

NUCLEAR REGULATORY COMMISSION

Docket No. 50-461

Exelon Generation Company, LLC

Clinton Power Station, Unit 1

Exemption

I. Background.

Exelon Generation Company, LLC (Exelon, the licensee), holds Facility Operating License No. NPF-62, which authorizes operation of the Clinton Power Station, Unit 1 (CPS), a boiling-water reactor facility, located in Dewitt County, Illinois. The license, among other things, subjects the facility to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The current operating license for CPS expires on April 17, 2027.

By letter dated November 8, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18312A139), Exelon requested an exemption to allow Exelon to submit a license renewal application for CPS at least 3 years prior to the expiration of the existing license and, if found to be sufficient by the NRC, still receive timely renewal protection under Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.109(b). 10 CFR 2.109(b) provides timely renewal protection to licensees that submit sufficient license renewal applications at least 5 years before the expiration of the existing license. In its application, Exelon informed the NRC that the economic viability of continued operation of CPS beyond the current expiration date of its NRC license is uncertain. According to Exelon, due to continuing and significant changes in the economic and legislative environments that materially affect continued CPS operation, Exelon will not be in a position to make a reasonable and sound business decision 5 years prior to the expiration of the CPS

license as to whether to pursue license renewal. Exelon contends that allowing it to make that decision at a later date, when the economic viability of extended CPS operation can be more readily assessed, will result in more efficient use of both Exelon and NRC financial and other resources.

II. Request/Action.

10 CFR 54.17(a) requires that an application for a renewed license be in accordance with Subpart A of 10 CFR, Part 2, which includes 10 CFR 2.109(b). In turn, 10 CFR 2.109(b) states, "If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined." In its letter dated November 8, 2018, Exelon requested an exemption from 10 CFR 54.17(a) to allow Exelon to submit its license renewal application for CPS at least 3 years prior to the expiration of the existing license and still receive timely renewal protection under 2.109(b). 10 CFR 54.15 allows exemptions from the requirements of Part 54 in accordance with 10 CFR 50.12.

III. Discussion.

Under 10 CFR 54.15, exemptions from the requirements of Part 54 are governed by 10 CFR 50.12. 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 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, as defined in 10 CFR 50.12(a)(2). In its application, Exelon stated that three special circumstances apply to its request: 10 CFR 50.12(a)(2)(ii), "[a]pplication 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;” 10 CFR 50.12(a)(2)(iii), “[c]ompliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;” and 10 CFR 50.12(a)(2)(vi), other material circumstances not considered when the regulation was adopted are present, such that granting the exemption is in the public interest.

A. The Exemption is Authorized by Law

This exemption would allow Exelon to submit a license renewal application for CPS at least 3 years prior to the expiration of its existing license and, if sufficient, still receive timely renewal protection under 10 CFR 2.109(b). 10 CFR 2.109 implements Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. §558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109 is the result of a discretionary agency rulemaking and not required by the APA. As stated above, 10 CFR 54.15 allows the NRC to grant exemptions from the requirements of 10 CFR part 54. The NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the APA, or the NRC’s regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for Exelon to submit a sufficient license renewal application and receive timely renewal protection is a scheduling change. The action

does not change the manner in which the plant operates and maintains public health and safety because no additional changes are made as a result of the action. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the license renewal application, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern. Based on the above, the NRC finds that the action does not cause undue risk to public health and safety.

C. The Exemption is Consistent with the Common Defense and Security

The requested exemption to allow for a timely renewal protection deadline of at least 3 years instead of 5 years is a scheduling change. The exemption does not change any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

D. Special Circumstances

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the "timely renewal" provision of Section 9(b) of the APA, 5 U.S.C. §558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The underlying purpose of this "timely renewal" provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with

agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR, Part 54, with associated changes to 10 CFR, Parts 2, 50, and 140, in the *Federal Register* (56 FR 64943). The statement of considerations (SOC) discussed the basis for establishing the latest date for filing license renewal applications and the timely renewal doctrine (56 FR 64962). The SOC stated that:

Because the review of a renewal application will involve a review of many complex technical issues, the NRC estimates that the technical review would take approximately 2 years. Any necessary hearing could likely add an additional year or more. Therefore, in the proposed rule, the Commission modified § 2.109 to require that nuclear power plant operating license renewal applications be submitted at least 3 years prior to their expiration in order to take advantage of the timely renewal doctrine.

No specific comment was received concerning the proposal to add a 3-year provision for the timely renewal provision for license renewal. The current regulations require licensees to submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their operating licenses. The Commission has concluded that, for consistency, the deadline for submittal of a license renewal application should be 5 years prior to the expiration of the current operating license. The timely renewal provisions of §2.109 now reflect the decision that a 5-year time limit is more appropriate.

Thus, the NRC originally estimated that 3 years was needed to review a renewal application and complete any hearing that might be held on the application. The NRC changed its original estimate from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and when they must submit their license renewal application to receive timely renewal protection. The NRC's current schedule for review of license renewal applications is to complete its review and make a decision on issuing the renewed license within 22 months of receipt without a hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's

review, the hearing process, and issuance of a decision on issuing the license within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a complete and sufficient application being submitted and on the review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstances of CPS.

It should be noted, among the key matters central to resolution of issues associated with renewal of the operating license and also to the application of the "timely renewal" doctrine is the submission of a sufficient application. Completing the license renewal review process on schedule is, of course, dependent on licensee cooperation in meeting established schedules for submittal of any additional information required by the NRC, and the resolution of all issues demonstrating that issuance of a renewed license is warranted.

E. Environmental Considerations

The NRC's approval of the exemption to scheduling requirements belongs to a category of actions that the NRC, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve certain categories of requirements, including scheduling requirements.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the license renewal application at least 3 years before the expiration of the existing license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exemption constitutes a change to the schedule by which Exelon must submit its license renewal application and still receive timely renewal protection and, therefore, is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source

term (i.e., potential amount of radiation in an accident) nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident.

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions.

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 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 NRC hereby grants Exelon Generation Company, LLC, a one-time exemption for CPS, from 10 CFR 54.17(a) to allow the submittal of the CPS license renewal application at least 3 years remaining prior to expiration of the operating license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b).

Dated at Rockville, Maryland, this 11th day of July 2019.

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber, Deputy Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.