

February 4, 2003

IA-02-027

Mr. James F. Mau
[Home Address Deleted
Under 10 CFR 2.790(a)]

SUBJECT: RESPONSE TO NOTICE OF VIOLATION
NRC OFFICE OF INVESTIGATION REPORT NO. 3-2001-021

Dear Mr. Mau:

This refers to the Notice of Violation (Notice) sent to you on August 5, 2002, by the U.S. Nuclear Regulatory Commission (NRC) concerning a violation of the NRC requirement prohibiting deliberate misconduct, 10 CFR 50.5, that occurred between May 8 and 9, 2001, at the Exelon Generation Company's Dresden Nuclear Power Station. The violation was based on findings from an investigation by the NRC Office of Investigations (OI) that you deliberately submitted to the licensee a security-related maintenance work package for the surveillance of doors and turnstiles that you knew to be incomplete and inaccurate.

By letter dated September 4, 2002, you submitted your response to the August 5, 2002, Notice. In your response, you denied deliberately falsifying the subject work records and requested that the NRC withdraw the Notice of Violation for deliberate misconduct. In summary, your bases for denying the violation were: (1) your action in closing the work request was accidental; (2) you believed that the work package and erroneous computer entry had to match; and (3) you asserted that conclusions in the OI report were based on incorrect information or facts regarding your motives and the need for computer status entry obtained during OI's investigation activities.

You indicated in your response that you accidentally closed the work package while processing it on the computer. However, a demonstration of the computer entry/closure process witnessed by the OI investigator showed that closing a work package involved multiple steps, and according to a licensee employee familiar with the computer entry and closure process for work packages, the multiple steps necessary to close the package made the chance for accidental closure very improbable.

Additionally, you indicated in your response that you believed that the work copy of the package should match the computer records, so you annotated the work copy that the work was completed. However, you did that when the evidence showed you knew the opposite to be true. Your contention that your action was simply a mistake, does not appear supported by the facts.

In your response, you admitted that testimony you provided to OI conflicted with written comments that you entered in Condition Report (CR) D2001-02550. On the CR you indicated that the work was complete, but in your testimony to OI you stated that you were fully aware that the work package was not complete. Your explanation for the conflicting information was that you could not remember why you wrote in the CR that the work was complete. This explanation provides no substantive information to contradict the previously developed multiple facts and testimony. Multiple witnesses testified that you were specifically told that the work had not been completed and that you had acknowledged that fact.

You contend that the investigation conclusions were based on incorrect facts regarding computer status entry and work package documentation. We find nothing in your response to support that contention. Rather, the information you provided included a mistake in computer entry, a mistaken belief that both the computer record and work package had to agree in facts you knew to be false, and that you could not remember what you were thinking when you wrote the response to the condition report that specifically addressed the "inappropriate closure of the package." Lastly, you stated that a lack of motive supported your contention that your actions were not deliberate. This position in and of itself does not provide sufficient grounds to negate our investigation conclusion of deliberate misconduct.

Consequently, based on the information contained in your September 4, 2002 letter, and our current evaluation of the evidence on record, the NRC has concluded that an adequate basis was not provided for the rescission of the violation. Therefore, the NRC concludes that the violation occurred as stated in the Notice.

As noted in our August 5, 2002 letter, you are required to respond to the Notice of Violation in the manner prescribed in the Notice. If you have any questions, please contact Mr. James R. Creed, Region III Safeguards Program Manager. Mr. Creed can be contacted at 630-829-9857.

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aware that all final NRC documents, including the final OI Investigation Report, may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of information in accordance with the FOIA.

Sincerely,

/RA/

James L. Caldwell
Deputy Regional Administrator

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*Via e-mail from J. Dixon-Herrity to B. Clayton.