



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, IL 60532-4352

November 29, 2010

EA-10-186

Mr. Michael J. Pacilio
Senior Vice President, Exelon Generation Company, LLC
President and Chief Nuclear Officer (CNO), Exelon Nuclear
4300 Winfield Road
Warrenville, IL 60555

**SUBJECT: RESPONSE TO DISPUTED NON-CITED VIOLATION – CLINTON POWER
STATION NRC INSPECTION REPORT 05000461/2010003**

Dear Mr. Pacilio:

On September 1, 2010, Mr. F. A. Kearney, Exelon Generation Company, LLC (Exelon) Clinton Power Station (CPS) Site Vice President, provided a response to a U.S. Nuclear Regulatory Commission (NRC) inspection report issued on August 3, 2010, concerning activities conducted at your facility. Specifically, Mr. Kearney's letter stated that Exelon is contesting a finding and associated non-cited violation (NCV) contained in the inspection report, namely Green NCV 05000461/2010003-02, regarding failure to perform an adequate Title 10 of the Code of Federal Regulations (10 CFR) 50.59 evaluation for CPS Procedure 3711.01, "CPS Operations with the Potential to Drain the Reactor Vessel (OPDRV)."

On September 22, 2010, the NRC acknowledged Mr. Kearney's letter. We have completed our review and determined that the violation of 10 CFR 50.59, "Changes, Tests, and Experiments," occurred as stated in the inspection report. The finding and NCV will remain as documented in the inspection report.

In the September 1, 2010, letter, Exelon indicated that:

- There is no specific definition in the CPS Technical Specifications (TS), nor is there an industry or regulatory definition for what constitutes an OPDRV. The conversion to Improved Technical Specifications (ITS) did not redefine an OPDRV, nor did it change any TS action if an OPDRV condition existed.
- Due to the lack of regulatory guidance and the lack of a definition of an OPDRV in the CPS licensing basis, CPS developed a new procedure to allow certain activities to be performed during cold shutdown or refueling operations while precluding a draindown event from occurring during performance of these activities. The implementation of new CPS Procedure 3711.01 neither provided any additional, nor removed any, TS requirements regarding OPDRVs.

- Procedure 3711.01 defines activities that could potentially cause an OPDRV (or an event that could cause a draindown) using industry operating experience and docketed NRC decision-making from Fermi 2 to determine what would not constitute an OPDRV.
- Without any guidance, maintenance activities [such as a bolt or gasket replacement] could have been effectively treated as an OPDRV.

NRC Staff's Review:

We reviewed the information Exelon provided to determine if the NCV was properly characterized. The NRC staff members who reviewed your basis for contesting the NCV were independent of the initial inspection effort. After careful consideration, we have concluded that the violation occurred as stated in the inspection report.

We have evaluated the information that Exelon provided to support your staff's basis that you properly incorporated industry and NRC guidance into CPS Procedure 3711.01, in order to provide clear instructions for plant workers and ensure plant safety; and that the establishment of this type of guidance did not require prior NRC approval. Our conclusions were based on the requirements of 10 CFR 50.59, "Changes, Tests, and Experiments," and statements in NRC Inspection Report No. 05000461/2010-003, which communicated to you that the new process by which you chose to define OPDRV is in contrast to the plain language contained in the CPS licensing basis.

The definition of what constitutes an OPDRV is stated in the Clinton TS. That is, an OPDRV is an "operation with the potential to drain the reactor vessel." The term "OPDRV" was meant to be a plain language definition and nothing more, and "OPDRV" is not otherwise defined in either the CPS Updated Final Safety Analysis Report or CPS Safety Evaluation documents. We agree that the conversion to ITS did not redefine an OPDRV nor did it change any TS action if an OPDRV condition existed.

Regarding development of CPS Procedure 3711.01, we concluded that this procedure did, in fact, create a new TS definition of OPDRV. Procedure 3711.01 changed the TS by defining a specific threshold below which OPDRV does not apply. That definition is inconsistent with the plain language wording of OPDRV, which is intended to address the threat of any reactor coolant inventory loss. The TS wording does not contain a threshold below which OPDRV does not apply; therefore, by defining such a threshold, Procedure 3711.01 changes the TS definition. Should CPS desire to use Procedure 3711.01 to define what it perceives as "non-OPDRV" type evolutions, then CPS is required to follow the process outlined in 10 CFR 50.59 and to submit a license amendment request.

Regarding the use of industry operating experience and docketed NRC decision making associated with a Fermi 2 issue to determine what would not constitute an OPDRV, the "industry operating experience," CPS used came from a 1995 Task Interface Agreement (TIA) response memorandum for Fermi 2. That TIA response memorandum contained a suggested definition of OPDRV for that specific application. The memorandum was not intended to serve

as an agency position applicable to any sites other than Fermi 2 and did not provide generic NRC approval for changes at other sites. The intent of a TIA is to answer requests for technical assistance from a Region or another NRC office. Task Interface Agreements are suitable for addressing plant-specific concerns and existing technical positions; however, the TIA process does not circumvent the generic issue or issues for resolution processes by establishing new staff positions in responses to TIAs. While the Fermi TIA response did establish some level of precedence and guidance for OPDRV, it was a specific answer to a Region III request that was only applicable to Fermi 2.

In addition to using the Fermi TIA response that was not intended to be applicable to CPS, we observed that the CPS application went beyond the specific position provided in the Fermi TIA. Specifically, as noted in Mr. Kearney's letter, point 1 from the Fermi TIA referred to: "an open penetration > [1 inch] in diameter. (The size threshold is based upon the size which compensatory makeup measures are able to replace water inventory loss.)" The CPS procedure allowed almost double the size penetration discussed in the Fermi TIA of 1 inch by allowing 1.92 inches, and, hence, based acceptability entirely upon the parenthetical statement, "The size threshold is based upon the size for which compensatory makeup measures are able to replace water inventory loss." The parenthetical statement was intended as a guide for NRC decision making regarding Fermi 2 and not as permission for utilities to determine the appropriate penetration size based solely on utility engineering judgment, without seeking NRC approval in accordance with the provisions of 10 CFR 50.59.

Regarding your staff's example of bolt or gasket replacement being effectively treated as an OPDRV, we recognize that, depending on the particular circumstances, such maintenance activities could represent OPDRV conditions. Consequently, CPS would be considered to be in violation of its TS if such maintenance activities constituted operations with the potential to drain the reactor vessel and the associated TS actions were not followed.

NRC Conclusion:

We have concluded that the finding and NCV for failure meet the requirements of 10 CFR 50.59 as documented in NRC Inspection Report No. 05000461/2010-003 are valid. Procedure 3711.01, which provides a specific definition of the term "OPDRV," is in contrast to the plain language that is contained in the CPS licensing basis. Therefore, implementation of CPS Procedure 3711.01 involved a change to the TS that required prior approval of the NRC.

M. Pacilio

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Sincerely,

/RA by Steven West Acting for/

Cynthia D. Pederson
Deputy Regional Administrator

Docket No. 50-461
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M. Pacilio

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Deputy Regional Administrator

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¹ Concurrence from OE received via e-mail from C. Hott on November 26, 2010.

² Concurrence from NRR received via e-mail from M. Cheok on November 18, 2010.

Letter to Michael J. Pacilio from Cynthia D. Pederson dated November 29, 2010

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STATION NRC INSPECTION REPORT 05000461/2010003

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