



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

June 25, 2020

EA-14-009

Mr. Bryan C. Hanson
Senior Vice President
Exelon Generation Company, LLC
President and Chief Nuclear Officer
Exelon Nuclear
4300 Winfield Road
Warrenville, IL 60555

**SUBJECT: WITHDRAWAL OF CONFIRMATORY ORDER EA-14-009 FOR JAMES A.
FITZPATRICK NUCLEAR POWER PLANT**

Dear Mr. Hanson:

This letter documents the U.S. Nuclear Regulatory Commission (NRC) staff's response to Exelon Generation Company's, LLC (Exelon's) request for rescission of a Confirmatory Order (Order) EA-14-009 for James A. FitzPatrick Nuclear Power Plant (FitzPatrick). As described in the enclosure to this letter, the NRC staff determined that Exelon demonstrated good cause in its request to withdraw the Order. Therefore, the NRC is withdrawing Order EA-14-009 for FitzPatrick.

On December 3, 2014, the NRC issued Order EA-14-009 to Entergy Operations, Inc., Entergy Nuclear Operations, Inc., and Entergy Nuclear Generation Company (collectively called Entergy), available in the NRC Public Document Room and from the NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML14339A167. The Order was issued as a result of a successful Alternative Dispute Resolution (ADR) mediation session resulting in a settlement agreement related to an apparent violation involving the willful actions of an unidentified security officer that occurred at Entergy's River Bend Station on March 18, 2012. The Order confirmed the commitments made by Entergy as part of the settlement agreement and was issued to all power reactor licensees owned and operated by Entergy, which included FitzPatrick.

Subsequent to the issuance of the Order, by letter dated March 1, 2017 (ADAMS Accession No. ML17041A196), the NRC approved the direct transfer of the Fitzpatrick Renewed Facility Operating License DPR-59 from Entergy to Exelon. Because the Order included provisions that the agreement is binding upon successors and assigns of Entergy, the Order and associated settlement agreement were binding upon Exelon as the new owner and operator of the FitzPatrick site. The Order states that the Regional Administrator, Region IV, may relax or rescind any of the Order conditions upon demonstration of good cause.

By letter dated March 25, 2020, Exelon requested rescission of the Order for FitzPatrick (ADAMS Accession No. ML20085H976). In the request letter, Exelon stated that the additional

security requirements that Entergy established in response to Order EA-14-009 were redundant to standards implemented as part of Exelon's fleet security program. Exelon provided a detailed comparison between the FitzPatrick site-specific procedure (maintained only to comply with the Order) to the requirements specified in the Exelon fleet procedure used at all other Exelon nuclear facilities.

The NRC Enforcement Manual, Part I, Section 2.7.8 (ADAMS Accession No. ML19274C228), states that where the NRC exercises its inherent discretionary authority to not enforce the terms of an order, the appropriate action is withdrawal, not rescission, of the Order. Notwithstanding this terminology difference, the NRC staff reviewed and evaluated the March 25, 2020, request from Exelon against the criteria provided in the NRC Enforcement Manual.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, if you choose to submit one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's ADAMS accessible from the Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions regarding this matter, you may contact Mr. Jeremy Groom of my staff at 817-200-1182.

Sincerely,

Scott A. Morris
Regional Administrator

Docket No. 05000333
License No. DPR-59

Enclosure: as stated

cc:
David T. Gudger
Sr. Manager, Licensing
Exelon Generation Company, LLC

WITHDRAWAL OF CONFIRMATORY ORDER EA-14-009 FOR JAMES A. FITZPATRICK
NUCLEAR POWER PLANT – DATED JUNE 25, 2020

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Response_Final.docx

ADAMS ACCESSION NUMBER: **ML20177A540**

☒SUNSI Review:

ADAMS: ☐ Non-Publicly Available

☒Non-Sensitive

Keyword:

By: JGK

☒ Yes ☐ No

☒ Publicly Available

☐ Sensitive

OFFICE	SES/ACES	TL:ACES	RC	C:DRS/PSB1	D:DRS	DRS/PSB/ BC:RI	NRR:D/DORL
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DATE	06/05/20	06/04/20	06/08/20	06/05/20	6/25/20	6/10/20	6/17/20
OFFICE	NSIR	OGC	OE	DRA	RA		
NAME	SPrasad	RCarpenter	GWilson	AVegel	SMorris		
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DATE	6/17/20	6/18/20	6/23/20	06/25/20	06/25/20		

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EVALUATION OF REQUEST TO WITHDRAW CONFIRMATORY ORDER EA-14-009 FOR THE JAMES A. FITZPATRICK NUCLEAR POWER PLANT

The NRC staff reviewed the March 25, 2020, request to withdraw Confirmatory Order (Order) EA-14-009 for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). Order Condition M.4 includes provisions that makes the agreement binding upon successors and assigns of Entergy Operations, Inc., Entergy Nuclear Operations, Inc., and Entergy Nuclear Generation Company (collectively called Entergy). Accordingly, the Order was binding upon Exelon Generation Company, LLC (Exelon) following the NRC's March 1, 2017, approval of the direct transfer of the FitzPatrick Renewed Operating License DPR-59 from Entergy to Exelon. The Order states that the Regional Administrator, Region IV, may relax or rescind any of the Order conditions upon demonstration of good cause.

In reviewing Exelon's request, the NRC staff noted that the purpose of the Order was to ensure compliance with the NRC's regulations regarding the control of safeguards information (SGI), in accordance with 10 CFR 73.21 and 10 CFR 73.22. Measures to ensure appropriate controls of SGI were included as Order Condition C. Further, the Order was issued following a successful alternative dispute resolution (ADR) session conducted in response to a willful violation of NRC requirements. Several conditions of the Order were included to promote a commitment to compliance (Order Condition E) and decorum standards (Order Condition F). These Order conditions were included as additional measures to prevent future instances of deliberate misconduct.

The NRC staff developed the following conclusions regarding Exelon's March 25, 2020, request using applicable criteria found in the NRC Enforcement Manual, Section 2.7.8.

1. *Acceptable level of quality and safety.* In its March 25, 2020, submittal to the NRC, Exelon stated that the basis to request the withdrawal of the Order for the FitzPatrick site was to facilitate better alignment of that site's SGI control process with the program requirements and measures of the Exelon fleet security program. To demonstrate that acceptable levels of quality and safety would be maintained if the NRC granted its request to withdraw Order EA-14-009, Exelon provided a comparison of the site-specific and fleet SGI control procedures. Specifically, Exelon provided a comparison of procedure SY-JF-101-106, "Safeguard Information Control," currently maintained only at the Fitzpatrick site to implement the Order requirements to the Exelon fleet procedure SY-AA-101-106, "Control and Classification of Safeguards Information (SGI) and Sensitive Unclassified Non-Safeguards Information (SUNSI)," which is used at all other Exelon sites. The NRC staff reviewed the comparison of procedure SY-JF-101-106 to procedure SY-AA-101-106 to independently determine if acceptable levels of quality and safety would be maintained if Order EA-14-009 was withdrawn for the Fitzpatrick site.

Regarding Order Condition C, the NRC staff found that both procedure SY-JF-101-106 and procedure SY-AA-101-106, include requirements for: (a) control and storage of security safeguards documents, (b) controls on accessing SGI materials on a mobile device, (c) control of SGI material, and (d) SGI inventory guidance. While each procedure has subtle differences in wording for the measures used to accomplish (a)-(d) above, the requirements of both procedures serve the same intent and would be equally effective.

Regarding Order Condition E, both procedure SY-JF-101-106 and procedure SY-AA-101-106, include statements related to the commitment to compliance to SGI

Enclosure

controls. While each procedure has subtle differences in wording, both require an annual “read and sign,” that affirms each SGI user’s commitment to compliance.

Further, NRC Region IV staff consulted a senior physical security inspector from NRC Region I who had knowledge of FitzPatrick’s physical protection program and associated protection of SGI program. The Region I senior physical security inspector provided perspectives on Exelon’s implementing procedures, current and past performance in the area of protection and control of SGI and other technical insights. Exelon’s fleet procedure SY-AA-101-106, was adequate to ensure continued acceptable quality performance and safety, including instances when SGI was in use and located outside of a security storage container.

Regarding Order Condition F, on May 26, 2020, Exelon made available supplemental information to the NRC regarding standards in place to ensure a professional environment for the security department if the Order is withdrawn. Specifically, Exelon staff made available to the NRC staff a copy of procedure SY-AA-101-124, “Operations of the Security Control Centers,” Revision 15, which is a fleet procedure that includes standards for etiquette, professionalism, and watch standing practices. Further, Exelon made available a copy of annual training assigned, in part, to each nuclear security officer titled, “Exelon Corporation – Code of Business Conduct.” The NRC staff reviewed procedure SY-AA-101-124 along with the Exelon code of business conduct training and found that these documents provide clear standards and expectations regarding the need to follow all safety and security laws and regulations, as well as Exelon policies, procedures and established practices. The NRC determined that together, procedure SY-AA-101-124 and the Exelon code of business conduct training established a reasonable alternative to Order Condition F that provide for acceptable levels of quality and safety.

Based on the above, the NRC staff concluded that Exelon’s fleet procedures described above provided an acceptable level of quality and safety to meet the requirements of Order EA-14-009 at FitzPatrick.

2. *Temporary relief.* The NRC staff determined that this criteria from the Enforcement Manual is not applicable to Exelon’s March 25, 2020, request as Exelon is not seeking temporary relief.
3. *Subsequent rulemaking.* The NRC staff determined that this criteria from the Enforcement Manual is not applicable to Exelon’s March 25, 2020, request as the Order has not been rendered unnecessary by subsequent rulemaking.
4. *Underlying purpose.* The underlying purpose of the Order was to ensure compliance with the NRC’s regulations regarding the control of SGI, in accordance with 10 CFR 73.21 and 10 CFR 73.22. Measures to ensure appropriate controls of SGI were included as Order Condition C. Additional Order Conditions (Conditions E and F) were included to promote a commitment to compliance and decorum standards within the security department because the violation associated with SGI control was associated with willful actions of an unidentified security officer.

As described in Item 1 above, the NRC staff determined that Exelon’s March 25, 2020, request, and additional information made available on May 26, 2020, included alternative proposals that will maintain an acceptable level of quality and safety to ensure:

1) appropriate SGI controls, 2) commitment to compliance and 3) decorum standards. Therefore, the NRC staff determined that the underlying purpose of Order EA-14-009 would continue to be met using the alternative proposals provided by Exelon at FitzPatrick.

5. *Material circumstance change.* The original intent in issuing an order to the Entergy fleet was to promote consistency regarding SGI controls, security commitment to compliance and decorum standards, across all sites owned and operated by Entergy. The NRC staff determined that the March 1, 2017, direct transfer of the FitzPatrick Renewed Facility Operating License DPR-59 from Entergy to Exelon represented a material circumstance change that warrants consideration of Exelon's request to withdraw the Order.

The NRC staff determined that because Exelon maintains fleet security implementing procedures to ensure consistent application of standards and these procedures include alternative measures that will maintain acceptable levels of quality and safety as discussed in Item 1 above, the Order is unnecessary for Exelon's FitzPatrick site.

In conclusion, the NRC staff determined that Exelon demonstrated good cause in its request to withdraw the Order. Therefore, the NRC is withdrawing Order EA-14-009 for FitzPatrick.