

~~**CONTAINS PROTECTED
INFORMATION – SUBJECT TO PROTECTIVE ORDER**~~

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY**

In the Matter of:)	
)	
)	NRC–2021–0099
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)	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
(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 Associated Independent Spent Fuel Storage Installations))	July 12, 2021

**PEOPLE OF THE STATE OF ILLINOIS’S
NON-CONFIDENTIAL
REQUEST FOR LEAVE TO INTERVENE AND FOR A HEARING REGARDING
EXELON GENERATION COMPANY, LLC’S FACILITY OPERATING LICENSE
TRANSFER APPLICATION**

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I. REQUEST FOR LEAVE TO INTERVENE

The People of the State of Illinois, by Attorney General Kwame Raoul, (hereafter the People of Illinois) request leave to intervene to address the effect that Exelon Generation’s license transfer request will have on the seven nuclear power plants and/or spent fuel facilities located in Illinois, specifically:

- Braidwood Station, Units 1 and 2;
- Byron Station, Unit Nos. 1 and 2;
- Clinton Power Station, Unit No. 1;
- Dresden Nuclear Power Station, Units 1, 2, and 3;
- LaSalle County Station, Units 1 and 2;
- Quad Cities Nuclear Power Station, Units 1 and 2;
- Zion Nuclear Power Station, Units 1 and 2 (Independent Spent Fuel Storage Installation or “ISFSI” only; and
- Associated ISFSIs

The People of Illinois are represented by Attorney General Kwame Raoul, by Susan L. Satter, 100 West Randolph Street, 11th floor, Chicago, Illinois 60601, (312) 814-3000. 10 C.F.R. §2.309(d)(1)(i). The People of Illinois have standing to intervene pursuant to 10 C.F.R. §2.309(h)(2) which provides: “If the proceeding pertains to a production or utilization facility (as defined in § 50.2 of this chapter) located within the boundaries of the State ... seeking to participate as a party, no further demonstration of standing is required.” More specifically, the People of Illinois have an interest in assuring that the successor-owners to Exelon Generation and its parent Exelon Corporation have sufficient financial and operational resources to manage the long-term operation, shutdown, decommissioning, and storage requirements associated with

the nuclear power plants and spent fuel storage identified above. *Id.* at §2.309(d). The effect of the operation, shutdown, decommissioning, and waste storage activities associated with the Illinois nuclear facilities that are the subject of this proceeding will be felt throughout the State of Illinois and include effects on the environment, land use, employment, financial responsibility, and state and local taxes.

For the foregoing reasons, the People of the State of Illinois request leave to intervene in this proceeding.

II. CONTENTIONS

A. Introduction

Exelon is asking the Commission to transfer the licenses for six operating nuclear power plants in Illinois, consisting of eleven units, one unit that is no longer in operation (Dresden Unit 1) and the decommissioned Zion Nuclear Power Station where spent fuel is in cask storage. While Exelon Generation is a well-established entity that is affiliated with Exelon Corporation and several regulated public utilities, including public utilities that built the plants,¹ the *proposed* corporate owners of the plants, a successor to Exelon Generation, referred to as “spinco” and “holdco,” will be unaffiliated with Exelon Corporation or the Exelon regulated utilities. Exelon Generation, Letter to NRC dated Feb. 25, 2021, Enclosure 1, *Application For Order Approving License Transfers And Conforming License Amendment*, page 2 (hereafter “Application”).

¹ Commonwealth Edison Company built all but the Clinton Power Station while subject to rate of return regulation. The Clinton Power Station was built by Illinois Power when it was subject to rate of return regulation, and was acquired by Exelon in about 2000. Commonwealth Edison is a subsidiary of Exelon Corporation. Illinois Power is defunct, and its service area is now part of Ameren Illinois.

Exelon Corporation and its subsidiary Exelon Generation currently own the largest fleet of commercial nuclear power plants in the United States. Exelon Corporation seeks approval to transfer all its ownership interests in Exelon Generation and these nuclear facilities to a holding company that currently does not exist. Two key factors in Exelon Corporation's reorganization are shedding its responsibility for its nuclear fleet and severing its liabilities and decommissioning obligations for the nuclear fleet by creating a new legal entity for which the existing Exelon Corporation bears no future responsibility. Exelon Generation's Application is clear: As a result of the proposed transaction "neither the new ultimate parent company nor Exelon Generation nor its subsidiaries will be affiliated with Exelon Corporation ("Spin Transaction"). Application, page 2.

In reviewing Exelon Generation's request to transfer licenses, the Commission considers "as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards." 10 C.F.R. §50.80(b)(1)(i). Further, the "application shall include also a statement of the purposes for which the transfer of the license is requested, [and] the nature of the transaction necessitating or making desirable the transfer of the license." *Id.* at §50.80(b)(2).

Section 50.33 of the Commission rules provides, among other things, that an applicant for an operating license provide "information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the

activities for which the permit or license is sought.” 10 C.F.R. §50.33(f). The rule further provides that an application for an operating license requires:

information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs.

Id. at 50.33(f)(2). Additional disclosure rules apply to situations like the one presented here, where the applicant is a “newly-formed entity,” including:

- (i) The legal and financial relationships it has or proposes to have with its stockholders or owners;
- (ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and
- (iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

Id. at §50.33(f)(4). The rules specifically authorize the Commission to request “additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate” to continue operations and to decommission the facility. *Id.* at §50.33(f)(5).

B. Contention 1

The Applicant Fails To Provide Valid Estimates For Total Annual Operating Costs For Each Of The First Five Years Of Operation Of The Facilities To Be Transferred By Omitting Financial Information About Four Illinois Nuclear Plants, Consisting Of Eight Generating Units, In Violation Of 10 C.F.R. §50.33(F)(2). The Omission Of Substantial, Illinois Specific Information Prevents A Finding Of Reasonable Assurance Of Adequate Finances To Protect The Public Health And Safety.

1. *The Applicant’s financial statements are incomplete and do not provide reasonable assurance of adequate finances to protect the public health and safety.*

The Applicant’s statements of operating costs for each of the next five years are incomplete and prevent the Commission from accurately reviewing the financial status of the “newly-formed entity” to which Exelon is asking the Commission to transfer licenses for 21 nuclear units at 12 plants. The Applicant has excluded the financial information concerning four of its twelve plants (eight of its 21 operating units) from its submitted financial statement (projected income statement, balance sheet, and statement of cash flows). Application, page 8. The failure to provide complete financial statements, covering all of the currently operating units for which it seeks license transfer violates the requirement in the Commission’s rules requiring that an applicant for a license transfer “shall submit estimates for total annual operating costs for each of the first five years of operation *of the facility*. The applicant shall also indicate the source(s) of funds to cover these costs.” 10 C.F.R. §50.33(f)(4)(emphasis added).

Exelon asserts that excluding financial information about four of its Illinois plants is “conservative” because it has announced the closure of two Illinois plants, Byron and Dreden, and two additional plants (Braidwood and LaSalle) are “at high risk of premature closure.” *Id.* However, all of these plants are currently operating and their operating licenses extend well beyond five years, as shown below:²

Plant	License Expiration
Dresden Units 2 and 3	2029, 2031
LaSalle Units 1 and 2	2042, 2043
Byron Units 1 and 2	2044, 2046
Braidwood Units 1 and 2	2046, 2047

² See Exelon SEC Form 10-K, December 31, 2020, page 11, available at https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_EXC_2020.pdf

In addition, the grid operator, PJM Interconnection, has not completed its reliability analysis of the Byron facilities to determine when it can approve their retirement and the Braidwood and LaSalle facilities are not included in PJM’s list of deactivation requests.³ Significantly, two of the four Illinois plants Exelon has excluded from its five-year analysis – Braidwood and LaSalle – recently cleared the PJM capacity auction, committing them to provide capacity through May 31, 2023,⁴ which is included in the five-year period for which the Commission requires financial information. The Commission cannot approve a transfer of licenses that does not include “estimates for total annual operating costs for each of the first five years of operation of the facility. ... [and] the source(s) of funds to cover these costs.” 10 C.F.R. §50.33(f)(4). The Application seeks the transfer of the licenses for four Illinois plants (Byron, Dresden, Braidwood, and LaSalle) but excludes the annual operating costs for those facilities in violation of the Commission rule.

In its Application, Exelon stated that it “anticipates that continued operation of these [Illinois] units under market reforms or legislative action would not materially adversely impact the financials and would not require additional financial support beyond what is reflected in this Application.” Application, page 10, footnote 12. Exelon’s opinion about the financial effect of the continued operation of the Illinois plants, however, cannot be relied upon by the Commission without the underlying financial data. It is critical that updated, accurate, and complete financial statements including all costs and all revenue sources for all licenses facilities be submitted as part of the application. Without financial information about *all* operating facilities and ISFSIs,

³ <https://www.pjm.com/planning/services-requests/gen-deactivations>

⁴ Exelon Corporation, SEC Form 8K, dated June 2, 2021. Available at: <https://investors.exeloncorp.com/static-files/6b3197bb-e60e-4ef6-b1bd-5885966439b3>

2. *Exelon’s Financial Statements are Unreliable and Do Not Provide Reasonable Assurance Of Adequate Finances To Protect The Public Health And Safety.*

Exelon excluded information about four Illinois nuclear plants consisting of eight operating units and one shutdown unit (Dresden Unit 1) from its five-year financial statements upon the premise that these units may close.⁵ Exelon did not expressly represent or promise that these units would close, and in fact qualified its position in footnote 12 on page 10 of its Application, indicating that the plants could remain open if there are “market reforms or legislative action that would enable these units to realize the value of their zero-carbon, reliable, baseload generation [and that] could address the economic distress being experienced by the Illinois units and avoid early retirements.” The uncertainty evident in Exelon’s representations means that the Commission cannot rely on the partial financial statements provided as an accurate picture of the financial position of the plants or of the other nuclear facilities owned by Exelon Generation and its successor.

During the pendency of this application, Exelon representatives met with Illinois legislative and gubernatorial representatives to obtain additional revenues from Illinois residents to subsidize the Illinois nuclear facilities through legislation for carbon mitigation credits.⁶ According to news reports, Exelon reached an agreement to obtain additional funds from Illinois consumers for the Byron, Braidwood, and Dresden plants and a commitment that the LaSalle plant would also remain viable and operating for the next five years.⁷ While this agreement is

⁵ Exelon represents that: “While Exelon Generation has not decided to close Braidwood and LaSalle, absent market reform or legislative action that would enable these units to realize the value of their zero-carbon, reliable, baseload generation, they remain at risk of premature retirement. Accordingly, the enclosures herein conservatively assume that all of the foregoing units retire.” Application, page 9-10.

⁶ See Exelon Earnings Conference Call First Quarter, May 5, 2021 at page 7, available at: <https://investors.exeloncorp.com/static-files/3082c451-110b-4164-ba98-15b56b6b05ed>

⁷ See, e.g., <https://news.bloomberglaw.com/environment-and-energy/exelon-subsidies-could-hit-1-billion-in-illinois-energy-bill> and <https://www.wbez.org/stories/new-energy-bill-pushed-by-gov-jb-pritzker-would-save-nuclear-plants-but-cost-customers-nearly-700-million/13bd53a5-6e7c-4fd7-bc96-420126bd5729>

part of a major revision of Illinois energy law that the Illinois General Assembly has not passed, the terms of the nuclear subsidies do not appear to be the source of the legislation delay.⁸

As a result of these legislative and gubernatorial discussions, there is a strong possibility that Illinois nuclear plants will continue to operate over the next five years. Financial statements that exclude information concerning the Illinois plants and that are based on the premature closure of these plants do not accurately reflect the expectation that these Illinois plants will continue to operate over the next five years and violate the Commission's rules that require the applicant to "submit estimates for total annual operating costs for each of the first five years of operation of the facility.... [and] indicate the source(s) of funds to cover these costs." 10 C.F.R. at 50.33(f)(2).

The incomplete financial statements produced by the Applicant cannot be relied upon by the Commission to provide reasonable assurance of adequate protection of the public health and safety. *Id.* The Illinois nuclear plants make up a substantial portion of Exelon's nuclear facilities and the exclusion of these plants from Exelon's financial statements compromises the reliability and accuracy of those financial statements. The Illinois plants generate close to 8,900 megawatts of Exelon's 18,800 megawatts of nuclear generation capacity, representing close to half of Exelon's total nuclear capacity (47%). Excluding the operational, shutdown, decommissioning, and storage cost and revenue information associated with these plants prevents the Commission from assessing the true condition of both Exelon Generation and the to-be-formed entity and prevents reasonable assurance that the new entity will have the financial resources to adequately protect the public health and safety.

⁸ See <https://www.chicagobusiness.com/utilities/energy-bill-deal-elusive-senate-heads-home-empty-handed>; <https://www.wbez.org/stories/new-energy-bill-pushed-by-gov-jb-pritzker-would-save-nuclear-plants-but-cost-customers-nearly-700-million/13bd53a5-6e7c-4fd7-bc96-420126bd5729>.

In light of the Synapse Report, the reported agreement among Exelon, Illinois legislators, and the Governor for nuclear subsidies, and the need for full financial information to assess the to-be- formed entity’s ability to operate the nuclear facilities subject to license transfer, the Commission should require Exelon to provide comprehensive and accurate financial statements that include financial information for all Illinois plants. Section 50.33(f) requires full financial information to provide the Commission with the best information available about the financial resources available to cover the costs of the facilities subject to this transfer request.

In footnote 12 in its Application, Exelon represented that it “will reevaluate the retirement assumptions reflected herein and, as relevant, provide updated financial scenarios that assume continued operations of one or more of these units.” The Commission is entitled to receive complete information about the current financial statements for those plants, and supplemental information if subsidies are allowed *before* making a decision on the license transfer application. Until the financial condition of all of the licensed and operating facilities is reported and understood for the coming five years, it is impossible for the Commission to evaluate the financial condition of the to-be-formed entity to which the license transfers are requested or to conclude that the transfer will protect the public health and safety. The People request that the Commission hold a hearing on the Application to obtain complete and accurate financial information and decline to approve a license transfer until the future of the Illinois facilities is known.

Contention 2

Sufficient Information Concerning The Financial Condition All Of Nuclear Facilities With Licenses To Be Transferred Is Critical To Provide Reasonable Assurance Of Adequate Finances To Protect The Public Health And Safety In Light Of The To-Be-Formed Company’s Loss Of The Corporate Diversification And Affiliation With Regulated, Monopoly Electric And Gas Distribution Companies.

1. *Applicant has failed to comply with Commission Rule 50.33(f)(4)(ii) that requires Applicant to provide information about the new owner of the nuclear facilities to be transferred.*

The heart of this request is that the NRC transfer nuclear facilities licenses to a company that will be smaller and less diversified than the current holder of the licenses. Commission rules include the requirement to assess “stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur.” 10 C.F.R. §50.33(f)(4)(ii). A key element of the Application is that Exelon Corporation, the current sole shareholder and owner of Exelon Generation’s Illinois plants, will be replaced by a to-be-formed and capitalized “Holdco.” As asserted by EDF, Inc. in a filing at the New York Public Utilities Commission concerning the transfer of ownership of certain nuclear plants to the Spinco: “EDF Inc., like New York’s captive ratepayers, will shoulder significantly increased risk if the Joint Petition is granted unconditionally. Key financial support for the Facilities would be transferred from Exelon [Corporation] to a new, yet-to-be-created holding company with an indeterminate financial condition.” *Joint Petition of Exelon Corporation and Exelon Generation Company, LLC for a Declaratory Ruling Disclaiming Jurisdiction Over or Abstaining from Further Review of the Proposed Transaction, or in the Alternative, an Order Authorizing the Proposed Transaction*, Case 21-E-0130, Comments and Request for Hearing of EDF, Inc. at 1 (June 8, 2021)(hereafter EDF, Inc. New York Comments). While EDF, Inc. holds a 49.99% interest in certain non-Illinois assets subject to the transaction, the significantly increased risk it identifies applies equally to all the facilities subject to license transfer. This increased risk stemming from the loss of its current sole shareholder and owner should lead the Commission to hold a hearing on the *new* licensee’s financial ability to protect the public health and safety in connection with

the risks associated with operation, shutdown, decommissioning, and storage obligations of the nuclear facilities.

Specifically, the new corporate owner is expected to lack the diversification and lose the financial and operational support Exelon Generation now can access from Exelon Corporation and Exelon Business Services. Currently, Exelon Corporation has revenues from major, regulated monopoly gas and electric distribution companies that provide substantial revenues unrelated to nuclear or other energy generation operations.¹³ If the Illinois plants, or any other plant owned by the SpinCo or HoldCo were to incur significant losses during operations or decommissioning, the only other businesses to devote funds or cover losses would be other generation assets and Constellation, a marketer of wholesale and retail electricity, natural gas, and related products. Application at 5. However, the generation assets and Constellation's energy supply business are subject to the same market conditions as the nuclear generation plants, resulting in a lack of diversification of risk. If revenues drop due to market forces, all of the new company's revenues will be affected.

Further, Exelon has represented that its successor company "will be poised to engage in innovative business initiatives consistent with its focus on the competitive merchant generation business and the opportunities arising thereunder." Application at page 4. Exelon's assertion that the Illinois plants are uneconomic and may be closed emphasizes the need for sufficient financial resources to address potential risks associated with an unanticipated health and safety or financial obligations that may result from shutting the plants down and decommissioning. The risks associated with the lack of diversification resulting from the reorganization and an

¹³ See Exelon Earnings Conference Call First Quarter, May 5, 2021 at page 5, 9, available at: <https://investors.exeloncorp.com/static-files/3082c451-110b-4164-ba98-15b56b6b05ed>

intent to engage in “innovative” and potentially untested market activities compound the uncertainty associated with this license transfer. These risks require more comprehensive disclosure of financial information than Exelon has offered in order for the Commission to have a reasonable assurance that the public health and safety will be protected by the to-be-formed new owner.

The changes in resources available to the reorganized Exelon Generation due to the loss of the association with regulated utility operations require the Commission to obtain specific information about the financial resources of the new company. While Exelon Generation may currently be investment grade, there is no guarantee and insufficient financial information to conclude that its new owner, generically identified as “holdco,” will be investment grade. Applicant’s representation that it “maintains an open dialogue with the credit rating agencies related to the Spin Transaction and, for Exelon Generation (as SpinCo), anticipates investment grade credit ratings and continued access to ample liquidity following separation,”¹⁴ does not demonstrate that *the to-be-formed company* “possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs.” 10 C.F.R. §50.33(f)(2). A hearing is required after the holdco is formed to determine its financial condition and whether it can be relied upon to be investment grade with adequate access to “ample liquidity.”

2. A hearing is necessary so the Commission can consider the financial condition of the to-be-formed owner of the nuclear facilities in light of the resources of the to-be-formed owner and whether financial assurance is compromised by the transfer.

¹⁴ Exelon Application at 5.

2019, \$21.77 per MWh versus \$27.32 per MWh. Of the \$5.55 per MWh decrease, 50.3 percent was a direct result of lower fuel costs. The other major contributor to the decline in energy prices was the significant drop in demand as a result of both the mild winter weather and COVID-19. On a cumulative basis, PJM load was down 4.0 percent compared to 2019, and load was down 3.4 percent after accounting for the impact of weather.

2020 State of the Market Report at 2 (emphasis added).¹⁵ Similarly, the Independent Market

Monitor for the New York ISO reported:

Average energy prices fell 15 to 29 percent across the state from 2019 to 2020 primarily because of lower gas prices and load levels. The impact of the pandemic was larger for commercial customers, so load fell more in downstate regions, which generally reduced congestion from upstate to downstate. Transmission congestion and losses led real-time prices to vary from an average of \$13.28 per MWh in the North Zone to \$28.03 per MWh in Long Island in 2020. (See II.A)

2020 State of the Market Report at ii (emphasis added).¹⁶

Capacity prices in PJM are similarly unstable. While the PJM capacity price per megawatt-day payable in the ComEd zone is \$195.55 for the year ending May 31, 2022, on June 1, 2022 the price per megawatt-day will drop to \$68.96, a 64.7% drop. The capacity prices in other PJM zones similarly declined for the 2022/2023 period.¹⁷ Energy and capacity clearing prices do not vary based on fuel type, meaning that the prices paid to nuclear generation plants are the same as those paid to fossil fuel, renewable energy and other generation plants.¹⁸ The Commission should not base its decision on a partial “stress” test that fails to apply a reduction

¹⁵ Available at: https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020/2020-som-pjm-vol1.pdf

¹⁶ Available at: <https://www.potomaceconomics.com/wp-content/uploads/2021/05/NYISO-2020-SOM-Report.pdf>

¹⁷ See PJM 2022/2023 RPM Base Residual Auction Results at page 1, available at: <https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2022-2023/2022-2023-base-residual-auction-report.ashx>

¹⁸ All of the nuclear facilities except the Clinton Power Station operate in the PJM markets. Nine of the twelve nuclear facilities subject to the license transfer request are in PJM (Pennsylvania, New Jersey, Maryland, and Illinois), three are in the New York ISO, and one in is the MISO region (central Illinois). Total Exelon generation is divided among PJM (69%), NYISO (6%), ERCOT (12%) and other regions (13%). Exelon SEC Form 10-K, December 31, 2020, page 9, available at https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_EXC_2020.pdf

in market prices to all generation revenues and reports **CONFIDENTIAL SUNSI**

XX.

END CONFIDENTIAL SUNSI.

The rules are clear that the “Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee’s ability to continue the conduct of the activities authorized by the license and to decommission the facility.” 10 C.F.R. §50.33(f)(5). The Commission should require actual investment grade certification *after the new company is established* but before approving the license transfer in order to determine that the to-be-formed company will maintain the capital and meet the financial metrics necessary to assure the continued safe operation (including the costs of refueling and maintenance and repair), shut down, decommissioning, and waste storage obligations of the nuclear plants in Illinois and in other states. The Commission cannot make a financial assurance conclusion before the capitalization and organization of the new corporation are established.

3. The change in parent guarantees diminishes financial assurance and should be subject to a hearing by the Commission.

While it is unclear whether there is currently a support agreement and parent guarantee from Exelon Corporation for plants other than FitzPatrick, Calvert Cliffs, NMP, and Ginna,¹⁹ the existing guarantees for those New York and Maryland plants protect Illinois plants and residents from risks associated with non-Illinois plants and preserves assets to address unanticipated financial obligations of the Illinois plants. The Applicant is proposing to change the existing

¹⁹ See Application at 6, 11 and Enclosure 9.

support agreement and parent guarantee so that each plant is subject to a single guarantee, rather than a cumulative guarantee amount covering several plants. As EDF, Inc. pointed out in its New York Comments at page 6, Exelon’s proposal “would impose plant-specific caps, in contrast to the current arrangement in which Exelon would be required to provide up to the total support of \$410 million if there were funding shortfalls at any one of the CENG-owned plants, including one of the Facilities.” This change in guarantee exposes the plants subject to the guarantee to greater risk of having insufficient financial resources in the event of an unexpected incident or expense at one of them. This may increase the financial burden on the affected plant, as well as affect the financial resources of the other affiliated nuclear facilities.

EDF, Inc. properly objected to this change in the guarantee in its New York filing. However, in this proceeding the Application assumes that EDF, Inc. will no longer be an owner by the time the SpinCo is finalized.²⁰ That is not a certainty, however, raising questions about who will ultimately be the new owner of Exelon Generation and the associated nuclear facilities. The Commission cannot rely on Exelon’s assumptions regarding EDF, Inc. and the CENG joint venture or its representation about the changes in its support agreement, parent guarantees, and other terms that are based on that assumption.²¹ A hearing is necessary to determine the status of EDF, Inc.’s interest in the nuclear facilities; the actual ownership structure of the to-be-formed entity; and whether and in what form replacement parental guarantees should be required.

In addition to the proposed support agreement and parent guarantee being restricted to specific amounts per plant, the proposed agreement would be limited to costs associated with ongoing operations and not cover unanticipated costs associated with decommissioning or long

²⁰ *Id.* at 6, fn. 3.

²¹ See EDF, Inc. New York Comments at 9-12.

term spent fuel storage. Enclosure 9, para. 9.²² The Commission should require a hearing to investigate all the changes in the existing support agreement and parent guarantee and whether the proposed replacements are less robust than existing protections, or too restrictive to provide the necessary financial backstop if the licenses for 15 plants are transferred to a to-be-formed company. Reducing the financial resources available to nuclear facilities does not provide a reasonable assurance of adequate protection of public health and safety in the event of a license transfer.

The changes in resources available to the reorganized SpinCo due to the loss of the association with regulated utility operations and the changes in the agreements discussed above require the Commission to obtain specific information about the financial resources of the new company. While Exelon Corporation and its subsidiary Exelon Generation may currently be investment grade, there is no guarantee that the HoldCo and SpinCo will continue to be investment grade in their new form. Applicant's representation that it "maintains an open dialogue with the credit rating agencies related to the Spin Transaction and, for Exelon Generation (as SpinCo), anticipates investment grade credit ratings and continued access to ample liquidity following separation,"²³ does not demonstrate that the *to-be-formed company* "possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs." 10 C.F.R. §50.33(f)(2). The Commission cannot rely on anticipated financial assessments and should require a hearing to obtain necessary financial assurance from the SpinCo and HoldCo once they are formed.

²² Paragraph 9 states in part: "This Agreement shall also terminate with respect to the Operating Expenses and NRC Requirements applicable to the Facility whenever the Facility permanently ceases commercial operations and certification is made as to the permanent removal of fuel from the reactor vessel; provided, however, that this Agreement may be extended for successive periods of two years each upon the mutual agreement of the parties."

²³ Exelon Application at 5.

Contention 3

The Commission Should Require A Hearing And Full Funding Of Decommissioning Trusts Because The Admitted Decommissioning Shortfall Threatens The Proper Decommissioning Of Eight Nuclear Power Facilities And Threatens The Health And Safety Of Illinoisans.

The Applicant cites the current under-funded decommissioning trusts in its request for Commission approval to transfer its operating licenses. Application at page 12. Specifically, it acknowledges that a decommissioning trust fund “shortfall exists for Byron Units 1 and 2,” and that the Dresden decommissioning funds are only sufficient with projected growth. *Id.* The other two Illinois plants that Exelon excludes from its financial analysis and that it asserts may close prematurely also may face “potential assumed decommissioning funding shortfalls.” *Id.* at 14. The Commission should not allow license transfers to a less financially robust corporation, particularly before that corporation is formed and its finances are established, without financial assurance in the form of an executed “surety method, insurance, or other guarantee method,” as provided in Section 50.75(e)(1)(iii) of the Commission’s rules.

According to the Application, adequate decommissioning funding for Byron Units 1 and 2 is dependent on a surety bond to be issued by the to-be-formed company and funding for the Zion ISFSI will be considered on February 8, 2022, *after* the license transfer has already take place. Application at pages 12, 13. Further, the potential decommissioning funding shortfall for Braidwood Units 1 and 2 and LaSalle Units 1 and 2 would also be addressed by the to-be-formed company after the transfer and based on its financial resources. Application at 14. The Commission cannot have reasonable assurance that future decommissioning will be properly funded without further information and decommissioning financial assurance *prior* to transfer.

The Commission regulations require an applicant for an operating license under subpart C of 10 CFR part 52, to report and certify financial assurance for decommissioning “in an amount which may be more, *but not less, than* the amount stated in the table in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.” 10 C.F.R. §50.75(b)(1). However, as of Exelon’s February 24, 2021, R S-21-030, Report on Status of Decommissioning Funding for Reactors and Independent Spent Fuel Storage Installations,²⁴ three of the four Illinois plants reported a decommissioning fund shortfall ranging from 18% for Braidwood Unit 1 to 6% for LaSalle Unit 1. The Commission should not approve a license transfer until the to-be-formed company to which the licenses are to be transferred has either fully funded all decommissioning trusts or provided assurance that each decommissioning trust is fully funded in the form of a surety method, insurance, or other guarantee method, including a copy of the financial instrument to be used as the surety. See 10 C.F.R. §50.75(e)(1)(iii) & (e)(3).

The requirement of adequate decommissioning funding should not be postponed until after the transfer and the new company is formed. Now is the time to assure adequate decommissioning funding for Illinois plants that the Applicant claims it will close. The public health and safety require assurance of complete decommissioning funding.

Commission rules provide that when closure is expected or planned within the next five years, licensees are to “submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.” *Id.* at

²⁴ [RS-21-030, Report on Status of Decommissioning Funding for Reactors and Independent Spent Fuel Storage Installations - kanterella](#)- accessed June 21, 2021

§50.75(f)(3). While the Application suggests that four Illinois plants including eight units will close sooner than five years, the Alternative Decommissioning Funding Scenarios provided at Enclosure 10 do not identify or assess any major factors that could affect the decommissioning cost. In fact, the alternative decommissioning costs are identical to the costs reported on February 24, 2021, and the February 24, 2021 report only addresses the premature retirement of Byron units 1 and 2. Letter to the NRC from Exelon Corporation at page 3 (Feb. 24, 2021). The February 24, 2021 report does not mention premature retirement of the Dresden, Braidwood, or LaSalle units, despite Applicant's representation that these plants are "at high risk of premature closure" and that its financial statements reflect the premise that they will close. Application at 9. The Commission should require the Applicant to provide an "up-to-date assessment of the major factors that could affect the cost to decommission" the eight units (Byron (2 units), Braidwood (2 units), Dresden (2 units), and LaSalle (2 units)) that the Applicant excluded from its financial statements on the grounds that they may be closed prematurely.

While Exelon represents that it plans to provide surety bonds for the decommissioning trusts, Application at p. 12, the Commission should require that these bonds, insurance, or other guarantee be obtained and produced for Commission review *before* it allows a transfer of the Illinois (and other) nuclear facility licenses to a yet to-be-formed and unnamed corporation.

III. CONCLUSION

The People of Illinois have standing under Commission rules, 10 C.F.R. §2.309(h)(2). Further they have a vital interest in the future of the nuclear facilities within their borders and in the continued safe operation of the facilities both to produce power and during decommissioning.

~~CONTAINS PROTECTED
INFORMATION – SUBJECT TO PROTECTIVE ORDER~~

For the foregoing reasons, the People of Illinois request that the Commission conclude that the Application lacks reasonable assurance of adequate protection of the public health and safety and order a hearing to require complete information *prior* to approving any license transfer to a to-be-formed and unnamed corporate entity. 10 C.F.R. §2.309(f)(1)(i).

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Respectfully submitted,

/Signed (electronically) by/

Susan L. Satter
Chief, Public Utilities Bureau
Illinois Attorney General Kwame
Raoul's Office
100 West Randolph Street
Chicago, Illinois 60601
Susan.Satter@illinois.gov
(312) 350-2769

Christopher J. Grant (excluding
CONFIDENTIAL SUNSI)
Senior Assistant Attorney General
Illinois Attorney General Kwame
Raoul's Office
69 W. Washington, #1800
Chicago IL 60602
(312) 814-5388
Christopher.J.Grant@illinois.gov