

February 28, 2011

Mr. Barry Quigley
3512 Louisiana Rd.
Rockford, IL 61108-6064

Dear Mr. Quigley:

I am responding to your petition dated January 2, 2011, addressed to Mr. William Borchardt, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC), which was referred to the Office of Nuclear Reactor Regulation (NRR) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). You also included Mr. David Lochbaum on the petition via email. Subsequently, on January 6, 2011, Mr. Lochbaum responded to your email and included Mr. Borchardt on his email response. On January 7, 2011, during a telephone conversation with the NRR petition manager, Mr. Charles Norton, you stated that Mr. Lochbaum's response was to be considered as a supplement to your petition.

The petition was filed under 10 CFR 2.206 requesting enforcement action against the licensee, Exelon Nuclear, for an untimely corrective action (C/A) and for failure to follow procedures at Byron Station, Unit 2. Specifically, you requested that the NRC issue the appropriate level of violation for failing to comply with 10 CFR 50, Appendix B, Criterion XVI, as it applies to pressurizer safety valve (PSV), 2RY8010A, leakage. You also requested that the NRC issue the appropriate level of violation for failure to document an operability evaluation for Issue Report (IR) 1144179. As the basis for your requests, you stated that the Byron Station, Unit 2, PSV, 2RY8010A, tailpipe high-temperature alarm setpoint was exceeded and subsequently reset in June 2010. The tailpipe high-temperature alarm setpoint was exceeded and reset several more times between June and October 2010, but has not been reset since October.

On October 24, 2010, you wrote that IR 113085 titled, "Concerns with 2RY8010A Operability," operability evaluation for IR 113085 performed by you on October 29, 2010, determined that the PSV, 2RY8010A, was operable. You assigned November 29, 2010, as the C/A due date because procedural guidance stated that C/A due dates should be commensurate with the safety significance of the component. The C/A due date was subsequently extended without your input. On November 23, 2010, you wrote IR 1144179 titled "Disagree with 2RY8010A Op Eval CA Extension," in which you stated that you would withdraw your signature from the IR 113085 operability evaluation, effective midnight on November 29, 2010. In addition, on January 2, 2011, the date your petition was filed, you stated that contrary to a procedural requirement to perform an operability evaluation for an IR within 24 hours of submittal, an operability evaluation for IR 1144179 had not yet been performed.

On January 6, 2011, NRR Project Manager, Mr. Nicholas DiFrancesco, contacted you by telephone and discussed the 10 CFR 2.206 process. Mr. DiFrancesco offered you the opportunity to address the NRC's Petition Review Board (PRB) prior to the initial internal meeting. You accepted the offer and on January 12, 2011, you addressed the PRB by teleconference. A copy of the transcript from that teleconference is publically available in the Agencywide Documents and Management System (ADAMS) Accession No. ML110260217.

On February 3, 2011, the PRB met and discussed your petition, along with the supplemental information provided by Mr. Lochbaum, and the information provided during the January 12, 2011, teleconference. The PRB recommended that your submittal meets the criteria for rejection under 10 CFR 2.206 because, in accordance with NRC Management Directive 8.11, you raised issues that had already been the subject of NRC staff review and evaluation in which a resolution had been achieved and the issues resolved. The PRB determined that the first issue in which you requested the NRC to issue a violation, “. . . failure to comply with 10 CFR 50, Appendix B, Criterion XVI, as it applies to Pressurizer Safety Valve 2RY8010A,” had been the subject of NRC staff review and evaluation for which a resolution had been achieved and the issue resolved before your petition had been submitted on January 2, 2011.

In June of 2010, as part of the Reactor Oversight Program, NRC staff reviewed the Adverse Condition Monitoring Plan for leakage past PSV 2RY8010A while performing Inspection Procedure 71111.15, “Operability Evaluations.” This review was documented by the Byron Station 2010, second quarter, NRC Integrated Inspection Report, dated July 27, 2010. In addition, as part of the NRC baseline inspection program, NRC staff monitored and trended all reactor coolant system leakage. NRC staff also reviewed and evaluated all IRs related to leakage past PSV 2RY8010A during the second, third, and fourth quarters of 2010, and the first quarter of 2011.

The NRC staff concluded that you selected a C/A due date of November 29, 2010, based on information available on October 29, 2010, as documented in IR 1130085. However, on November 9, 2010, Byron Station personnel, following appropriate procedures, researched the issue and determined that the C/A could be condition-based rather than time-based and selected criteria to initiate reassessment as documented on OP-AA-101-1006, Attachment A, Issue Resolution and Documentation Form, tracking number WO 1196070. NRC staff determined that licensee action was in accordance with guidance found in Regulatory Guide 1.45, “Guidance on Monitoring and Responding to Reactor Coolant System Leakage,” and determined that no enforcement action was necessary.

The PRB determined that the second issue for which you requested the NRC to issue a violation, “. . . failure to document operability for IR 1144179,” had been the subject of NRC staff review and evaluation for which a resolution had been achieved and the issues resolved before the petition was submitted on January 2, 2011. As part of the NRC baseline inspection program to monitor plant status, NRC staff reviewed IR 1144179, titled, “Disagree with 2RY8010A Op Eval CA Extension,” shortly after it was written and determined that the IR documented an administrative issue. The IR neither identified a new degraded system, structure or component, nor did it identify a physical change to an operable but degraded system, structure or component. NRC staff was satisfied that not performing an operability evaluation of IR 1144179 was consistent with the expectations of the Exelon Corrective Action Program and determined that no enforcement action was necessary.

NRC staff also considered the need to readdress the operability evaluation of IR 1130085, based upon the concerns raised in IR 1144179, and determined that no enforcement action was necessary because Exelon had already addressed operability in the Issue Resolution Documentation dated November 9, 2010. The PRB found that the petition did not present significant new information to prompt NRC staff to reconsider or reopen the NRC staff decision not to initiate enforcement action.

B. Quigley

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On February 8, 2011, the NRR petition manager, Mr. Norton, informed you of the PRB's initial recommendation and offered you a second opportunity to address the PRB and provide additional information to support your petition. On February 15, 2011, you declined the second opportunity and did not have additional information to present to the PRB. Therefore, the PRB initial recommendation is now the final recommendation.

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

/RA/

Theodore R. Quay, Deputy Division Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Docket No. 50-455

cc/w incoming 2.206 Petition
Mr. Michael Pacilio
President and Chief Nuclear Officer
Exelon Nuclear
4300 Winfield Road
Warrenville, IL 60555

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Mr. Michael Pacilio
President and Chief Nuclear Officer
Exelon Nuclear
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Warrenville, IL 60555

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