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**NUCLEAR REGULATORY COMMISSION**

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING TO DISCUSS EXELON GENERATING COMPANY,  
LLC'S APPEAL OF COMPLIANCE BACKFIT AFFECTING  
BRAIDWOOD AND BYRON GENERATING STATIONS

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MONDAY,

MARCH 7, 2016

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ROCKVILLE, MARYLAND

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The Public Meeting convened at the Nuclear  
Regulatory Commission, One White Flint North, Room  
13B04, 11555 Rockville Pike, at 1:30 p.m.

NRC PANEL AND PRESENT FROM EXELON:

MARISSA BAILEY, NRC

BRAD FEWELL, EXELON

ALEX GARMOE, NRC

ADAM GENDELMAN, NRC

ANTHONY GODY, NRC

DAVID GULLOTT, EXELON

PHIL RAUSH, EXELON

DARANI REDDICK, EXELON

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## P R O C E E D I N G S

1:30 p.m.

MR. GARMOE: All right. We'll go ahead and get started and then I'll take us off mute.

MS. BAILEY: Okay. All right. Well, thanks, Alex. First of all, let me welcome all of you to today's meeting and thank you for attending the meeting.

The purpose of this meeting is to provide the Braidwood and Byron licensee, Exelon, the opportunity to discuss its backfit appeal and for the Backfit Review Panel to ask any clarifying questions regarding that appeal.

I do want to note, and Alex will probably mention this also, that we are transcribing this meeting, but the purpose for the transcription is for transparency and also for convenience so that we can go back and review any information that we did get at this meeting.

The transcript for this meeting will be made publicly available once its complete and hopefully within the next week or so.

My name is Marissa Bailey. I am the chair for the NRC Backfit Panel that's reviewing your backfit appeal.

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1           We have Adam Gendelman here, who is with  
2           the Office of General Counsel, and Tony Gody, who is  
3           with Region II and they're also members of the panel.

4           I just want to note that our  
5           recommendation, you know, our job is to basically give  
6           the office director of NRR a recommendation on your  
7           appeal.

8           Our recommendation will be based on your  
9           December 8, 2015 submittal. The purpose here, again,  
10          is for us to ask clarifications for the document that  
11          you provided us.

12          So, with that, I'm going to turn it over  
13          to Alex to talk about logistics.

14          MR. GARMOE: Greetings. My name is Alex  
15          Garmoe. I'm a senior project manager in the Generic  
16          Communications Branch of Division of Policy and  
17          Rulemaking at NRR. And I'm the lead project manager  
18          to support the Backfit Review Panel.

19          So, before we get started with the actual  
20          meat of the meeting, I need to cover a few  
21          administrative topics.

22          First and foremost, this is a Category 1  
23          public meeting. So, what that means is that the  
24          public is invited to observe the initial portion of  
25          this meeting, which is a discussion between Exelon and

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1 the NRC's Backfit Review Panel, which is sitting at  
2 the table here.

3 And then after we conclude that  
4 discussion, there will be an opportunity for members  
5 of the public to ask questions of the NRC.

6 I welcome participants on the phone.  
7 Thank you for joining us. Please keep your phones on  
8 mute, except to ask questions during the public  
9 comment portion of the meeting.

10 If you don't have a mute button on your  
11 phone, you can press \*6 and that will place your phone  
12 on mute by the bridge line. And then you can press \*6  
13 again to unmute the phone.

14 We do ask that you keep the phone muted by  
15 one method or another to help minimize background  
16 noise.

17 As Marissa had mentioned, we are  
18 transcribing the meeting. And, as she mentioned, it's  
19 for transparency, for convenience.

20 We won't be making regulatory decisions at  
21 this meeting. So, I want to make sure that's clear.  
22 And the transcript, as Marissa mentioned, will be made  
23 publicly available in ADAMS. And when I send out the  
24 meeting summary, it will have the ML number for the  
25 transcript.

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1           This meeting is scheduled for two hours  
2           from 1:30 to 3:30. And as we mentioned before, we're  
3           not obligated to fill that time, but it's available to  
4           us and we certainly want to ensure that we have a full  
5           and complete discussion.

6           For security purposes, NRC policy dictates  
7           that visitors are required to wear and display their  
8           badges, as well as be escorted at all times within an  
9           NRC-controlled space.

10          If you're not an NRC employee, you must be  
11          escorted once you enter the elevator lobby on the  
12          first floor and then all the floors up above there.  
13          So, if you need to leave this room for any reason,  
14          please ensure an NRC employee is with you. And we'll  
15          make arrangements at the end of the meeting to ensure  
16          that you're all allowed to leave.

17          In the event of an emergency, use the  
18          stairs, not the elevators. To get to the stairs, we  
19          exit the room, go across the elevator lobby, and the  
20          stairs are either left or right. The restrooms are  
21          located across from the stairs. So, again, across the  
22          lobby to the left and to the right.

23          Please turn off or silence cell phones  
24          during the meeting so we minimize distractions.  
25          There's an attendance list that's circling the room.

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1 So, please fill out the information and pass the list  
2 along.

3 Once it's completed, I'll gather them up  
4 at some point here and everybody who's signed the  
5 attendance list will get the meeting summary and the  
6 transcript once those are made public.

7 Let's see. For those who desire to  
8 provide feedback about the public meeting process,  
9 please go ahead and email me. My email address is  
10 either [alex.garmoe@nrc.gov](mailto:alex.garmoe@nrc.gov) or you can use adg2 --  
11 that's Alpha Delta Golf 2 -- @nrc.gov

12 And finally the slides that are being  
13 shown in the room today are available publicly in  
14 ADAMS at ML16062A422. There's a link to the slides on  
15 the website for the public meeting. And they're also  
16 available in ADAMS at the ML I mentioned. We're not  
17 - we, the NRC, are not using any public presentation  
18 material at today's meeting.

19 So, at this point, I'll move into  
20 introductions. As we mentioned previously due to the  
21 large number of people observing in person and on the  
22 phone, we're going to go ahead and restrict  
23 introductions to those sitting at the table.

24 So, please be sure to clearly state your  
25 name, position, company and for those in the NRC, the

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1 office that you work for within the NRC. So, I'll  
2 start off.

3 Once again I'm Alex Garmoe. I'm the lead  
4 project manager supporting the Backfit Review Panel  
5 and I'm in the Generic Communications Branch at NRR.

6 MR. GODY: I'm Tony Gody, the director of  
7 the Division of Reactor Safety, NRC Region II.

8 MR. GENDELMAN: I'm Adam Gendelman. I am  
9 the acting deputy assistant general counsel for  
10 Reactors and Materials Rulemaking in the Office of the  
11 General Counsel at NRC.

12 MS. BAILEY: I'm Marissa Bailey. I'm the  
13 acting director for the Division of Engineering in  
14 NRR/NRC.

15 MR. RAUSH: I'm Phil Raush, Exelon  
16 Braidwood Nuclear Station, operations director.

17 MR. FEWELL: I'm Brad Fewell. I'm senior  
18 vice president for Regulatory Affairs and general  
19 counsel for Exelon Generation.

20 MS. REDDICK: I'm Darani Reddick. I'm a  
21 regulatory affairs manager and assistant general  
22 counsel at Exelon.

23 MR. GULLOTT: David Gullott, corporate  
24 licensing manager for Exelon responsible for Byron and  
25 Braidwood.

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1 MR. GARMOE: Thanks. And then I recognize  
2 there's other NRC and Exelon staff around the room.  
3 So, in the event as part of the discussion you need to  
4 provide some additional perspective or to amplify some  
5 of the information, please just be sure to speak your  
6 name before you start speaking to help our transcriber  
7 and those on the phone. All right.

8 MS. BAILEY: Okay. So, at this point I  
9 just would like to spend a few minutes to discuss the  
10 backfit review process. And then after that, I'll  
11 turn it over to you for your presentation.

12 MR. FEWELL: Thank you.

13 MS. BAILEY: On October 9, 2015, NRC  
14 issued a letter imposing a backfit on the Braidwood  
15 and Byron nuclear power plants.

16 Broadly speaking, the issue involves the  
17 water qualification of relief valves that are  
18 predicted in several UFSAR Chapter 15 analyses to  
19 relieve water.

20 In its October 9 letter, Exelon was  
21 provided with 60 days to appeal the backfit, which  
22 they did by letter to the director, Office of NRR  
23 dated December 8, 2015.

24 The process by which the NRC addresses  
25 backfit appeals is laid out in Management Directive

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1 Handbook 8.4, which is titled Management of Facility-  
2 Specific Backfitting and Information Collection,  
3 section III.A.6.

4 Section III.A.6 discusses the backfit  
5 appeal process, which in this case is considered a  
6 first-level appeal, or an appeal to the Office  
7 Director of NRR.

8 The NRR process for addressing a backfit  
9 appeal is laid out in Office Instruction LIC-202,  
10 procedures for managing plant-specific backfits, and  
11 50.54(f), information requests.

12 Section IV.A, which is called Non-  
13 Adjudicatory Appeal Process, directs that a three-  
14 member backfit panel review - backfit review panel be  
15 appointed by the NRR office director and a public  
16 meeting be arranged at which the licensee can present  
17 its appeal. And today's meeting is - today's meeting  
18 is that public meeting.

19 So, the panel will arrive at its  
20 determination based on the information that's  
21 discussed in your December 8 letter, as well as  
22 information discussed at this meeting and also review  
23 of other associated documents. And I think that's all  
24 I have to say for that.

25 Any question about the process?

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1 (No questions.)

2 MS. BAILEY: Okay. Well, let me then turn  
3 it over to you for your presentation.

4 MR. FEWELL: All right. Well, thank you,  
5 Marissa.

6 PARTICIPANT: Before you start, I have a  
7 logistics thing.

8 Is there just one microphone for the  
9 meeting?

10 MR. GARMOE: There's built-in microphones  
11 in this room.

12 PARTICIPANT: Okay. Because different  
13 people it was hard to hear sometimes.

14 MR. GARMOE: Okay. So, just for everybody  
15 at the table, let's make sure to speak fairly loudly  
16 and clearly and then hopefully the mics will pick us  
17 up. Thanks for that feedback.

18 PARTICIPANT: Thank you.

19 MR. GENDELMAN: I'd also just note that,  
20 which is funny given that, try not to talk over  
21 anyone, because the transcript really struggles with  
22 that. And identify yourself if you're speaking,  
23 especially for folks on the phone.

24 MR. FEWELL: Okay. Well, hey, thank you  
25 all very much for the opportunity to present this

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1 appeal. And thank you in particular to the panel for  
2 the obvious time and effort it takes for you folks to  
3 get up to speed on this and pay attention to what we  
4 think is certainly an important issue.

5 I'm Brad Fewell. As mentioned, I am the  
6 senior vice president for Regulatory Affairs and  
7 general counsel at Exelon. And David, Darani and Phil  
8 are here at the table to also offer part of the  
9 presentation.

10 As Alex alluded to, we've got a number of  
11 folks in the room who also are here and will be able  
12 to help answer questions should that need arise.

13 After my brief remarks, and they will be  
14 brief, we will provide an overview of the backfit-  
15 related issues, review the criteria for applying the  
16 backfit rule most importantly, the compliance  
17 exception and explain why the NRC has not satisfied  
18 the criteria for use of the compliance exception in  
19 this case.

20 As you know and as Marissa mentioned, the  
21 NRC issued a backfit determination on October 9th,  
22 2015, regarding compliance with General Design  
23 Criteria 15, 21 and 29 at Byron and Braidwood  
24 stations.

25 The NRC did not conduct a backfit

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1 analysis, which is required by its regulations. Under  
2 its own process, NRC would have to perform a cost-  
3 benefit analysis and justify the action it wants Byron  
4 and Braidwood to undertake and to show that it's a  
5 substantial safety enhancement before it can impose  
6 the backfit.

7           However, in this case, the NRC determined  
8 that it could forego that process and that rigorous  
9 analysis by invoking an exception to this requirement.

10           Specifically, the NRC conducted no backfit  
11 - I'm sorry, the NRC concluded no backfit analysis was  
12 required, because the backfit was necessary to bring  
13 the facilities into compliance with NRC requirements,  
14 otherwise known as the compliance exception to the  
15 backfit rule.

16           However, as explained in detail in our  
17 appeal, the compliance exception is a narrow one that  
18 is only appropriate when the compliance error is due  
19 to an omission or mistake of fact.

20           The Commission has made very clear that  
21 the compliance exception does not apply and does not  
22 allow the NRC to avoid a backfit analysis in cases of  
23 new or modified interpretations of compliance. And  
24 that is exactly what we have in this particular case.

25           To further clarify, the NRC, not the

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1 licensee, must demonstrate that there was an omission  
2 or mistake of fact. The compliance exception does not  
3 apply when the NRC simply asserts without foundation  
4 that its historical judgment was erroneous.

5 I like to think of it as a mistake by the  
6 NRC does not constitute a mistake of fact or an  
7 omission.

8 In this case, we actually don't believe  
9 that the NRC originally made a mistake, and we'll  
10 touch on some of that as we get into our presentation.

11 This backfit involves Byron and  
12 Braidwood's analysis regarding inadvertent operation  
13 of the emergency core cooling system and related  
14 issues.

15 Even though we may disagree on several  
16 items regarding this backfit, our challenge to how the  
17 NRC applied the backfit rule does not, and I think  
18 this is important to emphasize, detract from Exelon's  
19 focus on safety.

20 The plants as they currently exist are  
21 safe. None of our positions should be interpreted by  
22 the NRC or the public as an attempt to undermine the  
23 overarching safety standards.

24 And, in fact, very important to our  
25 decision today and our discussion today, these very

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1 issues were reviewed and approved by the NRC multiple  
2 times in the context of previous licensing actions.

3 While the NRC may now be asking new  
4 questions, the facts have remained the same. These  
5 new questions support that the staff is now changing  
6 its mind on how to interpret the same information that  
7 has existed for years.

8 The NRC certainly is allowed to change its  
9 mind. That's what the backfit rule allows. But to  
10 impose that changed position on a licensee through the  
11 compliance exception, the NRC must identify the  
12 omission or mistake of fact invalidating its prior  
13 approvals, or it must use the backfit rule and do the  
14 backfit analysis showing that there is a substantial  
15 increase in safety with this change of direction and  
16 that it is cost-justified. To date, it is not done  
17 either.

18 To be clear, we are not here to debate the  
19 technical issues underlying the backfit, which  
20 certainly would need to be addressed after the backfit  
21 analysis is completed.

22 That technical discussion would be  
23 premature at this time since our appeal is focused on  
24 the appropriateness of the use of the compliance  
25 exception.

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1           The staff's approach to this backfit is an  
2 important issue not just for Byron and Braidwood, but  
3 for the industry at large. As the Nuclear Energy  
4 Institute noted in its letter of support for our  
5 appeal, under the NRC's principles of good regulation  
6 the Agency must adhere to its backfit rules to ensure  
7 efficient, clear and reliable regulatory oversight.  
8 NEI representatives are here at the meeting as well.

9           Again, thank you for the opportunity to  
10 present this today and I'll turn it over to David  
11 Gullott and Darani Reddick who will provide, really,  
12 a fairly brief presentation.

13           And we're certainly glad to answer any  
14 questions during the presentation. Or if you  
15 determine it might be more efficient, we're happy to  
16 answer questions after the presentation. That's  
17 really whatever makes the most sense for you folks.  
18 So, thank you for your time.

19           MR. GULLOTT: Okay. Thank you, Brad.

20           So, I'm sure the NRC is aware of the  
21 details of the backfit, but I do want to start with a  
22 brief overview of the key points.

23           So, in the October 2015 NRC letter, Exelon  
24 was informed that the current staff conclusions with  
25 regard to the Byron and Braidwood USFAR analyses of

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1 certain anticipated operational occurrences differs  
2 from previous NRC approvals and these current  
3 positions constitute a backfit.

4 The letter stated that there were five  
5 aspects of noncompliance associated with backfit and  
6 those were specifically in noncompliance with GDC 15  
7 related to reactor coolant system design, GDC 21  
8 related to protection system reliability and  
9 testability, and GDC 29 which is related to the  
10 protection against anticipated operational  
11 occurrences.

12 The NRC did also note that there's  
13 noncompliance with 10 CFR 50.34(b) related to  
14 maintaining a Final Safety Analysis report, and  
15 finally a noncompliance with the UFSAR provision  
16 related to prohibiting the progression of ANS  
17 Condition II events.

18 So, fundamental to the NRC's new  
19 conclusion, the necessity of the use of the backfit is  
20 a change in NRC position. And the specific changes  
21 are, first, that the pressurizer safety valves, or  
22 PSVs as we'll call them, are not qualified for water  
23 relief. Prior NRC reviews and approvals conclude that  
24 the valves could be credited for water relief.

25 The second position is the UFSAR

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1 evaluations for inadvertent ECCS injection, CVCS  
2 malfunction and inadvertent opening of either a  
3 pressurizer safety or relief valve do not meet the  
4 Condition II requirements. Prior NRC approvals  
5 concluded differently.

6 So, before we go into details of the  
7 appeal, it's important to note that the backfit and  
8 our appeal itself is not a safety issue. This is  
9 based on the conclusions in the UFSAR for these AOOs  
10 accurately demonstrate that as evaluated, the  
11 potential offsite dose consequences remain far below  
12 the limiting transients and accidents.

13 There are other plant system design  
14 features, as well as detail procedures and operator  
15 training that will provide additional barriers that  
16 either prevent or limit the events as they are  
17 evaluated in the UFSAR.

18 Also, the current plant operation design  
19 is consistent with the NRC with what the NRC has  
20 previously approved and determined to be safe. And we  
21 continue to operate the plants within the construct of  
22 those approvals.

23 And finally, the issues raised in the  
24 backfit do not represent a substantial safety hazard  
25 as all safety functions continue to be met and there

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1 is no undue risk to the health and safety of the  
2 public and, therefore, adequate protection is  
3 maintained.

4 MS. REDDICK: And as you know, the  
5 definition of "backfit" is set forth in 10 CFR  
6 50.109(a)(1). It includes modifications or additions  
7 that flow from NRC staff interpretations of regulatory  
8 requirements that are either new or different from  
9 previously applicable NRC staff positions.

10 Now, in our case, "new or different" is  
11 really the operative phrase that we're talking about.  
12 And as we all know, the backfit rule was intended to  
13 promote regulatory stability and increase overall  
14 safety.

15 The Commission has long recognized the  
16 importance of subjecting new or different  
17 interpretations to the analytical requirements of the  
18 backfit rule. Therefore, in accordance with 10 CFR  
19 50.109, the staff must perform a systematic and  
20 documented evaluation of a backfit unless it  
21 determines that one of the exceptions to the backfit  
22 rule applies.

23 After concluding or conducting this  
24 backfit analysis, the staff must determine that the  
25 backfit would result in a substantial increase to

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1 overall safety and that it is also cost-justified.  
2 But of course in this case, the staff did not perform  
3 a backfit analysis on the basis that the compliance  
4 exception applied.

5 The compliance exception is also set forth  
6 in 50.109. It provides that a backfit analysis is not  
7 required when the backfit is necessary to bring a  
8 facility into compliance with either NRC requirements  
9 or with a licensee's written commitments.

10 Now, the Commission has explained very  
11 clearly what the purpose of the compliance exception  
12 is. This is stated in the Statements of Consideration  
13 for the 1985 revisions to the backfit rule, as well as  
14 NUREG-1409, which of course are the backfitting  
15 guidelines.

16 In there, the Commission has stated that  
17 the purpose of the compliance exception is meant to  
18 cover narrow circumstances in which an omission or a  
19 mistake of fact has led the licensee to be out of  
20 compliance with an NRC requirement that was known and  
21 established at the time of the omission or a mistake  
22 of fact.

23 An example of an mission could be where  
24 the staff knew that it should have considered certain  
25 information, but did not consider that information.

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1 Had it considered that information, it would have  
2 determined the licensee was not in compliance.

3 Similarly, an example of a mistake of fact  
4 would be where the licensee relied on - or the staff  
5 relied on an erroneous mathematical calculation that  
6 otherwise would have led it to conclude the licensee  
7 was not in compliance.

8 Now, not only has the Commission said what  
9 the compliance exception is meant to cover, it has  
10 also said what it is not intended to cover. And that  
11 is situations where the staff has developed new or  
12 modified interpretations of what constitutes  
13 compliance. That does not fall within the compliance  
14 exception.

15 So, the staff changing its mind on what is  
16 required for compliance is not an omission or a  
17 mistake of fact covered by the compliance exception.  
18 And to consider it that way, to interpret it as such  
19 would really defeat the purpose of the exception and  
20 the rule. It's directly contrary to the Commission's  
21 stated intent behind the exception and the rule and  
22 effectively I think it would just - it would allow the  
23 exception to swallow the rule.

24 So, the compliance exception does not  
25 permit the staff to forego a backfit analysis when

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1 there is no omission or mistake of fact, but rather  
2 when there is only a change in staff interpretations  
3 of what constitutes compliance.

4 And in those circumstances, which is the  
5 case that we have here, a backfit analysis is  
6 required.

7 And of course here the staff relies on --

8 MR. GENDELMAN: I'm sorry. Maybe this is  
9 a good time to ask a question. When you gave examples  
10 of a compliance exception, I want to better understand  
11 that in the context of something that Mr. Fewell said  
12 in terms of the idea that it can't be an NRC mistake.

13 Do you understand a mistake of fact or  
14 omission to be a certain party's mistake of fact or  
15 omission? Is it the licensee's? Is it the NRC's?  
16 Can you fill that out a little more for me?

17 MS. REDDICK: Yeah, and I think - and Brad  
18 can elucidate on this as well. What I think he was  
19 referring to was that it's not just a plain mistake.  
20 It's a mistake of fact.

21 And I don't believe that we attribute that  
22 to any party, but it's the reliance on whatever that  
23 mistake of fact or omission would be. So, directly to  
24 answer your question, I don't think we're saying that  
25 it has to be a licensee's mistake of fact or it has to

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1 be the staff's mistake of fact, but it's a mistake of  
2 fact, not just a mistake.

3 MR. GENDELMAN: So, if, I mean, this  
4 hypothetical is going to come up a lot, I'm sure. If  
5 a requirement says something must be 10 feet high and  
6 there's an application that clearly provides for a  
7 nine-foot thing and it clearly says we're going to  
8 build it nine feet high and that's reviewed and it's  
9 in the RAI, it's nine feet, right? And the response  
10 is, yep, and then a positive regulatory finding is  
11 made.

12 It's your view that that would not be a  
13 mistake of fact and that a compliance backfit in that  
14 circumstance would be inappropriate.

15 MS. REDDICK: So, it would, I think,  
16 depend on what the staff is basing its decision on for  
17 the mistake of fact.

18 And, again, here I should reiterate that  
19 we're not saying that there's any compliance exception  
20 whatsoever.

21 I think the basis for our appeal right now  
22 is that we don't know what that omission or mistake of  
23 fact is, because the staff has not identified that in  
24 the backfit evaluation.

25 And that's sort of on this next slide what

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1 we were talking about here is what the backfit  
2 evaluation says. It doesn't identify an omission or  
3 mistake of fact.

4 And as Dave will talk about in the next  
5 slides, the NRC has reviewed this several times in the  
6 past and has approved this several times, but the  
7 evaluation, the backfit evaluation itself does not  
8 identify any omission or mistake of fact that  
9 undermines those prior approvals.

10 Now, what it does say is that the prior  
11 conclusions were based upon the use of water-qualified  
12 PSVs that was later determined to be, quote,  
13 unsubstantiated, but there is really no explanation in  
14 the backfit evaluation of how the prior approvals are  
15 unsubstantiated or those conclusions are  
16 unsubstantiated.

17 And more importantly for the purpose of  
18 the backfit exception - or the compliance exception,  
19 there's no explanation of how this unsubstantiated  
20 conclusion is an omission or a mistake of fact or how  
21 that undermines what those prior approvals are.

22 MR. GENDELMAN: So, is the answer to my  
23 question yes?

24 MR. FEWELL: So, let me try to answer your  
25 question. So, if everybody knew that the wall was

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1 nine foot even though the requirement said 10 foot,  
2 the licensee knew it was nine foot, NRC knew it was  
3 nine foot, but because of whatever the licensee was  
4 doing that the NRC reviewed and determined that the  
5 nine-foot wall complied with the 10-foot requirement  
6 because of A, B, C and D and everybody went into it  
7 with their eyes wide open, nobody thought that the  
8 wall was 10-foot tall and somehow different than nine  
9 foot, and that everybody agreed upon all of the facts  
10 that were there at the time, then I would suggest that  
11 the compliance exception would not apply and that the  
12 NRC would be required to perform a backfit analysis  
13 because they have then, therefore, changed what had  
14 been an unaccepted regulatory position that the  
15 licensee relied upon, the NRC relied upon, because you  
16 got to go back a little bit to the whole purpose of  
17 the backfit rule, which is regulatory certainty.

18 And, you know, if at the time the NRC  
19 would have said, no, the wall needs to be 10 feet tall  
20 and we mean 10 feet, then presumably the licensee  
21 would have complied at that time and there would have  
22 not been need for further discussion.

23 The other thing that Darani was mentioning  
24 and I think is important as well, is -- even aside  
25 from your example, what the NRC in this case, the

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1 staff has failed to do, is to even point out what is,  
2 in fact, the omission or mistake of fact in the  
3 document that they have provided. And they've not  
4 met, if you will, their burden of proof to articulate  
5 or to show what that mistake of fact or omission was.

6 MS. REDDICK: And just in your scenario  
7 just like Brad was saying, the mistake of fact would  
8 have been if everyone thought the wall was 10 feet  
9 tall and that was the basis for the approval.

10 If everyone understood the facts at the  
11 time, which was it's nine feet, but for whatever  
12 reasons nine feet constitutes compliance with the 10-  
13 foot requirement, that's where there would be no  
14 mistake of fact.

15 MR. GENDELMAN: I mean, we could  
16 completely have --

17 MR. GODY: So, why don't you ask the  
18 question about if the statement of fact was  
19 transitioned from a Category II to a Category III.  
20 So, if the mistake and/or the omission -- fact that  
21 was omitted was a transition from Category II to  
22 Category III event - or Condition II to Condition III.

23 I notice in your FSAR dated December of  
24 2002 it says, if the pressurizer safety relief valves  
25 do not reseal, then the transient will proceed and

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1 terminate as described in section 15.6.1, which is  
2 titled Inadvertent Opening of a Pressurizer Safety or  
3 Relief Valve.

4 And the last sentence of the paragraph  
5 says, this event is also classified as an event of  
6 moderate frequency.

7 Are you saying that that is a Category --  
8 or a Condition II or a Condition III event?

9 MR. GULLOTT: That's a Category --  
10 Condition II event in our UFSAR, and I believe in the  
11 -- I'm confident it is also in the ANS --

12 MR. GODY: So, the failure of pressurizer  
13 safety or pressurizer PORV to reseal is categorized as  
14 a Condition II event in your FSAR?

15 MR. GULLOTT: No. The inadvertent opening  
16 of a safety valve or a PORV, that initiating event is  
17 a Condition II event in our UFSAR.

18 MR. GODY: Okay. Let me restate the  
19 paragraph that's written in your FSAR. If the  
20 pressurizer safety relief valves do not reseal, that  
21 means they stick open --

22 MR. GULLOTT: Right.

23 MR. GODY: -- then the transient will  
24 proceed and terminate as described in section 15.6.1,  
25 the title of which is Inadvertent Opening of a

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1 Pressurizer Safety Relief Valve.

2 This event, and I'm hoping that when I  
3 read the words, this event, it is referring to the  
4 pressurizer safety valve not reseating, but it says,  
5 this event is also classified as an event of moderate  
6 frequency.

7 In the FSAR, does that say that this is a  
8 -- this, the failure of a pressurizer safety valve to  
9 reseal, is a Condition II event? Is that what you're  
10 saying in your FSAR?

11 MR. GULLOTT: I don't believe that -- no,  
12 that's not what we're saying in the FSAR.

13 MR. GODY: So, the event you're referring  
14 to is the title of the section --

15 MR. GULLOTT: Yes.

16 MR. GODY: -- 15.6.1, not necessarily the  
17 lead-in sentence to this paragraph. Very confusing  
18 paragraph.

19 MR. GULLOTT: I understand.

20 MR. GENDELMAN: We have a hand.

21 MR. GULLOTT: John, do you want to --

22 MR. PANICI: Yes. This is Giovanni  
23 Panici, John Panici. I'm here with Design  
24 Engineering.

25 We have revised that paragraph in December

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1 of '14 to clarify what it stood for.

2 MR. GODY: So, this is old?

3 MR. PANICI: If it's 2002, it is old.

4 MR. GODY: Okay.

5 MR. PANICI: The paragraph now reads,  
6 during operation ECCS to a power operation event does  
7 not progress until a valve is located. Both the  
8 valves may lift in response to the event, but they  
9 will reclose. Resulting leakage from the safety valves  
10 that are seated and bounded by the flow of the one  
11 fully opened valve. The consequences of the event are  
12 bounded by the analysis described in USFAR section  
13 15.6.1, inadvertent opening of the pressurizer safety  
14 relief valve. And this event is also classified as an  
15 event of moderate frequency. The --

16 MR. GODY: The inadvertent opening of it,  
17 but not the failure to reseal.

18 MR. PANICI: Right.

19 MR. GODY: So, you're actually crediting  
20 reseating.

21 MR. PANICI: Yes, sir.

22 MR. GODY: Okay. That's important.

23 MR. GULLOTT: So, as Darani discussed, the  
24 NRC talks about the unsubstantiated conclusion with  
25 regard to the PSVs. And Exelon does not agree that

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1 there is any unsubstantiated conclusion or that there  
2 is a mistake of fact or omission in the prior NRC  
3 approvals.

4 And this is clear from the prior -- the  
5 historical NRC correspondence. And the reviews that  
6 the NRC performed in those prior licensing actions in  
7 2001 and 2004 were thorough and comprehensive.

8 And I'd like to take some time to discuss  
9 the depth of those NRC reviews, because they really  
10 show what the NRC considered when they approved those  
11 licensing actions.

12 There's a chart on the next slide, which  
13 I won't go to at this point, but that outlines the  
14 prior NRC approvals. And then on the back of the  
15 presentation there are some references, the same  
16 references that were in our appeal letter. Okay.

17 The current licensing basis for  
18 inadvertent ECCS event was established in the 2001  
19 power uprate approval and a license amendment request  
20 laid out the current UFSAR analysis for this event,  
21 which did include the pressurizer becoming water solid  
22 and crediting the PSVs for water discharge and then  
23 would subsequently reclose.

24 And during its review, the NRC did ask us  
25 some very specific questions related to water solid

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1 pressurizer and the operation of the PSVs.

2 So, and in one RAI the NRC recognized that  
3 the pressurizer would go water solid and that the NRC  
4 has not typically accepted a solid pressurizer as for  
5 this accident to avoid the potential for the valves to  
6 stick open.

7 We responded to that RAI and the basis --  
8 in that RAI response, we provided the basis for  
9 allowing the pressurizer from water solid and  
10 crediting the PSV's ability to pass water to mitigate  
11 the event.

12 And the conclusions were based on meeting  
13 all the Condition II event acceptance criteria even  
14 with the water solid pressurizer.

15 And so, specifically the RCS remains below  
16 110 percent of the design pressure. The minimum  
17 departure for nucleate boiling remains above the DNBR  
18 limit. And based on performance testing of the valves  
19 in response to NUREG-0737, it was concluded that the  
20 PSVs would reseal and the event will not progress to  
21 a Condition III event.

22 And Exelon in that RAI response concluded  
23 that since all the Condition II acceptance criteria  
24 was met, that no plant modifications or additional  
25 reanalysis were required.

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1           So, as part of this review the NRC did  
2 perform a detailed review of the NUREG-0737 EPRI  
3 qualification program, and the NRC's prior endorsement  
4 of the associated TER, and then asked a subsequent RAI  
5 that related to the EPRI testing conditions and how  
6 they were applicable to Byron and Braidwood.

7           And in our docketed response, we provided  
8 the details on the applicability of the EPRI testing  
9 to the inadvertent ECCS event. And again we concluded  
10 that the event does not progress to a Condition III  
11 event because the assurance that the PSVs will close  
12 following water discharge, and the NRC agreed with  
13 that.

14           The details of the NRC's review were  
15 documented in the 2001 power uprate safety evaluation  
16 where the NRC concluded, and I quote, crediting of the  
17 PSVs to discharge liquid water during a spurious SI  
18 event to be acceptable, unquote.

19           Now, subsequent to that as part of the  
20 2004 PSV setpoint license amendment, the same events  
21 were discussed and the analysis conclusions were  
22 reaffirmed.

23           Again, the NRC reviewed the details of the  
24 AOO analyses and they asked for a quantitative  
25 evaluation of the impact of the setpoint change on the

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1 AOO results.

2 And Exelon provided this quantitative  
3 evaluation, which again demonstrated that the EPRI  
4 testing qualified the valves under bounding conditions  
5 and that the inadvertent ECCS event does not progress  
6 to a Condition III event because of reasonable  
7 assurance that the PSVs would close.

8 Now, the analysis described in our LAR and  
9 the subsequent RAIs was addressed in the 2004 safety  
10 evaluation that the NRC issued and the staff concluded  
11 that, quote, reanalysis is acceptable to assure that  
12 the PSVs will remain operable following a spurious SI  
13 event, unquote.

14 So, it's clear from the docketed history  
15 that the NRC asked questions and probed into the  
16 details of our analysis on the PSV qualification  
17 program and its applicability to the AOOs, we've  
18 reviewed on at least two separate occasions the  
19 approach that the events could be mitigated by water  
20 discharge through the PSVs, and the conclusion that  
21 the events do not progress to a Condition III event  
22 was evaluated and supported by the NRC. And  
23 compliance with GDC 15 was assured and the DNBR limits  
24 were maintained.

25 Now, the NRC considered the details of the

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1 current analysis and they did find them acceptable.  
2 And our plant continues to operate within the -- like  
3 I said earlier, the confines of those prior NRC  
4 approvals.

5 Now, the only thing that's changed is the  
6 NRC's position with regard to these events. And  
7 therefore the NRC has appropriately entered into the  
8 backfit process. Where we disagree, and the point of  
9 our appeal, is in the use of the compliance exception.

10 So, as stated by the Commission and  
11 discussed earlier today, it must be demonstrated that  
12 there was an omission or mistake of fact in order to  
13 invoke the compliance exception and the NRC has not  
14 identified either.

15 And it's clear from the docketed  
16 correspondence that the NRC reviewed the -- the review  
17 of it was thorough, and it was comprehensive, and that  
18 there was no omission in these reviews. All the  
19 necessary information was available at the time of the  
20 NRC reviews.

21 Nor does the NRC identify factual mistakes  
22 in those prior approvals. And to be clear, a  
23 difference of opinion or new position on what  
24 constitutes compliance is not a mistake of fact as we  
25 discussed earlier. And right now treating it as such

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1 would effectively render meaningless the backfit  
2 rule's protections. Therefore, it's our conclusion  
3 that the use of compliance exception is not justified.

4 What the backfit evaluation does do is  
5 provide a lot of discussion on new or modified  
6 interpretations in AOO's analyses without explaining  
7 how compliance is no longer achieved.

8 This and other technical-related issues or  
9 issues related to the interpretations aren't the focus  
10 of this meeting or our appeal, but may have to be  
11 addressed in a future stage of the backfit process.

12 These interpretations appear to be the  
13 NRC's current position, but the compliance exception  
14 was not intended to be used in instances such as this  
15 where the NRC has changed its mind.

16 So, obviously the panel has to respond to  
17 our appeal. And if the staff does - or the panel does  
18 identify a potential omission or mistake of fact,  
19 supports compliance exception, Exelon will review the  
20 basis and expect the opportunity to respond.

21 MR. FEWELL: Yeah, so that's really the  
22 conclusion of our formal presentation. I think we've  
23 beat that horse pretty hard and made our point  
24 relatively clear fairly simply, but obviously we're  
25 happy to answer any additional questions you have on

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1 any of the topics we've discussed.

2 MR. GENDELMAN: So, a couple of different  
3 phrases I've heard, credited to relieve water and  
4 water qualified.

5 Are the valves water qualified?

6 MR. GULLOTT: Yes, our conclusion is the  
7 valves are water qualified.

8 MR. GENDELMAN: Do you think that's the  
9 staff's position?

10 MR. GULLOTT: I would be - based on  
11 reading the letter, the backfit evaluation, I would be  
12 speculating because it's not as clear. It wasn't  
13 clearly articulated, but I would speculate, no, that  
14 is not the staff's position.

15 MR. GENDELMAN: So, in the backfit itself  
16 there are two references to the ASME code about water  
17 qualification.

18 MR. GULLOTT: Uh-huh.

19 MR. GENDELMAN: And so, your view is that  
20 these have been satisfied?

21 MR. GULLOTT; No, Exelon's view - our view  
22 is that those for the application we're using these  
23 valves in this event, these vales open to allow flow  
24 path of water when the pressurizer comes to water  
25 solid.

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1           That event is not an RCS over  
2           pressurization event. Those valves do not function to  
3           perform the over pressure protection function.

4           The ASME code, and specifically the  
5           appendices for relief valve testing, relief valve  
6           qualification, are all related to the over pressure  
7           protection function of a safety valve or a relief  
8           valve.

9           The -- and the code explicitly says that  
10          it's not intended for other functions that a valve may  
11          have.

12                   MS. REDDICK: And I think --

13                   MR. GULLOTT: Go ahead.

14                   MS. REDDICK: I was going to say I think  
15          that, you know, the technical discussion that you're  
16          asking about right now is certainly valid and that's  
17          something obviously Dave and others are ready to  
18          engage on, but I want to bring us back as well to the  
19          compliance exception because those things that you're  
20          referencing in the backfit evaluation are not  
21          specifically called out as omissions or mistakes of  
22          fact.

23                   So, we don't -- we haven't had the  
24          opportunity really to even rebut what any particular  
25          omission or mistake of fact may have been.

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1 MR. GODY: So the PORVs, the pressurizer  
2 power-operated relief valves --

3 MR. GULLOTT: Yes.

4 MR. GODY: -- are they safety-related?

5 MR. GULLOTT: Yes --

6 MR. RAUSH: Yes, they are.

7 MR. GULLOTT: -- they are safety-related.

8 MR. PANICI: The only piece that's not  
9 safety -- circuit three, is a non-safety relief  
10 variable.

11 MR. GODY: Are the power-operated relief  
12 valves or the pressurizer block valves, are they  
13 safety-related?

14 MR. PANICI: Yes.

15 MR. GODY: Have you done an analysis to  
16 determine how many times the power-operated relief  
17 valves will cycle in an RCS increase-in-inventory  
18 event before it's terminated?

19 MR. GULLOTT: John.

20 MR. PANICI: I do not recall if we have  
21 the number of cycles for PORVs.

22 MR. GODY: Have you compared that to the  
23 time it would take an operator to isolate the power-  
24 operated relief valve?

25 MR. GULLOTT: No, not that I'm aware of.

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1 I do not know.

2 MR. GODY: I think by claiming that - and  
3 this is where I'm going: The power-operated relief  
4 valves will cycle and open before the pressurizer  
5 safety valves, correct?

6 MR. PANICI: That is correct.

7 MR. GULLOTT: Yes, based on the cycle.

8 MR. GODY: And if a power-operated relief  
9 valve were to fail in that process, I would assume  
10 that the operators would have some time critical  
11 action to isolate it?

12 MR. GULLOTT: Phil, do they have a time  
13 critical action there?

14 MR. RAUSH: There is response actions in  
15 the emergency procedures to close a stuck open  
16 pressurizer PORV. And if that doesn't work, then  
17 close the associated blackout.

18 I'm not certain whether or not that is a  
19 time critical operator action or not.

20 MR. GODY: Okay. That's fine.

21 Can you state that the power-operated  
22 relief valve and its associated block valve are  
23 qualified to do those operations?

24 MR. JURY: Are you asking qualified with  
25 respect to the ASME code, Tony?

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1 MR. GODY: Qualified with respect to the  
2 ASME code that they're tested with both steam and  
3 water that they're qualified to shut against a fully-  
4 opened power-operated relief valve and that you do  
5 have procedures in place, maybe not time critical, to  
6 do that, to isolate that small break loss of coolant  
7 accident which might occur.

8 MR. RAUSH: I don't know about the  
9 qualification, but clearly the block valves were  
10 designed to isolate a stuck open pressurizer PORV.

11 I don't specifically what pedigree we have  
12 for the qualification for closing those, but, clearly,  
13 yes, that is an operator response is to close it.

14 MR. GULLOTT: And both those valves are in  
15 tech specs for those functions.

16 MR. RAUSH: Correct. The function of the  
17 pressurizer PORV block valve is to isolate a leaking  
18 pressurizer PORV and that's their tech spec recorded  
19 function is to be able to close.

20 But regarding the design analysis we had  
21 to support the qualification, I'm not familiar with  
22 that.

23 MR. GODY: So, do you recall NRC  
24 regulatory issue summary 2005-29 that communicates the  
25 NRC's position on crediting closure of a PORV -- I'm

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1 going to use the acronym now -- the PORV and its block  
2 valve to isolate a small break LOCA so that you can  
3 take credit for that function in an increase in RCS  
4 inventory event to prevent it from going to a  
5 Condition III?

6 MS. REDDICK: If I can, I'll jump in  
7 before our technical guys answer. I would say that -  
8 and I'm not qualified to talk about the technical  
9 aspects of that, but the 2005 RIS that you're  
10 referring to is interesting because in the  
11 nonconcurrency that appears to support the basis for  
12 the backfit evaluation, it states that the licensee  
13 has been out of compliance since the 2005 RIS.

14 Which would mean that in 2001 and 2004  
15 when the NRC made the prior approvals that we were in  
16 compliance, in which case there could be no omission  
17 or mistake of fact that would support the compliance  
18 exception here.

19 So, I think sort of the logic in the  
20 discussion about the role of the RIS, it doesn't  
21 square with the use of the compliance exception, but  
22 I'll - I'll let the technical folks -

23 MR. GODY: And I do understand that. As  
24 a matter of fact, you can twist it around the other  
25 way and say that the previous staff approvals in 2001

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1 and 2004 occurred before the NRC's position or  
2 realization occurred in 2005 and make an argument the  
3 actually opposite way and say that the previous NRC  
4 approvals were done without this realization of  
5 information in this RIS.

6 MS. REDDICK: And even if that were the  
7 case, though, that would not support the idea that  
8 there was an omission or mistake of fact at the time  
9 of the previous approvals.

10 MR. GODY: That is correct. I agree with  
11 that.

12 So, the RIS is real clear about, you know,  
13 if you're going to credit closure of that RCS leak  
14 path, then it needs to be safety-related and all the  
15 attending things that go along with the term safety-  
16 related, qualification, testing, tech specs.

17 MR. RAUSH: Correct. And our pressurizer  
18 PORV block valves are safety-related. They're fed  
19 from Class 1E power. They're on the emergency diesel  
20 generators. So, they have full pedigree.

21 The pressurizer PORVs are also safety-  
22 related although, as John pointed out, the automatic  
23 opening pressure is not. We rely on manually opening  
24 and closing those valves to depressurize the reactor  
25 coolant system for a steam generator tube rupture

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1 event or to cool down the plant.

2 So, they do have a safety-related air  
3 supply. There is a sufficient volume of air to allow  
4 those pressurizer PORVs to function during those  
5 accidents that we credit them for and they're also fed  
6 from safety-related Class 1E power.

7 The only portion of that circuit -- we  
8 actually use those also for the low pressure over-  
9 pressurization system.

10 The normal at-power line of those bi-  
11 stables that open that RCS pressure are not safety-  
12 related. They're in the balance-of-plant instrument  
13 regs and therefore we don't credit the automatic  
14 opening of those valves.

15 MR. GODY: Which is why you're relying on  
16 your pressurizer safety vales for opening and closing.

17 MR. RAUSH: I'm not sure if that's why  
18 we're relying on them, but that was the original  
19 analysis and licensing bases from early on and we just  
20 -- we haven't changed that.

21 MR. GODY: So, the conversation we just  
22 had is very clear in the backfit paper, right? There  
23 is a very clear paragraph that discusses the need to  
24 have -- the safety-related nature of the PORV and its  
25 block valve and to eliminate that as a potential

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1 transition point to a Category III event. So, when I  
2 read this, the words in this backfit, that's very  
3 clear.

4 So, I'm saying that the staff didn't  
5 articulate the basis - or this is at least one piece  
6 of it that I think is quite clear.

7 MR. GULLOTT: Tony, could you - sorry.  
8 Could you walk me through that again. I just -

9 MR. GODY: Okay. I'll read a sentence out  
10 of the --

11 MR. GULLOTT: And you're reading from --

12 MR. GODY: This is the actual backfit --

13 MR. GULLOTT: Okay. Okay.

14 MR. GODY: -- that was submitted to you on  
15 October 9th, 2015.

16 MR. GULLOTT: Okay.

17 MR. GODY: I'm not going to read this  
18 whole paragraph.

19 MR. GULLOTT: I understand.

20 MR. GODY: The Byron and Braidwood  
21 licensing basis of IOECCS, inadvertent operation of  
22 emergency core cooling system, analysis is based on  
23 the nonconservative assumption that PORVs, power-  
24 operated relief valves, and sprays are not available.  
25 NRC interprets this assumption to mean that the

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1 licensee believes that the failure of a PORV to reseal  
2 need not be addressed since a stuck open PORV could be  
3 easily remedied by closing its block valve. This is  
4 an approach that was recommended in 1993. The staff  
5 rejected it in 2005. That's the RIS. The  
6 recommendation was repeated by

7 a vendor in 2007 and it  
8 continues to be unacceptable to NRC staff because a  
9 stuck open PORV is a Condition III uncontrolled loss  
10 of RCS inventory in excess of normal makeup system  
11 capacity, not a Condition II IOECCS.

12 MS. REDDICK: If I may, I would just jump  
13 in that, you know, I think what you're reading from is  
14 an explanation of what the staff's current position  
15 is.

16 What we're saying is that there is no  
17 explanation by the staff in that backfit evaluation of  
18 how - what the NRC previously approved was based on an  
19 omission or mistake of fact. That may explain what  
20 the NRC staff's current position is.

21 MR. GODY: Right, but it was - the current  
22 position was formed in 2005. And the previous  
23 references were 2001, 2004. So, it might explain.  
24 I'm just saying it's possible.

25 MS. REDDICK: But it still, I think, does

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1 not explain what that omission or mistake of fact  
2 could be.

3 MR. GENDELMAN: I want to get there, but  
4 I'll follow this train through. So, if - so, on this  
5 idea of Condition II to Condition III if new  
6 information comes to light that shows that what was  
7 thought to be something that would not go from two to  
8 three does, so it's just an empirically factual piece  
9 of new information, that this particular configuration  
10 we thought wouldn't become a three and it happened at  
11 a bunch of plants and every single one of them went  
12 from two to three and it was whatever you want to call  
13 it, a mutual mistake, a mutual misunderstanding as to  
14 how systems would perform under certain circumstances,  
15 but it is empirically the case that what, say, the  
16 licensee and NRC thought would stay as a two, doesn't  
17 and this new information comes to light, RISes, reg  
18 guides, et cetera, are at issue.

19 Is it your view that that could not be an  
20 appropriate subject for a compliance backfit even  
21 though the position on twos not going to threes is  
22 consistent, because with regard to that particular  
23 component the view changed, but it changed insofar as  
24 it turns out our understanding of the universe was  
25 incomplete?

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1 MS. REDDICK: Yeah, I mean, I think the  
2 case is that in order to afford the backfit  
3 protections that the NRC, that the Commission  
4 intended, you can't have this sort of evolving  
5 standard, which means you can't discontinue new  
6 information as new information comes to light. It has  
7 to be information that was known at the time.

8 I think that's why -

9 MR. GENDELMAN: Well, what was known at  
10 the time is twos can't become threes. So, what I'm  
11 trying to understand is if a particular part, say,  
12 fails in a certain circumstance that it wasn't known  
13 to fail, but it does fleet-wide. So, if that two,  
14 according to noncurrent licensing documents, occurs,  
15 it will, in all cases, become a three.

16 And then further assume that the agency  
17 has had a longstanding position that twos can't become  
18 threes. That still can't be a compliance backfit  
19 under your view.

20 MS. REDDICK: So, and maybe Dave can jump  
21 in here, too, but I think your question is whether -  
22 not whether there's a prohibition on the escalation  
23 from two to three, but whether the particular event in  
24 question actually qualifies as a two versus a three.

25 MR. GENDELMAN: Well, I think factually

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1 once that new information comes to light, it is a  
2 three. Whatever you want to call it.

3 I mean, if the physics of the universe are  
4 such that this particular condition results in an  
5 accident that is described as a Condition III, it is  
6 a three whether the licensing documents or our  
7 documents, for that matter, reflect it or not, right?

8 MR. GULLOTT: Well, what we've struggled  
9 to understand is if the hypothetical you are bringing  
10 up is a hypothetical mirrored off of this event.  
11 We've struggled to understand and review of the  
12 backfit evaluation is just that.

13 It's - there's a lot of discussion,  
14 technical discussion in the backfit evaluation that we  
15 have looked at, studied, and in several areas do not  
16 understand how the NRC came to these conclusions.

17 Now, that is - those technical discussions  
18 and, Adam, a little bit to what you were talking about  
19 here is, in our view, outside of the use of the  
20 compliance exception.

21 And if this process moves down the road  
22 into another stage, those are all discussions we would  
23 have to have with the NRC.

24 MS. BAILEY: So, maybe you're going to  
25 have to connect the dots for me, but you did mention

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1 a couple of times that the NRC changed its position.

2 MR. GULLOTT: Umhm.

3 MS. BAILEY: And I think in the October  
4 9th letter, NRC did acknowledge that the staff changed  
5 its position with respect to compliance with the GDCs  
6 with the regulatory requirements.

7 MR. GENDELMAN: For Byron and Braidwood.

8 MS. BAILEY: For Byron and Braidwood. I  
9 guess I'd like to understand from you where  
10 specifically you think the staff changed its position  
11 other than, you know, they don't comply with the GDCs  
12 for Byron and Braidwood.

13 MR. GULLOTT: The -- I can't speak to  
14 where the staff changed their position on the GDCs  
15 because we --

16 MS. BAILEY: But you have a view because  
17 you're --

18 MR. GULLOTT: Well --

19 MS. BAILEY: -- saying that the  
20 application -

21 MR. GULLOTT: With regard --

22 MS. BAILEY: -- of the compliance of  
23 backfit is incorrect.

24 MR. GULLOTT: With regard to the GDCs, we  
25 don't understand the current staff's position, because

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1 it wasn't articulated. Okay?

2 With regard to where the NRC has changed  
3 its position specifically, the NRC has not changed its  
4 position that a Condition II event cannot progress to  
5 a Condition III event.

6 MS. BAILEY: Okay.

7 MR. GULLOTT: The UFSAR is clear on that,  
8 the NRC has been clear on that since, you know,  
9 forever as far as we can find.

10 Where the NRC has changed its position  
11 with regard to that is that these particular events as  
12 analyzed for Byron and Braidwood, the NRC agreed  
13 previously that crediting the valves to close was  
14 acceptable and, therefore, these events did not  
15 progress to a Condition III event.

16 Now, it appears that the position is that  
17 somewhere in there, there is - it's no longer the  
18 staff's position and these events do now progress to  
19 a Condition III event.

20 MS. BAILEY: So, let me make sure I  
21 understand it correctly. So, where you think the  
22 staff has changed its position is the qualification of  
23 that valve, the adequacy of that - those valves to  
24 prevent the progression from a Category II to a  
25 category III event.

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1 MR. GULLOTT: Yes.

2 MS. BAILEY: And what you're basically  
3 saying is the staff has always knew about the  
4 qualification of those valves.

5 MR. GULLOTT: Yes.

6 MS. BAILEY: Okay.

7 MR. JURY: With that, again, it's Keith  
8 Jury with Exelon. If you look at the RIS itself it  
9 talks about that there's a concern that some licensees  
10 may have changed their licensee basis to credit the  
11 use of nonsafety-related components, consistent with  
12 DNBR design basis event without prior staff review,  
13 which I think was the original question.

14 And our point here is, is our crediting of  
15 the valves to be able to pass water and then close  
16 once reviewed and approved by the staff was not done  
17 unilaterally.

18 That's another point where it wasn't done  
19 without prior NRC review. It was discussed openly in  
20 RAIs and approved on at least two separate occasions  
21 prior to the MUR in 2013.

22 MS. BAILEY: Okay. And you talked a lot  
23 about omissions and mistakes of fact versus just an  
24 omission or a mistake and -- what's the difference?

25 MS. REDDICK: What's the difference

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1 between an omission and a mistake of fact, or --

2 MS. BAILEY: What's the difference between  
3 a mistake --

4 MS. REDDICK: -- just a plain old mistake?

5 MS. BAILEY: -- versus a mistake of fact  
6 or omission versus --

7 MR. FEWELL: Yeah, why don't you go ahead  
8 and use the examples that we raised earlier and maybe  
9 elaborate on them, but I think it's just the  
10 fundamental question, you know.

11 MS. REDDICK: Right.

12 MR. FEWELL: What's a mistake versus a  
13 mistake of fact versus and/or an omission.

14 MS. REDDICK: Right. So, I think a  
15 mistake of fact, a pretty obvious example of that  
16 would be where sort of like Adam's hypothetical about  
17 everyone thought that wall was 10 feet high. It was  
18 not, it was nine feet.

19 Or even perhaps more simply, the staff  
20 approval was based on a calculation that the licensee  
21 did that said that two plus two equals five or  
22 something. A mistake being that - a mistake of fact  
23 being that the calculation itself was erroneous,  
24 right?

25 That's just plain wrong in factual terms

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1 as opposed to a mistake being the staff deciding that  
2 the way it had previously interpreted its regulations  
3 was wrong for a variety of reasons, but not grounded  
4 in fact.

5 And the difference between that and also  
6 an omission, I think an omission is where the staff  
7 should have considered information, it knew it should  
8 have considered that information at the time it was  
9 reviewing something, but it didn't do that.

10 And had it done that, I mean, the key as  
11 well is that the omission or mistake of fact has to  
12 undermine the prior approvals. So, it has to be such  
13 that if they had considered that information, it would  
14 have caused the staff at the time to determine the  
15 licensee was not in compliance.

16 MS. BAILEY: Is that a well-understood  
17 distinction in the legal world?

18 MR. GENDELMAN: So, to talking to a high  
19 level, we've talked about this a lot in a couple  
20 different ways that compliance exception is an  
21 omission or a mistake of fact. And you point to the  
22 SOC statement to that regard and to the associated  
23 guidance NUREG-1409, which mentions the word "mistake"  
24 twice both in verbatim quoting the SOC.

25 I guess my question to you is, is it your

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1 understanding, because I think Mr. Fewell used the  
2 word "only," that a compliance exception is only a  
3 mistake of fact or omission, and I'm wondering why you  
4 think that is especially given that it's not in the  
5 rule text. So, we'll start there.

6 MS. REDDICK: Okay. Well, I think if you  
7 look at the 1985 SOC, statements of consideration, the  
8 language in there about the Commission explaining what  
9 the compliance exception is meant to cover is pretty  
10 clear and I'll just quote it directly.

11 It says: In cases involving the  
12 compliance exception, backfit analysis is not required  
13 and the standard does not apply. The compliance  
14 exception is intended to address situations in which  
15 the licensee has failed to meet known and established  
16 standards of the Commission because of omission or a  
17 mistake of fact. It should be noted that newer  
18 modified interpretations of what constitutes  
19 compliance would not fall within the exception and  
20 would require a backfit analysis.

21 So, I think in terms of Brad's statement  
22 to say that it only applies to an omission or mistake  
23 of fact, we're just looking at the language in the  
24 SOC.

25 The Commission does not explain any other

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1 circumstances in which the compliance exception would  
2 be appropriate. And, furthermore, it doesn't say that  
3 the compliance exception is intended to address, for  
4 example, situations in which there is - so it's - to  
5 me it's an exclusive list that says these are the two  
6 situations in which the compliance exception is  
7 appropriate.

8 MR. FEWELL: And I would go back just a  
9 little bit to -

10 MR. GENDELMAN: But my question is, why is  
11 that inclusive? It says it is intended for situations  
12 A and B. I don't think that speaks anything to  
13 situations C and D if they would otherwise meet the  
14 rule.

15 MR. FEWELL: Well, I think that you could  
16 probably posit a variety of things that aren't said  
17 there. And if you do so, I think you start to  
18 undermine the whole purpose and eat away entirely at  
19 the whole purpose of the backfit rule and the  
20 requirement in order to ensure regulatory certainty  
21 that the backfit analysis occurs.

22 I mean, it is designed to say that we  
23 understand that there might be circumstances where the  
24 NRC is going to need to change its mind. And it makes  
25 sense for the NRC to change its mind and erode

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1 regulatory certainty under some conditions.

2 But when they do that, the rule requires  
3 that they perform this backfit analysis where there  
4 needs to be a showing that there's a substantial  
5 increase in safety by requiring this change and that  
6 it is cost-justified.

7 MR. GENDELMAN: Or an exception applies.

8 MR. FEWELL: Or an exception applies. But  
9 on the other hand, you don't - you can't have the  
10 exception eat up the rule in its entirety.

11 MS. DOMEYER: This is Tammy Domeyer from  
12 Exelon. Just to kind of pick up on what Darani and  
13 Brad said, a backfit fundamentally always is based on  
14 a mistake, right?

15 The new interpretation of staff means that  
16 the prior interpretation was mistaken. So, to say  
17 that a compliance exception doesn't require a mistake  
18 of fact pretty much obliterates the need for a backfit  
19 analysis ever, because a backfit always is based on a  
20 mistake, a mistake in a conclusion reached by prior  
21 staff.

22 MS. BAILEY: Yeah, but what you seem to be  
23 saying is that it requires a mistake of fact versus  
24 just a mistake.

25 MS. DOMEYER: A backfit just requires a

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1 mistake. Prior staff was mistaken. We have a new  
2 interpretation of what is required to comply with the  
3 regulations. And in order to impose that backfit on  
4 licensees, requires the backfit analysis, which is the  
5 conclusion that there's a substantial safety  
6 enhancement and that it's cost-justified.

7 In order for the compliance exception to  
8 exist, though, you can't just say there was a mistake,  
9 because that's what a backfit is. You have to say  
10 there was a mistake of fact that made the prior  
11 staff's conclusion wrong not because we have a new  
12 interpretation, but because the prior staff believed  
13 a fact existed to support their conclusion when the  
14 fact was erroneous.

15 MR. JURY: Let me try this in laymen's  
16 terms. This is the way I understand it. And to  
17 Brad's point, if there's a change in position, right,  
18 it's a backfit. I think everybody agrees that if  
19 there is a change in position, it's a backfit.

20 When you go back to compliance exceptions  
21 and you look at it, in essence, by definition we're  
22 saying that you were always supposed to do it this  
23 way. And it's from the get-go from your licensing  
24 basis and the regulation required, you were always  
25 supposed to do it this way and you've missed it.

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1           And our point here is the fact that we've  
2           been very open with how we do this in this scenario,  
3           it's gone back and forth with the staff in several  
4           RAIs and it was reviewed and approved, because this  
5           very question was put on the table and the staff said  
6           that provides a reasonable level of assurance, we were  
7           given SEs, and now we're being told it says, oh, no,  
8           you guys, in my words, were always required to comply  
9           with this. That's why we can institute that exception  
10          to say -- the compliance exception.

11           And our position is it's a new position  
12          from what's been previous -- a known position that's  
13          been previously reviewed and approved on multiple  
14          occasions. In essence, it's a change in staff  
15          position. And as such, the staff can change its mind,  
16          obviously, but there's a process to go through and  
17          that's the backfit.

18           To come back and say it's a compliance  
19          backfit, you're saying we should have always been  
20          complying in this manner. And we're saying, wait a  
21          minute, it's been reviewed and approved on multiple  
22          occasions and well understood.

23           MS. BAILEY: And that new position, in  
24          your view, is where the staff previously accepted the  
25          qualification of the valves, they're no longer

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1 accepting the adequacy of the qualification of the  
2 valves. That's, in your view -

3 MS. REDDICK: Yes.

4 MR. JURY: The ability of the valves to  
5 close.

6 MS. BAILEY: Whereas I think in the  
7 October 9 letter, the staff would say that their  
8 change in position is whether or not the regulatory  
9 requirements were met.

10 MR. FEWELL: Well, okay. If their  
11 position is that they're changing their mind about  
12 whether the regulatory requirements are met, then  
13 that, in our view, would be a classic example of when  
14 a backfit analysis should occur.

15 MS. BAILEY: Well, I'm just reading the  
16 staff's conclusion with respect to noncompliance with  
17 the GDCs is what's changed.

18 And then if I look at NUREG-1409, it  
19 actually, you know, one of the examples where, you  
20 know, the compliance backfit - the compliance - use of  
21 the compliance exception may be appropriate is where  
22 the staff has previously accepted the licensee's  
23 program as adequate and, you know, they no longer do.

24 So, we have a situation where the staff  
25 once accepted the adequacy of meeting the regulation,

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1 and now the staff has changed its position on that,  
2 but that seems to be one example at least that's  
3 provided in the NUREG and where the compliance  
4 exception is the, you know, it's an appropriate use  
5 for compliance exception.

6 MS. REDDICK: And I think if you read that  
7 in context with what the rest of the NUREG says, it  
8 also makes clear and it reiterates the standard about  
9 an omission or mistake of fact.

10 So, the compliance exception, I mean, we  
11 would certainly believe the compliance exception is  
12 appropriate in certain circumstances where there is  
13 that omission or mistake of fact.

14 MR. GENDELMAN: So, going back to that,  
15 then, I'm literally looking at 109841, that a  
16 modification is necessary to bring a facility into  
17 compliance with a license or the rules or orders of  
18 the Commission or into conformance with written  
19 commitments by the licensee. To that you would add  
20 "through omission or mistake of fact."

21 And so, I sort of want to go back to a  
22 distinction between the SOC language and the rule  
23 language to the extent that something can meet the  
24 rule, but not the SOC.

25 And sort of tiering off of that, something

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1 else I think I hear underneath your arguments, but I  
2 sort of want to get at it explicitly is I don't know  
3 if the word is "invocation," but you say what is the  
4 mistake of fact or omission?

5 I mean, is it your view that a document  
6 imposing a compliance backfit need to have a section  
7 Mistake of Fact, colon, the following is the mistake  
8 of fact, colon?

9 MR. FEWELL: Well, I think in terms of  
10 process, I think that it needs to clearly articulate  
11 that, yes.

12 I think part of what we've been saying is  
13 that the document that has been presented to us  
14 doesn't do that. Even if the NRC has in their mind  
15 that there was a mistake of fact or an omission, the  
16 document that was presented to us does not, in our  
17 view, satisfy in terms of clarity the burden to say,  
18 well, here is what it is.

19 So, you know, however they would want to  
20 do it is fine, but it needs to articulate or make  
21 clear what that mistake of fact or omission was.

22 MR. GENDELMAN: Do you think that the  
23 document clearly states the rules or orders of the  
24 Commission with which it seeks to bring Byron and  
25 Braidwood into compliance?

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1 MS. REDDICK: From what I've understood,  
2 I think we would also have a disagreement about that  
3 as well in terms of understanding how we are not in  
4 compliance with the GDCs.

5 But I think that, you know, your point,  
6 Adam, about having, you know, adding words to the rule  
7 itself, I think it's entirely appropriate to look at  
8 the regulatory history when interpreting how rules  
9 should be applied.

10 I think the Commission has made that very  
11 clear. It's in your own guidance in NUREG-1409. And  
12 to sort of ignore that, I think, is --

13 MR. GENDELMAN: Well, I think -- I don't  
14 think that's what I would suggest. I think what I'm  
15 saying is the SOC language as quoted in the guidance  
16 says, is intended to, and it gives two examples. It  
17 doesn't speak to their exclusivity, or their  
18 nonexclusivity.

19 And then I think as a separate matter is  
20 this idea that it seems like at least more explicitly  
21 than what is done in the document you want some  
22 explication of what the mistake or omission was.

23 And to that end, I want to follow up on  
24 something we haven't talked about yet, which is  
25 something in your slides about the staff statement in

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1 conclusion about the water qualification of the valves  
2 being unsubstantiated, because I think some of this is  
3 turning on that.

4 And I was wondering if you could talk some  
5 more about that in terms of what, for lack of a better  
6 term, you think was unsubstantiated, because many of  
7 the reviews you talked about in terms of the prior  
8 staff reviews of, say, this system or systems  
9 associated with it are also called out in the backfit  
10 itself.

11 And so, in that context I was wondering if  
12 you could fill that out a little more.

13 MR. GULLOTT: Can you ask the question  
14 again? I'm just trying to follow.

15 MR. GENDELMAN: Okay. So, one of the  
16 points that I think is made in a few places in your  
17 slides are that the statement in the backfit that  
18 water qualification of the valves is unsubstantiated  
19 -- that you think that that staff statement is  
20 unsubstantiated.

21 And as an example, as to the review that  
22 was performed that you think would negate this claim  
23 includes the previous staff reviews of it and  
24 associated systems, which the staff itself seems aware  
25 of in its backfit discussion.

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1           And so, I'm wondering if given that, that  
2           at least there seems to be some cognizance of the very  
3           reviews that you point to in the backfit if you could  
4           fill out what you mean by "unsubstantiated," because  
5           clearly the backfit talks to the reviews and what the  
6           staff thought and what it did at various stages with  
7           regard to the water qualification and these parts.

8           So, you may disagree ultimately, I think,  
9           with what the staff said, but I was wondering if you  
10          could fill out a little more about what dimension of  
11          that you thought was unsubstantiated, because it's not  
12          a blank page.

13                 MS. REDDICK: I think -

14                 MR. GENDELMAN: Because whether you agree  
15                 or disagree with it, it's not like the staff just said  
16                 it was unsubstantiated, end of page.

17                 MS. REDDICK: Okay. So, I just want to  
18                 make sure I understand your question and I'll - the  
19                 word "unsubstantiated" is not Exelon's word. It is  
20                 the staff's word, right?

21                 So, the staff uses it on multiple places,  
22                 I think, like, for example, Page 12 of the backfit SE  
23                 the staff says that the prior approvals, and I'm  
24                 paraphrasing, were based on the use of water-qualified  
25                 PSVs which were later found to be unsubstantiated.

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1           And I think what we are saying is that it  
2           is not clear what is unsubstantiated about those prior  
3           approvals, about the prior approval that the PSVs were  
4           water-qualified.

5           Somehow that has now become  
6           unsubstantiated. It is not clear to us why that is  
7           unsubstantiated now. And furthermore, it is not clear  
8           to us how that unsubstantiated conclusion is an  
9           omission or mistake of fact that would undermine what  
10          the staff previously approved.

11          MR. GULLOTT: It reads like a change of  
12          position. Now, I've reviewed it and someone's  
13          reviewed it now and says, oh, I disagree, which is a  
14          backfit - traditional backfit change in  
15          interpretation, not pointing out a specific aspect of  
16          all our previous testing and NRC approvals and NRC  
17          reviews that were very comprehensive.

18          Those tests that we performed, the NRC in  
19          2001 or prior to that, had those in front of them.  
20          They had specific RAIs about the conditions of the  
21          test. We gave them -

22          MR. GENDELMAN: Are these the EPRI tests?

23          MR. GULLOTT: The EPRI tests.

24          We gave them test reports, test numbers to  
25          go look at the data and to support our conclusion,

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1 which the NRC got into the details of and agreed that  
2 - with our conclusion that this is - that these valves  
3 will perform their intended function under the  
4 conditions that they were tested to. And, therefore,  
5 there's reasonable assurance the valves will reclose  
6 and the condition will not escalate to a Condition III  
7 event.

8 So, all that information was in front of  
9 the NRC prior to 2005, prior to 2011 and our submittal  
10 and they made a conclusion. When you read  
11 "unsubstantiated," it - there's no, okay, what was  
12 wrong? What aspect of those prior - what of those  
13 prior tests that we submitted was wrong?

14 MS. REDDICK: Well, not just wrong, but  
15 what was an omission or mistake of fact.

16 MR. GULLOTT: Yeah, what was technically  
17 wrong.

18 MR. GENDELMAN: The transcriptionist is  
19 going to have a hot key for that by the time this -

20 (Laughter.)

21 MR. FEWELL: We were thinking about doing  
22 an over-under on how many times "omission or mistake  
23 of fact" would be mentioned.

24 MR. GENDELMAN: You're just juicing your  
25 own numbers now.

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1 (Laughter.)

2 MR. GENDELMAN: So, back to the nine-foot  
3 fence. So, and I want to talk about the significance  
4 of the previous NRC reviews and what -- what they did  
5 or didn't entail means, in your view.

6 And in particular if -- maybe analogous to  
7 this, maybe not -- if the application was for the  
8 nine-foot fence notwithstanding an NRC regulation that  
9 says the fence shall be 10 feet high and we asked in  
10 an RAI, so just to make sure, it's a nine-foot fence,  
11 right? And the response is, yep. And then you get an  
12 approval that includes, among other things, a  
13 provision for a nine-foot fence.

14 It's your view that eyes open, I think is  
15 what you said, that that's not an opportunity for  
16 later compliance backfit.

17 Now, I think if there's an added  
18 protection reason for a 10-foot fence, that's a  
19 different conversation. And I think you can see that  
20 and I don't want to go there.

21 But if it's just in the compliance context  
22 that you would think that that's not a mistake of  
23 fact, you knew it was nine feet, it was not an  
24 omission, you knew it was nine feet, and that,  
25 therefore, a compliance exception wouldn't apply; is

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1 that right?

2 MR. FEWELL: You articulated it very well.

3 MR. GENDELMAN: That's helpful. Thank  
4 you. I think I'm out of words.

5 MR. GODY: I really hate that fence.

6 (Laughter.)

7 MS. BAILEY: I don't have any more  
8 questions.

9 MR. GENDELMAN: I can talk about nickel  
10 concentrations in vessels, if you want.

11 MR. GARMOE: So, does the panel have any  
12 other questions?

13 MS. BAILEY: I have no other questions.

14 MR. GODY: I'm thinking. Maybe take five.  
15 Let's take a minute.

16 MR. GARMOE: All right. We'll take a  
17 couple minutes and determine whether we have any final  
18 questions before moving forward.

19 (Whereupon, the proceedings went off the  
20 record at 2:50 p.m. for a brief recess and went back  
21 on the record at 2:57 p.m.)

22 MS. BAILEY: Okay. This is Marissa Bailey  
23 again. I'm saying that for the sake of our  
24 transcriber.

25 I don't have any more questions. Adam --

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1 MR. GENDELMAN: I don't.

2 MS. BAILEY: -- Tony, do you have any more  
3 questions?

4 MR. GODY: I don't have any more  
5 questions.

6 MS. BAILEY: Okay. So, before we go to  
7 addressing any public questions, any other final  
8 thoughts, statements, any information you wanted to  
9 give us?

10 MR. FEWELL: Yeah, I just want to thank  
11 you all again for the attention -- you've obviously  
12 spent a lot of time thinking about this, looking at  
13 it. So have we, obviously.

14 And at the risk of continuing on with the  
15 fence discussion, my colleagues have instructed me to  
16 add one more piece that they felt was important.

17 And that was that into the scenario, the  
18 nine-foot fence kind of keeping it on track with what  
19 we're dealing with here, has been tested and has been  
20 deemed to perform the function that was required of  
21 the 10-foot fence.

22 And I just think that that's important to  
23 point that out because that shows that it meets its  
24 intended safety function and that that's something  
25 that all of us, all of us are interested ensuring that

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1 all of these plants, components and equipment function  
2 safely and meet their intended safety purpose.

3 So, again, thank you all for your  
4 attention.

5 MS. BAILEY: Okay. Thank you.

6 At this point, let's move to comments from  
7 the public. And we'd like to open it up for members  
8 of the public to address -- or direct questions to the  
9 NRC panel.

10 MR. GARMOE: So, the way we're going to do  
11 this, just to lay out some ground rules as the phones  
12 are fairly crowded, just to clarify, these are  
13 questions for the NRC panel from members of the  
14 public. So, there's a number of other people in the  
15 room, but please direct your questions towards the NRC  
16 panel.

17 And please keep the content or context of  
18 your questions focused on the backfit appeal that  
19 Exelon has made, the backfit that the NRC issued and  
20 any ancillary discussions that we've had focused on  
21 that topic.

22 Again, because the phones are fairly  
23 crowded, I'm aware of several organizations or  
24 individuals who have called in. So, what I'd like to  
25 do is call them out by name quickly one by one to see

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1 if you have any questions.

2 If you don't, you can either say, no  
3 questions, or say nothing. If you do, go ahead and  
4 ask them. And then at that point, I'll open it up to  
5 anybody else that might be on the phone that I wasn't  
6 aware of.

7 So, first, any individuals from Certrec?  
8 Do you have any questions?

9 CERTREC: None.

10 MR. GARMOE: Thank you.

11 Anyone from Duke Energy?

12 (No response.)

13 MR. GARMOE: That was no questions. Thank  
14 you.

15 Xcel Energy?

16 XCEL ENERGY: No questions.

17 MR. GARMOE: Thank you.

18 Southern Nuclear?

19 SOUTHERN NUCLEAR: No questions.

20 MR. GARMOE: Thank you.

21 Palisades?

22 (No response.)

23 MR. GARMOE: Hearing nothing from  
24 Palisades.

25 Mr. Miranda?

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1 MR. MIRANDA: Yes, I have some questions  
2 and comments.

3 MR. GARMOE: Go ahead.

4 MR. MIRANDA: First, I'll identify myself  
5 as a member of the public and also a retired NRC  
6 employee for full disclosure. And the author of RIS  
7 2005-29.

8 First of all, just a comment regarding the  
9 nine-foot fence meeting all those requirements. While  
10 I doubt that the operating history has a number of  
11 stuck parts in the record and a number of inadvertent  
12 ECCS actuations, and some of them have occurred as  
13 part of unnecessary reactor trips that should have  
14 come without complications.

15 Can you still hear me? I've got some  
16 static.

17 MR. GARMOE: Yes, we got that, too.

18 MR. GODY: But we heard you.

19 MR. MIRANDA: Okay. So, what happens if  
20 that nine-foot fence is not a nine-foot fence?  
21 Suppose it's a 20-meter tsunami wall. What happens  
22 then?

23 Let me -- let me move on to your  
24 presentation. And I'm talking about here the  
25 unsubstantiated qualification that the NRC mentioned.

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1           And that goes to your reference 5. And  
2           that's Leonard Olshan's letter of August 18, 1988.  
3           And that letter transmitted a test report from EG&G  
4           concerning the performance testing of leak of safety  
5           valves from fire stations near the 22. I have this on  
6           the public docket and it's available to me.

7           In section 12.2.3, entitled Extended High  
8           Pressure Injection Event, it's a short paragraph.  
9           What it says is, limiting extended high pressure  
10          injection event is a spurious actuation of the safety  
11          injection system at power. For a formal plant, both  
12          the safety valves and PORVs will be challenged. Both  
13          steam and water discharge are expected. In this  
14          event, however, safety valves or PORVs open and steam  
15          and liquid discharge would not be observed until the  
16          pressurizer becomes water solid. According to  
17          reference 7, this would not occur until at least 20  
18          minutes into the event, which allows ample time for  
19          operator action. Thus, the potential for liquid  
20          discharge, an extended HPI event, can be disregarded.

21          So, what Exelon is claiming that those  
22          PORVs are qualified for water, according to this  
23          report that test was not done.

24          I would also like to talk about the FSAR,  
25          Byron and Braidwood FSAR. Okay. You mentioned this

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1 earlier with respect to the event proceeding according  
2 to the analyses pertaining to inadvertent opening of  
3 the PORVs.

4 And what it says, and I understand it was  
5 later revised in 2014, but in 2002 it -- and the  
6 reason I mention this is because of the language that  
7 was used today about mistake of fact versus omission.  
8 And these are not the terms I've seen in the backfit  
9 rule 50.109. I assume they must be from the statement  
10 of consideration, because the backfit rule has no such  
11 qualifications.

12 It's the exception for compliance is there  
13 for the licensee's failure to comply with written  
14 licensing commitments. And the written licensing  
15 commitment in this case was the assertion made in the  
16 FSAR that the ANS standard 18.2 1973 requirement that  
17 a Condition II event must not proceed to a Condition  
18 III event without the occurrence of another  
19 independent fault that has to be prevented.

20 So, what the FSAR says, and this is also  
21 short, besides the condition about the safety valves  
22 failing to reseal and proceed according to water  
23 event, it goes on to say, the ANS standard of a  
24 Condition II event and a minor reactor coolant system  
25 leak, which would not prevent ordering reactor

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1 shutdown and cool down and starting back up, as  
2 provided by one of the following.

3 Coolant reactor systems are designed to  
4 maintain reactor coolant inventories under conditions  
5 respective conditions of start-up and stand-by power  
6 operation or cool down using onsite power. Since the  
7 cause of the ECCS flow will be less than or equal to  
8 that of the ECCS.

9 MR. GARMOE: If you could summarize your  
10 point, please, that would be helpful so that we could  
11 ensure we have time for any other public comments as  
12 well.

13 MR. MIRANDA: Okay. I refer to this as a  
14 mistake of fact. The assertion that the ECCS flow  
15 into the reactor coolant system will be matched by  
16 flow coming out of the stuck PORV is not true, not for  
17 at least an hour after the event occurs. Flow coming  
18 out of a PORV at 2350 or 2400 psi critical flow cannot  
19 be matched by pump ECCS flow.

20 Okay. And this - I don't understand how  
21 a degreed engineer can make this statement. And I  
22 happen to know that this particular paragraph comes  
23 straight out of IN-93-13, which was provided by  
24 Westinghouse to its customers as an advisory to  
25 dealing with the inadvertent ECCS event.

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1 I understand that's been revised and at  
2 least according to as it was read out earlier in the  
3 meeting, is also a mistake of fact because it cannot  
4 be compared, it cannot be bounded to the inadvertent  
5 opening of the PORV.

6 The inadvertent opening of a PORV will  
7 release steam. And in this case, a stuck open PORV is  
8 relieving water.

9 And, by the way, there are two such  
10 analyses in the FSAR. One is a Condition II event,  
11 and the other is a Condition III event.

12 MR. GARMOE: All right. Thanks. Is there  
13 - if you could summarize in about 20 or 30 more  
14 seconds, that would be great. And then we can come  
15 back to you if there's no other public comments.

16 MR. GODY: I'm understanding his position.

17 MR. GARMOE: Okay. It sounds like the  
18 panel heard your comments and understands.

19 MR. GODY: Appreciate the input.

20 MR. MIRANDA: One more thing and I'll be  
21 done. Concerning the RIS 2005-29, I think it was  
22 clear in there that what it said was if the -- this  
23 was also replies from Westinghouse to close the block  
24 valve.

25 If the operator is closing a block valve,

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1 he's not responding to an inadvertent SI event. He's  
2 responding to a small break LOCA. And that is  
3 evidenced that the ANS requirement has already been  
4 violated.

5 And one last thing. I would advise that  
6 you check into EC&G's license amendment request of  
7 1997 (sneezing) wherein they qualified reports and  
8 safety-related equipment and they use them in their  
9 FSAR in the correct manner as safety-related  
10 equipment.

11 MR. GARMOE: Okay. Thank you. Let's see.  
12 I believe there's somebody on the phone from Platts.

13 Are there any questions?

14 (No response.)

15 MR. GARMOE: I'm hearing that as a no.

16 And, Mr. Lewis, are you there and do you  
17 have any questions?

18 (No response.)

19 MR. GARMOE: Hearing nothing from Mr.  
20 Lewis is there any members of the public that are on  
21 the phone that I haven't called that have any  
22 questions for the NRC panel?

23 (No response.)

24 MR. GARMOE: Okay. And anybody else who's  
25 a member of the public in the room that might have

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1 questions for the NRC panel?

2 MR. BONANNO: This is Jerry Bonanno from  
3 NEI. I don't have a question for the panel. Just  
4 wanted to make a few comments.

5 We obviously submitted a letter dated  
6 January 20th, which I assume you all have seen,  
7 supporting Exelon's backfit.

8 I think, you know, for us the essential  
9 question is the question that you guys have been  
10 wrestling with today, which is, you know, trying to  
11 discern situations where there is a reinterpretation  
12 from situations where the staff is really trying to  
13 take action to bring a licensee back into compliance  
14 with known and established standards.

15 That's a - that can be a difficult  
16 question to address. I think a lot of the issues that  
17 you've been talking about today demonstrate that.

18 My only comment is that from our  
19 perspective, it would be great if we could resolve  
20 some of these issues in a generic way, you know, once  
21 - I know we won't be able to resolve them all.

22 Some of these issues are going to be fact-  
23 specific. They're going to have to be ironed out with  
24 specific panels, but these words have been around for  
25 a long time in the SOC.

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1 I think people have interpreted them in  
2 different ways and it would be good to - I think there  
3 is some ground to gain generically in this space. So,  
4 that's my only comment.

5 And, again, I think this has been useful  
6 and I hope that future panels continue to have public  
7 meetings like this when they get backfit appeals.

8 MR. GARMOE: Any other public questions  
9 from in the room?

10 (No response.)

11 MR. GARMOE: Okay. And, Mr. Miranda, I  
12 did promise I'd come back to you if we have time.

13 Do you have any other brief remarks, or  
14 did that summarize your thoughts?

15 MR. MIRANDA: Thank you. Do you want some  
16 more comments?

17 MR. GARMOE: I understand. I believe that  
18 sounds like we've wrapped up public comments. One  
19 last call on the phones for any other public  
20 questions.

21 (No response.)

22 MR. GARMOE: Okay.

23 MR. BAILEY: Okay. Well, first of all I'd  
24 like to thank you for your time for the presentation  
25 of your backfit appeal.

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1           Just want to remind everyone that the  
2 purpose of this meeting is for us to hear your backfit  
3 appeal for us to ask questions and clarification  
4 questions.

5           There were no regulatory decisions made at  
6 this meeting. So, please don't take our questions as  
7 any indication of where we're going to come out one  
8 way or another. It was purely for us to get  
9 clarification and try to understand your appeal.

10           Adam or Tony, any --

11           MR. GENDELMAN: Thanks.

12           MS. BAILEY: -- closing statements at this  
13 point?

14           MR. GODY: No. Thank you very much.

15           MS. BAILEY: Okay. So, at this point,  
16 I'll hand it back to you to close the meeting.

17           MR. GARMOE: All right. We are adjourned.  
18 I just remind everybody as you're leaving the room,  
19 make sure we have NRC staff. We can do a five-to-one  
20 visitor ratio for heading back down to the lobby. And  
21 we're hanging up the phones.

22           (Whereupon, at 3:14 p.m. the meeting was  
23 adjourned.)

24

25