

# Licensee Experience with Backfit Appeal Process

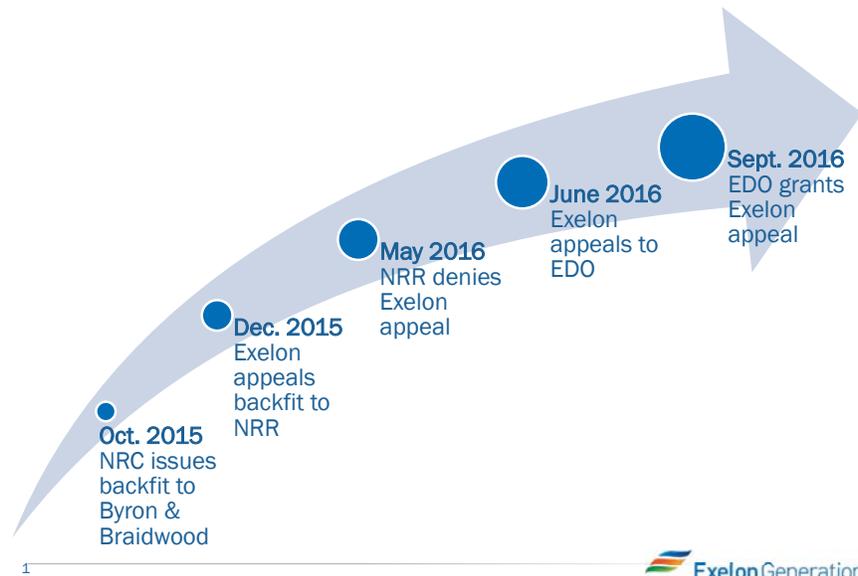
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## Byron/Braidwood Backfit Appeal Chronology



## Technical Positions

Are the Pressurizer Safety Valves “water qualified” such that they will pass water and then re-close if there is a reactor coolant system mass addition event?

### NRC

- Must assume PSVs will stick open unless PSVs are “water qualified”
- Exelon has not shown PSVs are water qualified
- Exelon not in compliance with General Design Criteria 15, 21, or 29, or with 10 CFR 50.34(b)

### Exelon

- Based on testing and analysis, Exelon has shown that PSVs are water qualified because they will pass water and re-close
- Exelon in compliance with GDCs 15, 21, or 29, and 10 CFR 50.34(b)

## Compliance Backfit Positions

NRC	Exelon
Compliance exception applies	Compliance exception does not apply
Prior NRC approvals based on assumption that PSVs were water qualified	NRC prior approvals demonstrate that NRC staff agreed PSVs would pass water and re-close
Assumption of water qualified PSVs later found to be “unsubstantiated”	<ul style="list-style-type: none"> <li>No “omission” or “mistake of fact” underlying staff’s prior approvals</li> <li>NRC reinterpreting what is necessary for compliance</li> <li>Reinterpretations of compliance not covered by compliance exception</li> </ul>
No backfit analysis required	Backfit analysis required

3

## First Appeal (NRR Director)

### NRR Director appointed Backfit Appeal Panel

- Two technical representatives and one attorney
- At public meeting with Appeal Panel, Exelon presented its appeal and answered Panel’s questions

### NRR Director agreed with Appeal Panel’s recommendation to deny appeal and uphold compliance exception

- Exelon failed to meet “known and established standard”
- “Mistake of fact” was that prior NRC staff should have required PSVs to be water qualified, and Exelon did not demonstrate PSVs to be water qualified

4

## Exelon Arguments on Second Appeal (EDO)

### NRC misidentified “known and established standard”

- Dispute hinged on whether PSVs are “water qualified”
- NRC cited guidance on water qualification (SRP, RIS) that did not apply when prior staff approvals were granted

### NRC mischaracterized change in interpretation as “mistake of fact”

- Prior staff reviewed issue in detail and determined that PSVs met applicable requirements
- Current staff believes that what prior staff approved is insufficient and more is needed to meet the requirements
- Example of new or modified interpretation of compliance that is not covered by the compliance exception

5

## EDO Decision

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- EDO granted Exelon's appeal on basis that there was no omission or mistake of fact to justify compliance exception

"I agree with the panel's conclusion that 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. Although these staff positions are conservative approaches that could provide additional safety margin, they do not provide an appropriate basis for a compliance backfit."

6

## Observations

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Importance of understanding design and licensing bases

Highlighted need clear guidance on, and consistent application, of compliance exception

Difficulties associated with citing General Design Criteria as the basis for a compliance backfit

Two NRC Staff management appeals (NRR Director and EDO), but no role for the CRGR unless the CRGR serves as the panel making a recommendation to the NRR Director or the EDO on the backfit appeal

Equal opportunity for staff and licensee involved in the backfit to present their case to an independent appeal panel

7