



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 5, 2016

EA-14-139

Mr. Bryan C. Hanson  
President and Chief Nuclear Officer  
Exelon Generation Company, LLC  
R.E. Ginna Nuclear Power Plant  
4300 Winfield Road  
Warrenville, IL 60555

SUBJECT: R.E. GINNA NUCLEAR POWER PLANT - ISSUANCE OF CONFIRMATORY ORDER AND CONFORMING AMENDMENT CONCERNING STANDALONE WEAPONS PREEMPTION AUTHORITY (TAC NOS. MF2618 AND MF2623)

Dear Mr. Hanson:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has issued the enclosed confirmatory order and conforming Amendment No. 120 to Renewed Facility Operating License No. DPR-18 for the R.E. Ginna Nuclear Power Plant, including the general-licensed Independent Spent Fuel Storage Installation (Enclosures 1 and 3). The confirmatory order and enclosed conforming amendment are in response to a letter from Exelon Generation Company, LLC, dated August 14, 2013, as supplemented by letters dated November 4, 2013, and May 14, 2014 (Agencywide Documents Access and Management System Accession Nos. ML13228A265, ML13312A921, and ML14139A342, respectively). The enclosed confirmatory order and conforming amendment permit security personnel at the R.E. Ginna Nuclear Power Plant to transfer, receive, possess, transport, import, and use certain firearms and large capacity ammunition feeding devices not previously permitted to be owned or possessed under Commission authority, notwithstanding certain local, state, or federal firearms laws, including regulations that prohibit such actions.

A copy of the related Safety Evaluation is provided as Enclosure 2. The notice of issuance will be included in the Commission's next regular biweekly *Federal Register* notice.

B. Hanson

- 2 -

The confirmatory order contained in Enclosure 3 has been forwarded to the Office of the Federal Register for publication.

Sincerely,

A handwritten signature in black ink, appearing to read 'W M Dean', with a long horizontal flourish extending to the right.

William M. Dean, Director  
Office of Nuclear Reactor Regulation

Docket Nos. 50-244 and 72-67

Enclosures:

1. Amendment No. 120 to DPR-18
2. Safety Evaluation
3. Confirmatory Order

cc: Listserv

Mr. Joseph E. Pacher, Vice President  
Exelon Generation Company, LLC  
R. E. Ginna Nuclear Power Plant  
1503 Lake Road  
Ontario, NY 14519



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

R.E. GINNA NUCLEAR POWER PLANT, LLC

EXELON GENERATION COMPANY, LLC

DOCKET NO. 50-244

R.E. GINNA NUCLEAR POWER PLANT

AMENDMENT TO RENEWED FACILITY OPERATING LICENSE

Amendment No. 120  
Renewed License No. DPR-18

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
  - A. The application for amendment filed by the Exelon Generation Company, LLC (Exelon, the licensee) dated August 14, 2013, as supplemented by letters dated November 4, 2013, and May 14, 2014, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
  - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

Enclosure 1

2. Accordingly, the license is amended by changes to the Technical Specifications as indicated in the attachment to this license amendment, and paragraph 2.C.(2) of Renewed Facility Operating License No. DPR-18 is hereby amended to read as follows:

- (2) Technical Specifications

- The Technical Specifications contained in Appendix A, as revised through Amendment No. 120 are hereby incorporated in the renewed license. Exelon Generation shall operate the facility in accordance with the Technical Specifications.

3. Accordingly, paragraph 2.E of the Operating License is amended as indicated in the attachment to this license amendment and subject to the following License Condition:

- The licensee has obtained Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a for weapons at its facility.

4. This license amendment is effective as of the date of its issuance and shall be implemented within 20 days.

FOR THE NUCLEAR REGULATORY COMMISSION



Travis L. Tate, Chief  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Attachment:  
Changes to the Renewed Facility  
Operating License

Date of Issuance: January 5, 2016

ATTACHMENT TO LICENSE AMENDMENT

AMENDMENT NO. 120 TO RENEWED FACILITY OPERATING LICENSE NO. DPR-18

DOCKET NO. 50-244

Replace the following pages of the Renewed Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove

3

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Insert

3

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- (b) Exelon Generation pursuant to the Act and 10 CFR Part 70, to possess and use four (4) mixed oxide fuel assemblies in accordance with the RG&E's application dated December 14, 1979 (transmitted by letter dated December 20, 1979), as supplemented February 20, 1980, and March 5, 1980;
  - (3) Exelon Generation pursuant to the Act and 10 CFR Parts 30, 40, and 70 to receive, possess, and use at any time any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
  - (4) Exelon Generation pursuant to the Act and 10 CFR Parts 30, 40, and 70 to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
  - (5) Exelon Generation pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.
- C. This renewed license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Sections 50.54 and 50.59 of Part 50, and Section 70.32 of Part 70; and is subject to all applicable provisions of the Act and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:
- (1) Maximum Power Level  
Exelon Generation is authorized to operate the facility at steady-state power levels up to a maximum of 1775 megawatts (thermal).
  - (2) Technical Specifications  
The Technical Specifications contained in Appendix A, as revised through Amendment No. 120 are hereby incorporated in the renewed license. Exelon Generation shall operate the facility in accordance with the Technical Specifications.
  - (3) Fire Protection  
Exelon Generation shall implement and maintain in effect all provisions of the approved fire protection program that comply with 10 CFR 50.48(a) and 10 CFR 50.48(c), as specified in the licensee's amendment request dated March 28, 2013, supplemented by letters dated December 17, 2013; January 29, 2014; February 28, 2014; September 5, 2014; September 24, 2014; December 4, 2014; March 18, 2015; June 11, 2015; August 7, 2015; and as approved in the safety evaluation report dated November 23, 2015. Except where NRG approval for changes or deviations is required by 10 CFR 50.48(c), and provided no.

Nuclear Power Plant Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan," submitted by letter dated May 15, 2006.

Exelon Generation shall fully implement and maintain in effect all provisions of the Commission-approved cyber security plan (CSP), including changes made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The licensee's CSP was approved by License Amendment No. 113 and modified by License Amendment No. 117. The licensee has obtained Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a for weapons at its facility.

- F. The Updated Final Safety Analysis Report supplement, submitted pursuant to 10 CFR 54.21 (d), describes certain future activities to be completed prior to the period of extended operation. Ginna LLC shall complete these activities no later than September 18, 2009, and shall notify the Commission in writing when implementation of these activities is complete and can be verified by NRC inspection.

The Updated Final Safety Analysis Report supplement, as revised, shall be included in the next scheduled update to the Updated Final Safety Analysis Report required by 10 CFR 50.71 (e)(4) following issuance of this renewed license. Until that update is complete, the licensee may make changes to the programs and activities described in the supplement without prior Commission approval, provided that the licensee evaluates each such change pursuant to the criteria set forth in 10 CFR 50.59 and otherwise complies with the requirements in that section.

- G. All capsules in the reactor vessel that are removed and tested must meet the test procedures and reporting requirements of ASTM E 185-82 to the extent practicable for the configuration of the specimens in the capsule. Any changes to the capsule withdrawal schedule, including spare capsules, must be approved by the NRC prior to implementation. Any capsules placed in storage must be maintained for future insertion, unless approved by the NRC.
- H. This renewed license is effective as of the date of issuance and shall expire at midnight on September 18, 2029.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By

J. E. Dyer, Director  
Office of Nuclear Reactor Regulation

Attachment: Appendix A - Technical Specifications

Date of Issuance: May 19, 2004



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO AMENDMENT NO. 120

TO RENEWED FACILITY OPERATING LICENSE NO. DPR-18

R. E. GINNA NUCLEAR POWER PLANT, LLC

EXELON GENERATION COMPANY, LLC

DOCKET NO. 50-244

R.E. GINNA NUCLEAR POWER PLANT

1.0 INTRODUCTION

By submittal dated August 14, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13228A265), as supplemented by letters dated November 4, 2013 (ADAMS Accession No. ML13312A921), and May 14, 2014 (ADAMS Accession No. ML14139A342), Exelon Generation Company, LLC (Exelon or licensee) requested that the U.S. Nuclear Regulatory Commission (NRC) authorize it to use the preemption authority granted to the Commission under Section 161A of the Atomic Energy Act of 1954, as amended (42 United States Code (U.S.C.) 2201a), on behalf of the R.E. Ginna Nuclear Power Plant, LLC. (Ginna). Use of Section 161A authority would permit security personnel at Ginna, to transfer, receive, possess, transport, import, and use certain weapons, ammunition, and other devices not previously permitted to be owned or possessed under Commission authority, notwithstanding local, State, or certain Federal firearms laws, including regulations, that prohibit such actions.

In the submittal, the licensee stated that this request is for preemption authority only, and is applicable to the firearms and devices presently in use at Ginna in accordance with the NRC-approved Ginna security plan, namely handguns, semiautomatic assault rifles, and large-capacity magazines. The licensee also stated that the firearms and devices identified in the submittal do not include enhanced weapons. The licensee stated that the types of firearms, ammunition, and other devices identified in the submittal are necessary in the discharge of official duties by security personnel to implement the NRC-approved Ginna security plan. In the submittal, the licensee identifies the New York Secure Ammunition and Firearms Enforcement Act of 2013 (NY SAFE Act), which was signed into law on January 15, 2013.

The supplemental letters dated November 4, 2013, May 14, 2014, and January 16, 2015, contained clarifying information and did not change the NRC staff's initial proposed finding of "no significant hazards consideration" published by the staff in the *Federal Register* on October 27, 2014 (at 79 FR 63951).



## 2.0 REGULATORY EVALUATION

Section 653 of the Energy Policy Act of 2005, Public Law 109-58 (119 Stat. 811), added Section 161A (42 U.S.C. § 2201a) to the Atomic Energy Act of 1954, as amended. Section 161A confers upon the Commission the authority to permit the security personnel of designated NRC-licensed facilities or certificate holders to transfer, receive, possess, transport, import, and use certain firearms and devices that were not previously permitted to be owned or possessed under Commission authority, notwithstanding local, State, or certain Federal firearms laws, including regulations, that prohibit such actions. The categories and types of firearms, ammunition, and devices that are subject to Section 161A are identified in Section 161A.b, which states that:

Notwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of Title 18, section 925(d)(3) of Title 18, section 5844 of Title 26, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle, a shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for any such gun or weapon, or a large capacity ammunition feeding device, in carrying out the duties of the Commission, the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use 1 or more such guns, weapons, ammunition, or devices . . . .

Section 161A became effective on September 11, 2009, when the Commission, with the approval of the Attorney General, published the "Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute" in the *Federal Register* (74 FR 46800), hereafter referred to as the "firearms guidelines." These firearms guidelines were subsequently revised on June 25, 2014 (79 FR 36100).

On June 5, 2013, the NRC issued Enforcement Action (EA) 13-092 "Order Designating an Interim Class of NRC-Licensed Facilities that are Eligible to Apply to the Commission for Authorization to Use the Authority Granted Under the Provisions of Section 161A of the Atomic Energy Act of 1954, as Amended" (ADAMS Accession No. ML13121A459), hereafter referred to as "the designation order." The designation order accomplishes the following: (1) designates an interim class of NRC-licensed facilities as eligible to apply for Section 161A preemption authority; (2) provides a process through which the licensee of each designated facility may apply for Section 161A preemption authority; (3) outlines the type of information that must be addressed in a submittal for Section 161A preemption authority; and (4) requires the licensee of each designated facility to subject all personnel who have, or will have, access to covered firearms and devices in the performance of official duties, to a firearms background check as specified in Section 161A.c.

The designation order requires, in part, that requests must be submitted to the NRC for review and approval under the provisions of Title 10 *Code of Federal Regulations* (10 CFR) 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit" and that the

licensee of each designated facility must notify the NRC in writing when a sufficient number of firearms background checks have been completed to staff the facility security organization.

### 3.0 TECHNICAL EVALUATION

In the submittal, the licensee stated that the request is for preemption authority at Ginna. The NRC staff reviewed Attachment 1 to the designation order and confirmed that Ginna is a member of the limited class of facilities designated by the Commission as eligible to apply for Section 161A preemption authority.

#### 3.1 Staffing

The designation order requires that all licensees within the designated class of facilities eligible to apply for Section 161A preemption authority shall subject all members of the security organization whose official duties require or will require access to any firearm to a firearms background check. In a letter dated November 4, 2013, the licensee stated that a sufficient number of personnel have completed the required firearms background checks to meet the minimum required staffing level for the Ginna security organization as stated in the NRC-approved Ginna security plan, including the minimum number of armed responder and armed security officer positions required to effectively implement the licensee's protective strategy and to meet applicable fatigue requirements of 10 CFR Part 26. The NRC staff reviewed the NRC-approved Ginna security plan, and determined that the licensee has identified the minimum number of armed responder and armed security officer positions that must be staffed at all times at Ginna and for which the assigned personnel must successfully complete a firearms background check. The NRC staff further finds that the number of firearms background checks completed by the licensee is consistent with the minimum number of armed responder and armed security officer positions required to implement the Ginna NRC-approved security plan and to meet applicable fatigue requirements.

#### 3.2 Training and Qualifications

The designation order requires the licensee of each designated facility to revise their training and qualification program, as needed, to ensure that affected personnel receive instruction regarding the firearms background check's disqualifying events. Additionally, the designation order requires that licensees must provide training on the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status. By letter dated May 14, 2014, the licensee responded to an NRC request for additional information and confirmed that site procedures had been revised to address the activities required to instruct all affected personnel on disqualifying events and their continuing responsibility to notify the licensee of a change in their status.

Based on its review of the licensee's information, the staff finds that the licensee has revised the Ginna training and qualification program, including the development and implementation of supporting site procedures, needed to ensure that affected personnel receive instruction regarding the types of events that would disqualify the individual from continued access to firearms and devices and the continuing responsibility to report such events to the licensee.

### 3.3 Firearms and Devices

Consistent with the firearms guidelines, before authorizing a licensee to use the authority granted by Section 161A, the Commission must determine that the weapons used by licensee security personnel are necessary in the discharge of their official duties. In its submittal, the licensee provided a list of the types of firearms and devices that are currently in use at Ginna and confirmed that these firearms and devices are used to implement its protective strategy at the facility. The licensee also addressed the types of duties and responsibilities that are required of personnel who are assigned armed duties. The staff reviewed the NRC-approved Ginna security plan to determine whether the use of the firearms and devices identified by the licensee in their submittal is adequately described as being necessary to the performance of official duties by personnel assigned to the armed responder and armed security officer positions at Ginna.

The Commission's regulations require that NRC-licensed facilities develop, implement, and maintain a physical protection system that will protect the special nuclear material that each licensee is authorized by license to possess and use. The physical protection system for an NRC-licensed power reactor will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. In establishing the specific level of physical protection that must be provided by each licensee at a power reactor facility, the Commission has defined a Design Basis Threat (DBT) of radiological sabotage in 10 CFR 73.1. Consequently, the Commission has assigned specific attributes and capabilities to the DBT of radiological sabotage to include the types of firearms, ammunition, and other devices and equipment that an adversary could use for the purpose of causing radiological sabotage. Conversely, the Commission has determined that it is also appropriate and necessary to ensure that those personnel who are assigned official duties required for the prevention of radiological sabotage at an NRC-licensed power reactor facility, are also provided with the types of firearms, ammunition, and other devices that will provide and ensure the ability of assigned personnel to counter the capabilities that the Commission has assigned to the DBT of radiological sabotage.

The licensee's description of the weapons and their use in the approved security plan identified the types of firearms and devices that are currently in use (specifically, handguns, semiautomatic assault weapons, and large-capacity ammunition feeding devices) and stated that these firearms and devices are necessary to satisfy Commission requirements for the physical protection of the Ginna facility. The staff determined that the description contained in the Ginna security plan is consistent with Commission regulations and the licensee's protective strategy for the Ginna facility, including the types of firearms and devices needed to provide armed responders and armed security officers with the ability to counter the attributes of the DBT of radiological sabotage.

Based on its review, the staff finds that the licensee has demonstrated that the firearms and other devices currently possessed at the Ginna facility are necessary in the performance of official duties required for the physical protection of a facility, radioactive material or other property Ginna owns and operates. The NRC staff also finds that the firearms and devices identified in the submittal are within the types of firearms and devices described in Section 161A.b and the firearms guidelines.

### 3.4 Firearms Background Check Processes

Firearms background checks are submitted through the NRC to the Federal Bureau of Investigation (FBI's) Criminal Justice Information Services Division and include a check against the FBI Criminal History database and the FBI National Instant Criminal Background Check System, which was established by Section 103(b) of the Brady Handgun Violence Prevention Act, Public Law 103-159, 107 Stat. 1536. All members of a licensee's security organization whose official duties require access to firearms and where the licensee has applied for use of preemption authority under Section 161A.b shall be subject to a firearms background check to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

The designation order requires the licensee of each designated facility to establish a program that addresses: (1) the removal of security personnel from duties requiring access to firearms on the receipt of an adverse firearms background check or other disqualifying information; (2) instruction for resolving a delayed response and/or appealing a denied response resulting from a firearms background check; (3) provisions for a firearms background check reinvestigation not to exceed five years; (4) the conduct of a firearms background check reinvestigation for individuals who have had a break in employment from the licensee or applicable security contractor of greater than one week; and (5) self-disclosure requirements and reporting requirements concerning a disqualifying event. Attachment 3 to the designation order contains provisions for establishing processes to ensure that security personnel maintain appropriate qualification and training as well as a process to establish periodic firearms background check re-investigations.

By letter dated May 14, 2014, the licensee confirmed that appropriate processes and procedures have been established to maintain the requirements for the conduct of firearms background checks to include, periodic reinvestigations, instruction for appealing adverse results, notification/reporting requirements for disqualifying events, and the removal of individuals from armed duties when disqualifying information becomes known, as required in Attachment 3 to the designation order.

Based on its review of the NRC-approved Ginna security plan and the licensee's letter dated May 14, 2014, the NRC staff finds that the licensee has established background check processes and procedures that are consistent with the designation order requirements. In addition, the NRC staff finds Ginna has established, through these processes and procedures, a method to assure that affected security personnel are not barred under Federal or State law from receiving, possessing, transporting, or using any of the subject firearms or devices used at the facility.

### 3.5 State Law

Section 161A of the Atomic Energy Act of 1954, as amended confers on the Commission the authority to permit the security personnel of designated NRC-licensed facilities or certificate holders to transfer, receive, possess, transport, import, and use certain firearms and devices that were not previously permitted to be owned or possessed under Commission authority,

notwithstanding local, State, or certain Federal firearms laws, including regulations, that prohibit such actions. The categories and types of firearms, ammunition, and devices that are subject to Section 161A are identified in Section 161A.b.

In its submittal, the licensee states that the NY SAFE Act, which was signed into law on January 15, 2013, will restrict access to firearms and devices needed to implement the protective strategy at Ginna. Therefore, the licensee has requested preemption authority.

The staff has reviewed applicable New York State law and found that New York State law makes it illegal to possess certain weapons or an ammunition feeding device that would include the types of firearms and devices that would be used by the licensee to implement its protective strategy as described in the NRC approved Ginna security plan. Based on this review, the NRC staff finds that applicable New York State law would restrict the use of such firearms and devices at Ginna, and that the licensee uses such firearms and devices in performance of official duties necessary to implement the licensee's protective strategy at Ginna. Therefore, the staff finds that the licensee has demonstrated a need for preemption authority.

### 3.6 License Condition

On page 1 of Attachment 2 to the submittal, Exelon proposed that the following language be added to the physical protection license condition 2.E:

The licensee has obtained Commission authorization to use Section 161A preemption authority under 42 U.S.C. 2201a for weapons as its facility.

As this condition revises the license to reflect the authorization issued in Order EA-14-139, the NRC staff finds the change acceptable.

### 3.7 Technical Conclusion

Based on its review of the licensee's submittal, the NRC staff has determined that the firearms, ammunition, and devices utilized by the licensee are consistent with the types of firearms and devices described in Section 161A.b and that the request was submitted in accordance with the requirements of the designation order, Section 161A, and applicable Commission regulations. Accordingly, the staff finds that Ginna meets the applicable requirements to use preemption authority under Section 161A.

## 4.0 STATE CONSULTATION

In accordance with the Commission's regulations, the New York State official was notified of the proposed issuance of the amendments. The State official had no comments.

## 5.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact was published in the *Federal Register* on October 29, 2015 (80 FR 66586). Accordingly, based upon the environmental assessment, the Commission has determined that issuance of this amendment will not have a significant effect on the quality of the human environment.

## 6.0 CONCLUSION

The NRC staff reviewed the information provided by the licensee and concludes that (1) the requirements of Commission Order EA-13-092 have been satisfied; (2) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner; (3) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and; (4) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

## 7.0 REFERENCES

1. Constellation Energy Nuclear Group, LLC "Application for Preemption Authority Pursuant to Section 161A of the Atomic Energy Act and License Amendment Request." Docket Nos. 50-244 and 72-67, August 14, 2013, , (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13228A265.
2. Constellation Energy Nuclear Group, LLC "Notification of Completion of Firearms Background Checks in Accordance with NRC Order EA-13-092," Docket Nos. 50-244 and 72-67, November 4, 2013, ADAMS Accession No. ML13312A921.
3. Constellation Energy Nuclear Group, LLC "Response to Request for Additional Information Concerning Preemption Authority" Docket Nos. 50-244 and 72-67, May 14, 2014, ADAMS Accession No. ML14139A342.
4. The Atomic Energy Act of 1954, as amended, Section 161A [42 United States Code (U.S.C.) § 2201a].
5. *New York Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013* (NY SAFE Act), (S.2230, A.2388; LBD12007-03-03), January 15, 2013.
6. Section 161A, "Use of Firearms by Security Personnel," of the Atomic Energy Act of 1954 (42 United States Code (U.S.C.) § 2201a), as added through Section 653 of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 811 (August 8, 2005) and as amended.

7. Section 922, "Unlawful Acts," and Section 925, "Exceptions: Relief from Disabilities," of Title 18, "Crime and Criminal Procedures," of the *United States Code* (18 U.S.C. §§ 922 and 925), as added through Section 902 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 226 (June 19, 1968), and as amended, particularly through the Brady Handgun Violence Prevention Act, Pub. L. 103-159, 107 Stat. 1536 (November 30, 1993).
8. Section 5844, "Importation," of Title 26, "Internal Revenue Code," of the *United States Code* (26 U.S.C. § 5844), as amended, particularly through Title II, "Machine Guns, Destructive Devices, and Certain Other Firearms," of the Gun Control Act of 1968, Pub. L. 90--618, 82 Stat. 1227 (October 21, 1968).
9. *U.S. Code of Federal Regulations, General Provisions "Purpose and scope"* Part 73, Chapter I, Title 10, "Energy" (10 CFR 73.1).
10. NRC, "Notice of Issuance of Guidelines on Use of Firearms by Security Personnel; Notice of Effective Date of Statute," Vol. 74, No. 175, September 11, 2009, pp. 46800-46806 (74 FR 46800).
11. NRC, "Order Designating an Interim Class of NRC-Licensed Facilities that are Eligible to Apply to the Commission for Authorization to Use the Authority Granted Under the Provisions of Section 161a of the Atomic Energy Act of 1954, as Amended," Commission Order EA-13-092, June 5, 2013, ADAMS Accession No. ML13121A459.
12. *U.S. Code of Federal Regulations*, "Application for Amendment of License, Construction Permit, or Early Site Permit," Section 50.90, Chapter I, Title 10, "Energy" (10 CFR 50.90).
13. *U.S. Code of Federal Regulations*, "Managing Fatigue," Subpart I of "Fitness for Duty Programs," Part 26, Chapter I, Title 10, "Energy" (10 CFR 26).
14. Brady Handgun Violence Prevention Act, Pub. L. 103-159, 107 Stat. 1536 (November 30, 1993).
15. *U.S. Code of Federal Regulations*, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, Subpart A - National Environmental Policy Act - Regulations Implementing Section 102(2); Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review." Part 51, Chapter I, Title 10, "Energy" [10 CFR Part 51.22(c)(12)].

16. *U.S. Code of Federal Regulations*, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, Subpart A - National Environmental Policy Act - Regulations Implementing Section 102(2); Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review." Part 51, Chapter I, Title 10, "Energy" [10 CFR Part 51.22(b)].

Principal Contributor: D. Gordon, NSIR

Date: January 5, 2016



**ENCLOSURE 3**

CONFORMING ORDER MODIFYING LICENSES

R.E. GINNA NUCLEAR POWER PLANT AND GENERAL-LICENSED  
INDEPENDENT SPENT FUEL STORAGE INSTALLATION

DOCKET NOS. 50-244 AND 72-67

UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket Nos. 50-244
Exelon Generation Company, LLC	)	and 72-67
	)	License No. DPR-18
R.E. Ginna Nuclear Power Plant	)	EA-14-139
	)	

## CONFIRMATORY ORDER MODIFYING LICENSE

## I.

Exelon Generation Company, LLC (Exelon, or the licensee) is the owner and operator of R.E. Ginna Nuclear Power Plant (Ginna), including the general-licensed Independent Spent Fuel Storage Installation (hereinafter Ginna or the facility), and holder of Provisional Renewed Facility Operating Licenses No. DPR-18 and Docket No. 72-67 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) under Title 10, "Energy," of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," Part 70, "Domestic Licensing of Special Nuclear Material;" and Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." The license authorizes the operation of Ginna with the conditions specified therein. The facility is located on the owner's site in Wayne County, New York.

II.

By application dated August 14, 2013 as supplemented by letters dated November 4, 2013, and May 14, 2014, Exelon requested, under Commission Order (EA-13-092), that under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended, the Commission permit the transfer, receipt, possession, transport, import, and use of certain firearms and large capacity ammunition feeding devices, by security personnel who protect a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission. Section 161A confers on the Commission the authority to permit a licensee's security personnel to possess and use firearms, ammunition or devices, notwithstanding local, State, and certain Federal firearms laws (including regulations) that may prohibit such possession and use.

On review of the Exelon application for Commission authorization to use Section 161A preemption authority at Ginna, the NRC staff has found the following:

- (1) The Exelon application complies with the standards and requirements of Section 161A and the Commission's rules and regulations set forth in 10 CFR Part 73, "Physical Protection of Plants and Materials;"
- (2) There is reasonable assurance that the facilities will operate in conformance to the application; the provisions of the Atomic Energy Act of 1954, as amended; and the rules and regulations of the Commission;

- (3) There is reasonable assurance that the activities permitted by the proposed Commission authorization to use Section 161A preemption authority are consistent with the protection of public health and safety, and that such activities will be conducted in compliance with the Commission's regulations and the requirements of this confirmatory order;
- (4) The issuance of Commission authorization to use Section 161A preemption authority will not be inimical to the common defense and security or to the health and safety of the public; and
- (5) The issuance of this Commission authorization to use Section 161A preemption authority will be in accordance with the Commission's regulations in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The findings, set forth above, are supported by an NRC staff safety evaluation under Agencywide Documents Access and Management System (ADAMS) Accession No. ML14260A166.

### III.

To carry out the statutory authority discussed above, the Commission has determined that the license for Ginna, must be modified to include provisions with respect to the Commission authorization to use Section 161A preemption authority as identified in Section II of

this confirmatory order. The requirements needed to exercise the foregoing are set forth in Section IV below.

The NRC staff has found that the license modifications set forth in Section IV are acceptable and necessary. It further concluded that, with the effective implementation of these provisions, the licensee's physical protection program will meet the specific physical protection program requirements set forth in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage" (for nuclear power reactors); and in 10 CFR 72.212(b)(9), "Conditions of the General License Issued Under § 72.210," and portions of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage" (for general-license independent spent fuel storage installations co-located with a reactor at the reactor site).

On January 16, 2015, Exelon consented to the issuance of this order. The licensee further agreed that this order will be effective 20 days after the date of issuance and that it has waived its right to a hearing on this order.

#### IV

Accordingly, under Sections 53, 103 and/or 104b, 161b, 161i, 161o, 161A, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, "Orders"; 10 CFR Part 50; 10 CFR Part 70; and 10 CFR Part 72, IT IS HEREBY ORDERED that:

1. The Exelon application for Commission authorization to use Section 161A preemption authority at Ginna is approved and permission for security personnel

to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws (including regulations) that may prohibit such possession and use, is granted.

2. The licensee shall review and revise its NRC-approved security plans, as necessary, to describe how the requirements of this confirmatory order and other applicable requirements of 10 CFR Part 73, "Physical Protection of Plants and Materials," to include those of the appendices to 10 CFR Part 73, will be met.
3. The licensee shall establish and maintain a program consistent with Commission Order EA-13-092 such that all security personnel who require access to firearms in the discharge of their official duties are subject to a firearms background check.

The Commission is engaged in an ongoing rulemaking to implement the Commission's authority under Section 161A. Subsequent to the effective date of that final rulemaking, the Director, Office of Nuclear Reactor Regulation (NRR) may take action to relax or rescind any or all of the requirements set forth in this confirmatory order.

The Director, NRR, may, in writing, relax or rescind this confirmatory order on demonstration by the licensee of good cause.

This confirmatory order is effective 20 days after the date of its issuance.

For further details with respect to this confirmatory order, see the staff's safety evaluation contained in a letter dated January 5, 2016 (ADAMS Accession Nos. ML14260A166 and ML14260A151), which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents stored in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

In accordance with 10 CFR 2.202, any other person adversely affected by this order may submit an answer to this order within 20 days of its publication in the *Federal Register*. In addition, any other person adversely affected by this order may request a hearing on this order within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and must include a statement of good cause for the extension.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this order should be sustained.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (published at 72 FR 49139, on August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, the participant should contact the Office of the Secretary (at least 10 days before the filing deadline) by e-mail to [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov) or by telephone at (301) 415-1677 to (1) request a digital ID certificate, which allows the participants (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission,"



which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site to file documents, but should note that the NRC's E-Filing system does not support unlisted software and that the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's Web-based online submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be Portable Document Format (PDF) documents in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time on the due date. On receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any

others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request or petition to intervene is filed so that they can obtain access to the filed documents through the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call to (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m. eastern time, Monday through Friday, excluding Government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First Class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by First Class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service on depositing the document

with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, available to the public at <http://ehd1.nrc.gov/ehd/>, unless they are excluded under an order of the Commission or by the presiding officer. Participants are requested not to include personally private information such as social security numbers, home addresses, or home phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing or of written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this order without further order or proceedings. If an extension of time for

requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 5<sup>th</sup> day of January 2016.

FOR THE NUCLEAR REGULATORY COMMISSION.

A handwritten signature in black ink, appearing to read 'W M Dean', with a long horizontal flourish extending to the right.

William M. Dean, Director,  
Office of Nuclear Reactor Regulation.

B. Hanson

- 2 -

The confirmatory order contained in Enclosure 3 has been forwarded to the Office of the Federal Register for publication.

Sincerely,

*/RA/*

William M. Dean, Director  
Office of Nuclear Reactor Regulation

Docket Nos. 50-244 and 72-67

Enclosures:

- 1. Amendment No. 120 to DPR-18
- 2. Safety Evaluation
- 3. Confirmatory Order

cc: Listserv

Mr. Joseph E. Pacher, Vice President  
 Exelon Generation Company, LLC  
 R. E. Ginna Nuclear Power Plant  
 1503 Lake Road  
 Ontario, NY 14519

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**ADAMS Accession No Package: ML14260A140**

**Cover Letter/Amendment : ML14260A151**

**Safety Evaluation: ML14260A166**

**Order: ML15176A256**

**Order Consent/Waiver: ML14260A201 \*by memo**

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DATE	12/31/2015	2/4/2015	1/5/ 2016	

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