

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
William H. Clark

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IA 98-045

ORDER PROHIBITING INVOLVEMENT IN  
NRC-LICENSED ACTIVITIES

I

William H. Clark was formerly employed by the Power Authority of the State of New York (New York Power Authority) as a contract employee who had been granted unescorted access to the Indian Point Unit 3 Nuclear Power Plant (Indian Point 3 Plant). The New York Power Authority is the holder of Facility Operating License No. DPR-64, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 5, 1976. The license authorizes the operation of the Indian Point 3 Plant in accordance with conditions specified therein. The facility is located in Buchanan, New York.

Mr. Clark was also formerly employed by the Centerior Service Corporation (Centerior) as a contract employee who had been granted unescorted access to the Perry Nuclear Power Plant (Perry Plant). Centerior is the holder of Facility Operating License No. NPF-58, issued by the NRC pursuant to 10 CFR Part 50 on November 18, 1987. The license authorizes the operation of the Perry Plant in accordance with conditions specified therein. The facility is located in Perry, Ohio.

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On October 30 and 31, 1997, the NRC received information from Centerior and the New York Power Authority, in accordance with 10 CFR 73.71(b)(1), that Mr. Clark had been granted unescorted access to the Perry Plant during the period September 11 through September 25, 1997, and the Indian Point 3 Plant during the period May 13 through August 14, 1997, and that Mr. Clark was previously denied unescorted access to the Philadelphia Electric Company's (PECo) Peach Bottom Nuclear Plant (Peach Bottom Plant) based on a positive test for illegal drug use (marijuana). On October 30, 1997, the New York Power Authority submitted Licensee Event Report (LER) No. 97-026-00 to the NRC which concluded that Mr. Clark had been granted unescorted access to the Indian Point 3 Plant based, in part, on false information that Mr. Clark provided to the New York Power Authority during pre-access screening regarding: (1) a prior positive test for illegal drug use (marijuana), which was administered to him by PECO on September 4, 1996; and (2) a prior denial of unescorted access to PECO's Peach Bottom Plant based on a positive test for illegal drug use. Centerior submitted a similar LER (No. 97-S01-000) to the NRC on October 31, 1997. Both Centerior and the New York Power Authority informed the NRC that had the information regarding Mr. Clark's previous positive test for illegal drug use and his denial of unescorted access to the Peach Bottom Plant been known, Mr. Clark would not have been granted unescorted access to their nuclear facilities.

In response to the information reported by Centerior and the New York Power Authority to the NRC, the NRC initiated an investigation of facts and circumstances surrounding the allegedly false information that Mr. Clark provided to Centerior and the New York Power Authority in order to gain unescorted access to the Perry Plant and the Indian Point 3 Plant. The investigation established:

1. On September 4, 1996, Mr. Clark submitted to pre-access drug and alcohol testing in order to gain unescorted access to PECO's Peach Bottom Plant and the immunoassay screen performed by PECO at its on-site lab identified the presence of cannabinoids (marijuana).
2. The specimen Mr. Clark submitted to PECO on September 4, 1996, was tested by the company DrugScan on September 5, 1996, and DrugScan reported to PECO that the specimen tested positive for marijuana metabolites.
3. On September 19, 1996, PECO sent Mr. Clark a certified letter which stated that PECO had received the results of his pre-access drug test and that if he did not contact the medical review officer within five days of receiving the letter, his pre-access drug test would be declared positive. On October 1, 1996, the medical review officer declared Mr. Clark's pre-access drug test positive based upon a positive drug test report and no response from Mr. Clark. The unopened, unclaimed certified letter was returned to PECO by the post office on November 4, 1996.
4. By letter dated October 25, 1996, PECO informed Mr. Clark that he was being denied unescorted access to PECO's Peach Bottom Plant for failing to meet PECO's fitness for duty requirements. The letter was mailed to Mr. Clark on October 28, 1996, by certified mail, return receipt requested, and Mr. Clark signed the certified mail receipt on or about November 13, 1996, thereby acknowledging his receipt of the letter.

5. On April 28, 1997, Mr. Clark applied for unescorted access to the Indian Point 3 Plant and answered "No" to two questions in order to gain unescorted access to the Indian Point 3 Plant: (a) whether he had ever been denied unescorted access to a nuclear power plant or employment due to a fitness for duty policy, and (b) whether he had ever been denied unescorted access to a nuclear power plant for any reason.
  
6. Based, in part, on Mr. Clark's answer of "No" to the two questions listed above in item five, Mr. Clark was granted unescorted access to the Indian Point 3 Plant from May 13 to August 14, 1997.
  
7. On September 10, 1997, Mr. Clark applied for unescorted access to the Perry Plant and answered "No" to two questions in order to gain unescorted access to the Perry Plant: (a) whether he had at any time in the past five years tested positive for illegal drug use, and (b) whether he had at any time in the past five years been removed from activities or denied unescorted access at any nuclear power plant, or other employment as a result of a fitness for duty policy.
  
8. Based, in part, on Mr. Clark's answer of "No" to the two questions listed above in item seven, Mr. Clark was granted unescorted access to the Perry Plant from September 11 to September 25, 1997.
  
9. On August 26, 1998, a Demand for Information (DFI) was sent to Mr. Clark. The DFI requested Mr. Clark to respond to a series of questions about his applications for unescorted access to the Indian Point 3 and Perry plants. Because Mr. Clark had not responded to the first DFI, a second copy of the DFI was sent to Mr. Clark on or about

the fourth week in September 1998. As of the date of this Order, Mr. Clark has not responded with the information requested by the DFI, and the post office has not returned the two copies of the DFI that were mailed to Mr. Clark.

10. On October 11 and October 22, 1998, telephone calls were placed to Mr. Clark's residence and messages were left on an answering machine asking Mr. Clark to contact the NRC Region III Office to discuss the DFI. As of the date of this Order, Mr. Clark has not contacted the NRC Region III Office in response to the telephone calls.

Based on the above, it appears that Mr. Clark, a former contract employee of both New York Power Authority and Centerior, has engaged in deliberate misconduct by providing false information to both NRC licensees, and it raises serious doubt as to whether Mr. Clark can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees.

### III

The NRC must be able to rely on a facility licensee and its employees to comply with the provisions of all NRC regulations. Based on its investigation, the NRC has concluded that Mr. Clark violated the NRC's regulations prohibiting deliberate misconduct at nuclear power facilities. Specifically, 10 CFR 50.5(a)(2), "Deliberate Misconduct," prohibits any employee of an NRC licensee, or any employee of a contractor or subcontractor of an NRC licensee, from deliberately submitting information to an NRC licensee that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The false answers and the information that Mr. Clark failed to provide about his prior use of

marijuana and his failed FFD test at, and his revoked unescorted access to, the Peach Bottom plant are material to the NRC because licensees are required to consider such information in making determinations for unescorted access in accordance with the requirements of 10 CFR 73.56. Therefore, the NRC has concluded that Mr. Clark's actions were a deliberate violation.

Mr. Clark's deliberate actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to refrain from deliberately violating those regulations. 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 will be protected if Mr. Clark were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Clark be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order, and if he is currently involved with another licensee in NRC-licensed activities at this time, he 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, for a period of one year following the one-year probation period, Mr. Clark is required to notify the NRC of any employment in NRC-licensed activities.

#### IV

Accordingly, pursuant to sections 103, 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, 10 CFR 50.5, 10 CFR 73.56, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. William H. Clark is prohibited for one year from the effective date of this Order from engaging in NRC-licensed activities. 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 one year after the period of prohibition has expired, William H. Clark shall, within 20 days of his acceptance of any 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 initial notification, Mr. Clark shall include a statement of his commitment to comply with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

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

V

in accordance with 10 CFR 2.202, William H. Clark 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. Clark 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: Assistant for 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 Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Mr. Clark, if the answer or hearing request is by a person other than Mr. Clark. If a person other than Mr. Clark 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).

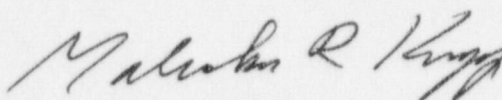
If a hearing is requested by Mr. Clark or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

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 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.

FOR THE NUCLEAR REGULATORY COMMISSION



Malcolm R. Knapp  
Deputy Executive Director for  
Regulatory Effectiveness

Dated at Rockville, Maryland  
this 21<sup>st</sup> day of December 1998

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12/9/98	12/10/98	12/9/98 <i>NLO subject to comments</i>	12/10/98