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Via email (Christiana.Lui@nrc.gov)]

Ms. Christiana Lui
Director, Division of Security Policy
Nuclear Regulatory Commission
T4F25-M
11555 Rockville Pike
Rockville, MD 20852

Re: Request for NRC Determination Regarding Safeguards Information

Dear Ms. Lui:

I am writing on behalf of Exelon Generation Company, LLC ("Licensee") to request a determination from the NRC as to whether a licensee's access authorization criteria set forth in its security procedures and developed as part of its overall physical security plan constitute safeguards information.

As background, this request arises following the decision of the United States Court of Appeals for the Seventh Circuit regarding the right of the Union (Local 15 IBEW) representing certain of the Licensee's employees to arbitrate the issue of whether such employees have been properly denied unescorted access to the Licensee's nuclear facilities. Following the court's decision in the Union's favor, the Licensee agreed to move forward in three separate arbitration proceedings to arbitrate issues related to its denial of unescorted access to three grievants (subject to and without waiving any objections the Licensee might have as a result of any subsequent NRC action).

In each of these pending arbitration matters, the Licensee informed the arbitrator that its specific access authorization criteria, developed in accordance with and to implement the requirements of 10 C.F.R. § 73.56, were of obvious relevance to each arbitrator's review of the Licensee's access authorization determination and advised the arbitrators that the criteria constituted Safeguards Information ("SGI") and could only be reviewed by those who had satisfied the NRC's regulatory criteria for access to SGI under 10 C.F.R. §§ 73.2, 73.21, and 73.22. The Licensee informed each of the arbitrators of the general parameters for SGI access, invited the arbitrators to submit to the necessary process for clearance, and further indicated that each arbitrator could appropriately

determine that the Union's counsel also had a "need to know" the SGI criteria pursuant to 10 CFR 73.2. The Licensee also informed each arbitrator of its position that the individual grievant in each case could not obtain SGI access because each grievant already had been determined not to be trustworthy and reliable as an essential part of the Licensee's denial of unescorted access. The Licensee also took the position, based on a lack of a "need to know" and earlier NRC guidance, that no Union representative (other than the attorney for the Union) could have SGI access to such criteria.

The Union objected to the Licensee's position and asserted that none of the specific access criteria was properly classified as SGI and that, in any event, the Licensee's position regarding access to SGI by the grievants and their Union representatives was baseless. Both the Licensee and the Union submitted detailed written arguments to each arbitrator in support of their respective positions. A copy of these submissions for one of the arbitration matters is enclosed (the submissions for the other two matters are substantively the same).

Earlier this week, one of the arbitrators, Thomas Cipolla, issued his written decision on these issues, concluding that the access criteria do not constitute SGI information and, as such, are not entitled to the SGI protections. A copy of his decision also is enclosed for your reference.

The two other arbitrators have not ruled on the issue. However, in the arbitration before Arbitrator Cipolla, the Licensee finds itself in the untenable position that, if it complies with the arbitrator's decision, it risks violating applicable federal law and NRC regulations and requirements, or alternatively, if it continues to insist on complying with its understanding of applicable law, regulations, and requirements, it risks not only being unable to adequately defend itself against the Union's claims, but also makes likely an arbitral decision on access that is not based on the relevant access criteria.

We therefore respectfully request the NRC's determination regarding these issues. Given the fact that the arbitration before Arbitrator Cipolla is currently set for hearing on December 3, 2012, we also request such determination on an expedited basis. We believe that the enclosed submissions of the Union and the Licensee to the arbitrators set out in detail the relevant arguments and supporting authority, and provide the basis for your determination. However, if you need additional information or have any questions, do not hesitate to let me know.

Sincerely,


J. Bradley Fewell

cc: Tamra Domeyer (co-counsel for Exelon)
Brian J. Gold (co-counsel for Exelon)
John J. Toomey (counsel for Union)