



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

November 6, 2020

Mr. David P. Helker
Sr. Manager, Licensing and
Regulatory Affairs
Exelon Generation Company, LLC
200 Exelon Way
Kennett Square, PA 19348

SUBJECT: PEACH BOTTOM ATOMIC POWER STATION, UNITS 1, 2, AND 3, AND
INDEPENDENT SPENT FUEL STORAGE INSTALLATION – TEMPORARY
EXEMPTION FROM BIENNIAL EMERGENCY PREPAREDNESS EXERCISE
FREQUENCY REQUIREMENTS OF 10 CFR PART 50, APPENDIX E,
SECTION IV.F.2.C (EPID L-2020-LLE-0151 [COVID-19])

Dear Mr. Helker:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the below temporary exemption from specific requirements of Appendix E to Title 10 of the *Code of Federal Regulations* Part 50, Section IV.F.2.c, for Peach Bottom Atomic Power Station (Peach Bottom), Units 1, 2, and 3, and independent spent fuel storage installation (ISFSI). This action is in response to your application dated September 25, 2020, as supplemented by letter dated October 9, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML20269A267 and ML20283A772, respectively) from the Pennsylvania Emergency Management Agency (PEMA) which requested a one-time exemption to the requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c, to exclude the participation of the offsite response organizations (OROs) in the biennial emergency preparedness (EP) exercise for calendar year (CY) 2020.

Exelon Generation Company, LLC (Exelon, the licensee) holds Facility Operating (Possession Only) License No. DPR-12 (decommissioned Unit 1) and Subsequent Renewed Facility Operating License Nos. DPR-44 and DPR-56, which authorize operation of Peach Bottom, Units 2 and 3. The licensee also holds an independent spent fuel storage installation license (License No. 72-29). These licenses are subject to the rules, regulations, and orders of the Commission. The facility consists of two boiling-water reactors located in York County, Pennsylvania.

By letter dated September 25, 2020, Exelon submitted a request for temporary exemption from Appendix E to 10 CFR Part 50, Sections IV.F.2.c, regarding performance of the offsite participation portion of the CY 2020 biennial EP exercise for responsible OROs.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c, state, in part:

Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). Subsequently, the Centers for Disease Control and Prevention (CDC) issued recommendations (e.g., social distancing, limiting assemblies) in an attempt to limit the spread of COVID-19.¹

In your application, you provided the following information:

- The requested exemption supports the continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining) to protect required offsite response organization (ORO) personnel in response to the COVID-19 PHE. These activities are needed to ensure supporting State and local government personnel are isolated from COVID-19 and remain capable of executing the functions of the emergency response organization (ERO), as described in the Peach Bottom Emergency Plan (EP), as well as other non-nuclear health and safety functions for the benefit of the public.
- The ongoing threat of COVID-19 spread has resulted in the inability to safely conduct the December 8, 2020, exercise with full ORO participation. The Commonwealth of Pennsylvania; Chester County, Lancaster County, and York County in Pennsylvania; the State of Maryland; and Cecil County and Harford County in Maryland have communicated to Exelon that the current COVID-19 pandemic response has impacted their ability to prepare for the scheduled Peach Bottom biennial EP exercise and that they are unable to participate in the exercise as currently scheduled. Consequently, Exelon determined it appropriate to request this one-time exemption regarding ORO participation for the CY 2020 Peach Bottom biennial exercise.
- This one-time schedular exemption to exclude participation of the ORO in the biennial EP exercise in CY 2020 supports continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required ERO and ORO personnel in response to the COVID-19 PHE.
- The last biennial EP exercise was conducted on April 17, 2018. Since that time, the licensee has conducted numerous drills, exercises, and other training activities that have exercised its emergency response strategies. As addressed in the exemption request, exercise and drill dates were provided that demonstrated the continuing level of engagement in EP activities for Peach Bottom and the actual and/or simulated participation with the Commonwealth of Pennsylvania, State of Maryland, and supporting plume exposure emergency planning zone counties in Pennsylvania (i.e., Chester, Lancaster, and York) and Maryland (i.e., Cecil and Harford). In addition to exercises and drills performed since the last biennial EP exercise at Peach Bottom, a listing of training that has been accomplished with the Commonwealth of Pennsylvania, the State of Maryland, and supporting organizations was also provided.
- The licensee will continue to conduct drills and exercises, as evidenced by its intent "to conduct the December 8, 2020, EP Exercise as scheduled utilizing Station and Corporate personnel..."

¹ CDC, "How to Protect Yourself and Others," April 18, 2020 (ADAMS Accession No. ML20125A069)

- The licensee made a reasonable effort to reschedule the exercise during CY 2020 with the respective OROs but was unsuccessful. By letter dated April 20, 2020 (ADAMS Accession No. ML20111A170), Exelon formally informed the NRC of its plans to reschedule its biennial EP exercise for Peach Bottom planned for April 21, 2020, to sometime later in the fourth quarter of CY 2020 due to the COVID-19 PHE. The biennial EP exercise was subsequently scheduled for December 8, 2020. During the interim period, Exelon continued to work with its OROs in preparing for the biennial EP exercise. However, the continued response to COVID-19 PHE by the OROs is impacting its ability to effectively prepare and participate in the biennial EP exercise at Peach Bottom scheduled for December 8, 2020. In addition, letters from the Commonwealth of Pennsylvania, the State of Maryland, and supporting Counties from those states communicated to Exelon and the Federal Emergency Management Agency (FEMA) to specifically request the cancellation of the biennial EP exercise due to the COVID-19 PHE. Accordingly, Exelon submitted this exemption request to exclude OROs from its December 8, 2020 biennial EP exercise.
- The licensee also noted that its submittal contained documentation that included information from the affected OROs that (1) they would not be impacted in a manner that would adversely affect its ability to maintain response capability to support emergency response activities to actual nuclear power plant radiological emergencies, (2) they are in agreement with the requested exemption, and (3) they are committed to maintaining their radiological emergency plans.

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC 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 the public health and safety, and are consistent with the common defense and security, and (2) special circumstances are present.

The NRC staff determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The regulations in 10 CFR Part 50, Appendix E, IV.F.2.c, concern requirements for licensees to conduct biennial EP exercises at their facilities. No new accident precursors are created by allowing the licensee to postpone the offsite participation portion of the biennial EP exercise from CY 2020 until CY 2022. Thus, the probability and consequences of postulated accidents are not increased. In addition, the requested exemption for a one-time change to the biennial EP exercise schedule has no relation to security issues. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Special circumstances, per 10 CFR 50.12, that apply to the requested exemption include:

- a. 10 CFR 50.12(a)(2)(ii): "Application 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."

The regulation in 10 CFR Part 50, Appendix E, Section, IV.F.2.c, requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. The underlying purpose of these requirements is to ensure that the emergency organization personnel are familiar with their duties and to identify and correct any weaknesses that may exist in the licensee's EP Program. The underlying purpose of Section IV.F.2.c is also to test and maintain interfaces among affected State and local authorities and the licensee.

The NRC recognizes that even if a licensee were to be exempted from the requirement to conduct an offsite biennial exercise in CY 2020, in the event of an actual radiological emergency, offsite authorities would respond. Offsite authorities in all states are currently demonstrating response capabilities, including making decisions on protective actions for the public, in response to the COVID-19 PHE.² Additionally, the NRC continues to monitor U.S. nuclear power plants to ensure that they operate safely during the COVID-19 PHE and that defense in depth is maintained to prevent accidents from happening and to mitigate their consequences.

The NRC has consulted with FEMA on the readiness of OROs and the use of this information to inform the NRC decision to grant exemptions, per the NRC/FEMA Memorandum of Understanding.³ FEMA has recently performed assessments of all offsite emergency response plan capabilities and has concluded that offsite radiological EP remains adequate to provide reasonable assurance that appropriate measures can and will be taken to protect the health and safety of the public in a radiological emergency during the COVID-19 PHE.⁴ FEMA monitors response and preparedness capabilities of the OROs to ensure that the response to the current PHE does not adversely impact the ability to protect the public health and safety in the event of a radiological emergency at a commercial nuclear power plant. Exercises are just one of the many methods by which FEMA assesses and validates the adequacy of ORO plans and the ability to implement those plans. In accordance with current FEMA program guidance,⁵ FEMA has alternative means of conducting these assessments.

Based on the above, granting a request for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022, would allow State and local governments to continue to focus their essential response efforts on the COVID-19 PHE. This exemption would apply only to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, and would not address 44 CFR Part 350. An exemption from Section IV.F.2.c would not prevent a State or local authority, at its discretion, from demonstrating key skills in drills and exercises for the 8-year exercise cycle or prevent a State or local authority from conducting the exercise in CY 2020 or CY 2021.

² COVID-19 Resources for State Leaders, Executive Orders – By State, accessed August 12, 2020, <https://web.csg.org/covid19/executive-orders/>

³ "Memorandum of Understanding (MOU) Between the Department of Homeland Security/Federal Emergency Management Agency and Nuclear Regulatory Commission Regarding Radiological Response, Planning and Preparedness," December 7, 2015 (ADAMS Accession No. ML15344A371)

⁴ FEMA Preparedness Assessments (ADAMS Accession Nos. ML20164A275, ML20174A603, ML20141L795, ML20170B043, ML20170B171, ML20167A175, ML20164A038, ML20154K696, ML20154K617, ML20150A110, and ML20162A056)

⁵ Program Manual, Radiological Emergency Preparedness, FEMA P-1028, December 2019, accessed August 12, 2020, https://www.fema.gov/media-library-data/1577108409695-4e49a0a56c8c62695dcc301272a1eda7/FEMA_REP_Program_Manual_Dec_2019.pdf

The licensee stated that it has conducted drills, exercises, and other training activities that have exercised its emergency response strategies since the last evaluated biennial EP exercise, and that State and local OROs have participated.

Therefore, the NRC staff finds that the underlying purposes of 10 CFR Part 50, Appendix E, Section, IV.F.2.c, are met with the rescheduled offsite biennial EP exercise to occur in CY 2022.

- b. 10 CFR 50.12(a)(2)(v): “The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.”

The Pennsylvania Emergency Management Agency (PEMA), Maryland Emergency Management Agency (MEMA), and supporting Counties from Pennsylvania (i.e., Chester, Lancaster, and York) and Maryland (i.e., Cecil and Harford) have communicated to Exelon and to the Federal Emergency Management Agency (FEMA) that the current COVID-19 pandemic response has impacted their ability to prepare for the scheduled Peach Bottom EP Exercise and that they are unable to participate in the EP Exercise as currently scheduled (i.e., December 8, 2020).

PEMA and MEMA will continue to work with FEMA in support of further relief for offsite participation, as appropriate, under FEMA’s requirements in 44 CFR 350.9.

Therefore, granting the requested exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite participation in the CY 2020 biennial EP exercise for Peach Bottom, with the next performance of the exercise to be no later than the end of CY 2022, would provide only temporary relief from the applicable regulation, and the licensee has made good faith efforts to comply with the regulation.

Based on the above, the NRC staff finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements.

The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, does not change any of the assumptions or limits used in the licensee’s safety analyses, and does not introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the licensee’s technical specifications or by the regulations in 10 CFR Part 20, “Standards for Protection Against Radiation.” There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the

exemption does not alter any of the assumptions or limits in the licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Granting the requested exemption does not impact NRC findings of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Peach Bottom. In the statement of considerations for the standards to be applied when considering whether to grant exemptions ("Specific Exemptions; Clarification of Standards, Final Rule," 50 FR 50764, dated December 12, 1985), the Commission stated:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

The NRC staff has determined that in accordance with 10 CFR 50.12, the requested 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; and that special circumstances are present. Therefore, the NRC hereby grants the licensee's request for a one-time schedular exemption from the requirements for the biennial EP exercise in 10 CFR Part 50, Appendix E, Section IV.F.2.c.

This exemption expires on December 31, 2022, or when the offsite biennial EP exercise is performed in CY 2022, whichever occurs first.

If you have any questions, please contact the Peach Bottom project manager, Jennifer Tobin, at 301-415-2328 or by e-mail to Jennifer.Tobin@nrc.gov.

Sincerely,

Craig G. Erlanger, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-171, 50-277,
50-278, and 72-29

cc: Listserv

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