

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

EXELON GENERATION COMPANY, LLC;
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

(Braidwood Station, Units 1 and 2; Byron Station, Unit Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit No. 1; 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 the Associated Independent Spent Fuel Storage Installations)

Docket Nos. STN 50-456, STN 50-457, 72-73, STN 50-454, STN 50-455, 72-68, 50-317, 50-318, 72-8, 50-461, 72-1046, 50-10, 50-237, 50-249, 72-37, 50-333, 72-12, 50-373, 50-374, 72-70, 50-352, 50-353, 72-65, 50-220, 50-410, 72-1036, 50-171, 50-277, 50-278, 72-29, 50-254, 50-265, 72-53, 50-244, 72-67, 50-272, 50-311, 72-48, 50-289, 72-77, 50-295, 50-304, and 72-1037 -LT

PROPOSED ORDER

On June 4, 2021, Exelon Generation Company, LLC, 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 (together, "Applicants"), the People of the State of Illinois by Attorney General Kwame Raoul ("the People of the State of Illinois"), and the Environmental Law and Policy Center ("ELPC") (collectively, "Movants") filed a Joint Motion to Amend Protective Order.¹ Movants have agreed upon provisions for the access,

¹ Joint Motion to Amend Protective Order (June 4, 2021).

use, and disclosure of sensitive, unclassified, non-safeguards information (SUNSI) belonging to Applicants in this proceeding, including proprietary trade secret and confidential commercial financial information.² Movants jointly move for a protective order to memorialize their agreement. The terms of this protective order and associated non-disclosure declarations are as set forth in the enclosure to the June 4, 2021, joint motion. Pursuant to my authority under 10 C.F.R. § 2.346(j), I grant the motion. The terms of the protective order and associated declarations are attached.

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this ____ day of _____ 2021

² See Consideration of Approval of Transfer of Licenses and Conforming Amendments, 86 Fed. Reg. 23,437 (May 3, 2021).

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Bottom Atomic Power Station, Units 1, 2, and
3; Quad Cities Nuclear Power Station, Units 1
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Docket Nos. STN 50-456, STN
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50-244, 72-67, 50-272,
50-311, 72-48, 50-289,
72-77, 50-295, 50-304,
and 72-1037 -LT

[PROPOSED] ORDER

(Amended Protective Order Governing the Disclosure of
Sensitive Unclassified Non-Safeguards Information)

1. This Protective Order shall govern the access, disclosure, and use of all Sensitive Unclassified Non-Safeguards Information ("SUNSI") in this proceeding. For the avoidance of doubt, SUNSI as used in this Protective Order includes proprietary trade secret or confidential commercial or financial information submitted to the U.S. Nuclear Regulatory Commission ("NRC") pursuant to 10 C.F.R. § 2.390. The SUNSI that is subject to this order belongs to Applicants and Applicants have agreed to provide certain SUNSI to Petitioners solely for contention preparation and any subsequent participation in the above-captioned proceeding. This Protective Order shall remain in effect until specifically amended or terminated by the Commission (or an Atomic Safety and Licensing Board ("Board") or Hearing Officer appointed by the Commission).

2. Persons who may receive SUNSI pursuant to this Protective Order are designated the “Authorized Recipients.” No Authorized Recipient shall receive access to SUNSI until the Authorized Recipient executes a copy of the Non-Disclosure Declaration designated as “Attachment 1” to this Order and the Petitioners serve a copy of that executed Non-Disclosure Declaration upon the Electronic Information Exchange (“EIE”) in the above-captioned proceeding. The complete list of Authorized Recipients, and the descriptions of the specific SUNSI to which they are entitled to access under this Protective Order is as follows:
 - a. Eric J. Epstein, representing himself and Three Mile Island Alert, Inc. (“TMIA”), is entitled to access, pursuant to the terms of this Protective Order, unredacted versions of pages 1 and 2 of Enclosure 6A, “Projected Financial Statements for SpinCo Consolidated (Proprietary Version)” to the Applicants’ License Transfer Application, dated February 25, 2021.
 - b. Susan L. Satter, Christopher J. Grant, and David J. Effron, representing the People of the State of Illinois by Attorney General Kwame Raoul (“the People of the State of Illinois”) are entitled to access, pursuant to the terms of this Protective Order, unredacted versions of Enclosure 6A, “Projected Financial Statements for SpinCo Consolidated (Proprietary Version)”; Enclosure 10A, “Alternate Decommissioning Funding Analysis (Proprietary Version)”; and pages 1-2, 11-12, and 21 of Enclosure 8A, “Projected Financial Statements for Nuclear Fleet and Subsidiary Owner LLCs (Proprietary Version)” to the Applicants’ License Transfer Application, dated February 25, 2021.
 - c. Margrethe Kearney, Caroline Cox, Howard Learner, and Peter Bradford, representing the Environmental Law and Policy Center (“ELPC”), are entitled to access, pursuant to the terms of this Protective Order, unredacted versions of Enclosure 6A, “Projected Financial Statements for SpinCo Consolidated (Proprietary Version)”; Enclosure 10A, “Alternate Decommissioning Funding Analysis (Proprietary Version)”; and pages 1-2, 11-12, and 21 of Enclosure 8A, “Projected Financial Statements for Nuclear Fleet and Subsidiary Owner LLCs (Proprietary Version)” to the Applicants’ License Transfer Application, dated February 25, 2021.
 - d. Eric J. Epstein, TMIA, the People of the State of Illinois, or ELPC (collectively, “Petitioners”) may seek authorization for additional or substitute person(s) necessary to participate in this proceeding to be approved as Authorized Recipients by telephoning Tamra Domeyer, Exelon Generation Company, LLC, at (630) 657-3753 or Alex Polonsky, Morgan, Lewis & Bockius LLP, at (202) 739-5830 for the purpose of negotiating a proposed amendment to this Protective Order. If no agreement can be reached, Petitioners may file a motion with the Secretary and addressed to the Commission, that is otherwise compliant with all procedural requirements in 10 C.F.R. Part 2, that requests the issuance of such an amendment.
3. “Authorized Holders” of SUNSI include:
 - a. Authorized Recipients;

- b. Personnel and contractors of the NRC (including the Commission (or Board or Presiding Officer appointed by the Commission) and their staff, and Commission adjudicatory employees as defined by 10 C.F.R. § 2.4); and
 - c. Personnel, contractors, and legal counsel of Applicants and their affiliates.
4. Other than the requirements set forth in this Protective Order for filing documents, the terms of this Protective Order do not apply to NRC personnel and contractors. The NRC's use of SUNSI is governed by NRC regulations and policies as well as other applicable laws.
5. SUNSI shall not be used or reproduced by Authorized Recipients except as necessary for the conduct of this proceeding.
6. SUNSI disclosed to Authorized Recipients pursuant to this Protective Order shall be treated as confidential by Authorized Recipients and shall not be disclosed by Authorized Recipients in any form or in any manner to any person except Authorized Holders. Authorized Recipients may copy and take notes of SUNSI, but such copies and notes become SUNSI subject to the terms of this Protective Order. Authorized Recipients may generate documents containing SUNSI, but such documents are also subject to the terms of this Protective Order. Authorized Recipients shall not reveal, either during or after this proceeding, any SUNSI that is disclosed to Authorized Recipients pursuant to this Protective Order.
7. Marking Documents Containing SUNSI:
 - a. Each document containing SUNSI shall be marked "**CONTAINS PROTECTED INFORMATION – SUBJECT TO PROTECTIVE ORDER**" in a conspicuous manner at the top of every page (including the first page or cover page and transmittal documents) and centered when feasible.
 - b. Electronic storage media (including, but not limited to USB sticks, removable hard drives, CD ROMs, or DVDs) containing SUNSI shall be marked "SUNSI."
 - c. Authorized Recipients shall treat unmarked information that qualifies as SUNSI in accordance with the terms of this Protective Order.
8. Safeguarding SUNSI: Authorized Recipients shall take reasonable precautions to guard against unauthorized disclosure of SUNSI. Among the reasonable precautions, the following measures shall be included:
 - a. Each Authorized Recipient shall establish "controlled environments" in which to protect SUNSI from unauthorized access or disclosure and make use of those controlled environments. A controlled environment is any area or space with adequate physical or procedural controls to protect SUNSI from unauthorized access or disclosure. A controlled environment must satisfy the requirements in paragraphs 8.b to 8.d of this Protective Order.¹

¹ An acceptable controlled environment must prevent unauthorized individuals from accessing, observing, or overhearing SUNSI. Thus, an Authorized Recipient should use a computer to

- b. Each Authorized Recipient shall reasonably ensure that unauthorized individuals cannot access, observe, or overhear SUNSI.
 - c. Each Authorized Recipient shall keep SUNSI under his or her direct control or store SUNSI in a secure location such as a locked filing cabinet, closet, or other storage containers so that only Authorized Holders can observe or access the SUNSI.
 - d. Each Authorized Recipient shall restrict access to electronic information systems containing SUNSI so that only Authorized Holders can observe or access the SUNSI. This obligation includes (but is not limited to) ensuring all electronic files containing SUNSI are encrypted and password protected when not in use; and, if storing such files in a cloud server, ensuring the cloud service provider uses encrypted servers and such files are stored in a password-protected account to which only the Authorized Recipient has access. Each Authorized Recipient shall furthermore take reasonable steps to ensure that electronic information systems containing SUNSI have up to date virus and security protections.
9. SUNSI may be transmitted only to Authorized Holders and only in accordance with the following requirements:
- a. SUNSI shall be electronically transmitted (such as by computer, tablet, smartphone, etc.) in encrypted form.
 - b. SUNSI may be discussed only between or among Authorized Holders.
 - c. SUNSI shall not be transmitted by facsimile.
 - d. SUNSI may be physically transmitted only by the following means:
 - i. by hand delivery from an Authorized Holder to another Authorized Holder, or
 - ii. by U.S. mail or commercial delivery service in an opaque envelope addressed to the Authorized Holder with no external markings to indicate the presence of SUNSI.
10. Documents containing SUNSI shall be filed using the EIE system as follows:
- a. Applicants and Petitioners shall take the necessary actions to obtain a digital certificate and file documents in this proceeding using the EIE system.
 - b. The person filing the document shall choose the option "Non-Public Submission" to prevent the document from being filed in the public docket of the proceeding.

view or process SUNSI only if the computer screen cannot be viewed by unauthorized individuals. Also, viewing or processing SUNSI on a public computer, such as those found in public libraries, would not be acceptable, because unauthorized individuals could access the computer's memory to retrieve the SUNSI.

- c. In the "Submission Comments" portion of the "Non-Public Submission" form, the filer shall include a statement that the filing contains SUNSI.
 - d. Only the Commission (or Board or Presiding Officer appointed by the Commission), NRC Staff counsel, Applicants' counsel, the Office of the Secretary (HearingDocket@nrc.gov), the Office of Commission Appellate Adjudication (OCAEmail@nrc.gov), and other Authorized Holders shall be "checked" as recipients on the electronic service list.
 - e. All non-public filings shall be accompanied by a separate, publicly filed one-page letter that briefly identifies the nature of the non-public filing without including SUNSI.
11. Persons may not reveal SUNSI during any open hearing or conference session. Any person who anticipates discussing SUNSI at any hearing or conference shall notify the Commission (or Board or Presiding Officer appointed by the Commission) and other participants at least 3 business days prior to that hearing or conference that SUNSI may be discussed. During any open hearing or conference, any person who intends to discuss SUNSI shall notify the Commission (or Board or Presiding Officer appointed by the Commission) and the participants that such discussion will contain SUNSI prior to the statement being made. Such statements containing SUNSI may be provided only in closed session as permitted by the Commission (or Board or Presiding Officer appointed by the Commission).
12. All Authorized Recipients shall maintain a log of all copies of materials containing SUNSI within their possession or control, including documents derived from SUNSI.
13. If Petitioners have reason to believe that SUNSI may have been lost or misplaced, or that SUNSI has otherwise become available to unauthorized persons, the Petitioners shall promptly notify the Commission (or Board or Presiding Officer appointed by the Commission) and Applicants' counsel regarding that belief and the reason for that belief by filing a notification through the EIE system as a non-public submission in accordance with paragraphs 10.b to 10.d of this Protective Order, without publicly filing a cover letter as would otherwise be required by paragraph 10.e of this Protective Order. If any Authorized Recipient has reason to believe that SUNSI may have been lost or misplaced, or that SUNSI has otherwise become available to unauthorized persons, that person shall promptly notify the Petitioners of that belief so that Petitioners may make the required notification.
14. If, upon receipt and review of a document containing SUNSI, Petitioners determine that such document does not appear to qualify for protection, Petitioners may file a motion with the Commission, or Board or Hearing Officer appointed by the Commission to adjudicate this proceeding, challenging such designation. The motion shall not contain any SUNSI and shall be filed as a "Public Submission" through the EIE; the challenged documents which contain SUNSI shall be filed as an "In-Camera Submission" through the EIE. In this manner, all parties and the public will know when such a motion is filed, but the SUNSI will continue to be withheld from public disclosure. Absent good cause shown, any such motion shall be filed within 10 days of receipt of the document containing SUNSI. Before presenting any such dispute to the Commission, the parties shall consult and use their best efforts to resolve it, including, but not limited to, the use of redaction. However, no party is obligated to redact documents containing SUNSI.

15. If Petitioners file a motion for disclosure under the preceding paragraph of this Protective Order, pending a ruling by the Commission, the information in question shall continue to be held in confidence as if it were SUNSI. If the Commission rules that a document does not qualify for the asserted SUNSI protection, or that the document should be disclosed without the restrictions of this Protective Order, then the unrestricted use of such documents may begin 61 days after the Commission's decision. If, during such time, Applicants request Commission reconsideration or file an interlocutory judicial appeal, then the SUNSI restrictions previously in place for the information in question shall be extended until such time as the Commission or court rules on the motion or appeal.
16. The Commission (or Board or Presiding Officer appointed by the Commission) may alter or amend this Protective Order and resolve disputes regarding the application of its terms. Petitioners, Applicants, or NRC Staff may seek amendments to this Protective Order or the Non-Disclosure Declaration via motion (see 10 C.F.R. Part 2).
17. SUNSI shall remain available to each Authorized Recipient until the Access Termination Date. The Access Termination Date is the earlier of (a) the date of an order by the Commission (or Board or Presiding Officer appointed by the Commission) rescinding the right of access granted by this Protective Order; (b) the date of an order by the Commission (or Board or Presiding Officer appointed by the Commission) terminating this proceeding for any SUNSI other than that needed to pursue or defend against an appeal of an order by the Commission, or Board or Presiding Officer appointed by the Commission; or (c) the date that an order terminating this proceeding is no longer subject to judicial review for any SUNSI that is needed to pursue or defend against an appeal of an order by the Commission, or Board or Presiding Officer appointed by the Commission.
18. Within 10 days of the Access Termination Date, Petitioners shall either destroy all materials containing SUNSI or return such materials to the Applicants. Each Authorized Recipient shall take those actions necessary for the Petitioners to satisfy this obligation. Within 10 days of the Access Termination Date, each Authorized Recipient shall execute the attached Termination of Possession Declaration ("Attachment 2"), stating that the SUNSI within his or her possession or control has been returned or destroyed. Within 10 days of the Access Termination Date, the Petitioners shall file all executed Termination of Possession Declarations via EIE and also shall e-mail copies of those executed Declarations to counsel for the Applicants.
19. This Protective Order does not govern SUNSI owned by third parties and in the possession or control of the parties ("Third-Party Protected Information"). Should any party seek access to Third-Party Protected Information, then the producing party shall make reasonable efforts to obtain from the owner of the Third-Party Protected Information any necessary approvals for its release, subject to any appropriate nondisclosure provisions. If there are costs associated with acquiring the rights or approval to produce Third-Party Protected Information (e.g., copyright or subscription costs), then the producing party will inform the requesting party of the total costs involved, and the requesting party must agree to pay those costs as a condition of being supplied the Third-Party Protected Information. If the requesting party does not agree to pay these costs, then the producing party is not obligated to go through the effort of acquiring approval to produce the Third-Party Protected Information.

20. Nothing in this Protective Order shall preclude a participant to this proceeding from objecting to the use of an exhibit, testimony, or a pleading because it contains SUNSI. The Commission (or Board or Presiding Officer appointed by the Commission) may issue additional orders concerning the use of SUNSI.
21. Nothing in this Protective Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding any information protected by this Protective Order.
22. If information identified in this proceeding as SUNSI comes into the possession of or is known by any participant independently of SUNSI produced in this proceeding, and such knowledge was acquired without violation of law or other requirements applicable to such participant directing the participant to keep such information confidential, use of that document or information in this proceeding, without compliance with the terms of this Protective Order, shall not be a violation of the terms of this Protective Order. If a party asserts that disclosure of such information or document was a violation of this Protective Order, then the participant asserting independent knowledge of the contents of SUNSI or independent access to such a document shall have the burden of proving that (1) such information was independently obtained and (2) was not improperly disclosed in contravention of any law or other non-disclosure promise.
23. Any violation of this Protective Order or of any Non-Disclosure Declaration executed hereunder may result in the imposition of sanctions as the Commission (or Board or Presiding Officer appointed by the Commission) deems appropriate.² Nothing in this Protective Order restricts or waives Applicants' or the NRC's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SUNSI.
24. The Petitioners must file executed Non-Disclosure Declarations within 2 business days after the issuance of this Protective Order. Within 3 business days after the filing of the executed Non-Disclosure Declarations, Applicants shall transmit to the Authorized Recipients by one of the methods provided in paragraph 9 an appropriately-marked copy of the SUNSI identified in paragraph 2 of this Protective Order.

² See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

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[PROPOSED] NON-DISCLOSURE DECLARATION

I, _____, state:

1. I have read the Commission's Protective Order issued in the above-captioned proceeding and will comply in all respects with its terms and conditions regarding the Sensitive Unclassified Non-Safeguards Information ("SUNSI") produced under that Protective Order. I will protect and keep confidential all SUNSI in accordance with the terms of the Protective Order and of this Non-Disclosure Declaration.
2. I will not disclose SUNSI to anyone except an Authorized Holder as defined in the Protective Order. I will protect documents containing SUNSI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other

documents containing such SUNSI), so that the SUNSI contained therein remains at all times under the control of an Authorized Holder and is not revealed to anyone else.

3. When not under my direct control or the direct control of another Authorized Holder, I will keep and protect all documents containing SUNSI (including, without limitation, transcripts, pleadings, documents that I generate, and any notes and copies that I make) in a secure locked place such as a filing cabinet, closet, or other storage container.
4. I will restrict access to electronic information systems with SUNSI in accordance with the terms of the Protective Order.
5. I will transmit SUNSI and file documents containing SUNSI only in accordance with the terms of the Protective Order.
6. I will mark each document containing SUNSI in accordance with the terms of the Protective Order.
7. Neither during nor after this proceeding, will I publicly reveal any SUNSI that I receive by virtue of this proceeding as long as the information remains SUNSI.
8. I acknowledge that any violation of the terms of this declaration or the Commission's Protective Order, which incorporates the terms of this declaration, may result in the imposition of such sanctions on me that the Commission (or Board or Presiding Officer appointed by the Commission) may deem to be appropriate, or any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SUNSI.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct and do solemnly agree to protect and keep confidential such SUNSI as may be disclosed to me in the above-captioned proceeding in accordance with the terms of the Protective Order and of this Non-Disclosure Declaration.

Signature

Date Executed

Address: _____

Phone number: _____

E-mail: _____

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[PROPOSED] TERMINATION OF POSSESSION DECLARATION

I, _____, state:

In accordance with Commission's Protective Order in the above-captioned proceeding, I have destroyed or returned all Sensitive Unclassified Non-Safeguards Information ("SUNSI") in my possession by one or more of the following methods (check all that apply):

_____ I have destroyed materials containing SUNSI in accordance with the Protective Order.

_____ I have returned SUNSI to the Applicants or the NRC Staff.

_____ I have returned SUNSI to the Petitioners' representative so that he or she can destroy or return the SUNSI in accordance with the Protective Order.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct and do solemnly agree to CONTINUE to protect and keep confidential such SUNSI as may have been disclosed to me in connection with the above-captioned proceeding in accordance with the terms of the Protective Order and of the Non-Disclosure Declaration I previously executed.

Signature

Date Executed

Address: _____

Phone number: _____

E-mail: _____

**Exelon Generation Company, LLC; Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC; R. E. Ginna Nuclear Power Station, LLC; Calvert Cliffs Nuclear Power Plant, LLC
ORDER (Granting Joint Motion to Amend Protective Order)**

Exelon Generation Company, LLC
4300 Winfield Road, 5th Floor
Warrenville, IL 60555
Tamra S. Domeyer, Esq.
Tamra.Domeyer@exeloncorp.com

Counsel for Exelon Generation Company, LLC
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Ryan K. Lighty, Esq.
Alex S. Polonsky, Esq.
Ryan.Lighty@morganlewis.com
Alex.Polonsky@morganlewis.com

Office of Illinois Attorney General Kwame Raoul
100 West Randolph Street, 11th floor
Chicago, Illinois 60601
Susan L. Satter, Esq.
Susan.Satter@Illinois.gov

Environmental Law & Policy Center
116 Somerset Dr. NE
Grand Rapids, MI 49503
Margrethe Kearney, Esq.
MKearney@elpc.org

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this ___ day of June 2021