

September 15, 2016

Anthony R. Pietrangelo
Senior Vice President and
Chief Nuclear Officer
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: RESPONSE TO NUCLEAR ENERGY INSTITUTE COMMENTS IN SUPPORT
OF EXELON GENERATION COMPANY SECOND-LEVEL APPEAL

Dear Mr. Pietrangelo:

This letter responds to your June 16, 2016, letter (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16208A008). In that letter, you documented the Nuclear Energy Institute's (NEI's) support for the appeal that was sent to me by Exelon Generation Company, LLC (Exelon) regarding the imposition of the subject backfit.

In response to Exelon's appeal and in accordance with U.S. Nuclear Regulatory Commission (NRC) Management Directive 8.4, "Management of Facility-specific Backfitting and Information Collection" (ADAMS Accession No. ML16208A008), I appointed several senior NRC staff and managers to a Backfit Appeal Review Panel to review the appeal of the staff's determination that a backfit was necessary at Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, as well as the staff's application of the compliance backfit exception provided in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.109 (the "Backfit Rule").

The panel undertook a detailed review of the relevant information at issue, that is, information pertinent to the performance of pressurizer safety valves and their treatment during accident analyses which support licensing decisions. The panel also reviewed the compliance exception to the Backfit Rule and re-affirmed that the compliance exception is intended to address failures to meet known and established Commission standards because of omission or mistake of fact. New or modified interpretations of what constitutes compliance therefore do not fall within the exception. The panel documented its review and evaluation of the technical and legal issues in a report enclosed with its memorandum to me. The panel's memorandum and report are publicly available via ADAMS Accession Nos. ML16236A202 and ML16236A208, respectively.

I have reviewed the panel's report, their recommendations, and their response to questions I posed when establishing the panel. In addition, I met with the panel and the Office of Nuclear Reactor Regulation management to assure that this issue has been given thorough, technically sound, and legally well-founded consideration.

Based on my review and discussions, I agree with the panel's conclusion that the positions taken by the NRC staff in the 2015 backfit decision represent new and different staff views on how to address pressurizer safety valve performance following water discharge. I informed Exelon of my decision supporting their appeal in a September 15, 2016, letter (ADAMS Accession No. ML16243A067). In summary, although the staff positions taken in proposing the compliance backfit were well-intentioned and conservative approaches that could provide additional safety margin, they did not provide an appropriate basis for a compliance backfit. In the absence of an assumed failure of the pressurizer safety valve to reseal, the concerns articulated in the backfit related to event classification, event escalation, and compliance with 10 CFR 50.34(b) and General Design Criteria 15, 21, and 29 are no longer at issue.

As you may be aware, I have also recently directed the NRC Committee to Review Generic Requirements (CRGR) to assess the adequacy and currency of existing NRC requirements, guidance, criteria, procedures, and training on the subject of backfitting (ADAMS Accession No. ML16133A575). The appeal panel has already been in contact with the CRGR to share insights and perspectives from this review. In addition, the CRGR will be considering stakeholder insights in its assessment of this important issue, including those you shared at the September 13, 2016, public meeting held by CRGR.

Sincerely,

/RA/

Victor M. McCree
Executive Director
for Operations

Based on my review and discussions, I agree with the panel's conclusion that the positions taken by the NRC staff in the 2015 backfit decision represent new and different staff views on how to address pressurizer safety valve performance following water discharge. I informed Exelon of my decision supporting their appeal in a September 15, 2016, letter (ADAMS Accession No. ML16243A067). In summary, although the staff positions taken in proposing the compliance backfit were well-intentioned and conservative approaches that could provide additional safety margin, they did not provide an appropriate basis for a compliance backfit. In the absence of an assumed failure of the pressurizer safety valve to reseal, the concerns articulated in the backfit related to event classification, event escalation, and compliance with 10 CFR 50.34(b) and General Design Criteria 15, 21, and 29 are no longer at issue.

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/RA/

Victor M. McCree
 Executive Director
 for Operations

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