



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, ILLINOIS 60532-4352

April 9, 2018

EA-17-138

Mr. Mark Kanavos
Site VP, Byron Generating Station
4450 North German Church Rd
Byron, IL 61010-9794

**SUBJECT: RESPONSE TO APPEAL OF NRC LETTER UPHOLDING DISPUTED VIOLATION
DOCUMENTED IN EVALUATION OF CHANGES, TESTS, AND EXPERIMENTS
BASELINE INSPECTION REPORT 05000454/2017009, 05000455/2017009**

Dear Mr. Kanavos:

In a letter dated February 8, 2018, to Anne T. Boland, Director of the U.S. Nuclear Regulatory Commission's (NRC) Office of Enforcement, you requested the NRC review a December 21, 2017, decision by Kenneth G. O'Brien, Acting Deputy Regional Administrator, Region III, to uphold Non-Cited Violation (NCV) 05000454/2017009-01; 05000455/2017009-01, which Exelon had disputed. After reviewing that decision, and your February 8, 2018, letter, and after coordination with the Director of the Office of Enforcement, I have decided to accept your request for review. To be clear, our process does not provide for multiple appeals of the Region's determination. Rather, under the specific facts of this case, I interpret your request instead as Exelon's initial appeal of the specific and substantive modifications to the NCV reflected in Region III's December 21 decision.

Consideration of this appeal is warranted in this case because the June 29, 2017, inspection report that documented the NCV (Byron Station Units 1 and 2—Evaluations of Changes Tests, and Experiments Baseline Inspection Report 05000454/2017009; 05000455/2017009) did not fully articulate the basis for the violation. Region III acknowledged this limitation in its December 21, 2017, letter, noting that the initially-documented NCV, "included an explanatory statement that was open to interpretation," and provided additional information to justify the NCV.

The additional information and analysis relied upon by Region III to uphold the NCV was not previously provided to Exelon in writing. In turn, Exelon's February 8 appeal asserts detailed new arguments and information that Region III could not have reasonably expected Exelon to have raised earlier, given how the NCV was first documented.

Accordingly, I have determined the unusual facts and circumstances of this particular case warrant consideration as an initial appeal of Region III's December 21 decision. Consistent with that approach, the review will be conducted by an independent panel, which will consider all relevant information provided on this matter to date. The panel's final determination will rely in

part upon input from the Office of Nuclear Reactor Regulation regarding the proper application of the NRC-approved Surveillance Frequency Control Program at Byron Station.

This letter will be made available electronically for public inspection and copying from the Agencywide Documents Access and Management System (ADAMS) available at <http://www.nrc.gov/reading-rm/adams.html> and in the NRC Public Document Room in accordance with Title 10 of the *Code of Federal Regulations* (CFR) 2.390, "Public Inspections, Exemptions, Requests for Withholding."

Sincerely,

/RA/

K. Steven West
Regional Administrator

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

cc: Distribution via LISTSERV®

Letter to Mark Kanavos from K. Steven West dated April 9, 2018

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¹ Concurrence received by email from Juan Peralta on April 5, 2018

² Concurrence and NLO received by email from Patrick Moulding on April 2, 2018.