

August 18, 2005

EA-05-159

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: BYRON STATION, UNITS 1 and 2
NRC OFFICE OF INVESTIGATIONS REPORT (OI CASE NO. 3-2005-008)

Dear Mr. Crane:

This refers to the investigation completed on May 11, 2005, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), at the Byron Nuclear Station. The purpose of this investigation was to follow up on the information provided by the staff at Exelon Generation Company's Byron Nuclear Station. The Byron staff informed the NRC that a former ventilation system engineer had falsely documented the completion of 27 ventilation surveillance procedures during the period of November 20, 2002, through February 25, 2005. A summary of the OI investigation is enclosed.

Based on the results of this investigation, two apparent violations were identified and are being considered for escalated enforcement action in accordance with the Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. As to the matter involving the two apparent violations, during a Nuclear Oversight Audit, the Byron Staff identified that a system engineer willfully failed to perform 15 Technical Specification ventilation surveillances. As a result of a subsequent extent-of-condition review, the licensee identified that the system engineer failed to perform 12 additional Technical Specification ventilation surveillances. During the re-verification or retest efforts for the 27 falsified surveillance tests, the results for six tests were less than the acceptance criteria. The action of the ventilation system engineer placed Exelon in violation of 10 CFR 50.9, "Completeness and Accuracy of Information," and Technical Specification 5.5.11, "Ventilation Filter Testing Program." The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective actions were discussed with members of your staff, during various meetings with the NRC Resident Inspectors. As a result, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision.

In addition, since you identified the violations, and based on our understanding of your corrective actions, a civil penalty may not be warranted in accordance with Section VI.C.2 of the Enforcement Policy. The final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violations addressed in the investigation report and this letter within 30 days of the date of this letter; or (2) request a predecisional enforcement conference. If a conference is held, it will be transcribed and closed to public observation because it involves the findings of an NRC OI report which has not been publicly disclosed. Please contact Richard Skokowski, Chief, Branch 3 at (630) 829-9620, within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation, EA-05-159" and should include: (1) the reason for the apparent violations, or, if contested, the basis for disputing the apparent violations; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

In addition, please be advised that the number and characterization of apparent violations described may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

Instead of a predecisional enforcement conference or a written response, you may request alternative dispute resolution (ADR) with the NRC. Alternate dispute resolution is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and the licensee) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential issues: 1) whether a violation occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violation(s). Additional information concerning the NRC's pilot program can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their

case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at 607-255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Nick Hilton, Office of Enforcement, at (301) 415-3055 for additional information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document 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.

Sincerely,

/RA/

Mark A. Satorius, Director
Division of Reactor Projects

Docket Nos. 50-454; 50-455
License Nos. NPF-37; NPF-66

Enclosure: Investigation Summary

cc w/encl: Site Vice President - Byron Station
Plant Manager - Byron Station
Regulatory Assurance Manager - Byron Station
Chief Operating Officer
Senior Vice President - Nuclear Services
Vice President - Mid-West Operations Support
Vice President - Licensing and Regulatory Affairs
Director Licensing
Manager Licensing - Braidwood and Byron
Senior Counsel, Nuclear
Document Control Desk - Licensing
Assistant Attorney General
Illinois Emergency Management Agency
State Liaison Officer, State of Illinois
State Liaison Officer, State of Wisconsin
Chairman, Illinois Commerce Commission
B. Quigley, Byron Station

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**Concurrence indicates approval to release the OI Report Summary

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Summary of Investigation

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, on March 14, 2005, to determine whether an individual deliberately falsified surveillance procedures, and deliberately failed to provide complete and accurate information to the licensee.

Based upon the evidence developed, this investigation substantiated the allegation that an individual deliberately falsified surveillance procedures by forging signatures to work orders, and deliberately failed to provide complete and accurate information to the licensee.