



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE N.E., SUITE 1200
ATLANTA, GEORGIA 30303-1200

March 13, 2023

IA-22-034

Mr. Berley L. Rister III
[Note: Home Address Deleted
Under 10 CFR 2.390]

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Rister:

This letter refers to an Event Notification (EN 55768) made by Virginia Electric and Power Company's Surry Power Station (Surry) on September 7, 2022, to the U.S. Nuclear Regulatory Commission (NRC). This EN informed the NRC that you had tested positive for alcohol during a random fitness-for-duty (FFD) test conducted on September 7, 2022. The NRC received additional information from Surry on October 5, 2022, associated with your confirmed positive FFD test result. Additional information was also obtained through our November 30, 2022, interview with you. Copies of the aforementioned documents have been placed in your Title 10 of the *Code of Federal Regulations* (10 CFR) Part 55 docket file.

In a letter addressed to you dated February 3, 2023, the NRC informed you that we were considering escalated enforcement for an apparent violation of 10 CFR 55.53(j). This regulation prohibits you, as a holder of an NRC license, from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of alcohol. We also informed you that we had sufficient information regarding the apparent violation to make an enforcement decision. However, we gave you the opportunity to address the apparent violation by either attending a predecisional enforcement conference or providing a written response before the NRC made its final enforcement decision. In an electronic message to NRC staff on February 17, 2023, you stated you had no additional information to provide.

The NRC determined that a violation of 10 CFR 55.53(j) occurred due to you being under the influence of alcohol while you were performing licensed activities, as demonstrated by a confirmed positive test result for alcohol. This violation is cited in the enclosed Notice of Violation (Notice). The purpose of the Commission's FFD requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of alcohol such that an operator exceeds the cutoff limits specified in 10 CFR Part 26, or in the licensee's FFD program, is a serious matter which undermines the special trust and confidence placed in you as a licensed operator. Therefore, this violation is categorized as a Severity Level III violation in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-rc/regulatory/enforcement/enforce-pol.html>.

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing FFD as a licensed operator. In accordance with 10 CFR 26.75, any additional positive FFD test results will substantially affect your authorization for unescorted access

to the protected area of a licensed facility. In addition, note that as provided in 10 CFR 55.61, the NRC could have taken action to suspend or revoke your license resulting from a confirmed positive test for alcohol in violation of the conditions and cutoff levels established by 10 CFR 55.53(j), and any repetition of this conduct in the future may result in revocation of your license.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator of a nuclear power facility. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. A copy of this letter and the enclosed Notice of Violation with your address removed will be made available to the public, unless you provide a sufficient basis to withdraw this violation. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. Detailed information about this system of records, including the NRC-3 system notice, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>. Finally, a copy of this letter will be placed in your 10 CFR Part 55 docket file.

If you have any questions related to this matter, please contact Thomas Stephen, Branch Chief, Division of Reactor Safety, NRC Region II, at 404-997-4703, or via email at Thomas.Stephen@nrc.gov.

Sincerely,

Laura M.
Pearson
Laura Pearson, Acting Director
Division of Reactor Safety

Digitally signed by Laura
M. Pearson
Date: 2023.03.13 08:47:45
-04'00'

Docket No. 55-72930
License No. OP-504467

Enclosure: Notice of Violation

cc w/Enclosure and with HOME ADDRESS DELETED: Distribution via ListServ

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

SUBJECT: NOTICE OF VIOLATION dated March 13, 2023

DISTRIBUTION:

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Non-Public Designation Category: MD 3.4 Non-Public _____ (A.3 - A.7 or B.1)
ADAMS ACCESSION NUMBER: ML23072A166 (Cover letter w/ enclosure(s))

Entire Report: X SUNSI Review		X Non-Sensitive <input type="checkbox"/> Sensitive			X Publicly Available <input type="checkbox"/> Non-Publicly Available	
OFFICE	RII:DRS	RII:EICS	RII:ORA	HQ:OE	HQ:NRR	RII:DRS
NAME	TStephen	MKowal	SPrice	JPeralta	RFelts	LPearson
DATE	2/21/2023	2/22/2023	2/27/2023	2/28/2023	2/28/2023	3/13 /2023

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Mr. Berley L. Rister III
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

Docket No. 55-72930
License No. OP-504467
IA-22-034

As a result of an event notification from Virginia Electric and Power Company dated September 7, 2022, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (10 CFR) 55.53(j) prohibits the licensee from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of alcohol. "Under the influence" is defined in 10 CFR 55.53(j) to mean that the "licensee exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in subparts E, F, and G of part 26 of this chapter, or as established by the facility licensee."

Contrary to the above, the licensee (you) performed licensed duties on September 7, 2022, immediately before the submission of a breath test sample which indicated that the licensee was under the influence of alcohol. Specifically, the licensee's breath test sample was 0.026 percent BAC. A positive test result was determined by the facility licensee because the licensee met or exceeded the administrative level of 0.02 percent BAC with a time at work of at least two hours. Based on this, the licensee exceeded cutoff levels for alcohol as established by the facility licensee.

This is a Severity Level III violation (NRC Enforcement Policy, Section 6.4.c.1).

Pursuant to the provisions of 10 CFR 2.201, Mr. Berley L. Rister (licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, 245 Peachtree Center Avenue NE, Suite 1200, Atlanta Georgia, 30303-1257, and marked "Open by Addressee Only," and a copy to the NRC Resident Inspector at Surry Power Station, with a similar marking, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; IA-22-034" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued requiring information as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. If personal privacy

Enclosure

or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. Detailed information about this system of records, including the NRC-3 system notice, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 13th day of March 2023.