

10 CFR 26.9

RS-21-026

February 20, 2021

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

LaSalle County Station, Units 1 and 2  
Renewed Facility Operating License Nos. NPF-11 and NPF-18  
NRC Docket Nos. 50-373 and 50-374

Subject: Request for Exemption from Pre-Access Drug and Alcohol Testing requirements in 10 CFR 26.65

In accordance with 10 CFR 26.9, "Specific exemptions," Exelon Generation Company, LLC (EGC), is requesting U.S. Nuclear Regulatory Commission (NRC) approval of a one-time exemption from the requirements of 10 CFR 26.65, "Pre-access drug and alcohol testing," subsection (d)(1)(ii), "Authorization reinstatement after an interruption of more than 30 days," and subsection (e)(2)(iii)(B), "Authorization reinstatement after an interruption of 30 or fewer days," for LaSalle County Station (LSCS).

Specifically, EGC requests a one-time exemption from the 5 business days requirements outlined in 10 CFR 26.65(d)(1)(ii) and 10 CFR 26.65(e)(2)(iii)(B) that require licensees to verify drug test results are negative within 5 business days of specimen collection or administratively withdraw authorization until the drug test results are received. EGC requests an additional 10 business days, thus extending the 5 business days requirement to 15 business days. EGC is requesting this exemption due to specimen shipments being affected by regional delays due to winter storms which have caused substantial service disruptions at the FedEx Express service hub in Memphis, Tennessee. Following collection, EGC shipped the specimens in a timely manner, however, the service disruption, which is outside of EGC's and our testing laboratory's control, prevents the delivery of the specimens to the laboratory for testing within the required 5 business days.

LSCS has in-processed over 400 supplemental personnel during the week of February 15, 2021 to support LSCS, Unit 2 refueling outage, which begins on February 22, 2021. In accordance with 10 CFR 26.65 requirements and without an exemption, EGC is required to administratively withdraw authorization of those personnel affected by this delay. This will impact the LSCS, Unit 2 refueling outage timeline and likely delay its restoration as a critical power source to the nation's electric power grid.

The attachment to this letter provides the detailed basis and justification for this exemption request and addresses the exemption requirements of 10 CFR 26.9.

EGC requests approval of this exemption by February 22, 2021. EGC requests that this exemption be valid for the specimen shipments currently in transit and any subsequent shipments made through February 26, 2021 to allow time to arrange alternative shipping, if possible. This exemption request contains no new regulatory commitments.

Should you have any questions or require additional information regarding this submittal, please contact Mr. Jason Taken at (630)-806-9804.

Respectfully,



Dwi Murray  
Sr. Manager – Licensing  
Exelon Generation Company, LLC

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cc: Regional Administrator – NRC Region III  
NRC Senior Resident Inspector- LaSalle County Station  
NRC Project Manager, NRR – LaSalle County Station  
Illinois Emergency Management Agency – Division of Nuclear Safety

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**EXEMPTION REQUEST**

**I. SPECIFIC EXEMPTION REQUEST**

In accordance with 10 CFR 26.9, "Specific exemptions," Exelon Generation Company, LLC (EGC), is requesting U.S. Nuclear Regulatory Commission (NRC) approval of a one-time exemption from the requirements of 10 CFR 26.65, "Pre-access drug and alcohol testing," subsection (d)(1)(ii), "Authorization reinstatement after an interruption of more than 30 days," and subsection (e)(2)(iii)(B), "Authorization reinstatement after an interruption of 30 or fewer days," for LaSalle County Station (LSCS).

Specifically, EGC requests a one-time exemption from the 5 business days requirements outlined in 10 CFR 26.65(d)(1)(ii) and 10 CFR 26.65(e)(2)(iii)(B) that require licensees to verify drug test results are negative within 5 business days of specimen collection or administratively withdraw authorization until the drug test results are received. EGC requests an additional 10 business days, thus extending the 5 business days requirement to 15 business days. EGC is requesting this exemption due to specimen shipments being affected by regional delays due to winter storms which have caused substantial service disruptions at the FedEx Express service hub in Memphis, Tennessee. LSCS, Unit 2 refueling outage begins on February 22, 2021. In accordance with 10 CFR 26.65 requirements and without an exemption, EGC is required to administratively withdraw authorization of those personnel affected by this delay. This will impact the LSCS, Unit 2 refueling outage timeline and likely delay its restoration as a critical power source to the nation's electric power grid.

EGC requests that this exemption be valid for the specimen shipments currently in transit and any subsequent shipments made through February 26, 2021 to allow time to arrange alternative shipping, if possible.

**II. BASIS FOR EXEMPTION REQUEST**

During the week of February 15, 2021, in preparation for the refueling outage, LSCS conducted in-processing for supplemental workers to assist in timely and safe completion of its refueling outage. In order to provide adequate staffing levels commensurate with nuclear safety, supplemental workers are brought on site to assist in the refueling outage testing and maintenance efforts. During in-processing, specimen collections are obtained from these supplemental workers consistent with the requirements outlined in 10 CFR 26, "Fitness For Duty Programs." Subsequent to specimen collection, EGC personnel ship the collected specimens via national couriers to testing labs. Due to winter storms throughout the region, FedEx Express reported that the hazardous conditions created by those winter storms have caused substantial service disruptions at the FedEx Express Hub in Memphis, Tennessee.<sup>1</sup> The delay in these shipments will cause EGC to not meet the 5 business days requirement in 10 CFR 26.65(d)(1)(ii) and 10 CFR 26.65(e)(2)(iii)(B), requiring EGC to withdraw authorization from key personnel causing a high likelihood of delay in LSCS refueling outage completion and restoration of LSCS, Unit 2 to the nation's electric power grid.

EGC's historical shipping practices regarding specimen collections are consistent with the practices that took place during the subject timeframe considered in this exemption request.

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<sup>1</sup> <https://www.fedex.com/en-us/service-alerts.html>, last visited February 20, 2021.

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No unnecessary delay on behalf of EGC was encountered. Historically, shipments arrive next business day, and specimen processing begins. EGC identified six shipments<sup>2</sup> currently experiencing these delays for LSCS, none of which have reached the laboratory as of the time of this request.

With respect to the impact on EGC's supplemental workers, EGC identified approximately 435 supplemental worker specimens currently impacted by this delay. These individuals are currently badged at LSCS and performing work consistent with 10 CFR 26 requirements. Without this exemption, EGC will withdraw unescorted access for those individuals as required by current regulations, severely limiting the number of available supplemental workers to safely and efficiently perform testing and maintenance activities, and potentially challenging the ability of LSCS to supply the nation's electric power grid when scheduled.

Of these 435 supplemental workers, approximately 56 supplemental workers are Tesco contractors supporting maintenance activities, approximately 29 supplemental workers are BHI employees supporting radiation protection activities, approximately 154 supplemental workers are GE contractors supporting non-destructive evaluation, turbine services, reactor services, and under vessel activities, and approximately 161 supplemental workers are Allied Power Services contractors supporting maintenance activities. Additional supplemental workers are supporting other plant activities.

EGC has made, and will continue to make, good faith efforts to consistently work with FedEx to track specimen shipments, obtain estimated arrival times, and work diligently with Medtox Laboratories, Inc. to ensure the specimens are analyzed in a timely manner consistent with 10 CFR Part 26 requirements and this exemption.

**Justification for the Exemption**

In accordance with 10 CFR 26.9, the NRC is authorized to grant exemptions from certain requirements of the 10 CFR 26 regulations upon determining that the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

**1. This exemption request is authorized by law:**

In accordance with 10 CFR 26.9, the NRC may grant an exemption from the requirements of 10 CFR 26 if the exemption is authorized by law. The 5-day requirements subject to this exemption request are not required by statute and the proposed exemption is authorized by law in that no other prohibition of law exists to preclude the activities which would be authorized by the exemption. Granting of the request does not result in a violation of the Atomic Energy Act of 1954, as amended.

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<sup>2</sup> Shipment dates were February 15, 2021, February 16, 2021, and February 17, 2021 for the six shipments identified.

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**2. This exemption request will not endanger life or property or the common defense and security:**

The requested exemption is a one-time exemption to allow temporary relief from access authorization and fitness-for-duty requirements of 10 CFR 26 as outlined in Section I of this letter. The requested exemption is specific to the requirements to obtain negative test results within 5 business days for an individual, who has previously obtained unescorted access, or suspend access until a negative test result has been obtained. The requested change allows for an additional 10 business days to obtain a negative test result before suspending access. This change in timing does not impact or alter any of the other requirements for granting unescorted access.

10 CFR 26.65 subsections (d)(1)(ii) and (e)(2)(iii)(B) permit the licensee or other entity to maintain the individual's authorization for 5 business days after reinstatement without receiving the drug test results. However, if the licensee or other entity does not receive negative drug test results within 5 business days of reinstating the individual's authorization, the rule requires the licensee or other entity to administratively withdraw the individual's authorization until negative drug test results are received. These requirements ensure that individuals whose authorization has been interrupted are subject to pre-access drug and alcohol testing to deter substance abuse and to detect any current substance abuse problem. Consistent with the regulation, the provisions authorize reinstatement because of these individuals' recent successful histories of maintaining authorization under Part 26.

All other access authorization and fitness-for-duty (FFD) requirements continue to be met. All personnel with unescorted access are subject to training requirements involving insider mitigation, background investigations, criminal history background checks, psychological testing and evaluation, positive identification, credit history, foreign travel history, and specific nuclear training requirements. During their time onsite, they are also subject to the behavioral observation program (BOP) which includes continuous behavior observation along with annual reviews. Individuals are still subject to the requirements of 10 CFR 26.31(c) which include random, for cause, post event and follow-up drug testing, if applicable. Lastly, individuals are also required to self-report certain legal actions. These requirements will not be altered by approval of this exemption. Further, the individuals impacted by this exemption request have previously demonstrated their compliance with 10 CFR 26 requirements related to abstaining from improper drug use and have demonstrated an understanding of the FFD program requirements. Upon receipt of the specimen at the laboratory, all required testing will be performed and acceptance criteria adhered to. The individuals covered by this exemption have previously been granted unescorted access by EGC or other licensees.

The requested exemption is related to access authorization and fitness-for-duty requirements and does not impact the LSCS physical and cyber security plans or defensive strategies. EGC will continue to meet all other access authorization and fitness-for-duty requirements not listed in Section I of this letter. The combination of EGC BOP program, FFD program, and the recent successful histories of the affected individuals in maintaining authorization under Part 26

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provides assurance that the requested additional 10 business days will not adversely impact the execution of the EGC FFD program and compliance with 10 CFR 26 requirements.

Based on the above, EGC has concluded that granting this one-time exemption will not endanger life or property or the common defense and security.

**3. This exemption request is otherwise in the public interest:**

The U.S. Departments of Homeland Security and Energy have stated in their guidance that the electric grid and nuclear plant operation make up the nation's critical infrastructure similar to the medical, food, communications, and other critical industries.<sup>3</sup> This exemption provides supplemental workers continued access to LSCS for a limited time prior to obtaining negative drug test results. The approximately 435 supplemental workers impacted by this exemption request are essential in supporting testing and maintenance activities necessary to ensure continued safe and reliable operation of LSCS, Unit 2 following the refueling outage. Execution of the refueling outage as scheduled and without delays is necessary to return LSCS, Unit 2 to subsequent operation to support its critical infrastructure role of ensuring required power is available during the remaining winter months. This timely refueling outage execution prevents overlap with other generation resource outages planned for the northern Illinois area.

Therefore, removing access to supplemental personnel due to compliance with the 5-day negative testing requirement of 10 CFR 26.65 and the potential delays in returning LSCS, Unit 2 to operation within the scheduled timeframe would not serve the public interest during the current Public Health Emergency (COVID-19) and winter months, and would not support the public need for providing safe and reliable source of baseload electrical power.

This exemption serves the public interest by allowing LSCS, Unit 2, to complete the refueling outage within the scheduled timeframe, thus allowing a reliable source of power to be restored to the nation's electric power grid without further delay.

### **III. ENVIRONMENTAL ASSESSMENT**

EGC requests an exemption from certain access authorization and fitness-for-duty requirements of 10 CFR 26 at LSCS. EGC has determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in the individual or cumulative public or occupational radiation exposure; that there is no construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Furthermore, the requirements

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<sup>3</sup> "Memorandum on identification of essential critical infrastructure workers during COVID-19 response," from Christopher C. Krebs, Director of Cybersecurity and Infrastructure Security Agency (CISA), dated March 19, 2020 (<https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>).

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for which an exemption is being requested involve access authorization and fitness-for-duty requirements. Accordingly, the proposed exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the proposed exemption.

**IV. CONCLUSION**

As demonstrated above, EGC concludes that this exemption request is in accordance with the criteria of 10 CFR 26.9. Specifically, this requested exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.