

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 20 days from the date of its publication in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for a hearing shall not stay the immediate effectiveness of this order.

Dated this the 1st day of December 2009.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Regional Administrator.*

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## NUCLEAR REGULATORY COMMISSION

[NRC-2009-0546, Docket Nos.: 50-277/278, License Nos: DPR-44 & DPR-56, EA-09-007 & EA-09-059]

### In the Matter of: Exelon Generating Company, LLC Peach Bottom Atomic Power Station, Confirmatory Order Modifying License (Effective Immediately)

#### I

Exelon Generating Company, LLC (Exelon or licensee) is the holder of Facility Operating License Nos. DPR-44 and DPR-56 issued by the U.S. Nuclear Regulatory Commission (NRC or agency) pursuant to 10 CFR Part 50. The licenses authorize the operation of Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom or facility), in accordance with conditions specified therein. The facility is located on the licensee's site in Delta, Pennsylvania.

This Confirmatory Order (Order) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 3, 2009. ADR is a process in which a neutral mediator with no decision-making authority assists parties in reaching an agreement on resolving any differences regarding the dispute.

#### II

Two investigations were initiated by the NRC Office of Investigations (OI) to determine if two former Peach Bottom employees deliberately violated NRC requirements by reporting inaccurate information in one instance, and failing to inform the licensee of information required to be reported in the other. An NRC letter to Exelon on June 5, 2009, transmitted factual summaries of the OI investigations and informed Exelon that, based on the evidence developed during the investigations, OI had substantiated that apparent violations of NRC requirements had occurred as the result of deliberate actions of the former Peach Bottom employees. The first investigation, initiated on February 12, 2008, determined that a former Peach Bottom maintenance supervisor deliberately failed to provide complete and accurate information when completing a Personal History Questionnaire (PHQ) for unescorted access authorization (UAA), and subsequently gained access to the site. PHQs are a means by which licensees, including Exelon, collect information to make determinations about an individual's suitability for unescorted access, as required by 10 CFR 73.56 and the licensee's Physical Security Plan. Specifically, the former maintenance supervisor provided incorrect information regarding the character of his military service, his history of misconduct in the military, and the nature of his discharge from the military. The second investigation, initiated on May 5, 2008, determined that a former Peach Bottom licensed Reactor Operator (RO) deliberately failed to report an arrest/criminal charges in accordance with the site security program procedures for UAA and the Behavioral Observation Program (BOP). Specifically, the RO was arrested and charged with driving under the influence on October 13, 2007, and did not report the incident to Exelon until April 28, 2008.

#### III

The June 5, 2009, NRC letter informed Exelon that the agency was considering escalated enforcement against it for these apparent violations of NRC requirements and offered Exelon the opportunity to either attend a Predecisional Enforcement Conference or to request use of ADR, to resolve this matter. On June 12, 2009, Exelon requested the use of ADR. On September 3, 2009, the NRC and Exelon met in an ADR session mediated by a professional mediator, arranged through Cornell University's Scheinman

Institute on Conflict Resolution. During that ADR session, a settlement agreement was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. Exelon did not take issue with the NRC preliminary conclusion set forth in the June 5, 2009, letter that two violations occurred and that the actions by the former maintenance supervisor and the former RO regarding the violations were deliberate. The NRC concluded that both violations warranted Severity Level III classification and would normally be subject to a civil penalty in accordance with the NRC Enforcement Policy, because Exelon did not identify one of the two violations. Exelon did not take issue with the NRC conclusion that the violation involving the former RO constitutes a Severity Level III violation. Exelon, however, asserted that the maintenance supervisor applicant was not a fully qualified supervisor when incomplete and inaccurate information was provided. Therefore, this instance would not constitute a Severity Level III violation. The NRC and Exelon agreed to disagree on the severity level of this violation.

2. The NRC acknowledged that Exelon had taken several corrective actions in response to the violations, so as to preclude the occurrence of similar violations in the future. These actions include:

a. Completed Corrective Actions only affecting Peach Bottom:

- i. Conducted training module, emphasizing the impact of deliberate misconduct on nuclear safety culture.
- ii. Performed common cause evaluation on deliberate misconduct events at PBAPS and implemented resulting corrective actions.

b. Completed Corrective Actions affecting all Exelon operating nuclear facilities:

- i. Revised Exelon fleet-wide PHQ to require applicants to review and acknowledge the expectation to provide complete and accurate information and the consequences of providing false, incomplete, or misleading information.
- ii. Revised fleet-wide procedure/process for validating military background investigation element.
- iii. Implemented fleet-wide safety culture training and workshops.

c. Completed Corrective Actions affecting the nuclear industry:

- i. Incorporated lessons learned regarding validation of military background into industry guidance document Nuclear Energy Institute (NEI) 03-01 to strengthen industry process.

ii. Presented lessons learned on military background falsification issue at July 2009 NEI industry Personnel Access Database System (PADS) workshop.

3. Exelon agreed to take additional actions to address the violations, to ensure that the corrective actions identified in Item 2 are effective, and to ensure that lessons learned from these events are extended to the Exelon fleet and to the industry. These actions consist of:

a. Planned Corrective Actions only affecting Peach Bottom:

i. Review special obligations of licensed operators and supervisors in Peach Bottom licensed operator training program, including Peach Bottom operating experience.

ii. Develop an assessment to verify the effectiveness of actions associated with deliberate misconduct training.

iii. Perform Peach Bottom Site Employee Issues Advisory Council (SEIAC) reviews regarding employee conduct issues/concerns, including any apparent trends in these areas; and ensure corporate EIAC emphasizes comparison of site data to identify trends or outliers.

iv. Repeat Peach Bottom training module on deliberate misconduct for new employees and current Peach Bottom personnel in 2010, emphasizing the impact of deliberate misconduct on nuclear safety culture.

b. Planned Corrective Actions affecting all Exelon operating nuclear facilities:

i. Include deliberate misconduct training in the fleet-wide Supervisory Development Program for new supervisors.

ii. Implement Peach Bottom training module fleet-wide, emphasizing the impact of deliberate misconduct on nuclear safety culture. Exelon will also review its current contractor training on deliberate misconduct and add the training module, if necessary.

iii. Provide additional information fleet-wide, to educate the workforce on BOP, Fitness-for-Duty requirements, and Employee Assistance Program services.

c. Planned Corrective Actions affecting the nuclear industry:

i. Provide lessons learned-type article to Professional Reactor Operators Society (PROS) requesting consideration for inclusion in industry newsletter.

ii. Provide lessons learned-type article to NEI requesting consideration for inclusion in its industry newsletter.

iii. Discuss with the Institute of Nuclear Power Operations (INPO) the possibility of incorporating into its supervisor and operations development programs, a module regarding the

significance and impact of deliberate misconduct.

4. Exelon agreed to complete the actions applicable only to Peach Bottom after issuance of an NRC Confirmatory Order, by June 30, 2010, and to send the NRC a letter informing the agency that the actions are complete, within 30 days of their completion, to facilitate NRC confirmatory reviews. Exelon also agreed to complete the remaining corrective actions after issuance of the NRC Confirmatory Order, by September 30, 2010, and to send the NRC a letter informing the agency that the actions are complete, within 30 days of their completion, to facilitate NRC confirmatory reviews.

5. In light of the corrective actions that Exelon took as noted in Item 2, as well as the additional actions Exelon committed to as described in Item 3, the NRC agreed to not issue a Notice of Violation or civil penalty for the two violations that are the subject of this ADR.

6. Exelon agreed to issuance of a Confirmatory Order confirming this agreement that describes the two violations and the classification of the violation involving the RO at Severity Level III. The NRC agreed that, for this violation, the date for the escalated enforcement and reactor oversight processes will be retroactive to the date that the individual's employment was terminated (August 17, 2008). In accordance with NRC practice, the Confirmatory Order and the letter forwarding it to Exelon will be publicly available and accompanied by a press release.

On November 19, 2009, Exelon consented to issuing this Order with the commitments, which are described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

#### IV

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

I find that Exelon's commitments, as set forth in Section III, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have also determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Exelon's consent, this Order is immediately effective upon issuance.

#### V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered, effective immediately that Exelon shall:*

A. Complete the following actions by June 30, 2010, and send the NRC a letter informing the agency that the actions are complete within 30 days of their completion:

a. Review special obligations of licensed operators and supervisors in Peach Bottom licensed operator training program, including Peach Bottom operating experience.

b. Develop an assessment to verify the effectiveness of actions associated with deliberate misconduct training.

c. Perform Peach Bottom Site Employee Issues Advisory Council (SEIAC) reviews regarding employee conduct issues/concerns, including any apparent trends in these areas; and ensure corporate EIAC emphasizes comparison of site data to identify trends or outliers.

d. Repeat Peach Bottom training module on deliberate misconduct for new employees and current Peach Bottom personnel in 2010, emphasizing the impact of deliberate misconduct on nuclear safety culture.

B. Complete the following actions by September 30, 2010, and send the NRC a letter informing the agency that the actions are complete within 30 days of their completion:

a. Include deliberate misconduct training in the fleet-wide Supervisory Development Program for new supervisors.

b. Implement Peach Bottom training module fleet-wide, emphasizing the impact of deliberate misconduct on nuclear safety culture. Exelon will also review its current contractor training on deliberate misconduct and add the training module, if necessary.

c. Provide additional information fleet-wide, to educate the workforce on BOP, Fitness-for-Duty requirements, and Employee Assistance Program services.

d. Provide lessons learned-type article to Professional Reactor Operators Society (PROS) requesting consideration for inclusion in industry newsletter.

e. Provide lessons learned-type article to NEI requesting consideration for inclusion in its industry newsletter.

f. Discuss with INPO the possibility of incorporating into its supervisor and operations development programs, a module regarding the significance and impact of deliberate misconduct.

The NRC Region I Regional Administrator may relax or rescind, in

writing, any of the above conditions upon demonstration by Exelon of good cause.

## VI

Any person adversely affected by this Confirmatory Order, other than Exelon, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

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

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's

"Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

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

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

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

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 20 days from the date of its publication in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 1st day of December 2009.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Regional Administrator.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

### **Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non- Safeguards Information (SUNSI) for Contention Preparation**

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to Exelon Generation Company, LLC (the licensee) for operation of the Clinton Power Station, Unit No. 1 (CPS), located in DeWitt County, Illinois.

The proposed amendment would modify License Condition 2.B.(6) and create new License Conditions 1.J and 2.B(7) as part of a pilot program to irradiate Cobalt (Co)-59 targets to produce Co-60, for the CPS. The licensee also requests an amendment to Appendix A, Technical Specifications (TS), of the CPS Facility Operating License, which would modify TS 4.2.1, "Fuel Assemblies," to describe the isotope test assemblies being used. The amendment application dated June 26,

2009, contains sensitive unclassified non-safeguards information (SUNSI). The amendment application is supplemented by letters dated November 4, 2009 (ADAMS Package No. ML093100316), November 17, 2009 (ADAMS Accession No. ML093210561), and November 20, 2009 (ADAMS Accession No. ML093280028).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes to the license conditions provide clarification and do not impact plant operation in any way. The handling of byproduct material (*i.e.*, Co-60) will continue to be done in accordance with the requirements of 10 CFR 30 and the requirements of the CPS Facility Operating License. The proposed change to TS 4.2.1 also provides clarification and additional description of the proposed ITAs to be used in the CPS core. These changes provide clarification and do not involve an increase in the probability or consequences of an accident previously evaluated.

The use of the GE14i ITAs, has been evaluated for impact on the previously evaluated transients and design basis accidents for CPS. GE-Hitachi report NEDC-33505P, "Safety Analysis Report to Support Introduction of GE14i Isotope Test Assemblies (ITAs) in Clinton Power Station," dated June 2009, documents the results of the analyses completed to demonstrate the impact on operation following introduction of the ITAs in the CPS core. The use of these ITAs does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained. The Cycle 13 (*i.e.*, the first cycle of operation with the GE14i assembly)

core, and subsequent cores, will be designed so that the ITAs will be placed in non-limiting locations with respect to thermal limit margins and shutdown margins. The ITAs do not adversely affect the ability of any structures, systems or components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

In addition to evaluation of the impact to operation with the introduction of the GE14i assemblies, EGC has also evaluated the effects of these assemblies on post-irradiation conditions. The additional heat from the Co-60 decay is insignificant when compared to the total heat from a normal refueling discharge. The small amount of extra heat added by the cobalt isotope rods poses no additional risk of spent fuel pool (SFP) local boiling over that was previously analyzed. The maximum incident radiation due to an irradiated GE14i bundle placed one foot from the spent fuel pool walls is in excess of the radiation that would result in significant gamma heating of the concrete. However, analysis has demonstrated that at four feet, the energy deposition rate is well below that required to cause significant concrete heating. CPS procedures exist to guide placement of irradiated fuel bundles in the SFP to avoid gamma heating of the wall concrete. These procedures will be modified to specify that the irradiated GE14i bundles be stored at least four feet from the pool walls. With the four foot distance requirement in effect, there is no limitation on the amount of time an irradiated GE14i bundle may remain in the pool.

Handling of the licensed transfer casks will be in accordance with the guidance in NUREG 0612, "Control of Heavy Loads at Nuclear Power Plants," using the Fuel Building Crane. These precautions will support safe movement of the casks within the Fuel Building.

The consequences of a previously analyzed event are dependent on the initial conditions assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The consequences of a previously evaluated accident are not significantly increased by the proposed change. As documented in NEDC-33505P, the proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of operation with the GE14i assemblies in the CPS core, demonstrated that the licensing basis radiological analyses are not impacted by the introduction of eight GE14i assemblies at CPS. This includes the analyses done for transients and design basis accident events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed revision to the CPS license conditions and TS 4.2.1 will not introduce