

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
RELATED TO PROPOSED CORPORATE RESTRUCTURING  
OF  
COMMONWEALTH EDISON COMPANY  
BRAIDWOOD STATION, UNITS 1 AND 2  
BYRON STATION, UNITS 1 AND 2  
DRESDEN NUCLEAR POWER STATION, UNITS 1, 2, AND 3  
LASALLE COUNTY STATION, UNITS 1 AND 2  
QUAD CITIES NUCLEAR POWER STATION, UNITS 1 AND 2  
ZION NUCLEAR POWER STATION, UNITS 1 AND 2  
DOCKET NOS. STN 50-456, STN 50-457, STN 50-454, STN 50-455, 50-10,  
50-237, 50-249, 50-373, 50-374, 50-254, 50-265, 50-295, 50-304

## 1.0 INTRODUCTION

In a July 7, 2000, application filed pursuant to 10 CFR 50.80, as supplemented by letters dated July 13 and September 1, 2000, Commonwealth Edison Company (ComEd) requested the approval from the U.S. Nuclear Regulatory Commission (NRC) for certain indirect license transfers to the extent effected by a planned corporate restructuring of ComEd that will result in the creation of a new holding company for ComEd, Exelon Corporation (Exelon). Exelon will result from the merger of PECO Energy Company (PECO) and Unicom Corporation (Unicom), the parent of ComEd.

ComEd is the holder of the licenses for, and is the sole owner (except as noted) and entity responsible for operating or maintaining the following listed plants:

Braidwood Station, Unit 1, License No. NPF-72  
Braidwood Station, Unit 2, License No. NPF-77  
Byron Station, Unit 1, License No. NPF-37  
Byron Station, Unit 2, License No. NPF-66  
Dresden Nuclear Power Station, Unit 1, License No. DPR-2  
Dresden Nuclear Power Station, Unit 2, License No. DPR-19  
Dresden Nuclear Power Station, Unit 3, License No. DPR-25

LaSalle County Station, Unit 1, License No. NPF-11  
LaSalle County Station, Unit 2, License No. NPF-18  
Quad Cities Nuclear Power Station, Unit 1, License No. DPR-29  
(ComEd owns a 75 percent interest; MidAmerican Energy Company  
owns a 25 percent interest and is a co-holder of the license)  
Quad Cities Nuclear Power Station, Unit 2, License No. DPR-30  
(ComEd owns a 75 percent interest; MidAmerican Energy Company  
owns a 25 percent interest and is a co-holder of the license)  
Zion Nuclear Power Station, Unit 1, License No. DPR-39  
Zion Nuclear Power Station, Unit 2, License No. DPR-48

The application proposed no changes in ComEd's rights or obligations under the above licenses by reason of the planned restructuring.

The July 7, 2000, application and July 13, 2000, supplement were the subject of a Federal Register notice published on August 31, 2000. The September 1, 2000, supplement provided additional information concerning management support to the ComEd plants, but did not expand the scope of the application as noticed.

## 2.0 BACKGROUND

By application dated December 20, 1999, as supplemented, ComEd requested approval of the direct transfer of the facility operating licenses, to the extent held by ComEd, for Braidwood, Byron, Dresden, LaSalle, Quad Cities, and Zion to a new proposed licensee, Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with a pending merger between Unicom and PECO, under which merger EGC, ComEd and PECO are to become direct or indirect subsidiaries of Exelon. The NRC approved these direct transfers by orders dated August 3, 2000.

ComEd indicated in the July 7, 2000, application that the direct transfer of the licenses to EGC may be delayed for an interim period following the completion of the merger, pending the receipt of other regulatory approvals of the direct transfers to EGC. During this interim period, ComEd, which will have become a subsidiary of Exelon upon the closing of the merger, would continue to hold the licenses until they are transferred to EGC. The July 7, 2000, application requests approval of the indirect transfer of the licenses listed above that would occur upon Exelon becoming the new parent of ComEd while ComEd continues to hold the licenses for the above interim period.

Under the ComEd restructuring where Exelon will become ComEd's parent, the holders of PECO common stock and Unicom common stock will become the common stock holders of the new parent company, Exelon. Following the restructuring and during the interim period prior to the transfer of generating assets from ComEd to EGC, ComEd will be a wholly owned electric utility subsidiary of Exelon.

### 3.0 FINANCIAL QUALIFICATION ANALYSIS

ComEd's July 7, 2000, application states that ComEd will continue to be financially qualified notwithstanding ComEd becoming a subsidiary of Exelon. Neither ComEd's current sources of operating and decommissioning funds, nor ComEd's "electric utility" status, within the meaning of 10 CFR 50.2, will be affected by reason of this restructuring of ComEd, according to the application.

Pursuant to 10 CFR 50.33(f), an electric utility is not required to demonstrate its financial qualifications. 10 CFR 50.2 states that an electric utility is "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority." As an electric utility, ComEd's financial qualifications are presumed to be adequate by 10 CFR 50.33(f) and no other specific demonstration of financial qualifications is required.

In consideration of the foregoing, the staff finds that the proposed restructuring will not affect ComEd's financial qualifications to hold the subject licenses.

However, in view of the NRC's concern that holding company structures can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC's practice has been to condition license transfer approvals involving new holding company structures upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following is to be made a condition of approval in the relevant transfer orders:

ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

### 4.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

NRC regulations require information showing "reasonable assurance...that funds will be available to decommission the facility" as stated in 10 CFR 50.33(k). ComEd is providing financial assurance for decommissioning through external sinking funds in which deposits are made at least annually. ComEd currently recovers decommissioning costs through a special tariff authorized by Section 9-201.5 (220 ILCS 5/9-201.5) and 16-114 (220 ILCS 5/16-114) of

the Illinois Public Utilities Act, and then makes periodic deposits to the funds over the generating life of the units. ComEd will continue to be eligible to use this method of decommissioning funding assurance by virtue of its continuing ability to recover costs under cost-of-service rate regulation after the proposed restructuring. After the proposed restructuring, ComEd will continue to fund its decommissioning trusts for its thirteen nuclear units in accordance with NRC regulations and the requirements of the Illinois Public Utilities Commission. Accordingly, the staff finds the proposed restructuring will not affect ComEd's decommissioning funding arrangements.

## 5.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 468 (1999). Therefore, since the transfer application postdates the issuance of the operating licenses for Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Dresden Nuclear Power Station, Units 1, 2 and 3; LaSalle County Station, Units 1 and 2; Quad Cities Nuclear Power Station, Units 1 and 2; Zion Nuclear Power Station, Units 1 and 2, no antitrust review is required or authorized.

## 6.0 TECHNICAL QUALIFICATIONS

ComEd states in the July 7, 2000, application that its technical qualifications will remain the same during the interim period following the proposed restructuring. However, according to the September 1, 2000, supplement, ComEd plans to implement the EGC Nuclear Group (NG) organization and management when Exelon is formed. The NG organization and management was previously reviewed by the staff in its August 3, 2000, safety evaluation regarding the direct transfer of the ComEd licenses to EGC, and was found acceptable for the facilities covered by these licenses. The September 1, 2000, supplement states that the NG senior management team will lead the NG headquarters and regional operating group organizations during the interim period following the restructuring in providing support to the ComEd facilities. Access to support resources will be through the corporate-level nuclear technical support organization and also through the regional vice presidents. Notwithstanding implementation of the NG organization and management, the President and Chief Nuclear Officer of ComEd will continue to report to the president and Chief Executive Officer of ComEd and to the ComEd Board of Directors, and final decision making authority with respect to the ComEd facilities will not change during the interim period following the restructuring. Accordingly, there will be no transfer of operating authority under the licenses during the interim period, notwithstanding ComEd's implementation of the NG organization and management.

ComEd states that during the interim period, the ComEd nuclear organization will continue to operate ComEd's nuclear stations in accordance with the terms of the existing licenses, and the functions, responsibilities, and reporting relationships within the ComEd nuclear organization will continue to be clear and unambiguous. ComEd's nuclear organization employees will remain ComEd employees and ComEd will retain authority for the safe operation of its plants and for regulatory compliance.

In consideration of the foregoing, the staff finds that the proposed restructuring will not affect ComEd's technical qualifications to operate or maintain its nuclear units.

#### 7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

In ComEd's July 7, 2000, application, ComEd incorporates, by reference, its earlier application dated December 20, 1999, and supplements thereto, that sought approval of the direct transfer of ComEd's licenses to EGC. In the earlier application, ComEd stated that Exelon will be a Pennsylvania corporation with its principal place of business being Chicago, Illinois; Exelon's stock will initially be held by PECO and Unicom shareholders, and will continue to be widely held and traded on the New York Stock Exchange. ComEd states in the July 7, 2000, application that all of the directors and officers of Exelon will be U.S. citizens. ComEd also states that ComEd will continue to be an Illinois corporation, all of the ComEd directors will be U.S. citizens, and the principal officers of ComEd will remain unchanged, following the proposed restructuring. ComEd further states that "neither Exelon nor ComEd will be subject to foreign ownership, control, or domination." The staff does not know or have reason to believe otherwise.

#### 8.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of an indirect transfer of operating licenses issued by the NRC. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

#### 9.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed restructuring will not affect the qualifications of ComEd as holder of the licenses for Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Dresden Nuclear Power Station, Units 1, 2, and 3; LaSalle County Station, Units 1 and 2; Quad Cities Nuclear Power Station, Units 1 and 2; and Zion Nuclear Power Station, Units 1 and 2, and that the indirect transfer of the licenses, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of the law, regulations, and orders issued by the Commission pursuant thereto, subject to the asset transfer condition discussed in this safety evaluation.

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Dated: October 5, 2000