

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

Docket Nos.:

EXELON GENERATION COMPANY, LLC; EXELON CORPORATION; EXELON FITZPATRICK, LLC;	)	STN 50-456, STN 50-457,
NINE MILE POINT NUCLEAR STATION, LLC;	)	72-73, STN 50-454,
R. E. GINNA NUCLEAR POWER PLANT, LLC; and	)	STN 50-455, 72-68, 50-317,
CALVERT CLIFFS NUCLEAR POWER PLANT, LLC	)	50-318, 72-8, 50-461,
	)	72-1046, 50-10, 50-237,
	)	50-249, 72-37, 50-333,
(Braidwood Station, Units 1 and 2; Byron Station, Unit	)	72-12, 50-373, 50-374,
Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1	)	72-70, 50-352, 50-353,
and 2; Clinton Power Station, Unit No. 1; Dresden	)	72-65, 50-220, 50-410,
Nuclear Power Station, Units 1, 2, and 3; James A.	)	72-1036, 50-171, 50-277,
FitzPatrick Nuclear Power Plant; LaSalle County Station,	)	50-278, 72-29, 50-254,
Units 1 and 2; Limerick Generating Station, Units 1 and 2;	)	50-265, 72-53, 50-244,
Nine Mile Point Nuclear Station, Units 1 and 2; Peach	)	72-67, 50-272, 50-311,
Bottom Atomic Power Station, Units 1, 2, and 3; Quad	)	72-48, 50-289, 72-77,
Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna	)	50-295, 50-304, and
Nuclear Power Plant; Salem Nuclear Generating Station,	)	72-1037 -LT
Unit Nos. 1 and 2; Three Mile Island Nuclear Station,)	
Unit 1; Zion Nuclear Power Station, Units 1 and 2; and	)	May 21, 2021
Associated Independent Spent Fuel Storage Installations))	

**APPLICANTS' ANSWER OPPOSING ENVIRONMENTAL LAW & POLICY
CENTER'S MOTION TO EXTEND HEARING REQUEST DEADLINE**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323(c), 2.1325(b), and 2.307, Exelon Generation Company, LLC (“Exelon Generation”), on behalf of itself and Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC; R. E. Ginna Nuclear Power Plant, LLC; and Calvert Cliffs Nuclear Power Plant, LLC (collectively, “Applicants”) submit this Answer opposing the Motion to Extend Deadline for All Hearing Requests Regarding Exelon Generation Company, LLC’s Facility Operating License Transfer Application (“Motion”) filed by the

Environmental Law & Policy Center (“ELPC”) on May 20, 2021.¹ ELPC’s Motion pertains to Applicants’ February 25, 2021, license transfer application (“LTA”), which seeks an indirect transfer of the above-captioned licenses and associated regulatory approvals.² As explained in the Hearing Opportunity Notice for this proceeding, hearing requests and petitions to intervene are currently due on May 24, 2021.³ Now, on the eve of the deadline, the Motion seeks a 50-day extension—*i.e.*, until July 13, 2021.

As discussed further below, ELPC has not satisfied the “good cause” standard applicable to its Motion. If granted, the extension would provide ELPC a total of 134 days since the LTA became publicly available in which to file a hearing request. That is more than *six times greater* than the 20-day review period codified in NRC regulations.⁴ ELPC claims more time is needed due to the alleged “unprecedented scale and scope” of the LTA, its desire to review other unspecified documents, and its general inability to complete a review in the allotted time. As explained below, none of these presents the “unavoidable and extreme” circumstances needed to justify an adjudicatory extension request. Moreover, ELPC’s Motion fails to comply with multiple procedural requirements. These defects are dispositive and require that the Motion be summarily rejected. For any or all of these many reasons, the Motion should be denied.

¹ Environmental Law & Policy Center’s Motion to Extend Deadline for All Hearing Requests Regarding Exelon Generation Company, LLC’s Facility Operating License Transfer Application (May 20, 2021).

² Letter from J. Bradley Fewell, Exelon Generation Company, LLC, to NRC Document Control Desk, “Application for Order Approving License Transfers and Proposed Conforming License Amendments,” (Feb. 25, 2021) (ML21057A273) (Non-Proprietary Version) (“LTA”).

³ Consideration of Approval of Transfer of Licenses and Conforming Amendments, 86 Fed. Reg. 23,437 (May 3, 2021) (“Hearing Opportunity Notice”).

⁴ See 10 C.F.R. § 2.309(b)(1).

II. THE MOTION SHOULD BE DENIED ON PROCEDURAL GROUNDS

As detailed below, there are at least three overlapping and dispositive procedural defects that require denial of the Motion. First, it is untimely. Second, ELPC failed to consult prior to filing the Motion. And third, ELPC's counsel failed to file a notice of appearance. The Motion should be denied for any or all of these procedural reasons.

A. The Motion Is Untimely Under 10 C.F.R. § 2.323

The Motion is subject to the NRC's procedural rule for general motions at 10 C.F.R. § 2.323.⁵ This regulation specifies that "[a]ll motions . . . must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises."⁶ The Motion fails to satisfy this requirement and should be rejected accordingly.

The occurrences and circumstances from which the Motion arises are: (1) the public availability of the LTA on March 1, 2021,⁷ and (2) the NRC's May 3, 2021 Hearing Opportunity Notice. Accordingly, pursuant to the 10-day timeliness requirement in 10 C.F.R. § 2.323(a)(2), motions purporting to challenge these occurrences and circumstances were due no later than May 13, 2021. The Motion was submitted on May 20, 2021. Thus, it is untimely.

"This procedural default alone suffices to justify rejection of [the filing] in its entirety."⁸ The Commission's "general policy has been to enforce [filing deadlines] *strictly*."⁹ Even *pro se* petitioners are not excused from "strict" compliance with filing deadlines because they are

⁵ 10 C.F.R. § 2.323(a)(1) ("the term 'all motions' includes any motion except § 2.309 motions for new or amended contentions filed after the deadline.").

⁶ *Id.* § 2.323(a)(2).

⁷ See LTA (ADAMS properties, noting public availability date of Mar. 1, 2021).

⁸ *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 201 (1998).

⁹ *Id.* at 202 (internal citations omitted) (emphasis added).

“basic” procedural requirements that are “simple to understand.”¹⁰ Here, ELPC is represented by counsel and has previously participated in other NRC licensing proceedings.¹¹ ELPC identifies no reason it could not have complied with this deadline. More broadly, the Commission “historically [has] excused a failure to meet [filing] deadlines only in ‘extraordinary and unanticipated circumstances.’”¹² ELPC identifies no such circumstances here. Accordingly, the Motion should be summarily rejected as untimely pursuant to 10 C.F.R. § 2.323(a)(2).

B. ELPC Failed to Consult on the Motion as Required by 10 C.F.R. § 2.323

The NRC’s rules require that movants consult with the other parties before filing motions and include a corresponding certification in the motion.¹³ Failure to do so is dispositive and *requires* that the motion be denied; the regulations are clear that the denial is *not* discretionary. As mandated by 10 C.F.R. § 2.323(b), “[a] motion must be rejected if it does not include [the required] certification.”¹⁴ Here, ELPC neither consulted the Applicants nor included the required certification. Thus, the Motion must be denied on this ground alone.

C. ELPC’s Counsel Failed to File a Notice of Appearance and Failed to Establish the Basis of Her Eligibility as a Representative, as Required by 10 C.F.R. § 2.314(b)

As specified in 10 C.F.R. § 2.314(b), “[a]ny person appearing in a representative capacity shall file with the Commission a written notice of appearance.” By filing the Motion on behalf of ELPC, its counsel purported to appear in a representative capacity in this proceeding.

¹⁰ *Id.* at 201, 202.

¹¹ *See, e.g.*, FirstEnergy Nuclear Operating Co. (Beaver Valley Power Station, Units 1 & 2, Davis-Besse Nuclear Power Station, Unit 1, Perry Nuclear Power Plant, Unit 1), The Environmental Law & Policy Center Petition to Intervene and Hearing Request (July 17, 2019) (ML19198A329).

¹² *Yankee*, CLI-98-21, 48 NRC at 202 (citing *Consumers Power Co.* (Midland Plant, Units 1 & 2), ALAB-684, 16 NRC 162, 165 n.3 (1982)).

¹³ 10 C.F.R. § 2.323(b).

¹⁴ *Id.* (emphasis added).

However, said counsel failed to file a notice of appearance before doing so. The mandatory nature of the notice of appearance is not merely a frivolous administrative requirement. Rather, it is intended as the vehicle through which an attorney establishes “the basis of his or her eligibility as a representative.”¹⁵ At present, given the lack of this required notice, such basis has not been established. Thus, at a fundamental level, it is unclear whether the Motion is properly before the Commission or whether the filer of the Motion is eligible to serve as a representative.

* * *

Ultimately, there are multiple and overlapping procedural defects that compel the summary rejection of the Motion.

III. THE MOTION SHOULD BE DENIED BECAUSE IT FAILS TO IDENTIFY ANY CIRCUMSTANCES THAT ARE BOTH “UNAVOIDABLE” AND “EXTREME”

Under the NRC’s Rules of Practice and Procedure, extension requests are subject to the rigorous “good cause” standard in 10 C.F.R. § 2.307(a). In this context, an extension may only be granted when warranted by “unavoidable and extreme circumstances”—and even then, only to the extent necessary to overcome the unavoidable delay.¹⁶ Moreover, this standard must be applied even more stringently in license transfer proceedings such as this (as opposed to other types of licensing proceedings) because of the Commission’s legal obligation to render a prompt decision on license transfer applications. For the many reasons detailed below, ELPC has not remotely satisfied the applicable standard here.

¹⁵ *Id.* § 2.314(b).

¹⁶ *Hydro Res., Inc.* (Albuquerque, NM), CLI-99-1, 49 NRC 1, 3 n.2 (1999) (quoting Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998)) (“We caution all parties . . .to pay heed to the guidance in our policy statement that ordinarily only ‘unavoidable and extreme circumstances’ provide sufficient cause to extend filing deadlines”).

A. Subpart M Mandates Rapid License Transfer Proceedings

In issuing 10 C.F.R. Part 2, Subpart M, the Commission provided an expedited hearing process. In the context of an extension request in a license transfer proceeding, any purported demonstration of good cause must be weighed against the Commission's codified policy of timely and efficient license transfer proceedings. On balance, ELPC offers no reason to abandon the Commission's longstanding and well-reasoned policy.

In 1998, the NRC adopted Subpart M of 10 C.F.R. Part 2 (10 C.F.R. §§ 2.1300 to 2.1331), authorizing the use of a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.¹⁷ These rules cover any direct or indirect license transfer for which NRC approval is required.¹⁸ In so doing, the Commission noted that "timely and effective resolution of requests for transfers on the part of the Commission is *essential*."¹⁹ "The procedures [in Subpart M] are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases."²⁰

Here, ELPC seeks a 50-day extension of time to request a hearing on the Application.²¹ That extension, alone, would be more than triple the amount of time codified in Subpart M, from 20 days to 70 days. At bottom, granting this type of extension would be contrary to the

¹⁷ See Streamlined Hearing Process for NRC Approval of License Transfers; Final Rule, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) ("Subpart M Rule"); see also Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2,182, 2,214 (Jan. 14, 2004) (retaining streamlined process under Subpart M for license transfers without substantive changes).

¹⁸ See Subpart M Rule, 63 Fed. Reg. at 66,727.

¹⁹ *Id.* at 66,721 (emphasis added).

²⁰ *Id.* at 66,722.

²¹ Motion at 2.

Commission-recognized “time-sensitivity” of license transfer proceedings. Given the policy considerations that led the Commission to issue Subpart M in the first place—*i.e.*, the need for rapid resolution—and as further detailed below, ELPC’s request is simply not enough.

B. The Unremarkable Length of the LTA Is Not an “Unavoidable and Extreme Circumstance”

ELPC primarily bases its demand for an extension on an unexplained assertion that the LTA somehow is “unprecedented” in “scale and scope.”²² However, ELPC provides neither a factual basis nor a logical explanation for this statement. To the extent ELPC is suggesting that the NRC has never considered a license transfer application involving multiple licenses across different sites, its assertion is demonstrably incorrect. Indeed, the previous license transfer proceeding through which Exelon Generation *first became* an NRC licensee—involving multiple licenses across different sites located in Illinois, New Jersey, and Pennsylvania, including many of the same facilities that are the subject of *this* proceeding—provides highly-relevant precedent and was quite similar in “scale and scope.”²³

Moreover, the LTA at issue in this proceeding consists of a mere 129 pages of content, inclusive of the cover letter, proprietary withholding affidavit, enclosures, and attachments.²⁴ ELPC provides no demonstration that the volume of content in the LTA is an “extreme”

²² *Id.*

²³ See generally 65 Fed. Reg. 49600-49609, 49611-49614 (notices of orders approving transfers of licenses for multiple plants from Commonwealth Edison Co. and PECO to Exelon Generation). ELPC should be aware of this proceeding, given that it submitted comments to the NRC. See, e.g., Letter from D. Rosenblum, ELPC, to A. Vietti-Cook, NRC, “Illinois Power Company; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment and Opportunity for Hearing – 64 Fed. Reg. 45290 (August 19, 1999)” (Nov. 2, 1999) (attachment within ML16229A624) (“1999 ELPC Comment Letter”).

²⁴ See LTA (non-proprietary version). The Applicants also submitted a supplement containing page-by-page markups of the actual licenses to reflect the changes previously described in the LTA. See Letter from D. Helker, Exelon Generation, to NRC Document Control Desk, “Supplemental Information Regarding Application for Order Approving Transfers and Proposed Conforming License Amendments” (Mar. 25, 2021) (ML21084A165).

circumstance. Indeed, the LTA here is relatively succinct compared to the applications at issue in other recent license transfer proceedings, such as those for Three Mile Island Unit 2 (ML19325C600, 244 pages), Indian Point (ML19326B953, 284 pages), and Pilgrim (ML18320A031, 255 pages), and is an order of magnitude smaller than the applications at issue in many other types of licensing proceedings.²⁵

ELPC also claims that it needs time to review other unspecified “reports,” purportedly comprising “thousands of pages.”²⁶ However, ELPC fails to: identify these “reports” with specificity; explain how long these unspecified “reports” have been publicly available, or why ELPC could not have reviewed them previously; or provide any demonstration that such unspecified and previously-available “reports” are within the scope of, or even relevant to, the instant proceeding. Accordingly, these statements provide no basis for an extension.

At bottom, ELPC fails to identify anything extraordinary or unusual about the LTA, much less any circumstance that is “unavoidable and extreme,” to justify the requested extension.

C. “Litigation Burden” Is Not an “Unavoidable and Extreme Circumstance”

ELPC also argues that an extension should be granted because reviewing the LTA “will require a significant investment of time and energy,” whereas ELPC lacks (or does not wish to expend) the resources to complete its review “in a short, 20-day time span.”²⁷ As a general matter, participation in NRC adjudicatory proceedings is entirely voluntary, but it comes with an

²⁵ For example, the subsequent license renewal applications in three recent proceedings contained 2,983 pages, 2,607 pages, and 3,634 pages, respectively. *See* Surry Power Station, Units 1 & 2 – Submittal of Application for Subsequent Renewed Operating Licenses (ML18291A842); Peach Bottom Atomic Power Station, Units 2 & 3 – Application for Subsequent Renewed Operating Licenses (ML18193A689); Turkey Point, Units 3 & 4 – Transmittal of Subsequent License Renewal Application, Rev. 1 (ML18113A132).

²⁶ Motion at 4.

²⁷ *Id.*

ironclad obligation to adhere to established adjudicatory deadlines. The normal litigation burdens and resource commitments required to voluntarily participate in such proceedings do not provide grounds to delay a proceeding. The Commission has long recognized that it “cannot postpone cases for many weeks or months simply because going forward will prove difficult for litigants or their lawyers.”²⁸ This is particularly true in license transfer proceedings, where timely resolution is “essential.” Simply put, the “time and energy” needed to review the LTA is not an unavoidable or extreme circumstance that warrants abandoning the Commission’s codified policy of “expeditious decisionmaking” for license transfer applications.

Furthermore, given its long history of involvement in NRC license transfer proceedings, ELPC and its counsel are well aware of the NRC’s licensing process.²⁹ In fact, ELPC squarely acknowledges that the LTA became publicly available “several months ago.”³⁰ ELPC offers no explanation as to why it could not have started its review when the LTA first became available to the public. Notwithstanding this awareness and ELPC’s history of participation in NRC license transfer proceedings, it appears that ELPC waited 63 days to begin its review—but now wants 50 of those days back. This is not an “unavoidable and extreme” circumstance; rather, it is a textbook example of an “avoidable” circumstance, and certainly does not justify the requested extension.³¹

²⁸ *Consolidated Edison Co. of NY* (Indian Point, Units 1 & 2), CLI-01-8, 53 NRC 225, 229-30 (2001).

²⁹ *See, e.g.*, 1999 ELPC Comment Letter.

³⁰ Motion at 4.

³¹ To the extent ELPC is claiming that the 20-day review period for license transfer applications is unreasonable *per se*, then its statements represent an impermissible challenge to the Commission’s codified conclusion in 10 C.F.R. § 2.309(b)(1) that 20 days provides sufficient time to file hearing requests. Pursuant to 10 C.F.R. § 2.335, challenges to NRC regulations are prohibited in individual adjudicatory proceedings absent an affirmative waiver from the Commission, which ELPC neither sought nor obtained here. Accordingly, such an argument cannot be entertained here.

D. ELPC’s Dubious Claim That It Will “Assist in Developing a Sound Record” Is Irrelevant to the “Unavoidable and Extreme Circumstances” Standard

Finally, ELPC cites “10 C.F.R. § 2.309(c)(1)(viii)” and claims that its review of the LTA and other unspecified “documents and information . . . will ‘assist in developing a sound record’ in the proceedings.”³² As a preliminary matter, 10 C.F.R. § 2.309(c)(1)(viii) is not an actual regulation—it simply does not exist. Moreover, it is unclear how this statement purportedly relates to the legal standard applicable to extension requests—and ELPC offers no explanation. Even if the ability to “assist in developing a sound record” was a relevant consideration, ELPC fails to offer any support for its claim. Indeed, the dubious nature of this conclusory claim is revealed through the factual misrepresentations,³³ and procedural failures,³⁴ associated with its simple, six-page Motion. Even so, the ability to “assist in developing a sound record” is irrelevant to the applicable legal standard here—“unavoidable and extreme circumstances”—and offers no support or justification for the requested extension.

* * *

Even assuming *arguendo* ELPC had filed a timely motion, had consulted and included the required certification, and its counsel had filed the requisite notice of appearance, the Motion should be denied for the simple reason that it fails to demonstrate “good cause” to extend the hearing request deadline in the instant Subpart M license transfer proceeding.

IV. CONCLUSION

The Motion should be denied for any or all of the multiple reasons explained above.

³² *Id.* at 5.

³³ *E.g., id.* at 4 (asserting that the LTA involves “Exelon [Corporation]’s request to extract itself from future decommissioning obligations”). As noted in the LTA, Exelon Generation and its subsidiaries—not Exelon Corporation—currently hold the decommissioning obligations and corresponding trust funds associated with the subject sites. *See, e.g.,* LTA, Encl. 1 at 12. That will not change following the proposed transaction. *Id.*

³⁴ *See supra* Section II.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated at Washington, D.C.
this 21st day of May 2021

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Answer Opposing Environmental Law & Policy Center’s Motion to Extend Hearing Request Deadline” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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