



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

February 22, 2021

Mr. David P. Rhoades
Senior Vice President
Exelon Generation Company, LLC
President and Chief Nuclear Officer (CNO)
Exelon Nuclear
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: LASALLE COUNTY STATION, UNITS 1 AND 2 – APPROVAL OF EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR PART 26, “FITNESS FOR DUTY PROGRAMS” (EPID L-2020-LLE-0011)

Dear Mr. Rhoades:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) approves the below temporary exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, “Fitness for Duty Programs,” for LaSalle County Station, Units 1 and 2 (LSCS). This action is in response to the Exelon Generation Company, LLC (Exelon, the licensee) application dated February 20, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21051A006), which requested a one-time exemption for LSCS from the requirements of 10 CFR 26.65, “Pre-access drug and alcohol testing,” paragraphs (d)(1)(ii) and (e)(2)(iii)(B), to maintain authorization for individuals assigned work activities necessary for the timely completion of a refueling and maintenance outage. Exelon provided additional information in a supplemental letter dated February 21, 2021 (ADAMS Accession No. ML21052A001).

According to the application, during the week of February 15, 2021, severe winter weather caused substantial service disruptions at the FedEx® Express shipping service hub in Memphis, TN. The weather delayed shipments and delivery of drug and alcohol test specimens for approximately 435 outage workers granted temporary access to LSCS. This delay may result in fitness-for-duty (FFD) authorization being removed for these individuals and Exelon’s inability to timely restore LSCS to the electrical grid to serve the public and the Nation’s economic infrastructure.

Exemption from Certain 10 CFR Part 26 Requirements and NRC Safety Assessment

10 CFR 26.65, “Pre-access drug and alcohol testing”

The regulations at 10 CFR 26.65 include the NRC’s fitness-for-duty (FFD) requirements concerning pre-access testing for granting FFD authorization to an individual who either has never held FFD authorization or whose last period of FFD authorization was terminated favorably and no potentially disqualifying FFD information has been discovered or disclosed that was not previously reviewed and resolved by a licensee under the requirements of this subpart. Sections 26.65(d) and 26.65(e) of the NRC’s regulations describe the requirements for FFD

authorization reinstatement after an interruption of more than 30 days and after an interruption of 30 or fewer days, respectively. In particular, 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B) require the licensee to verify that the drug test results are negative within 5 business days of specimen collection or administratively withdraw FFD authorization until the drug test results are received.

The purpose of these requirements is to grant FFD authorization to individuals to conduct those duties and responsibilities or maintain the types of access described in 10 CFR 26.4, “FFD program applicability to categories of individuals,” who have not yet received drug testing results from a laboratory certified by the U.S. Department of Health and Human Services (HHS) for a period not to exceed 5 business days from specimen collection.

For both 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B), Exelon requested “an additional 10 business days, thus extending the 5 business days requirement to 15 business days.” In its submittals, the licensee provided the following information:

- The licensee will document the implementation and completion of the requested exemption within its corrective action program.
- The licensee has commenced the re-collection of specimens from the affected individuals in an effort to meet the NRC requirements.
- The licensee will communicate with its fleet regarding the importance of the behavioral observation program (BOP), including re-emphasizing the importance of “see something, say something.” Site-wide communications will occur and be reinforced by department managers or designees at LSCS to reinforce the understanding of the BOP and FFD program requirements
- The licensee requests that the exemption remain in effect 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.
- Following collection, Exelon shipped the specimens in a timely manner, however, the service disruption, which is outside of Exelon’s and its testing laboratory’s control, prevents the delivery of the specimens to the laboratory for testing within the required 5 business days.
- An additional 10 business days is necessary to ensure that all required testing can be completed. The additional 10 business days is based on allowing 5 business days for delivery of the delayed shipments. If within these first 5 business days of the requested exemption the shipments do not progress to their destination, the remaining 5 additional business days allow Exelon to conduct re-testing of the affected individuals and ship the new specimens to the laboratory for testing.
- Exelon has explored alternative shipping options and the use of a back-up HHS-certified laboratory. Exelon determined that use of an alternate shipping courier is not feasible because the affected shipments are delayed in-transit. Exelon determined that use of a back-up laboratory for the delayed shipments would not resolve the noncompliance with 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B) because the capabilities of the primary laboratory are unaffected by the shipment delays.

- Should the initial shipments not be received by the testing laboratory by Friday, February 26, 2021, Exelon will re-test the affected individuals and send new specimens for testing such that their results would be received by Exelon by the end of the requested 10 additional business days.

The NRC finds Exelon's basis for exemption from these requirements to be reasonable. The granting of FFD authorization in accordance with 10 CFR Part 26, Subpart C, "Granting and Maintaining Authorization," provides reasonable assurance that individuals are fit for duty and trustworthy and reliable to safely and competently perform those assigned duties and responsibilities making them subject to 10 CFR Part 26. This subpart establishes requirements in a graded manner based on risk, thereby providing flexibility to licensees and other entities. For example, specific to 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B), the NRC stated in its Statement of Considerations for the 2008 10 CFR Part 26 Final Rule (73 FR 17041; March 31, 2008):

The requirements for pre-access testing of these [reinstate] individuals are less stringent than the requirements for initial authorization and an authorization update. The provision relaxes the pre-access testing requirements in [the] former [rule], which mandated that all applicants for authorization must be subject to pre-access testing within 60 days before granting authorization. Less stringent pre-access testing requirements are appropriate because these individuals have met the rigorous criteria for initial authorization, established a recent record of successfully maintaining authorization under Part 26, and had only a short break in authorization.

[Section 26.65(d)(1)(ii) does] not unduly delay authorization reinstatement because these individuals' recent successful histories of maintaining authorization under Part 26 indicate that they are at low risk of engaging in substance abuse.

Exelon's assessment of risk in its submittals is consistent with the NRC's risk assessment in the 2008 Final Rule. The licensee stated that "[a]ll of the affected individuals have previously been granted Unescorted Access Authorization (UAA) or Unescorted Access (UA) within nuclear facilities and are still considered trustworthy and reliable. The affected individuals have completed all of the required training and had previously and currently maintain and meet access authorization requirements." The licensee also informed the NRC that only two affected individuals are in a 10 CFR Part 26 follow-up testing program and that Exelon frequently works with the companies that provided the supplemental workers whose specimens are affected by the shipping delays. This helps to provide assurance that the affected individuals can be trusted and relied upon to safely and competently perform assigned duties and responsibilities.

The flexibility inherent in 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B) is also justified because of the defense-in-depth afforded by the regulatory framework established by the Commission's requirements that helps provide reasonable assurance of public health and safety, common defense and security, and protection of the environment. Independent of the exemption request, the 10 CFR Part 26 framework requires licensee adjudication of any potentially disqualifying information, completion of a suitable inquiry and employment check, and the successful completion of FFD-related training and negative alcohol test for each individual. The individual must also have recently been subject to a 10 CFR Part 26 FFD program. In addition to 10 CFR Part 26, programmatic defense-in-depth is provided by licensee implementation of its

insider mitigation and access authorization programs under 10 CFR 73.55(b)(9) and 10 CFR 73.56, respectively. Based upon the risk assessment and the underlying purpose of these requirements, the NRC finds that Exelon's request for an additional 10 days is reasonable.

The shipping delays caused by winter storms were beyond Exelon's control. Based on Exelon's extensive operating experience in shipping specimens from its in-processing facility in Wellington, IL, to the HHS-certified laboratory (MedTox) in Minneapolis, MN, the licensee had no credible evidence that the affected shipments would be delayed. As stated in the application, "[h]istorically, shipments arrive [the] next business day, and specimen processing begins," and the licensee identified "six shipments currently experiencing [shipping] delays . . . none of which have reached the laboratory as of the time of this request." Furthermore, Exelon implemented reasonable actions to help in the timely transport of these specimens. For example, the NRC was informed verbally by Exelon that the licensee had paid for expedited shipping and the application states that Exelon "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." As stated in its supplemental letter dated February 21, 2021, Exelon "has confirmed with the primary laboratory [MedTox] that the shipment delay will not result in delayed specimen processing once specimen shipments are received."

Approval of the Exemption

Pursuant to 10 CFR 26.9, "Specific exemptions," upon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of 10 CFR Part 26 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC 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 finds that the requested exemption is authorized by law.

The NRC determined that the requested exemption will not endanger life or property or the common defense and security. Consistent with the underlying purpose of the requirements in 10 CFR 26.65, the temporary exemption from 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B) enables Exelon to maintain FFD authorization for approximately 435 individuals who are refueling the nuclear reactor and maintaining and surveilling structures, systems, and components necessary for the unit to safely start up and generate electricity, while the licensee awaits shipment of the affected specimens from the FedEx hub in Memphis to the MedTox laboratory in Minneapolis. The risk incurred by a reasonable increase in the time allowed for Exelon to maintain authorization for affected individuals is mitigated by the limited scope of the exemption, the prior work experience of all the affected individuals under a 10 CFR Part 26 testing program, the relative short duration of the exemption period, the Exelon controls, and existing NRC requirements. The Exelon controls will help ensure that LSCS management and staff will continue to meet the FFD performance objectives described in 10 CFR 26.23, "Performance objectives." Furthermore, the defense-in-depth afforded by licensee implementation of the FFD and access authorization requirements provides reasonable assurance that the affected individuals are fit for duty and trustworthy and reliable to be granted authorization necessary to be afforded unescorted access to protected areas and sensitive

material and information. Lastly, licensee work controls and implementation of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," requirements, including the quality assurance, reactor vessel surveillance, and primary containment leakage requirements in Appendices B, H, and J of 10 CFR Part 50, respectively, provide assurance that plant structures, systems, and components important to safety will be properly restored to an operable status to support safe reactor start up and operation. Therefore, the NRC finds that the requested exemption will not endanger life or property or the common defense and security.

The NRC determined that the requested exemption is in the public interest. The requested exemption is reasonable because the impacts of extreme weather events were not considered during the 10 CFR Part 26 rulemakings in 1989 (54 FR 24468; June 7, 1989) and 2008 (73 FR 16966; March 31, 2008) and because the delays in shipping were beyond the licensee's control. Refueling of a commercial nuclear power plant and conducting certain types of maintenance, surveillance, and testing can only be accomplished with the reactor shutdown and not generating electricity. Therefore, unit outages contribute to plant safety and security. However, unit outages must be planned and scheduled with local and state regulators to help ensure that the loss of the nuclear-generated electricity does not adversely affect the stability of the electrical grid and its capacity to serve the public and the Nation's economic infrastructure. Temporary exemption from 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B), with the associated licensee controls and existing NRC requirements, provides reasonable assurance that the affected individuals can safely and competently perform assigned duties and responsibilities. The importance of this temporary exemption is illustrated by Exelon's determination that "[t]he individuals who have delayed specimens represent approximately 30 percent of the total population of supplemental workers who have been or will be in-processed to support [LSCS]." Therefore, the NRC finds that providing Exelon with a reasonable increase in flexibility to maintain a relatively large contracted workforce onsite to perform and timely complete outage-related activities, support a subsequent reactor start-up, and generate electricity is in the public interest.

Environmental Considerations

NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25), and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(I), that the requirements from which the exemption is sought involve other requirements of an administrative, managerial, or organizational nature. 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 the 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 the exemption does not affect the 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 the 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 this exemption request.

Conclusions

The NRC has determined that pursuant to 10 CFR 26.9, the 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. Therefore, the NRC hereby grants the licensee's request to exempt LSCS from the requirements in 10 CFR 26.65(d)(1)(ii) and 10 CFR 26.65(e)(2)(iii)(B), as controlled and discussed above. The exemption is effective upon issuance and will remain in effect 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.

If you have any questions, please contact the LSCS Project Manager, Bhalchandra K. Vaidya, at 301-415-3308 or by e-mail to Bhalchandra.Vaidya@nrc.gov.

Sincerely,

David J. Wrona, Acting Deputy Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-373 and 50-374

cc: Listserv

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