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U.S. Nuclear Regulatory Commission
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Subject: Response to Solicitation of Public Comments on the Third Year of Implementation of the Reactor Oversight Process

References: (1) Volume 67, Federal Register No. 226, Pages 70468-70470, dated November 22, 2002

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Office of Director
Nuclear Energy

Exelon Generation Company, LLC and AmerGen Energy Company, LLC, appreciate the opportunity to provide comments on the Third Year of Implementation of the Reactor Oversight Process (ROP). We are actively involved with the Nuclear Energy Institute (NEI) on this subject and endorse the industry comments on this subject.

The ROP continues to be viewed as a significant improvement over the previous process in that it is objective, safety focused and predictable. This approach, for the most part, provides an objective measurement of performance, avoids unnecessary regulatory burden, and focuses NRC and licensee resources on risk/safety significant issues. Further, the ROP provides a timely and understandable assessment of licensee performance which leads to an increase in public confidence regarding the nuclear industry.

Over the past year, the ROP has continued to evolve with respect to improvements in the areas of performance indicators and the significance determination process (SDP). More work is required to further the success of the ROP as our comments will indicate later. To this end, industry and the NRC must continue to prioritize and pursue ROP changes that enhance the overall process within the objectives established.

In the area of ROP performance indicators, we believe they add value and we fully support further risk informing efforts to the greatest extent possible. We also believe that the process for overall management of the performance indicators, as well as the process for frequently asked questions, has enabled us to have an ongoing dialogue and a better understanding and identification of problem areas. We support the NRC change process where the staff identifies and reviews the potential for changing a performance indicator. One example is the current pilot program for the Mitigating Systems Performance Index (MSPI). It is important to note, however, our concern over excessive data collection in any of the performance indicators based on the impact on system engineers. Our goal has been to derive a performance indicator that is risk informed, optimizes data collection and sets the platform to fully align Maintenance Rule and INPO/WANO data collection into one common indicator.

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We recognize and fully support the NRCs self assessment of the ROP completed earlier this year, in particular the detailed improvement plan created for the SDP area. Implementation of this improvement plan is very important to resolving several significant issues in the SDP. While we have seen some progress made in resolving some of the issues, there is a significant amount of work yet to accomplish in the following areas:

- There are significant resource expenditures for low risk issues. Specifically, our concern is when significant resources are expended in non-risk based SDPs dealing with what we feel might be interpretation or application issues.
- Some outcomes are inconsistent – we need to push to ensure that outcomes are commensurate with risk/safety significance across the cornerstones. Specifically, we need to see that a white outcome for a safety system on availability is largely consistent with what you might see in Security or Emergency Planning. We are concerned that , without this consistency, the result could be unintended consequences with respect to the public's understanding to the true risk significance.

To expand on this thought, one of the initial goals of the Revised Oversight Process (ROP) was to improve regulatory consistency across NRC Regions. Using a specific example, the Emergency Preparedness (EP) SDP does not further this goal. Unlike the systems portions of the ROP SDP, the selection of significance for many of the planning standards is dependent upon a qualitative determination of the events/issues impact on the overall ability to complete the function assigned to the 50.47 Planning Standards. Such a basis requires interpretation by both the regulator and the licensee. The examples of past events are unlikely to exactly match future events and therefore interpretation is inevitable thereby promoting inconsistency across the regions.

The other concern revolves around the appearance that the EP SDP establishes de facto regulations. For some planning standards, significance variations were chosen arbitrarily by the regulator. These numerical interpretations have no basis in existing regulations but when chosen as significance discriminators become de facto limits. Examples in this area include: individual siren reliability measurement, outage times for facilities and/or equipment, and arbitrary assignment of corrective action timeliness.

Revising the EP SDP has been an ongoing issue for the majority of 2002. This issue has been highlighted in SECY-02-0062, "Calendar Year 2001 Reactor Oversight Process Self Assessment" as an area needing revision. Further, this SECY highlighted comments by external stakeholders, including Exelon, regarding difficulties in implementing the EP SDP, not producing consistent results, and SDP outcomes which were not commensurate with risk.

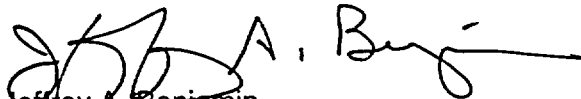
The NRC self assessment for calendar year 2001 was well written and clearly articulated the areas needing improvement. Moreover, a detailed SDP Improvement Plan (Attachment 3 to the SECY) was developed to address the numerous SDP issues highlighted in the self assessment. Specifically, this report clearly stated that "this improvement initiative is intrinsic to the long term success of the SDP, and consequently, the Reactor Oversight Process".

At the May 1, 2002 Agency Action Review meeting, I articulated full support and encouragement in the NRCs execution of the SDP improvement plan. A major concern for Exelon, as we reviewed the most recent draft of the EP SDP, is the lack of implementation of this improvement plan applied to this particular SDP.

As we move forward, Exelon offers the following recommendations regarding improvement to the ROP. We encourage both the NRC and the industry, through NEI, to work on implementing the SDP improvement plan including table top scenarios and training for proposed SDPs prior to their implementation. In the area of performance indicators, the amount of data collection must be a serious issue for proposed changes to performance indicators. This is especially true with respect to the issue of aligning the ROP, Maintenance Rule and INPO/WANO indicators for safety systems – one of the potential benefits to be derived from the MSPI pilot program. With respect to licensee self assessment in lieu of inspection, Exelon supports moving forward with this initiative based on the industry as a whole having matured over the past several years.

Exelon will continue its full support of the ROP and will work to implement the needed improvements to the overall process. We hope that our comments will prove to be insightful to the NRC as we begin the fourth year of implementation of the ROP. As always, should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Benjamin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeffrey A. Benjamin
Vice President
Licensing and Regulatory Services

cc: Nuclear Energy Institute – Ralph Beedle
Nuclear Energy Institute – Steve Floyd
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