigue** – may set in after several weeks or months of cumulative fatigue. Its symptoms are similar to those of Chronic Fatigue Syndrome (CFS):

1. The desire to sleep;
2. Apathy;
3. Substantial impairment in short-term memory or concentration;
4. Muscle pain;
5. Multi-joint pain without swelling or redness;
6. Headaches of a new type, pattern or severity;
7. Un-refreshing sleep; and
8. Post-exertional malaise lasting more than 24 hours.

4.6.7. **Physiological Changes that Follow a Daily Pattern**

1. An individual's ability to perform and remain alert is influenced by physiological changes that follow a daily pattern.

2. Humans are hard-wired with a genetically-determined biological need for sleep and with a circadian pacemaker that programs us to sleep at night and to be awake during the day, on a 24-hour schedule.
3. Sleep is a complex, active physiological state that is vital to human survival.
4. When an individual is deprived of sleep, the response is sleepiness, which is the brain's signal to prompt an individual to obtain sleep.
5. When deprived of sleep (acutely or chronically), the human brain can spontaneously, in an uncontrolled fashion, shift from wakefulness to sleep in order to meet its physiological need for sleep.
6. Twenty-four hour operations challenge these basic physiological principles.
7. Individuals may be trying to work when the brain is programmed to be asleep, during the circadian low-point in alertness and performance capacity.
8. Conversely, individuals may be trying to sleep when the brain is programmed to be awake; leading to sleep loss and poor sleep quality, which further degrades alertness and performance capacity.
9. Shift work, altered and changing work schedules, crossing time zones, long hours of continuous wakefulness, and sleep loss can create sleep and circadian disruptions that degrade waking function.
10. This results in fatigue and sleepiness while driving, monitoring equipment; degraded vigilance and decision making; and a wide range of other performance effects that can erode the safety margin in operational settings.

4.6.8. **Two Common Sleep Disorders:**

1. Sleep Apnea - A temporary suspension of breathing occurring repeatedly during sleep that often affects overweight people or those having an obstruction in the breathing tract, an abnormally small throat opening, or a neurological disorder.
2. Insomnia - Chronic inability to fall asleep or remain asleep for an adequate length of time.

4.6.9. **Indications and Risk Factors for Common Sleep Disorders:**

1. Extended work and/or Commuting Periods;
2. Split-Shift Work Schedules
3. Sleep/Work Periods Conflicting with Circadian Rhythms;
4. Changing or Rotating Work Schedules;

5. Lack of Rest or Nap Periods;
6. Sleep Disruptions;
7. Inadequate Exercise Opportunities;
8. Poor Diet; and
9. Environmental Stressors

4.6.10. **Shift-Work Strategies to Optimize Sleep Periods to Obtain Adequate Rest:**

1. Minimize sleep loss; it is important *not* to begin a new work schedule with an existing sleep debt (normally requires 2 nights of unrestricted sleep);
2. Take naps; minimize to 30 minutes (only allowed during non-paid work time in designated areas when in a work status);
3. Develop good sleep habits; a regular pre-sleep routine can condition relaxation in preparation for falling asleep (physical and mental relaxation techniques such as meditation, yoga and progressive muscle relaxation can be used); and
4. Understand the affects of food, alcohol and exercise; being hungry or eating too much may interfere with falling asleep as well as the use of nicotine or caffeine; alcohol produces easily disrupted, lighter sleep and suppresses REM (rapid eye movement); regular exercise may enhance deep sleep but avoid strenuous exercise within 6 hours of going to bed.

4.6.11. **Countermeasures that can be used at Home:**

1. Adequate Sleep is the best way to prevent or resolve fatigue;
2. Create a comfortable sleep environment at home; get a comfortable mattress; adjust heating and cooling as needed and get in habit of sleeping 8 hours per night;
3. Napping (only allowed during non-paid work time in designated areas) and should be less than 30 minutes. Longer naps produce sleep inertia, which is counterproductive;
4. Anchor sleep is 4 hours of sleep at the same time each day used when a normal 8-hour sleep cannot be achieved (effect when changing from shift to shift); and
5. Being mindful of effects of medications

4.6.12. **Countermeasures that can be used at Work:**

1. Strategic caffeine use to help work through decreased alertness;

2. Social interaction and active involvement in conversation;
3. Physical activity such as stretching and isometric exercises; and
4. Consume well-balanced meals and plan ahead for nutritious snack food (simple carbohydrates can cause “sugar highs” followed by lows that cause decreased alertness)

4.6.13. **Symptoms of fatigue include:**

1. Yawning
2. Red eyes
3. Prolonged/excessive blinking
4. Irritability
5. Sleepiness
6. Difficulty concentrating
7. Apathy
8. Feeling of isolation
9. Annoyance
10. Increased reaction time to stimulus
11. Slowing of higher level mental functioning
12. Decreased vigilance
13. Memory problems
14. Increased errors while performing tasks

4.6.14. **Contributors to Decreased Alertness and Increased Worker Fatigue:**

1. Task demands such as:
 - A. Repetitiveness
 - B. High cognitive demands
 - C. High level of required attention
 - D. Sedentary

- E. Lack of social interaction
2. Environmental conditions such as:
- A. High heat and humidity
 - B. Poor lighting
 - C. Low frequency noise

4.7. **Legal Action Reporting**

- 4.7.1. Any individual who signs a personal history questionnaire in order to obtain UAA/UA but has not been certified UAA or granted UA and individuals with UAA/UA who have had any legal action, as defined in this procedure, are required to report this on their first day back to work subsequent to the incident. Any incident involving drugs or alcohol **must** be reported. If there is any question as to whether an incident is reportable, individuals should contact their Supervisor, Department Head, and/or Site Security Access/Fitness For Duty Lead for a determination.
- 4.7.2. The Supervisor, **or** Department Head shall ensure the individual reports the incident to Site Security Access/Fitness For Duty Lead and the local Human Resources Department for Exelon employees.
- 4.7.3. The Site Security Access/Fitness For Duty Lead shall complete Attachment 1, Exelon Legal Action Self-Reporting Form, page 1, Section 1, and promptly forward the information to the corporate reviewing official.
- 4.7.4. The Site Security Access/Fitness For Duty Lead shall immediately request the individual reporting the legal action to complete Attachment 1, page 2. The narrative shall include specific details of the ongoing legal action. When section 1 of page 1 and page 2 of Attachment 1 are completed, immediately forward to Exelon Nuclear Corporate Security along with any supporting documentation (court order, copies of tickets, etc).
- 4.7.5. Exelon Nuclear Corporate Security will review Attachment 1 on the day that the report is received and shall evaluate the circumstances related to the reported legal action(s) and re-determine trustworthiness and reliability and track legal action until closure.
- 4.7.6. When the employee notifies Exelon Site Security Access/Fitness For Duty Lead, Human Resources **or** the cognizant Exelon manager will be included in the notification process if required or if requested by the employee.
1. As a minimum, the employee should be prepared to provide the date of the incident, the charge, final disposition **and/or** court date, if known.

- 4.7.7. Failure to report any legal action could result in unescorted access being denied. In addition to the potential denial of unescorted access, Exelon personnel who fail to report an incident could receive disciplinary action up to **and** including termination. Exelon Generation Corporate Security will discuss the legal action with the individual **and** evaluate the incident for appropriate action. The reporting of any legal action may initially result in unescorted access being placed on administrative hold or temporary hold pending further review. A decision regarding the status of his/her unescorted access will be made **and** the employee advised.
- 4.7.8. Upon receipt of information of a felony issue, unescorted access will be immediately placed on administrative hold plus any felony conviction of a licensed operator, Exelon Generation Corporate Security will notify Human Resources. The site has 30 days to notify the Nuclear Regulatory Commission about the Operator's conviction for a felony per the requirements of 10CFR 55.53(g).
- 4.7.9. Upon receipt of information of a domestic violence legal action on a member of the Security organization, Site Security Access/Fitness For Duty Lead will notify the Security Manager.
- 4.7.10. Upon receipt of a drug or alcohol-related legal action the Site Access/Fitness for Duty Lead shall notify Corporate Access Authorization Security so a determination of fitness can be initiated, if applicable. If the individual is a licensed operator or armed security then unescorted access will be immediately placed on administrative hold and the station nurse must be notified.
1. If drug related this is considered credible information and a for cause drug and alcohol test shall be completed in accordance with SY-AA-102-202, For Cause Testing. The fatigue assessment is not required.
- 4.7.11. It is imperative that this information be kept confidential **and** all individuals **and** departments involved are responsible for maintaining confidentiality.
- 4.7.12. Exelon Corporate Nuclear Security will notify the individual in writing of the final disposition. Human Resources will also be notified for Exelon employees.
- 4.8. **Supervisor Review**

CAUTION

If the annual supervisory review is not completed by the expiration date, UAA/UA will be terminated.

- 4.8.1. A supervisory review shall be conducted on a nominal annual basis for each individual in the critical group with UAA/UA, utilizing the Behavior Observation Program – Annual Supervisory Review form in NEI 08-06, Nuclear Power Plant

Access Authorization and Fitness for Duty Program Forms, or equivalent including an electronic process or form.

- 4.8.2. A supervisory review shall be conducted on a nominal annual basis for all other individuals with UAA/UA, maintained for 365 consecutive days. Supervisory reviews are not required for an individual where UAA/UA is terminated prior to the anniversary date of granting UAA/UA. The status of supervisory reviews is not required to be provided to other licensees.
- 4.8.3. The review shall be conducted by the individual's immediate supervisor. The review shall be based on interactions with the individual over the review period, is not intended to be face to face or replace daily responsibilities as discussed within this procedure and shall include:
1. A description of any condition that may have resulted in the employee acting or behaving in an unconventional manner;
 2. Any circumstances which may indicate the need to refer the employee for additional medical or psychological review; and any information developed over the review period, regarding the behavioral characteristics of the employee supervised. This information would typically include behavioral norm deviations which have been reported to the supervisor through implementation of the BOP, as well as those behavioral norm deviations personally observed by the Supervisor.
- 4.8.4. If the Supervisor does not have the frequent interaction with the individual throughout the review period needed to form an informed and reasonable opinion regarding the individual's behavior, trustworthiness, and reliability, the individual is also subject to a supervisory interview in accordance with the requirements of the licensee's or C/V's BOP.
- 4.8.5. For Exelon employees, in cases where the individual's position is one of the highest ranking positions of authority, or the individual does not physically report to the same permanent work location as the individual's immediate Supervisor, the supervisory review may be completed by another Supervisor who works directly with the individual on a regular basis and is aware/trained on their responsibilities for behavior observation.
- 4.8.6. When potential disqualifying information is identified, the Annual Supervisory Review shall be evaluated by an access authorization program reviewing official to determine if additional action is required concerning the individual's trustworthiness, reliability, and fitness for duty. The completed review shall be included as part of the licensee's access authorization files.

4.9. **Record Retention**

- 4.9.1. Annual Supervisor Reviews and Legal action Reporting documentation for an individual must be retained for a minimum of five years following access termination from the authorizing licensee's program.

5. **DOCUMENTATION** - NONE

6. **REFERENCES**

- 6.1. Commitments - None

- 6.2. User's References

- 6.2.1. SY-AA-102, Exelon's Nuclear Fitness For Duty Program

- 6.2.2. SY-AA-102-202, For Cause Testing.

- 6.2.3. SY-AA-103-510, Insider Mitigation Program

LS-AA-119, Fatigue Management and Work Hours Limit

- 6.3. Writer's References

- 6.3.1. Nuclear Regulatory Commission 10CFR 73.56, Access Authorization Program for Nuclear Power Plants

- 6.3.2. Nuclear Regulatory Commission 10CFR 26, Fitness For Duty Program

- 6.3.3. Nuclear Regulatory Commission, 10CFR 55.53, Operator Licenses

- 6.3.4. NEI 03-01, Nuclear Power Plant Access Authorization Program

- 6.3.5. NEI 03-04, Guideline for Plant Access Training

7. **ATTACHMENTS**

- 7.1 Attachment 1 - Exelon Legal Action Self Reporting Form

**ATTACHMENT 1
EXELON LEGAL ACTION SELF-REPORTING FORM
PAGE 1 OF 2**

Section 1: (To be completed by Site Security Access/Fitness For Duty Lead/Designee)

NAME: (Individual making self-report): _____

PHONE NUMBER: _____

ADDRESS: _____

S.S.#: _____

STATION: _____

COMPANY/DEPT: _____

DATE OF SELF-REPORT: _____

DATE RETURNED TO WORK: _____

DATE OF LEGAL ACTION: _____

CURRENT CHARGES: _____

COURT DATE: _____

FELONY YES NO (if felony unescorted access must be immediately placed on administrative hold) MISDEMEANOR YES NO

IS THE CHARGE DRUG OR ALCOHOL RELATED? YES NO (if drug related unescorted access must be immediately placed on administrative hold and a "For Cause" test must be conducted)

REVIOUS LEGAL ACTIONS (Must list all legal action even if previously reported) :

LOCATION OF INDIVIDUAL (in Custody or Jail): _____

You must provide copies of any supporting documentation (court order, tickets, etc.)

Are you a Supervisor? YES NO Are you a Licensed Operator? YES NO

Immediate Supervisor Notified? YES NO Are you an Armed Security Officer/Responder? YES NO

Site Nurse Notified, if applicable? YES NO Are you a member of the Critical Group? YES NO

On page 2 of this attachment, request individual to provide a statement with a detailed narrative description of the events leading up to, during and following the Legal Action (who, what, when, where, how and why). For a DUI/DWI/DWAI etc., list the Blood Alcohol Concentration or write, "**Refused**" if the Breathalyzer or blood test was refused. Ensure the individual signs, prints and dates the attachment.

Site Security Access/FFD Lead: _____ Date: _____

Section 2: (To be completed by Corporate Security) **Immediately forward to Corporate Security**

LOG NUMBER: _____

TEMP HOLD: _____

DENIED: _____

REVIEWED BY: _____

CLOSED DATE: _____

COMMENTS: _____

EXHIBIT 4

Dresden Confirmatory Order Mtg 11/21/13
Tony C Mike F
Jim M Sarge
Tamra D Bill
Marilyn

JM Coming out of Dresden Event we had an ADR. Our regulator is driving us to more reporting. Also want to talk about no longer safeguarded regs on Access. The third is the proposed appeal process.

T.D. A lot of media attention on the SRO issues at Dresden. Described NRC involvement. NRC decided Lavy deliberately violated BOP NRC issued an apparent violation. As a result of this we went to mediation, the Confirmatory Order came out of that. The NRC is requiring Exelon to take actions based on that.

MT. It looks like this was a Settlement Agreement
T.D. Yes, they could have issued a violation if not
JM. Probably would have ended up in the same place through enforcement.

~~73 F.~~

7356. F 3
Aberent behavior

T.D. Company took position that employees aren't obligated to report off duty behavior of other employees. The NRC is adamant that obligation applies to on duty + off duty. We are required to change our policies and our BOP.

M.T. What is aberent behavior

T.D. Not normal activity for that person or other normal people. It also includes illegal behaviors.

M.T. Went through paperwork

EXHIBIT 5

SCHUCHAT, COOK & WERNER

CHARLES A. WERNER
CHRISTOPHER T. HEXTER*
MARILYN S. TEITELBAUM*
JAMES I. SINGER*
SALLY E. BARKER
DEAN L. CHRISTIANSON*
RHONA S. LYONS
LORETTA K. HAGGARD*
GEORGE O. SUGGS
CHRISTOPHER N. GRANT*
CLARE R. BEHRLE*
NANCY M. WATKINS
COLLEEN JOERN VETTER*
MATTHEW B. LEPPERT*
PATRICK K. SHINNERS*
ROCHELLE G. SKOLNICK*

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STANLEY R. SCHUCHAT
(1914 - 1979)

ARTHUR J. MARTIN
(1947 - 2012)

JAMES K. COOK
OF COUNSEL

*also licensed in Illinois



November 26, 2013

Electronically and Regular Mail

Ms. Tamra S. Domeyer
Exelon Generation Co., LLC
4300 Winfield Road
Warrenville, IL 60555
Tamra.domeyer@exeloncorp.com

Re: Local 15 and Exelon; Union's Request for Information

Dear Tammy:

It was nice meeting you last week. Our November 21, 2013 meeting was informative and the union appreciates the time the company took to discuss certain issues with it.

At that meeting, you confirmed that the company had unilaterally implemented, for the first time, a requirement that employees report their off duty offsite observations of other employees' off duty offsite activity to the extent the activity is "illegal," "unusual," and/or "aberrant." You stated that, as reflected in Section III. A. of the Confirmatory Order, the company, pursuant to a settlement agreement reached with the NRC at the September 18, 2013 ADR (Alternative Dispute Resolution) meeting, had already implemented this change through a revision of procedure SY-AA-103-513. You further stated that within 90 days of the October 28, 2013 Confirmatory Order, the company would issue further guidance on the types of observed offsite activities or credible information that the employees had a duty to report. In response to the union's request to bargain over these changes, you responded that the company has no duty to and will not bargain concerning them and that the company has already implemented the change: all that is left is the issuing of the further guidance to flesh it out pursuant to Section III. B. of the Confirmatory Order and that the company would not bargain with the union over these either.

To date, the union has not received a copy of the changes in procedure SY-AA-103-513 described above and in the Confirmatory Order. It is the union's position that the company had a duty to bargain with the union before the company entered into the September 18, 2013 ADR settlement agreement with the NRC and/or to request the union's participation in that ADR given

it affects the employees' terms and conditions of employment. It is also the union's position that the company has an obligation to bargain with the union over the content and implementation of the guidance referred to in Section III. B of the Confirmatory Order. I stated these positions at our November 21, 2013 meeting to which you responded that the company had no duty to bargain with the union on these matters because they were required by the NRC Regulations and/or the Confirmatory Order. I pointed out that the Confirmatory Order was the product of a settlement agreement with the NRC and that the U.S. Supreme Court has held in *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, that if the company enters into a settlement agreement with an agency of the federal government which conflicts with the CBA, the company will still be bound by the CBA. Further, there is nothing in the Confirmatory Order that would preclude the company from negotiating the "additional guidance" pursuant to III. B.1 of the Confirmatory Order.

Please let me know if I have inaccurately summarized any of the above facts and, if so, please specify what is inaccurate and what the correct information is.

Below I have summarized the information you agreed to produce at our November 21, 2013 meeting along with some other documents we have added to the list that relate to the Confirmatory Order. The union needs this information in connection with the NRC's October 28, 2013 Confirmatory Order and the changes the company prepared or is in the process of preparing and implementing in connection with that Order so, among other things, it can assess those changes and their impact on the bargaining unit:

1. State when the company instituted a requirement that employees report their off duty offsite observations of other employees' off duty offsite activity to the extent the activity is "illegal," "unusual," and/or "aberrant." Please provide copies of documents reflecting this information.
2. A copy of Procedure SY-AA-103-513 and the date it first went into effect and all revisions thereto with the effective date of each revision. To the extent any revision is currently in progress, please provide additional documents as they become available.
3. As to all revisions in procedures, rules, etc., to include guidance on reporting offsite activities to the extent not reflected in SY-AA-103-513, please provide the previous rule/procedure and the revised rule/procedure with the promulgation and effective dates of each. Also, please state the date the union was first notified of this procedure, who was notified and provide documents reflecting this.
4. Please produce the following documents referred to in the NRC's October 28, 2013 Confirmatory Order Modifying License in Dockets 50-237 and 50-249 and accompanying letter from NRC Regional Administrator Cynthia Pedersen to Michael Pacilio:
 - a. OI Report No. 3-2012-020

- b. July 3, 2013 letter from NRC to Exelon
 - c. Briefing and/or training materials concerning Policy/Procedure SY-AA-103-513 reference at pages 3 and 4 in Section III of the Confirmatory Order and any others that have been or may be prepared. To the extent these are still being developed, please provide additional documents as they become available.
 - d. Documents relating to or reflecting upon the "effectiveness assessment" referenced at page 4 of the Confirmatory Order. To the extent this is still being developed, please provide additional documents as they become available.
 - e. Any and all documents submitted to the NRC in connection with the NRC's investigation of Exelon initiated June 6, 2012 and concluded March 29, 2013.
5. Any and all documents relating to or reflecting upon Exelon's interpretation and/or implementation of the NRC's October 28, 2013 Confirmatory Order Modifying License in Dockets 50-237 and 50-249.
 6. Any and all documents relating to or reflecting upon Exelon policies, procedures, directives and the like relating in any manner to the off-duty conduct of bargaining unit employees and not already produced in response to the information requests above.
 7. Any and all documents relating to or reflecting upon the interpretation of 10 CFR §73.56(f)(1) and (3).

Please produce the above requested information within two weeks of the date of this letter or let me know within that period time when the company can reasonably produced it. If some can be produced earlier than other information, please do so.

Sincerely,



Marilyn S. Teitelbaum

MST:sp

Cc: David Sergenti (electronically only)
Billy Phillips (electronically only)
Dean Apple (electronically only)
Rochelle G. Skolnick (electronically only)

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-237-EA
EXELON GENERATION COMPANY, LLC)	50-249-EA
)	
(Dresden Nuclear Power Station)	ASLBP No. 14-930-01-EA-BD01
Confirmatory Order Modifying License))	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that on this date, February 14, 2014, copies of “Reply of Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO to NRC Staff and Exelon Answers Opposing Local 15’s Petition to Intervene and Request for Hearing” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Rochelle G. Skolnick

Marilyn S. Teitelbaum
Rochelle G. Skolnick
Schuchat, Cook & Werner
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Counsel for Local Union No. 15, IBEW

Dated in St. Louis, Missouri
this 14th day of February, 2014
548939.docx