

Dated at Rockville, Maryland, this 3rd day of October 2002.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

**Margaret Federline,**

*Deputy Director, Office of Nuclear Material Safety and Safeguards.*

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## NUCLEAR REGULATORY COMMISSION

[EA-02-124; Dockets Nos. 50-456; 50-457, 50-454; 50-455, 50-461, 50-10; 50-237; 50-249, 50-373; 50-374, 50-352; 50-353, 50-219, 50-171; 50-277; 50-278, 50-254; 50-265, 50-289, 50-295; 50-304; Licenses Nos. NPF-72; NPF-77, NPF-37; NPF-66, NPF-62, DPR-2; DPR-19; DPR-25, NPF-11; NPF-18, NPF-39; NPF-85, DPR-16, DPR-12; DPR-44; DPR-56, DPR-29; DPR-30, DPR-50, DPR-39; DPR-48]

**Exelon Generation Company, LLC and AmerGen Energy Company, LLC; Braidwood Station, Units 1 & 2, Byron Station, Units 1 & 2, Clinton Power Station, Dresden Nuclear Power Station, Units 1, 2 & 3, LaSalle County Station, Units 1 & 2, Limerick Generating Station, Units 1 & 2, Oyster Creek Nuclear Generating Station, Peach Bottom Atomic Power Station, Units 1, 2 & 3, Quad Cities Nuclear Power Station, Units 1 & 2, Three Mile Island Nuclear Station, Unit 1, Zion Nuclear Power Station, Units 1 & 2; Confirmatory Order Modifying Licenses (Effective Immediately)**

Exelon Generation Company, LLC (Exelon) and AmerGen Energy Company, LLC (AmerGen) (Licensees) are the holders of twenty-one NRC Facility Operating Licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50, which authorizes the operation of the specifically named facilities in accordance with the conditions specified in each license. Licenses No. NPF-72 and NPF-77 were issued on July 2, 1987, and May 20, 1988, to operate the Braidwood Station, Units 1 and 2. Licenses No. NPF-37 and NPF-66 were issued on February 14, 1985, and January 30, 1987, to operate Byron Station, Units 1 and 2. License No. NPF-62 was issued on April 17, 1987 to operate the Clinton Power Station. Licenses No. DPR-2 and DPR-25 were issued on September 28, 1959, and January 12, 1971, to operate Dresden Nuclear Power Station, Units 1 and 3 (Dresden Station Unit 1 is currently in decommissioning). License

No. DPR-19 was extended on February 20, 1991, for Dresden Nuclear Power Station, Unit 2. Licenses No. NPF-11 and NPF-18 were issued on April 17, 1982, and February 16, 1983, to operate LaSalle County Station, Units 1 and 2. Licenses No. NPF-39 and NPF-85 were issued on August 8, 1985, and August 25, 1989, to operate the Limerick Generating Station, Units 1 and 2. License No. DPR-16 was extended on July 2, 1991, for the Oyster Creek Nuclear Generating Station. License No. DPR-12 was issued on January 24, 1966, to operate Peach Bottom Atomic Power Station, Unit 1, which was shut down on October 31, 1974, and is in safe storage. Licenses No. DPR-44 and DPR-56 were issued on October 25, 1973, and July 2, 1974, to operate Peach Bottom Atomic Power Station, Units 2 & 3. Licenses No. DPR-29 and DPR-30 were issued on December 14, 1972, for the operation of both units at the Quad Cities Nuclear Power Station, Units 1 and 2. License No. DPR-50 was issued on April 19, 1974, to operate the Three Mile Island Nuclear Power Station, Unit 1. Licenses No. DPR-39 and DPR-48 were issued on October 19, 1973, and November 14, 1973, for operation of the Zion Nuclear Power Station, Units 1 and 2 (the Zion Station is currently in decommissioning).

On January 29, 2001, the NRC Office of Investigations (OI) initiated an investigation to determine if a former Exelon employee performing work at the Byron Station had been discriminated against for raising safety concerns. In its Report No. 3-2001-005, issued March 26, 2002, OI concluded that an Exelon corporate manager deliberately discriminated against the former employee on August 25, 2000, in violation of the NRC regulations prohibiting employment discrimination, 10 CFR 50.7, "Employee Protection," by not selecting the employee for a new position. On June 17, 2002, the NRC staff contacted Exelon management to schedule a predecisional enforcement conference. To expedite resolution of this matter, Exelon requested the opportunity to present a settlement proposal to the NRC prior to a predecisional enforcement conference. The NRC staff agreed to this request.

Representatives of Exelon met with the NRC staff on July 2, July 18, July 30, September 9 and September 11, 2002, to discuss the terms of the Exelon settlement proposal. In an August 5, 2002 letter, Exelon described the proposed settlement and on September 27, 2002, the Licensees committed to a number of corrective actions with respect to employee protection, agreed to have the corrective actions confirmed

by Order, and admitted that a violation of 10 CFR 50.7 had occurred. The corrective actions include, but are not limited to, counseling management personnel involved in the violation of 10 CFR 50.7, and training all vice-presidents and plant managers throughout the Licensees' organization (at every nuclear station and at corporate headquarters) on the provisions of the employee protection regulation. These individuals, in turn, will train their subordinate managers. The Licensees will also modify management training programs as appropriate regarding the provisions of 10 CFR 50.7.

On September 27, 2002, the Licensees consented to issuance of this Order with the commitments described in Section V below, waived any right to a hearing on this Order, and agreed to all terms of this Order, including that it shall be effective immediately.

I find that the Licensees' commitments as set forth in Section V, below, are acceptable and necessary, and conclude that since Exelon admitted the violation of 10 CFR 50.7 and since the Licensees committed to taking comprehensive corrective actions by implementing this Confirmatory Order, the NRC staff's concern regarding employee protection can be resolved through confirmation of the Licensees' commitments by this Order. I further find that the Licensees' approach to resolving this matter is salutary and efficient, and that this resolution is in the public interest. Accordingly, the NRC staff exercises its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue Notices of Violation or a civil penalty in this case.

Accordingly, pursuant to sections 103, 104b, 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 license Nos. NPF-72, NPF-77, NPF-37, NPF-66, NPF-62, DPR-2, DPR-19, DPR-25, NPF-11, NPF-18, NPF-39, NPF-85, DPR-16, DPR-12, DPR-44, DPR-56, DPR-29, DPR-30, DPR-50, DPR-39, and DPR-48 are modified as follows:*

1. Exelon will counsel and coach personnel involved in the violation of 10 CFR 50.7, which occurred on August 25, 2000, to emphasize the importance of a safety conscious work environment and provisions of 10 CFR 50.7. The counseling will be conducted by a corporate Exelon executive not involved in the violation described herein and who shall be senior to those counseled.

2. An Exelon corporate executive will train and coach every executive-level employee (defined to include plant managers and all vice-president level personnel) throughout the licensed organizations, including every nuclear station and headquarters, on the employee protection provisions of 10 CFR 50.7. The sessions will be conducted by an Exelon executive knowledgeable about the issues involved in the August 25, 2000, violation and will be held in small groups to assure focus and interactive involvement of every executive. The sessions will include a case study of the selection decision that caused this enforcement action and a discussion of the lessons learned.

3. Each executive trained pursuant to Paragraph 2 above will be provided a communications package for use in training the managers in that executive's chain-of-command regarding these issues and the Licensees' expectations for handling employee interactions.

4. The Licensees will enhance training on the prevention of employment discrimination beyond that in its existing management training programs. Lesson plans and other materials used in management training programs on the prevention of employment discrimination will be reviewed and revised as appropriate to address maintaining a safety conscious work environment and the employee protection provisions of 10 CFR 50.7. The on-going training will be conducted at a frequency consistent with the Licensees' existing policies, practices and procedures.

5. The Licensees will review the internal candidate selection process to ensure that the process incorporates the principles of employee protection under 10 CFR 50.7.

6. A communication will be distributed to all employees of the Licensees' organizations that strongly reaffirms management's commitment to fostering a safety-conscious work environment in all organizations at all sites and in its headquarters organization. The Licensees will also reaffirm to all employees the Licensees' commitments to a strong and viable Employee Concerns Program and will reiterate the various means that all employees may employ to raise issues that may be of concern to them.

7. Exelon will review all work environment surveys conducted since September 2000 at the Byron Station (where the former employee previously worked) to assure that management responses to any findings were implemented to assure that no residual effect exists in the safety-conscious

work environment at the station as a result of the selection decision. Exelon will provide to the Regional Administrator, NRC Region III, Lisle, Illinois, a written description of the results of this review and any actions taken or planned to be taken to assure that a safety conscious work environment exists at the Byron Station.

8. The Licensees will accomplish these actions within six months of the date of this Order and will furnish a written report of the results achieved to the Director, Office of Enforcement, within 30 days following completion.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by the Licensees of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensees, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit a request for a hearing must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351; to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415; and to the Licensees. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If such 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 § 2.714(d).<sup>1</sup>

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 3rd Day of October 2002.

For the U.S. Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 030-33887; License No. 49-26808-02; EA-01-302]**

### **In the Matter of High Mountain Inspection Service, Inc., Mills, WY; Order Imposing Civil Monetary Penalty**

#### **I**

High Mountain Inspection Service, Inc., (Licensee) is the holder of Materials License No. 49-26808-02 issued by the Nuclear Regulatory Commission (NRC or Commission) on

<sup>1</sup> The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.