



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

July 23, 2018

EA-17-138

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

SUBJECT: WITHDRAWAL OF NON-CITED VIOLATION 05000454/2017009-01;  
05000455/2017009-01

Dear Mr. Kanavos:

On July 31, 2017, Exelon Generation Company (EGC), LLC, provided a written response to the U.S. Nuclear Regulatory Commission (NRC) Inspection Report 05000454/2017009; 05000455/2017009 issued on June 29, 2017, concerning an Evaluations of Changes, Tests, and Experiments Inspection completed at Byron Station, Units 1 and 2. Specifically, the letter contested Non-Cited Violation (NCV) 05000454/2017009-01; 05000455/2017009-01 associated with the failure to perform an evaluation of a change to the facility as described in the Updated Final Safety Analysis Report (UFSAR) pursuant to Title 10 of the *Code of Federal Regulations* (CFR), paragraph 50.59(d)(1). On December 21, 2017, the NRC responded to your letter contesting the violation (Agency Documents Access and Management System (ADAMS) Accession No. ML17355A561). In that letter the NRC determined that the violation was valid, but we articulated that the initially-documented NCV needed additional information to justify the NCV. On February 8, 2018, in a letter from Exelon to the Director of the Office of Enforcement, you sought to appeal that decision, and provided additional information. In a letter to Exelon on April 8, 2018 (ADAMS ML18100A222), the NRC agreed to review the issue as an initial appeal of Region III's December decision based on the change from the original violation and the new information Exelon provided. This letter provides the decision based on our review.

The review was conducted by an independent NRC panel, which considered relevant information on this matter to date. The relevant information considered included: applicable guidance documents concerning the Surveillance Frequency Control Program (SFCP), 10 CFR 50.59 process, and the licensee's commitment management process; all docketed correspondence on the violation; input from NRC subject matter experts in various offices; participation in the Category 2 public meeting with the Nuclear Energy Institute (NEI) regarding the SFCP on March 20, 2018; and interviews with the key NRC and Exelon staff involved in the assessment of the violation, assessment of the disputed violation, and/or dispute of the violation.

In September 2000, the NRC endorsed NEI 99-04, Revision 0, "Guidelines for Managing NRC Commitment Changes" (Regulatory Information Summary 00-017, "Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff"). In November 2000, the

NRC endorsed NEI 96-07, Revision 1, "Guidelines for 10 CFR 50.59 Evaluations" (NRC Regulatory Guide 1.187). By letter dated September 19, 2007, the NRC found NEI 04-10, Revision 1, "Risk-Informed Technical Specification Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies," acceptable for referencing by licensees proposing to amend their Technical Specifications (TS) to establish a SFCP (ADAMS ML072570267).

By letter dated February 24, 2011, the NRC issued Byron Amendment No. 171 which relocated specific surveillance frequencies in Byron's TS to a licensee-controlled program (i.e., the SFCP). For these relocated surveillance frequencies, the TS were revised to state that the surveillance will be performed "in accordance with the surveillance frequency control program." As part of this amendment, Section 5.5.19, "Surveillance Frequency Control Program," was added to the TS, which requires changes to the relocated surveillance frequencies to be made in accordance with NEI 04-10, Revision 1.

As part of Byron Amendment No. 171, specific surveillance frequencies associated with the testing of emergency diesel generators (EDGs) were relocated to the SFCP. In February 2014, Byron used their NRC-approved SFCP, including the NEI 04-10 guidance, to evaluate and control a frequency change for performance of an EDG and integrated safeguards loss of offsite power/engineered safety features surveillance test from "18 months" to "18 months on a staggered test basis."

In assessing the new information provided for the disputed violation, the NRC independent review panel noted one main point of disagreement between the NRC and Exelon. Specifically, the main issue occurs in Step 2 of the NEI 04-10 process in assessing whether the frequency change represents a change in a regulatory commitment. In particular, Byron Updated Final Safety Analysis Report (UFSAR) Appendix A, "Application of NRC Regulatory Guides," originally stated that Byron complied with Institute of Electrical and Electronics Engineers Standard 387-1984, "IEEE Standard Criteria for Diesel Generator Units Applied as Standby Power Supplies for Nuclear Power Generating Stations," and supplemental regulatory positions in Regulatory Guide 1.9, "Application and Testing of Safety-Related Diesel Generators in Nuclear Power Plants," Revision 3, which require licensees to perform the EDG surveillances during every refueling outage. To resolve this apparent point of confusion, the review panel stepped through the NEI 04-10 process and the related NRC-endorsed industry guidance documents (NEI 99-04 and NEI 96-07).

In NEI 04-10 Step 2, a check is made to determine if the applicable regulatory commitments to the NRC can be changed. Evaluating changes to regulatory commitments is a separate activity based on a method acceptable to the NRC for managing and changing regulatory commitments (e.g., NEI 99-04). NEI 99-04 Section 3.1, "Definitions," defines a regulatory commitment as an explicit statement to take a specific action agreed to, or volunteered by, a licensee and submitted in writing on the docket to the NRC. A regulatory commitment is an intentional undertaking by a licensee to (1) restore compliance with regulatory requirements, or (2) complete a specific action to address an NRC issue or concern (e.g., generic letter, bulletin, order, etc.). The panel determined through review of NRR Office Instructions that Byron's UFSAR Appendix A is part of a mandated licensing bases document and not a set of regulatory commitments. In addition, the use of the SFCP to change surveillance frequencies was previously reviewed and approved by the NRC staff with Byron Amendment No. 171. Thus, there was no associated regulatory commitment to change under NEI 04-10 Step 2, and it was appropriate for the licensee to continue to step through the NEI 04-10 process to evaluate an EDG surveillance frequency change. The review panel noted that the licensee was addressing the associated EDG surveillance frequency change through an NRC approved change-control process (SFCP) specifically intended for that purpose.

Following satisfactory completion of the SFCP evaluation process to approve the EDG surveillance frequency change, Exelon performed a 10 CFR 50.59 screening using its internal guidance. Specifically, in February 2014, Exelon's 50.59 screening (No. 6E-14-017) determined that a 10 CFR 50.59 evaluation was not required. The review panel did not identify any regulatory obligations, additional mandated licensing bases documents, commitments, and/or UFSAR wording changes evaluated under this 10 CFR 50.59 screening that was not covered by the SFCP process. The review panel determined that a 10 CFR 50.59 evaluation was not required, because the NRC staff had previously granted the licensee authority, through Byron Amendment No. 171, to change the specific EDG surveillance frequencies in accordance with the SFCP.

Based on the independent panel's thorough review of the issue, the NRC has concluded that the 50.59 violation as written cannot be supported. Therefore, the NCV is hereby withdrawn, and we will modify our records accordingly.

This letter will be made available electronically for public inspection and copying from ADAMS available at <http://www.nrc.gov/reading-rm/adams.html> and in the NRC Public Document Room in accordance with 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding."

If you have any questions regarding this matter, please contact Mr. John Giessner at (630) 829-9800.

Sincerely,

*/RA/*

K. Steven West  
Regional Administrator

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

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Letter to M. Kanavos from K. Steven West dated July 23, 2018

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<sup>1</sup> NRR concurrence provided via e-mail from M. Miller on July 13, 2018  
<sup>2</sup> OE concurrence provided via e-mail from M. Marshfield on July 17, 2018  
<sup>3</sup> OGC NLO provided via email from Sara Kirkwood on July 13, 2018