



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
475 ALLENDALE ROAD, SUITE 102
KING OF PRUSSIA, PA 19406-2713

April 2, 2024

IA-24-005

Mr. Keith Miller
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT 1-2023-018 AND NOTICE OF VIOLATION

Dear Keith Miller:

This letter refers to the investigation initiated on August 16, 2023, by the U.S. Nuclear Regulatory Commission's (NRC's) Office of Investigations (OI), to determine whether you, a licensed Reactor Operator (RO) at James A. FitzPatrick Nuclear Power Plant (FitzPatrick) deliberately subverted a random fitness for duty (FFD) test and, in so doing, deliberately violated, Title 10 of the *Code of Federal Regulations* (CFR) Section 55.53(k). On August 8, 2023, an Event Notification (EN# 56667) was made by FitzPatrick informing the NRC that you had refused to participate in a random FFD test on August 8, 2023.

In a letter dated August 16, 2023, ([ML23228A134](#)),¹ the NRC requested additional information from FitzPatrick regarding this occurrence, including: (1) whether you were at the controls or supervising licensed activities while under the influence of illegal drugs or alcohol; (2) whether there were any procedural errors or other operational impacts related to this occurrence; and (3) FitzPatrick's intentions with regard to your resumption of licensed duties. FitzPatrick responded to the NRC in a letter dated September 7, 2023 (ML19275E380; non-public because it contains personal privacy information), and clarified that the August 8, 2023, report was due to your refusal to participate in a random FFD test, and that no specimen had been collected and tested for that occurrence. FitzPatrick informed the NRC that, on August 8, 2023, your license had been inactive because you were in the Senior Reactor Operator class and that you had not performed licensed duties since May 29, 2022. FitzPatrick stated that there were no procedural errors or other operational impacts related to the occurrence. Additionally, FitzPatrick informed us that you resigned your employment on August 8, 2023.

Based on the results of its investigation, and although you violated 10 CFR 55.53(k) requirements by refusing to participate in a random FFD test, the NRC determined that there was insufficient evidence to substantiate that you did so deliberately. Specifically, on August 8, 2023, you were notified that you were required to complete a random FFD test. However, you resigned your position and did not submit to the random FFD test as required by FitzPatrick's

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS.

FFD Program. Based on your testimony during the investigation, it appears that you resigned your position due to personal reasons and not to avoid participating in the FFD Program.

Nonetheless, as discussed below, the NRC has determined that your actions still resulted in a violation of 10 CFR 55.53(k), which requires, in part, that licensed individuals at power reactors participate in the drug and alcohol testing programs established pursuant to 10 CFR Part 26.

During a telephone conversation on March 12, 2024, Cherie Crisden, of my staff, described to you the apparent violation and 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 (PEC) or providing a written response before the NRC made its final enforcement decision on this matter. You indicated that you did not believe that either attending a PEC or submitting a written response was necessary. Accordingly, the NRC has determined that the violation of 10 CFR 55.53(k) occurred due to your refusal to participate in FitzPatrick's FFD program on August 8, 2023. The violation is cited in the enclosed Notice of Violation (Notice).

The purpose of the NRC's FFD requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free from drugs and alcohol, and the effects of the use of these substances. Refusing to participate in the facility's FFD program is a serious matter that undermines the special trust and confidence placed in you as a licensed reactor operator. Therefore, the violation is categorized at Severity Level III 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-nrc/regulatory/enforcement/enforce-pol.html>.

Since you no longer have an NRC license, you are not required to respond to the Notice unless you contest the violation. Should you contest the Notice, a response is required within 30 days of the date of this letter addressing the specific basis for disputing the violation. This response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, NRC Region I, 475 Allendale Road, Suite 102, King of Prussia, PA 19406-2713, and marked Open by Addressee Only - Response to a Notice of Violation; (IA-24-005).

The NRC intends to place a copy of this letter, the NRC letter dated August 16, 2023, the FitzPatrick letter dated September 7, 2023, and the enclosed Notice in your 10 CFR Part 55 docket file. If you reapply for an operator license at FitzPatrick, or apply for an operator license at any other NRC licensed facility, you will need to not only satisfactorily address the requirements of 10 CFR 55.31 and 10 CFR 55.33, but also the requirements of 10 CFR 2.201. At that time, you will need to submit a written response to the enclosed Notice to address the reasons for the violation and the actions you have taken to prevent recurrence in order to ensure your ability and willingness to: (1) uphold the special trust and confidence placed in you as a licensed reactor operator; and (2) abide by all FFD and other license requirements and conditions. This response should be sent to the address listed above.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from the NRC's 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 <https://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/index.html>.

All final NRC documents, such as the OI report described above, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, "Requests for Records." Additional information is available on the NRC website at <http://www.nrc.gov/reading-rm/foia/foia-privacy.html>. 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. 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>.

Should you have any questions concerning this letter, please contact Cherie Crisden, of my staff. Cherie Crisden, who is a Region I Allegations and Enforcement Specialist, can be reached at 610-337-5061 or Cherie.Crisden@nrc.gov.

Sincerely,

Raymond K. Lorson
Regional Administrator

Docket No. 55-74918
License No. OP-503584

Enclosures:

1. Notice of Violation
2. Event Report 56667

cc: w/encl and w/HOME ADDRESS DELETED
David P. Rhoades, Senior Vice President
Constellation Energy Generation, LLC

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT 1-2023-018 AND NOTICE OF VIOLATION DATED APRIL XX, 2024

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DATE	3/12/2024	3/12/2024	3/15/2024	3/15/2024	3/18/2024	3/18/2024
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NAME			J Peralta/JP via email	R Felts/RF via email	A Valentine/NLO	R Lorson/RKL
DATE			3/27/2024	3/20/2024	3/27/2024	04/02/24

*see previous concurrence

NOTICE OF VIOLATION

Keith Miller
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

Docket No. 55-74918
License No. SOP-503584
IA-24-005

As a result of a notification from Constellation Energy Generation, LLC, James A. FitzPatrick Nuclear Power Plant, on August 8, 2023, and a subsequent NRC investigation conducted between August 16, 2023, and October 11, 2023, the NRC identified a violation of NRC requirements. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 55.53(k) requires, in part, that licensed operators participate in the drug and alcohol testing programs established by the Part 50 licensee pursuant to 10 CFR part 26.

Contrary to the above, on August 8, 2023, Keith Miller, an individual licensed operator, did not participate in the James A. FitzPatrick Nuclear Power Plant drug and alcohol testing program by refusing to provide a specimen for testing when selected for a random test.

This is a Severity Level III violation (NRC Enforcement Policy Example Violation 6.4).

You are not required to respond to the Notice unless you contest the violation. Should you contest the violation, a response is required within 30 days of the date of this letter, addressing the specific basis for disputing the violation. This response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, NRC Region I, 475 Allendale Road, Suite 102, King of Prussia, PA 19406, and marked Open by Addressee Only – Response to a Notice of Violation; (IA-24-005). 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 Agency-wide 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, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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 2nd day of April, 2024