

civil penalties are imposed, in part, to deter future violations by not only the involved licensee, but other licensees conducting similar activities. See Enforcement Policy, Section VI.B.

Contrary to the Licensee's statements, the civil penalties proposed in this case are within the authority of the NRC. The Licensee's comparison of the civil penalties in this case with civil penalties in other cases does not bring the NRC's exercise of its lawful authority into question. Of decisive importance is the NRC's clear authority to exercise discretion in the choice of enforcement sanctions and the ordering of enforcement priorities. *Advanced Medical Systems, Inc.*, (CLI-94-6), 39 NRC 285, 320 (1994). A sanction is not rendered invalid because it is more severe than that issued in other cases. *Id.* As explained above, the NRC acted within its statutory authority and the bounds of the Enforcement Policy when NRC exercised its discretion to escalate the civil penalties in this case. A rigid uniformity is not required in enforcement decisions, which inherently involve the exercise of informed judgment on a case-by-case basis. *Id.* See also, *Radiation Technology, Inc.*, (ALAB-567), 10 NRC 533, 541 (1979).

#### *NRC Conclusion*

The NRC has concluded that the violations occurred as stated in the Notice and an adequate basis for mitigation of the civil penalties was not provided by the Licensee. Consequently, the proposed civil penalties in the amount of \$280,000 should be imposed.

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#### [Docket No. 50-278]

#### **PECO Energy Company; Public Service Electric and Gas Company; Delmarva Power and Light Company; Atlantic City Electric Company (Peach Bottom Atomic Power Station, Unit 3); Exemption**

##### **I**

PECO Energy Company, et al. (PECo, the licensee), is the holder of Operating License No. DPR-56, which authorizes operation of the Peach Bottom Atomic Power Station, Unit 3, at steady state reactor core power levels not in excess of 3293 megawatts thermal. The license provides, among other things, that the licensee is subject to the rules, regulations and order of the Commission now or hereafter in effect.

The plant is a boiling water reactor located at the licensee's site in York County, Pennsylvania.

##### **II**

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Section III.D.2(a) of Appendix J to 10 CFR Part 50 requires that Type B leak rate tests, except for air locks, be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations.

Section III.D.3 of Appendix J to 10 CFR Part 50 requires that Type C leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are intended to measure containment isolation valve leakage rates for certain containment isolation valves.

##### **III**

By letter dated February 22, 1995, the licensee requested a one-time exemption from the requirements of Appendix J, Sections III.D.2(a) and III.D.3 for a period of 60 days for the isolation valves or leakage boundaries for 80 penetrations. In its request, the licensee provided a list of the affected penetrations and associated plant-specific leak test procedures, the date when the leak tests had last been performed and the date when the current leak test will expire.

The licensee has implemented a 24-month operating cycle schedule at the Peach Bottom facility. The last refueling outage for Unit 3, 3R09, commenced in September 1993 and ended in November 1993 and the next refueling outage, 3R10 is scheduled to commence no later than September 30, 1995. The leak tests for which the licensee has requested scheduler exemption were last conducted during the refueling outage 3R09, based on the information provided in the licensee's application. The licensee has stated that the affected leak test require either that safety systems be isolated or require access to

the drywell, either of which would require the reactor to be shutdown.

The licensee has divided the affected leak tests into two categories: (1) Those that require shutdown reactor conditions but come due prior to the latest scheduled commencement of 3R10 on September 30, 1995, and (2) those that require reactor shutdown conditions and come due after the scheduled commencement of 3R10. There are 52 leak test surveillance procedures affecting 47 penetrations or penetration groups in the first category. These tests and penetrations are listed in Table 1 of the licensee's February 22, 1995 request. The earliest of these tests falls due on August 12, 1995, up to 49 days prior to the scheduled shutdown. The licensee has requested an exemption for 60 days which will allow the unit to operate until the beginning of the planned outage without shutting down to perform leak tests and which will allow for flexibility in planning the leak tests during the outage.

There are 28 leak test surveillance procedures affecting 29 penetrations in the second category described previously. These tests are listed in Table 2 of the licensee's February 22, 1995 submittal. The licensee has requested an exemption of 60 days to allow for flexibility in planning these leak tests during the outage. The licensee stated that all of the affected penetrations will be leak tested prior to restart from 3R10.

##### **IV**

The licensee presented information in support of its request for a 60-day extension of the Type B and C test intervals. The maximum allowable leakage rate for maintaining primary containment ( $L_a$ —minimum pathway leakage) is 125,417 cc/min. The as-found total Type B and C minimum pathway leakage rate observed during Unit 3 refueling outage 3R09 during the fall of 1993 was 33,434 cc/min. The as-left leak rate for that same outage was 27,188 cc/min.

PECo stated that an extension of the leak test interval to allow for 49 days of operation is not likely to significantly decrease the margin between as-found leak rates and  $L_a$ .

PECo also stated that the remainder of the total 60-day extension, requested for outage planning flexibility, will have minimal safety significance since the unit will be in cold shutdown. Primary containment integrity is not required during cold shutdown.

The licensee provided information regarding the requirements of 10 CFR 50.12, "Specific Exemptions." With respect to the requirements of 10 CFR

50.12(a)(1), the licensee stated that the requested action is authorized by law in that no prohibition of law exists which would preclude the activities which would be authorized by the exemption. In addition, the licensee stated that, for the reasons discussed above, the requested exemption does not present an undue risk to the public health and safety. Finally, the licensee stated that containment leak rate testing is not considered in the common defense and security of the nation.

With respect to the requirements of 10 CFR 50.12(a)(2)(iii), the licensee stated that special circumstances are present because compliance with the strict requirements of Appendix J would result in hardships significantly in excess of those contemplated when the regulation was adopted. The licensee stated that at the time the regulation was adopted, a presumption was made that a 2-year test interval would easily accommodate performance of the required tests during an operating cycle. However, development of new core designs have resulted in cycles of 24 months, or longer. Performance of the tests at the 24-month frequency would result in undue financial hardship resulting from extended reactor shutdown beyond that intended by the regulation with little or no compensatory increase in the level of safety or quality.

#### V

Based on the above, the staff finds there is reasonable assurance that the containment leakage-limiting function will be maintained and that a forced outage to perform Type B and C tests is not necessary. Therefore, the staff finds the requested exemption, to allow the Type B and C test intervals for the penetrations listed in the licensee's February 22, 1995 request to be extended for 60 days from their current expiration date, to be acceptable. The exemption request has been evaluated in a safety evaluation dated April 25, 1995.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission finds that the special circumstances as required by 10 CFR 50.12(a)(2) are present. The Commission's finding is based on the information provided by the licensee regarding 10 CFR 50.12(a)(2)(iii). In addition, as specified in 50.12(a)(2)(ii), special circumstances are present whenever the application of the

regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that the components comprising the primary containment boundary are maintained and leak tested at periodic and appropriate intervals. The 24-month maximum interval was originally expected to bound the typical operating cycle, including a limited amount of mid-cycle outage time. The advent of advanced fuel types has made it possible to operate the facility for the 24 months with minimal, if any mid-cycle outage time. Strict adherence to the 24-month maximum interval is not necessary to meet the underlying purpose of the rule in that, taking into consideration the 60-day extension, the components that comprise the primary containment boundary will still be tested at a frequency that is appropriate to those components and their application. In addition, the 60-day extension represents a minimal increase in the existing 24-month interval required by the rule. Therefore, the staff finds the requested temporary exemption, to allow the Type B and C test intervals for penetrations described in the licensee's February 22, 1995 letter, to be extended for 60 days, to be acceptable.

An exemption is hereby granted from the requirements of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50, which requires that Type B and C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years, for a period of 60 days from the expiration of the current leak test for the affected penetrations.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 19968).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 25th day of April 1995.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II,  
Office of Nuclear Reactor Regulation.*

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[Docket No. 030-32493; License No. 29-28685-01; EA 93-072]

### Radiation Oncology Center at Marlton, Marlton, New Jersey; Order Imposing a Civil Monetary Penalty

#### I

Radiation Oncology Center at Marlton (Licensee) is the holder of Byproduct Materials License No. 29-28685-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on January 17, 1992. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein. The License is due to expire on January 31, 1997. By a Confirmatory Action Letter dated February 5, 1993, the Licensee agreed to not obtain any sources of radioactive material authorized under the License until specifically authorized by NRC Region I. By a Confirmatory Order Modifying License (Effective Immediately) dated March 9, 1993, the Licensee was required to maintain any NRC-licensed material in a locked, stored, and shielded condition, and was prohibited from receiving any NRC-licensed material.

#### II

An NRC inspection of the Licensee's activities was conducted on February 2 and 4, 1993. The results of this inspection indicated that the Licensee has not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 31, 1994. The Notice states the nature of the violation, the provisions of the NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in letters dated August 31, 1994, October 4, 1994, and December 1, 1994. In its responses the Licensee denies Examples A.3, A.4, B.1, B.2, D., and G. of the violations, denies in part and admits in part Examples A.1, A.2, and C. of the violation, and admits Examples A.5, E., and F. of the violation. The Licensee also protests the amount of the civil penalty proposed and requests mitigation of the penalty as appropriate.

#### III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that, with the