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Associated Independent Spent Fuel Storage Installations; Consideration of Approval of Transfer of Licenses and Conforming Amendments

Comment On: NRC-2021-0099-0001

Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC (NMP LLC); R. E. Ginna Nuclear Power Plant, LLC (Ginna LLC); and Calvert Cliffs Nuclear Power Plant, LLC (Calvert LLC); and the Associated Independent Spent Fuel Storage Installations; Consideration of Approval of Transfer of Licenses and Conforming Amendments; Public Comment Period Extended

Document: NRC-2021-0099-DRAFT-0004

Comment on FR Doc # 2021-09218

Submitter Information

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Organization: Nuclear Energy Information Service (NEIS)

General Comment

Comments are attached, along with supportive files.

Attachments

Exelon's corporate partner seeks to slow down spinoff train 6-9-21

NEIS Comments on Proposed License Transfer of Exelon Reactors into SpinCo stationery 6-23-21

Exelon's corporate partner seeks to slow down spinoff train

A French utility conglomerate is proving an impediment to Exelon's desire for quick approval of plans to separate its nukes from its regulated utilities.

STEVE DANIELS -- Crain's Chicago -- June 09, 2021 01:02 PM UPDATED 3 HOURS AGO



Alamy

Exelon's petition to New York state to fast-track review of its proposed spinoff of its nuclear plants and other unregulated businesses has run into opposition **from its own corporate partner.**

French utility conglomerate EDF, which co-owns three of Exelon's nukes including two in New York,

yesterday filed with state regulators to reject Exelon's request to approve the separation of its regulated and unregulated businesses without undergoing a normally required full-blown review. **EDF said it feared that a nuclear power business without the backing of Exelon's more financially stable regulated utilities could subject it to unforeseen costs.**

"The proposed spin transaction **would result in a transfer of risks to EDF Inc. and to New York's captive ratepayers,**" EDF wrote in its filing before the New York Public Service Commission. **"(Exelon's) petition does not adequately address this transfer of risks. As such, the commission should conduct a full review of the proposed spin transaction."**

Most of the regulatory approvals Exelon needs to separate its two main businesses are at the federal level. **New York is the only state of several affected, including Illinois, that also has oversight over this process and whose consent is required.** New York's agreement to curtail review is critical to Exelon's hoped-for timing of the spinoff, which is late this year or early next.

Details thus far have been scant, however. Exelon [in February](#) announced plans to separate the businesses, something investors were clamoring for since regulated utilities are valued far more highly in today's environment than are power plants subject to market forces. **More than three months later, we still don't know the management and boards of the two companies, how much debt each will carry and other basic information.**

EDF wrote that the public interest demands a full-blown review "given that (Exelon) propose(s) an unformed entity of indeterminate financial condition to be the new parent owner of the facilities. The petitioners argue that (Exelon Generation's) 'financial

wherewithal and strength will continue to be strong operating as a direct subsidiary of a new, independent, publicly traded holding company post-transaction,' but they base this almost exclusively on their own projections regarding ExGen's condition and not that of the yet-to-be-created (spinoff)."

EDF's motives are complicated, though. It is [seeking to exit the partnership](#) in which it holds a 49.99 percent interest in Exelon's R.E. Ginna and Nine Mile Point nukes in New York, as well as the Calvert Cliffs nuke in Maryland. The two parties are at odds over the valuation of the three nukes, and the process has been slow since EDF sought to cash out in late 2019.

The partnership gives EDF the right to exit and be paid market value for its stake. But if the two sides can't agree, under the deal, then [the dispute goes to an arbitrator](#). Neither Exelon nor EDF have been willing thus far to roll the dice with a third party.

EDF can use the threat of delay to put pressure on Exelon to increase what it's willing to pay the conglomerate to go away.

"We continue to believe that our petition to separate the New York nuclear plants from Exelon meets the New York Public Service Commission's standard of being in the public interest and we hope to achieve approval by the end of the year," Exelon said in an email. "At the same time, [we are following a contractual process to acquire EDF's stake in the plants that is expected to conclude in the second half of 2021](#). The transaction with EDF is a separate matter and should have no bearing on the Commission's consideration of our plan to separate the generation business."

EDF in its filing said there's no guarantee of an agreement with Exelon this year.

New York has been faced with a similar request before. New Orleans-based Entergy proposed more than a decade ago to spin off its substantial nuclear division, which included plants in New York. The state denied the request, [scotching the deal](#).

Since then, New York Gov. Andrew Cuomo has won approval of [substantial subsidies](#) to keep open several nukes, including three operated by Exelon. Analysts generally have taken the view that [a repeat of the Entergy drama isn't likely with Exelon's spinoff](#).

But, as regulators have proved many times before in complex financial dealings involving energy assets, they are a wild card. [EDF's move may demonstrate there's more risk in New York to Exelon's plans than investors previously appreciated](#).



Nuclear Energy Information Service

Illinois' Nuclear Power Watchdog since 1981

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NEIS Comments on Proposed License Transfer of Exelon Reactors into "SpinCo":

Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC (NMP LLC); R. E. Ginna Nuclear Power Plant, LLC (Ginna LLC); and Calvert Cliffs Nuclear Power Plant, LLC (Calvert LLC); and the Associated Independent Spent Fuel Storage Installations; Consideration of Approval of Transfer of Licenses and Conforming Amendments; Public Comment Period Extended

Federal Register Number: 2021-09218; Docket ID NRC-2021-0099

June 23, 2021

TO: NRC Chairman Hanson and Commissioners Baron, Caputo, and Wright,

Nuclear Energy Information Service, a safe-energy, environmental organization based in Chicago, Illinois representing over 800 members nationally and over 600 in state, submits the following comments regarding Docket ID NRC-2021-0099, Exelon Corporation's request to transfer its Illinois and other state reactor licenses into a currently unestablished entity labeled "SpinCo."

NEIS urges the Commission to reject the Exelon application contained in this docket. NEIS' objections to the transfer fall into three broad categories:

1. Lack of sufficient required information about the proposed SpinCo render it ineligible to receive and maintain reactor operating licenses, and incapable of conducting business;
2. Vast uncertainty exists about SpinCo's financial capability and fiscal assets required by NRC regulation to both safely manage reactors subject to the operating license transfers, and adequately fund reactor decommissioning funds, making this transfer into a new LLC prohibitive from a fiscal, regulatory and health/safety standpoint;
3. Recent ethical lapses pertaining to lobbying activities in Illinois on the part of Exelon subsidiary ComEd (which by association have extended to Exelon itself in that state), plus a recent filing of Exelon's own business partner EDF in the State of New York urging more detailed analysis of the proposed SpinCo and its effects prior to granting license transfers should send up warning flags to the NRC that much more detailed analysis and far more detailed information about the proposed spin-off is required.

- 1. *Lack of sufficient required information about the proposed SpinCo render it ineligible to receive and maintain reactor operating licenses, and incapable of conducting business:***
 - This proposed LLC has no executive officers, no Board of directors, no staff, no mailing address, and no state of incorporation. It is a non-entity, with no one available to assume responsibility or accountability for conducting business, or managing the operation of 24 nuclear reactors worth billions of dollars.
 - NRC itself has pointed these facts out in its RAI letter dated May 24, 2021; yet has extended an "escape clause" to Exelon, based on "promise" to provide this before NRC would grant final permission for license transfer:

“Alternatively, confirm acceptance of a condition to provide this information prior to the closing of the transfer transaction for inclusion in any license transfer order. [Source: NRC RAI correspondence to Exelon, May 24, 2021, p.3]

- Based on Item our item #3 above, this is an unwise and very naïve course of action for NRC to take.

2. *Vast uncertainty exists about SpinCo’s financial capability and fiscal assets required by NRC regulation to both safely manage reactors subject to the operating license transfers, and adequately fund reactor decommissioning funds, making this transfer into a new LLC prohibitive from a fiscal, regulatory and health/safety standpoint;*

- NRC regulations stipulate that no entity can obtain or retain a nuclear reactor operating license unless it can demonstrate the financial means to continue to operate the plant safely in accordance with NRC regulations.
- Exelon’s own filing indicates that, “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.***” [emphasis ours]
- The creation of the SpinCo LLC will create an entity with no financial backing of the former parent company, Exelon Corp., and that has no initial financial assets or revenue streams of its own beyond: 1.) the rates it collects from its customer base; 2.) the awarding of state-based “bailouts”, unpredictable in size, sufficiency, and timing; 3.) the physical assets of the reactors and associated machinery and property on which the reactors reside.
- In Illinois Exelon has already made public proclamation that rates are insufficient to warrant continued operation of the Dresden 2&3, Byron 1&2, and possibly Braidwood 1&2 reactors, and has even filed initial paperwork announcing the closures of Dresden and Byron in December, 2021 and September 2021 respectively.
- Bailouts Exelon received in 2016 for the Quad Cities 1&2 and Clinton reactors will expire in 2026. Current attempts to secure bailouts from the Illinois legislature have been unsuccessful; and negotiated amounts nearly ten times less what Exelon claimed during negotiations that it would need over the next 10 years. There is no guarantee that any subsequent bailouts will either occur, or be sufficient in amount or timing to keep the reactors operating in accordance with NRC regulations.
- With an already demonstrated insufficient rate-base, no guarantee of state or federal bailouts at this time, no other sources of revenue, and no continued financial backing from the now separate Exelon parent company, the new SpinCo will be from its start a debtor entity with no financial means of supporting the safe operation of nuclear reactors.

Decommissioning concerns:

- NRC regulations also require utilities to pay into reactor decommissioning funds, and demonstrate that such funds are sufficient to be able to conduct reactor decommissioning operations once a reactor closes, within NRC regulatory requirements.
- In 2019, the Callan Institute concluded that Exelon’s decommissioning funds were between \$1.5 billion and \$7.4 billion short of the amounts needed for decommissioning.

- With an already insufficient stream of rate-based funding by Exelon’s own admission, SpinCo will have no other sources of decommissioning funding than the decommissioning trust funds, which are already of questionable solvency.
 - As a result SpinCo will have no means to conduct a reactor decommissioning according to NRC regulations in a manner that would be protective of the public health and safety.
- 3. Recent ethical lapses pertaining to lobbying activities in Illinois on the part of Exelon subsidiary ComEd (which by association have extended to Exelon itself in that state), plus a recent filing of Exelon’s own business partner EDF in the State of New York urging more detailed analysis of the proposed SpinCo and its effects prior to granting license transfers should send up warning flags to the NRC that much more detailed analysis and far more detailed information about the proposed spin-off is required.**
- It is a matter of public record that Exelon subsidiary ComEd pleaded guilty to lobbying irregularities, and that some of the personalities involved should not be thought of as acting separate from Exelon and its interests at the Illinois state legislature. Further FBI investigation may uncover more detail about this situation.
 - As a result of these developments, a prudent party would be much more wary and skeptical of the business propositions that come from Exelon and its subsidiaries until these issues are completely and satisfactorily resolved.
 - In the meantime, Exelon’s utility business partner in New York State – EDF, which co-owns three of Exelon’s nuclear plants including two in New York – has filed a request with the New York State public utilities commission, urging the Commission to:

“reject Exelon’s request to approve the separation of its regulated and unregulated businesses without undergoing a normally required full-blown review. EDF said it feared that a nuclear power business without the backing of Exelon’s more financially stable regulated utilities could subject it [EDF] to unforeseen costs.

“The proposed spin transaction would result in a transfer of risks to EDF Inc. and to New York’s captive ratepayers,” EDF wrote in its filing before the New York Public Service Commission.

“(Exelon’s) petition does not adequately address this transfer of risks. As such, the commission should conduct a full review of the proposed spin transaction.” [Source: [“Exelon’s corporate partner seeks to slow down spinoff train.”](#) Crain’s Chicago Business, June 9, 2021.]

If Exelon’s own business partner in New York has legitimate legal grounds to be skeptical of unwise and rash actions regarding the license transfers and request the PUC to slow down their approvals, NRC should do likewise as a matter of prudence.

CONCLUSION:

In conclusion NEIS asserts that NRC should not approve Exelon’s requested license transfers until all of the conditions outlined in this document are fully met; including “conduct[ing] a full review of the proposed spin transaction.”

Thank you for consideration of these views. We are available to answer any questions you might have relating to our positions.

Submitted by: David A. Kraft, Director, NEIS

A handwritten signature in black ink, appearing to read "David A. Kraft", with a long horizontal flourish extending to the right.

David A. Kraft, Director
The Board of Nuclear Energy Information Service

Cc: the offices of

Sen. Richard Durbin
Sen. Tammy Duckworth
Rep. Mike Quigley
Rep. Bobby Rush
Illinois Governor JB Pritzker
Illinois Attorney General Kwame Raoul
Speaker of the Illinois House Chris Welch
President of the Illinois Senate Don Harmon