
Memorandum

Date: May 9, 2012

To: NNSA Deputy Administrator Anne Harrington

cc: Carol Berrigan, NEI

From: Tom Mundy and Julie Stevenson

Subject: Exelon Statement Regarding Nuclear Safety and 10 CFR 810

Exelon respectfully submits that the existing 810 rule, as currently interpreted, and the proposed revised rule, both work as deterrents to improving safety in nuclear operations around the world. As the largest commercial nuclear generating company in the U.S., Exelon is frequently asked to host visitors from many countries to its nuclear facilities, including from countries that are on the current restricted list at 10 CFR 810.8(a). Exelon is also frequently asked to share with or make available to such restricted countries nuclear safety information that could be subject to a Specific Authorization under Part 810 (referred to generally as “DOE-controlled information”).

Several recent requests concerning proposed visits by nuclear regulators from countries that are on the restricted list exemplify the difficulties faced by U.S. nuclear generating companies, as we try to balance our interest in contributing to improved nuclear safety around the world, and our export control obligations under the DOE regulations.

In 2009, the World Association of Nuclear Operators (WANO) requested that Exelon host the Russian First Deputy General Inspector of Energoatom in charge of nuclear oversight to visit Exelon’s corporate headquarters and one of its plants in order to study Exelon’s Nuclear Oversight program. Nuclear Oversight is actually the internal self-policing arm of any U.S. commercial nuclear operations organization, focused mainly on safety. The First Deputy General Inspector’s position in Russia is similar to a high level official in our U.S. Nuclear Regulatory Commission (“NRC”). In order to accommodate this requested visit and exchange of information that could include DOE-controlled information, Exelon requested a 30-day expedited general authorization from NNSA under §810.7(c) for “furnishing information or assistance, including through continuing programs, to enhance the operational safety of an existing civilian nuclear power plant in a country listed in §810.8(a)” (10 CFR §810.7(c)) (Exelon Letter to NNSA, dated January 23, 2009, attached).

NNSA rejected Exelon's request, claiming that there was a requirement within the regulation that the visit be "in conjunction with a specific safety issue at a specific nuclear power plant" (NNSA Letter to Mr. Darin Benyak of Exelon, dated February 19, 2009, attached). The regulation clearly states that this exception to requiring a Specific Authorization is for purposes of furnishing assistance to "enhance the operational safety of an existing civilian nuclear power plant. . . OR (emphasis added) to prevent, reduce, or correct a danger to the health and safety of the off-site population posed by a civilian nuclear power plant" (10 CFR §810.7(c)). Obviously, the visit of and exchange of information with the Russian Deputy General Inspector would have enhanced the operational safety of an existing nuclear power plant, as well as numerous existing nuclear power plants in Russia. The fact that the visit and exchange of information would have enhanced safety at more than one plant should not have resulted in the negative NNSA response. The fact that this particular visit was sponsored by WANO, as one of many nuclear safety related programs, would seem to fit within the regulatory language to allow "furnishing information or assistance, including through continuing programs, to enhance the operational safety of an existing civilian nuclear power plant . . ." (*Id.*). As a result of NNSA's denial, the Russian Deputy General Inspector did not come to visit the United States. An important opportunity to assist Russia in improving its nuclear safety oversight was lost.

Another recent example of how the rule can deter improving safety in nuclear operations around the world happened in early February of 2012. The NRC requested that Exelon allow Ukrainian regulators to visit an Exelon nuclear plant. As Exelon understood the request, the NRC was interested in sponsoring ten Ukrainian regulators to come shadow the NRC Resident Inspectors¹ at the plant in order to see how they do their job of making sure U.S. nuclear reactors are safely operated. As Ukraine is on the restricted country list, and given Exelon's previous experience of denial of expedited general authorization under 810.7(c), without sending a request to NNSA, Exelon declined the request to allow the Ukrainian visitors into the Exelon plant to discuss with the NRC what could be DOE-controlled information, absent a Specific Authorization from DOE. Current Specific Authorization requests are taking more than one year to process and approve. Exelon allowed the Ukrainian regulators to come through its plant only for the public tour, with no detailed discussions with the NRC Resident Inspectors onsite.

Also this year, Exelon received a request from the NRC to allow NRC Resident Inspectors to bring Armenian regulators to an Exelon plant. Again, Armenia is on the 810.8(a) restricted list. The NRC asked Exelon for permission to meet with four government officials from Armenia's nuclear regulatory body inside Exelon's nuclear plant for instruction on things such as the Production Risk Assessment (PRA). The PRA evaluates equipment for its safety significance, and a discussion or review of the PRA could include some DOE-controlled information. Allowing this training inside the U.S.

¹ Pursuant to NRC regulations, each operating nuclear power plant in the U.S. is required to have at least two NRC Resident Inspectors assigned to the plant. The Resident Inspectors remain employees of the NRC, but work on a daily basis at the location of the NRC licensee's nuclear power plant.

plant would have increased its effectiveness in improving safety at nuclear plants in Armenia. However, given the short time frame, and our previous negative experience of asking NNSA for expedited 810.7(c) approval, Exelon again directed the station to share only public information.

Exelon's experience with NNSA's interpretation of §810.7(c) of the existing rule has been that this section cannot be used to share nuclear safety related information to "enhance the operational safety" of an existing plant (without specifically identifying the precise plant at issue) or group of plants in a restricted country, even though, according to the regulatory language, this section was put in place for exactly this purpose. Additionally, NNSA's first version of the new rule completely deletes this nuclear safety section. Exelon suggests that a better course would be to clarify and expand the nuclear safety exception in order to allow exactly the type of information exchanges for nuclear safety purposes noted above. We respectfully request that NNSA reconsider this important part of the 810 regulations in order to allow the United States to contribute to nuclear safety across the world.