

misconduct, is tantamount to not holding the licensee responsible for the use or possession of licensed material. If the NRC adopted this position, there would be less incentive for licensees to monitor their own activities to assure compliance because licensees could attribute noncompliance to employee negligence or misconduct.

With regard to BIX's argument that its actions in responding to and reporting the incident should be considered, the NRC notes that BIX's actions were considered in proposing the civil penalty. In fact, as stated in the NRC's February 24, 1997 letter, BIX's prompt voluntary reporting of the incident to the NRC and its prompt and comprehensive corrective actions formed the basis for proposing a civil penalty limited to one-half of the base value for a Severity Level II problem. Thus, the NRC believes that the circumstances of this case were appropriately considered in determining the proposed penalty amount.

NRC Conclusion

The NRC rejects BIX's arguments that it should not be held fully responsible for the violations, and believes that BIX's actions in responding to and reporting the incident were appropriately considered in determining the proposed penalty amount. The NRC concludes, therefore, that the Licensee has not provided adequate justification for a reduction or remission of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of \$4,000 should be imposed by order.

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NUCLEAR REGULATORY COMMISSION

[IA 97-032]

In the Matter of Mr. Daniel R. Baudino; Order Prohibiting Involvement in NRC- Licensed Activities

I

Mr. Daniel R. Baudino was formerly employed by Bechtel Constructors Inc. (Bechtel) at the Commonwealth Edison Company's Dresden Nuclear Station (ComEd, Dresden, or Licensee) where he was granted unescorted access. ComEd holds Facility Licenses No. DPR-2, No. DPR-19, and No. DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. These licenses authorize ComEd to operate the Dresden Nuclear Station, Units 2 and 3, and possess and maintain but not operate Unit 1 (Dresden Station) located near Morris, Illinois, in accordance with the conditions specified therein.

II

In accordance with 10 CFR 73.56, nuclear power plant licensees must conduct access authorization programs

for individuals seeking unescorted access to protected and vital areas of the plant with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation, including criminal history. The decision to grant unescorted access authorization must be based on the licensee's review and evaluation of all pertinent information.

In order to be certified for unescorted access at Dresden Station as a contractor employee, Mr. Baudino completed Dresden Station forms entitled "Personal History Questionnaires for Unescorted Access" (personal history questionnaires) on several occasions, including January 16, 1992, and October 5, 1992. On each of these forms, Mr. Baudino indicated and certified with his signature that he had never been arrested and convicted of a criminal proceeding for the violation of any law, regulation or ordinance, including driving under the influence or traffic offenses other than non-personal injury traffic or parking offenses. Mr. Baudino was subsequently granted unescorted access to the Dresden station on each occasion, based in part on his representations on the personal history questionnaires that he had no criminal history. Mr. Baudino's unescorted access to the Dresden Station was revoked for cause by the Licensee on December 5, 1995, for other reasons than accurately completing his personal history questionnaire.

During an investigation by the NRC Office of Investigations (OI) at the Dresden Station, Mr. Baudino was interviewed by OI on March 14, 1996. During the interview, Mr. Baudino was shown copies of the personal history questionnaires referenced above and acknowledged that the signatures on each of the forms were his.

Mr. Baudino also acknowledged that his marking of an "x" in the "no" block under the question regarding criminal history indicated that he had not been arrested or convicted of any offenses. When confronted with the arrest records that OI had obtained from the Grundy County, Illinois, Circuit Court, which revealed that Mr. Baudino had multiple arrests and convictions during the period of 1987 to October 5, 1992, Mr. Baudino admitted they were records of his arrests. Mr. Baudino stated that he thought the questions pertained to federal arrests and convictions when asked why he falsely reported on the forms that he had no criminal history.

In a report issued on September 23, 1996, OI concluded that Mr. Baudino deliberately falsified his criminal history information on the personal history questionnaires in order to gain unescorted access to the Dresden Station.

III

Based on the above, the NRC has concluded that Mr. Baudino engaged in deliberate misconduct on January 16, 1992, and October 5, 1992, by deliberately falsely stating on the personal history questionnaires he signed on those dates that he had no criminal history. Mr. Baudino's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately providing information to a licensee or contractor that the individual knows is inaccurate or incomplete in some respect material to the NRC. The information that Mr. Baudino provided regarding his criminal history was material because, as indicated above, licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Baudino's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations, and his doing so on multiple occasions raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Baudino were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Baudino be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if Mr. Baudino is currently involved with another licensee in NRC-licensed activities, Mr. Baudino must immediately cease such activities, and inform the NRC of the name, address and telephone number of

the employer, and provide a copy of this Order to the employer. Additionally, Mr. Baudino is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Baudino's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161c, 161i and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, *It is hereby ordered, effective immediately, that:*

1. Mr. Daniel R. Baudino is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years after the five year period of prohibition has expired, Mr. Baudino shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Baudino shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission shall have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Baudino of good cause.

V

In accordance with 10 CFR 2.202, Mr. Baudino must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Baudino or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Baudino, if the answer or hearing request is by a person other than Mr. Baudino. If a person other than Mr. Baudino 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).

If a hearing is requested by Mr. Baudino or 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. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Baudino may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time to request a hearing, the provisions specified in Section IV above shall be final 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 IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 27th day of May 1997.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Deputy Executive Director for Regulatory Effectiveness.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327 and 50-328, License Nos. DPR-77 and DPR-79, EA 96-414]

In the Matter of Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Tennessee Valley Authority (Licensee) is the holder of Operating License Nos. DPR-77 and DPR-79 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 17, 1980, and September 15, 1981, respectively. The licenses authorize the Licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2 in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities at the Sequoyah Nuclear Plant was conducted during the period September 19 through November 2, 1996. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated December 24, 1996. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated January 23, 1997. In its response, the Licensee agreed that the violations occurred but contested NRC's application of the Enforcement Policy and requested the NRC to reconsider its decision to categorize Violations A(1), A(2) and A(3) as a Severity Level III problem and mitigate the proposed civil penalty for Violations A(1), A(2) and A(3) in its entirety. The Licensee's request was based on its view that NRC's categorization of Violations A(1), A(2) and A(3) as a Severity Level III problem and the proposed imposition of a \$50,000 civil penalty was inconsistent with the NRC Enforcement Policy.