

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-219; NRC-2011-0287]**

**Exelon Generation Company, LLC**

**Oyster Creek Nuclear Generating Station**

**Exemption**

**1.0 Background**

The Exelon Generation Company, LLC (the licensee) is the holder of Facility Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station (OCNGS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility consists of a boiling-water reactor located in Ocean County, New Jersey.

**2.0 Request/Action**

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix E, Section IV.F.2.c requires that "Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan." By letter dated September 30, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML112730283), the licensee requested a one-time exemption from this requirement that would allow the licensee to delay conduct of certain offsite portions of a biennial emergency preparedness (EP) exercise from September 27, 2011, to June 2012. The licensee's request states that Hurricane Irene passed through New Jersey on August 28, 2011, causing widespread damage and flooding in the surrounding area, and that the event required

the response of the New Jersey State Office of Emergency Management (OEM), the Ocean County OEM, numerous other state departments, and the Division of State Police.

Because of its ongoing response to and recovery from Hurricane Irene, the New Jersey OEM and Ocean County OEM requested that OCNGS reschedule specific functions of the offsite portion of the biennial EP exercise scheduled for September 27, 2011. The licensee states in their request that the New Jersey OEM has indicated that it is not feasible to reschedule the specific offsite functions that remain to be exercised prior to the end of calendar year (CY) 2011.

In a letter to the Federal Emergency Management Agency (FEMA) dated August 29, 2011, (ADAMS Accession No. ML112800560), the New Jersey State OEM requested that FEMA postpone the exercise until 2012, citing the ongoing response to the Hurricane Irene aftermath. By letter dated August 31, 2011 (Attachment 3 to ADAMS Accession No. ML112730283), FEMA responded favorably to the New Jersey OEM request by agreeing to postpone the offsite portions of the biennial exercise until 2012.

The onsite portion and some aspects of the offsite portions of the exercise were conducted on September 27, 2011. These portions were inspected by the NRC and evaluated by FEMA. The NRC's inspection of the September 27, 2011, exercise, documented in Inspection Report 05000219/2011502 dated November 9, 2011 (ADAMS Accession No. ML113130149), identified no findings.

### **3.0 Discussion**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, Appendix E, when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

#### Authorized by Law

This exemption would allow the licensee and offsite response organizations to accommodate Hurricane Irene's impacts upon their resources by postponing the select functions of the offsite portion of the exercise from the previously scheduled date of September 27, 2011, until June 2012.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50, Appendix E. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

#### No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.c is to ensure that licensees test and maintain interfaces among themselves and affected State and local authorities during the intervals between biennial EP exercises by conducting emergency preparedness activities and interactions. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the remaining offsite portions of the OCNCS full-participation exercise by June 2012, rather than CY 2011, places the exercise outside of the required biennium. Since the last biennial EP exercise on October 6, 2009, the licensee has

conducted 16 training drills/exercises/demonstrations and 32 training sessions that have involved interface with State and local authorities. These drills and training sessions did not exercise all of the proposed rescheduled offsite functions, but they do support the licensee's assertion that it has a continuing level of engagement with the State and local authorities to maintain interfaces. The NRC staff considers the intent of this requirement is met by having conducted these series of drills and training sessions.

Based on the above, no new accident precursors are created by allowing the licensee to postpone the selected offsite portions of the exercise from CY 2011 until 2012. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

#### Consistent with Common Defense and Security

The proposed exemption would allow rescheduling of the specific offsite portions of the biennial EP exercise from the previously scheduled date of September 27, 2011, until June 2012. This change to the EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### Special Circumstances

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. Special circumstances per 10 CFR 50.12 that apply to this exemption request are 10 CFR 50.12(a)(2)(ii) and (v). Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when: "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." Section IV.F.2.c of 10 CFR Part 50, Appendix E requires licensees to exercise offsite plans biennially with full or partial participation by each offsite authority having a role under the plan. The underlying purposes of 10 CFR 50, Appendix E, Section IV.F.2.c requiring licensees to

exercise offsite plans with offsite authority participation is to test and maintain interfaces among affected State and local authorities and the licensee. At the previous biennial EP exercise conducted on October 6, 2009, FEMA identified one planning deficiency when several municipalities did not receive notice of a Protective Action Decision (letter dated November 3, 2009, ADAMS Accession No. ML093070475). Per FEMA letters dated February 24, 2010, and June 22, 2010 (ADAMS Accession Nos. ML102590007 and ML110341597, respectively), FEMA informed the New Jersey State OEM and the NRC that the deficiency had been successfully corrected by demonstration at a remedial drill conducted on January 28, 2010. Since the licensee has conducted 16 training drills/exercises/demonstrations and 32 training sessions that have involved interface with State and local authorities in 2010 and 2011, and has supported the FEMA evaluation of the State and local authorities at the biennial exercise in 2009 and at the remedial drill in 2010, the NRC staff considers that these measures are adequate to test and maintain interfaces with affected State and local authorities during this period, satisfying the underlying purpose of the rule.

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Due to the scheduled biennial EP exercise on September 27, 2011, the 16 training drills/exercises/demonstrations conducted in 2010 and 2011, and the licensee's support of the FEMA evaluation of some aspects of the offsite portion of the September 27, 2011 exercise, the NRC staff considers the licensee to have made good faith efforts to comply with the regulation. Also, the requested exemption to conduct the onsite EP exercise in 2012 instead of 2011 would grant only temporary relief from the applicable regulation. Therefore, since the underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.c is achieved, the licensee has made a good faith effort

to comply with the regulation, and the exemption would grant only temporary relief from the applicable regulation, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and (v) exist for the granting of an exemption.

#### **4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission, hereby grants Exelon Generation Company, LLC an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c to conduct the offsite portion of the OCNCS biennial EP exercise required for 2011, permitting that part of the exercise to be conducted in coordination with NRC Region I and OCNCS schedules by the end of June 2012.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 79227, December 21, 2011).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21<sup>st</sup> day of December 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

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