

In the Matter of:)	
)	
)	NRC-2021-0099
EXELON GENERATION COMPANY,)	
LLC; EXELON CORPORATION;)	Docket Nos.: STN 50-456, STN 50-457, 72-
EXELON FITZPATRICK, LLC; NINE)	73, STN 50-454, STN 50-455, 72-68, 50-317,
MILE POINT NUCLEAR STATION,)	50-318, 72-8, 50-461, 72-1046, 50-10, 50-237,
LLC; R. E. GINNA NUCLEAR POWER)	50-249, 72-37, 50-333, 72-12, 50-373, 50-374,
PLANT, LLC; and CALVERT CLIFFS)	72-70, 50-352, 50-353, 72-65, 50-220, 50-410,
NUCLEAR POWER PLANT, LLC)	72-1036, 50-171, 50-277, 50-278, 72-29, 50-
)	254, 50-265, 72-53, 50-244, 72-67, 50-272,
(Braidwood Station, Units 1 and 2; Byron)	50-311, 72-48, 50-289, 72-77, 50-295, 50-304,
Station, Unit Nos. 1 and 2; Calvert Cliffs)	and 72-1037 -LT
Nuclear Power Plant, Units 1 and 2;)	
Clinton Power Station, Unit No. 1;)	May 20, 2021
Dresden Nuclear Power Station, Units 1,)	
2, and 3; James A. FitzPatrick Nuclear)	
Power Plant; LaSalle County Station,)	
Units 1 and 2; Limerick Generating)	
Station, Units 1 and 2; Nine Mile Point)	
Nuclear Station, Units 1 and 2; Peach)	
Bottom Atomic Power Station, Units 1, 2,)	
and 3; Quad Cities Nuclear Power Station,)	
Units 1 and 2; R. E. Ginna Nuclear Power)	
Plant; Salem Nuclear Generating Station,)	
Unit Nos. 1 and 2; Three Mile Island)	
Nuclear Station, Unit 1; Zion Nuclear)	
Power Station, Units 1 and 2; and)	
Associated Independent Spent Fuel)	
Storage Installations))	

1

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.307 and 2.323, the Environmental Law & Policy Center (“ELPC”) hereby requests a 50-day extension, until July 13, 2021, of the deadline for filing hearing requests on the Exelon Generation Company, LLC’s (“Exelon”), application for indirect transfer of their facility operating licenses, materials license, and general licenses. The NRC’s hearing notice sets the current deadline of May 24, 2021. 86 Fed. Reg. 23,437 (May 3, 2021). ELPC respectfully submits that pursuant to 10 C.F.R. § 2.307, “good cause” exists to extend the deadline for ELPC and all other potential parties, because the unprecedented scale and scope of Exelon’s request will have a significant impact on communities and the environment in Illinois and beyond, and constitutes “unavoidable circumstances” that necessitate a longer time frame for preparation of hearing requests. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

II. GOOD CAUSE EXISTS TO EXTEND THE HEARING REQUEST DEADLINE FOR ELPC AND ALL OTHER POTENTIAL PARTIES

The scale and scope of Exelon’s request are unprecedented and will have a significant impact on communities and the environment in Illinois and beyond. Exelon and its wholly-owned subsidiary Exelon Generation own the largest fleet of commercial nuclear power plants in the United States. Exelon seeks approval to transfer all of its ownership interests in these nuclear power plants a currently non-existent holding company. The series of transactions that will create “SpinCo” – a new corporate entity – is complicated and opaque. Yet the eventual outcome appears straightforward: Exelon will shed any and all liabilities and decommissioning obligations for its nuclear fleet by parking them with a new legal entity for which Exelon bears no future responsibility.

The NRC’s Staff recognizes that:

Specifically, the application, as supplemented, requests that the NRC consent to the indirect transfer of control of the licenses to support a proposed transaction in which Exelon Corporation will transfer its 100 percent ownership of EGC to a newly-created subsidiary that will then be spun off to Exelon Corporation shareholders, becoming EGC's new ultimate parent company. **Once the spin transaction is completed, the new ultimate parent company, EGC, and its subsidiaries will no longer be affiliated with Exelon Corporation.**

Letter from Blake A. Purnell, NRC Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation to Mr. David P. Rhoades, Senior Vice President, Exelon Generation Company, dated April 28, 2021 (emphasis added).

Exelon requests the NRC's approval to transfer the operating licenses for the largest fleet of nuclear plants in the United States – more than 18,000 MW of capacity from reactors in multiple states – to a newly formed entity that, after the “Spin Transaction” takes place, will no longer be affiliated with Exelon corporation. (Application at 4). Notably, “SpinCo” will not be a rate-regulated, traditional utility business. Exelon Corporation – current parent of Exelon Generation Company and the parental guarantor and backstop for Exelon Generation Company's decommissioning obligations – has a more diverse portfolio of assets available including several distribution utility companies. The need for interested parties to thoroughly understand and, if necessary, submit admissible contentions to the NRC in a Petition for Hearing, is fundamental for a transaction of this magnitude.

Exelon's request raises particular concerns because it has publicly threatened that some of these nuclear plants will not continue to operate for the remaining period allowed under the operating license. For example, Exelon has stated that it will retire the Byron 1 & 2 and Dresden 2&3 nuclear power plants, located in Illinois, in 2021, because these plants “face revenue shortfalls in the hundreds of millions of dollars.”¹ Exelon has also stated that Braidwood and LaSalle nuclear

¹ Exelon Newsroom, <https://www.exeloncorp.com/newsroom/exelon-generation-to-retire-illinois%E2%80%99-byron-and-dresden-nuclear-plants-in-2021> (last accessed May 20, 2021).

power plants are “at high risk for premature closure.”² Exelon’s SEC filings acknowledge that the decision to early retire the Byron and Dresden nuclear power plants will have “ongoing annual financial impacts stemming from shortening the expected economic useful lives of these nuclear plants primarily related to accelerated depreciation of plant assets (including any ARC), accelerated amortization of nuclear fuel, and changes in ARO accretion expense associated with the changes in decommissioning timing and cost assumptions to reflect an earlier retirement date.”³ How these ongoing financial impacts will be absorbed and resolved by “SpinCo” deserves close scrutiny by interested parties, whose analysis will benefit the NRC in developing a complete record in this docket.

A detailed public review and careful consideration of the license application and the accompanying and referenced reports – comprising thousands of pages – cannot take place in a short, 20-day time span. While Exelon’s Application may have been provided on ADAMS several months ago, public notice was not made in the Federal Register until May 4, 2021. Interested parties, who rely on publication in the Federal Register for public notice of this type of Application, cannot reasonably be expected to evaluate Exelon’s application in any meaningful way in the 20-day period provided under the notice. The NRC’s administrative rules provide for extensions of time for precisely these situations; good cause exists to provide interested parties with additional time to review Exelon’s request to extract itself from future decommissioning obligations for the nation’s largest fleet of nuclear plants.

² S&P Global Market Intelligence, *A look at Exelon’s 4 economically challenged nuclear plants in Illinois*, <https://www.spglobal.com/marketintelligence/en/news-insights/blog/corporate-credit-risk-trends-in-developing-markets-a-probability-of-default-perspective> (last accessed May 20, 2021).

³ Exelon SEC 10-Q for 1st Quarter of 2021, ending March 31, 2021, at page 76.

Adequately responding in a constructive and meaningful fashion to an extensive set of documents will require a significant investment of time and energy. ELPC and its experts have already expended time to begin the review of the application and related materials. Much more time is needed. Exelon asserts that its financial demonstrations assume the early retirement of at-risk units, but ELPC does not have sufficient time to evaluate and test this assertion. ELPC must review the financial assurances for decommissioning, financial qualifications for operations, and proposed corporate structure, potentially consulting with experts on these types of corporate transactions to determine how obligations and liabilities will be shifted. Twenty days is insufficient time to gather and thoroughly review all the relevant documents to constructively address whether this application meets the NRC's requirements. Review of these documents and information by ELPC and its experts will "assist in developing a sound record" in the proceedings. 10 C.F.R. § 2.309(c)(1)(viii).

III. CONCLUSION

ELPC has important interests in this matter. ELPC has members who live near the licensed reactors who will be directly impacted by the weakening of financial assurances resulting from the proposed license transfer. If the organizations are not allowed to request a hearing and intervene, substantial injury to its members and to the overall public interest may result. A demonstration of standing will be made with the intervention petition if or when it is filed.

A thorough and complete response cannot be accomplished by May 24, 2021. In light of the volume of material to be analyzed, and the need to obtain the assistance of experts, we urge a 50-day extension of the current deadline to Tuesday, July 13, 2021.

DATED: May 20, 2021

Respectfully submitted,
/Signed (electronically) by/

Margrethe Kearney
Counsel for ELPC
Environmental Law & Policy Center
35 E. Wacker Drive, Ste. 1600
Chicago, IL 60601
(312) 673-6500
mkearney@elpc.org