



444 South 16th Street Mall
Omaha, NE 68102-2247

March 1, 2013
LIC-13-0023

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555-0001

- References:
1. Docket No. 50-285
 2. Letter from OPPD (W. G. Gates) to NRC (Document Control Desk), *Management Change*, dated September 10, 2012 (ML12258A074)
 3. Letter from NRC (L. E. Wilkins) to OPPD (L. P. Cortopassi), *Fort Calhoun Station, Unit No. 1 – Request for Additional Information RE: Changes in Management (TAC No. ME9577)*, dated January 8, 2013 (NRC-13-0001)

SUBJECT: Response to Request for Additional Information

In Reference 2, the Omaha Public Power District (OPPD) submitted to the U.S. Nuclear Regulatory Commission (NRC) a letter outlining pertinent provisions of the Operating Services Agreement (OSA) between Exelon Generation Company, LLC (Exelon), and OPPD, dated August 17, 2012. In Reference 3, the NRC indicated that it needs additional information "to confirm that licensing actions are not needed regarding the stated management changes, in accordance with the regulations set forth in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 regarding transfer of licenses." That letter also stated, "Please submit the OSA in its entirety to the NRC for review. If the OSA contains proprietary information that should be withheld from public disclosure, please include an affidavit per the requirements set forth in 10 CFR 2.390 to assure that the information will be handled accordingly."

OPPD and Exelon — co-owners of the document — consider the entire OSA, including Scope Change No. 1 and all other scope changes to the OSA, but exclusive of Sections 3.1 through 3.3, 3.3.1 through 3.3.3, 3.13.1, 4.1 through 4.3, 4.17, 4.17.1 through 4.17.12, 5.12, 5.12.1 through 5.12.13, to be confidential commercial and financial information and trade secrets; therefore, OPPD and Exelon request that the OSA and scope changes in their entirety be withheld from public disclosure in accordance with 10 CFR 2.390(a)(4).

ADD
NRC

U. S. Nuclear Regulatory Commission

LIC-13-0023

Page 2

The OSA, Scope Change No. 1, and Licensing Agreement are provided in the enclosures. The associated affidavit is provided in Attachment 1. Exelon does not, however, object to Sections 3.1 through 3.3, 3.3.1 through 3.3.3, 3.13.1, 4.1 through 4.3, 4.17, 4.17.1 through 4.17.12, 5.12, 5.12.1 through 5.12.13 of the OSA being disclosed publicly, as long as all other provisions of the OSA are redacted or otherwise shielded from disclosure. In Reference 2, OPPD provided an attachment that included the language in Sections 3.1 through 3.3, 3.3.1 through 3.3.3, 3.13.1, 4.1 through 4.3, 4.17, 4.17.1 through 4.17.12, 5.12, 5.12.1 through 5.12.13 of the OSA.

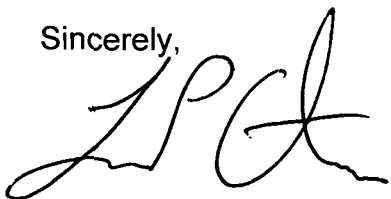
OPPD provided the letter and provisions of the OSA to demonstrate that the arrangement between OPPD and Exelon is consistent with the regulatory requirements of 10 CFR 50.80 and does not trigger a review pursuant to NRC Regulatory Issue Summary 2001-06, "Criteria for Triggering A Review Under 10 CFR 50.80 For Non-Owner Operator Service Companies."

Please note that the Enclosures contain information proprietary to Exelon and should be withheld from public disclosure in accordance with Attachment 1.

There are no regulatory commitments in this letter.

If you should have any questions regarding this letter, or require additional information, please contact Mr. Bill R. Hansher at 402-533-6894.

Sincerely,



Louis P. Cortopassi
Site Vice President - CNO

LPC/brh

Attachment: 1. Affidavit

Enclosures: Operating Services Agreement (OSA), Scope Change No. 1, and Licensing Agreement

c: E. E. Collins, Jr., NRC Regional Administrator, Region IV (w/o enclosures)
L. E. Wilkins, NRC Project Manager (w/enclosures)
J. M. Sebrosky, NRC Project Manager (w/o enclosures)
J. C. Kirkland, NRC Senior Resident Inspector (w/o enclosures)

Proprietary - WITHHOLD FROM PUBLIC DISCLOSURE UNDER 10 CFR 2.390
Enclosures contain proprietary information.
Upon removal of Enclosures, this letter is Decontrolled.

LIC-13-0023
Enclosures
Page 1

Omaha Public Power District
Fort Calhoun Station

- **Operating Services Agreement (OSA)**
- **Scope Change No. 1**
- **Licensing Agreement**

AFFIDAVIT

I, Kevin D. Stepanuk, state as follows:

- (A) I am Associate General Counsel for Exelon Business Services Company, LLC, and have been delegated the function of reviewing the information described in paragraph (B) which is sought to be withheld, and have been authorized to apply for its withholding.
- (B) The information sought to be withheld is the entire Operating Services Agreement (OSA), including Scope Change No. 1 and all other future scope changes, exclusive of Sections 3.1 through 3.3, 3.3.1 through 3.3.3, 3.13.1, 4.1 through 4.3, 4.17, 4.17.1 through 4.17.12, 5.12, 5.12.1 through 5.12.13 of the OSA (collectively, the "Complete Agreement").
- (C) Through arms-length negotiations, Exelon and OPPD mutually agreed that the terms and content of the Complete Agreement are confidential commercial and financial information and that the Complete Agreement could not be disclosed to a third party without prior permission from the other party or unless otherwise allowed by the terms of the Complete Agreement.
- (D) OPPD and Exelon agreed that the Complete Agreement may be disclosed to a Governmental Authority as required by applicable law, provided that the disclosing party uses reasonable efforts to have the Complete Agreement afforded confidential treatment and protected from public disclosure.
- (E) On behalf of Exelon, the reasons for holding the Complete Agreement as confidential are:
 - 1. The Complete Agreement contains trade secrets and other proprietary or commercial information which if released would give an advantage to Exelon's domestic and international business competitors and would serve no public purpose.
 - 2. The information in the Complete Agreement, if used by a competitor in a competitive bid situation, would reduce such competitor's expenditure of resources and time necessary to prepare its bid or would improve a competitor's competitive position in the solicitation of a contract for similar services, especially in a competitive situation in which Exelon is participating. Exelon is currently in one such competitive bid situation domestically and is pursuing numerous similar competitive situations internationally.

Attachment 1

8. The limitation of liability and other financial based commercial terms, without exclusion of or diminishment of the value of all of the terms, were intensely negotiated by the parties over a period of over three months and represent significant knowledge for how the parties priced various commercial risks associated with their respective rights and obligations. Disclosure of this information will provide an unfair advantage for its competitors or clients/potential clients with whom it is negotiating similar financial terms.

(F) In accordance with 10 CFR § 2.390(b)(4):

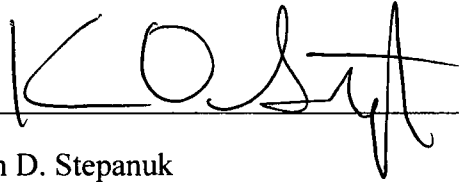
1. The information sought to be withheld is being submitted to the NRC in confidence. The information is of a sort customarily held in confidence by Exelon, and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by Exelon, not been disclosed publicly, and not been made available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary and/or confidentiality agreements that provide for maintaining the information in confidence.
2. The information is being transmitted to the Commission in confidence.
3. To the best of my knowledge and belief, the information is not available in public sources.
4. Public disclosure of the information sought to be withheld is likely to cause substantial harm to Exelon. The information is part of the services Exelon offers to potential customers and its commercial value extends beyond the original development cost. Exelon's competitive advantage will be lost if its competitors are able to use the information to acquire the potential customers.
5. The value of this information to Exelon would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive Exelon of the opportunity to exercise its competitive advantage to seek an adequate return on its investment in developing and obtaining this valuable information.

3. The information discloses the detailed process and components of Exelon's service model that is the result of significant investment and time by Exelon. The Complete Agreement entailed a minimum of four months of work and the knowledge and lessons learned by Exelon from numerous competitive bid situations in which Exelon was not successful. Exelon uses this service model in its other competitive bids. Disclosing this information to a competitor would provide Exelon's competitor with a competitive economic advantage.
4. The domestic nuclear marketplace for operating consultants and managers is extremely limited. In Exelon's experience, the highest number of competitors it has faced for this service domestically is two. The international marketplace is more robust (perhaps 10-12 initial competitors) but typically involves a down-select process leaving three to four "finalists" to compete for the ultimate contract award. Therefore, in Exelon's experience there is not a vast array of service models in the marketplace as may be found in other industries with more competitors. Small differences in method and approach provide more significant differential when there are few competitors. Exelon's service and pricing provide it with an advantage over its competitors.
5. The nuclear operating consultant and operating management community is small, therefore it is likely that the NRC's placing this in the public domain will result in Exelon's domestic and international competitors accessing and reviewing it.
6. Exelon's pricing and pricing structure are highly confidential and protected by Exelon. Exelon is currently active and fully engaged in one domestic and one international competitive bid process related to nuclear plant development or operations, and pending down-select in at least two other competitive international endeavors, in addition to sole source contractual negotiations in international markets. Exelon continuously uses its pricing and pricing structure or some derivation thereof in its business dealings. Disclosure of its pricing or pricing structure will provide an unfair advantage for its competitors or clients/potential clients with whom it is negotiating pricing.
7. Exelon believes it possesses unique intellectual property and disclosure of the method by which it priced and the structure through which it sold this asset to OPPD would provide an unfair advantage to its competitors or clients/potential clients.

Attachment 1

I declare under penalty of perjury that the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 27th day of February 2013.



Kevin D. Stepanuk
Associate General Counsel
Exelon Business Services Company
2301 Market Street
Philadelphia, PA 19103
Kevin.stepanuk@exeloncorp.com

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

Subscribed and sworn to me, a Notary Public, in and for the County and State above named, this 27th day of February 2013.



My Commission expires: 12/18/16

