

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.307 and 2.323, the People of the State of Illinois, by Attorney General Kwame Raoul, hereby request a 50-day extension, until July 13, 2021, of the deadline for filing requests to intervene, and hearing requests and until July 23, 2021 for filing Comments 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 for hearing requests and comments must be filed by June 3, 2021. 86 Fed. Reg. 23,437 (May 3, 2021). The People of Illinois respectfully submit that pursuant to 10 C.F.R. § 2.307, "good cause" exists to extend the deadline for all other potential parties, including representatives of the People of the States in which the plants subject to this request are located, because Exelon's request will have a significant impact on communities, the environment, and the continued safe operation and decommissioning of the nuclear power plants 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 ALL POTENTIAL PARTIES

The scale and scope of Exelon's request are unprecedented and will have a significant impact on communities, the environment, and the continued safe operation of the nuclear power plants in Illinois and beyond. Exelon and its wholly-owned subsidiary Exelon Generation currently 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 holding company that currently does not exist. There will be a series of transactions that will create "SpinCo" – a new corporate entity. The process is

complicated and opaque and the final result is currently unknown. However, it is apparent that Exelon intends to shed its liabilities and decommissioning obligations as well as its responsibility to operate its nuclear fleet by placing them with a new legal entity for which the existing Exelon Corporation bears no future responsibility. As the NRC's Staff stated: "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.

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). Exelon Corporation currently is the parental guarantor and backstop for Exelon Generation Company's decommissioning obligations and has a diverse portfolio of assets available including several rate regulated distribution utility companies. The People of Illinois need additional time to gather relevant information, analyze the effect of the requested change, and, if necessary, submit comments or a request for a hearing with contentions to the NRC.

Exelon's request raises unique concerns for Illinois because it has publicly threatened to close some of the nuclear plants that are the subject of this request in the near future. 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 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 There are ongoing discussions in the Illinois General Assembly about potential subsidies for a number of the nuclear plants in Illinois, and the result of those discussions and their effect on the future of the Illinois nuclear plants are not expected to be known until after May 31, 2021, the last day of the legislative session.⁴ It is critical for the People of Illinois to have sufficient time to assess how the new, un-named owner of these plants will address these financial and other challenges so that the NRC can have a sufficient record.

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

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).

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.

⁴ <https://www.chicagobusiness.com/utilities/how-much-ratepayer-support-enough-come-parent-exelon>; see also <https://muckrack.com/steve-daniels/articles>.

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.

The Office of the Illinois Attorney General, as well as the Attorney General Offices in other states where Exelon nuclear plants are located, have been operating under COVID-19 restrictions for more than 12 months, making communications among offices more difficult and time-consuming. Further, in order to constructively and meaningfully review and respond to the documents associated with the request will require a significant investment of time and energy. The People must review the financial assurances for decommissioning, financial qualifications for operations, and proposed corporate structure, retain experts on these types of corporate transactions and operations to determine how the reorganized company will meet its obligations and liabilities. Twenty days is simply insufficient to gather and review all the relevant documents necessary to constructively address whether this application meets the NRC's requirements. Intervention, participation, review of these documents and information, and request for a hearing or submission of comments by the People of Illinois will "assist in developing a sound record" in the proceedings and support this request for additional time. 10 C.F.R. § 2.309(c)(1)(viii).

III. CONCLUSION

The People of Illinois have vital interest in the future of the nuclear power plants within their borders and in the continued safe operation of the facilities both to produce power and during decommissioning. If the People of Illinois are not allowed to request a hearing and

intervene or file comments, substantial injury to Illinois and its residents 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 and Comments cannot be completed by June 3, 2021. In light of the volume of material to be analyzed, the need to obtain the assistance of experts, and the necessity to work with other state Attorneys General, the People request no less than a 50-day extension of the current deadline to Tuesday, July 13, 2021 for a Petition for Hearing and to July 23, 2021 for Comments.

DATED: May 20, 2021

Respectfully submitted,
/Signed (electronically) by/

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