

Table of Contents

I. ARGUMENT1

a. Exelon Mischaracterizes the People’s Main Assertion in Contentions 2 and 3 by Asserting that the Transfer at Issue Is “Indirect” and a Simple Name Change; the People’s Main Assertion Is that “SpinCo” and “HoldCo” May Not Have Sufficient Financial Resources to Operate and Decommission the Existing Facilities.....1

b. Exelon Wrongly Argues That the People Are Requesting “Absolute Certainty” when Instead the People Request Adequate Disclosure.....5

II. CONCLUSION.....6

The People of the State of Illinois, by Attorney General Kwame Raoul, (hereafter, the “People of Illinois” or the “People”) submit this Reply to Exelon’s Answer Opposing Petition Of The State Of Illinois For Leave To Intervene And Request For A Hearing (hereafter “Exelon Answer”) as allowed by Commission rules. 10 C.F.R. § 2.309(i)(2).

I. ARGUMENT

a. **Exelon Mischaracterizes the People’s Main Assertion in Contentions 2 and 3 by Asserting that the Transfer at Issue Is “Indirect” and a Simple Name Change; the People’s Main Assertion Is that “SpinCo” and “HoldCo” May Not Have Sufficient Financial Resources to Operate and Decommission the Existing Facilities.**

The People asserted in their initial petition that the Nuclear Regulatory Commission (the “Commission”) should require a hearing to obtain assurance that Exelon Generation / “SpinCo” and “HoldCo” will have sufficient financial resources such that they can safely operate and decommission the facilities that are subject to the transfer request. Rather than address the People of Illinois’s main contention, Exelon asserts that it is not required by the Commission’s rules to submit further financial reporting in its *Application For Order Approving License Transfers And Conforming License Amendment* (hereafter, “Application” or “LTA”) because the Application’s proposed transfer is an “indirect transfer” to an “established” entity. *See* Exelon Answer at 13–16, 26.

This argument clouds the real issue in this proceeding: the new HoldCo and/or SpinCo may not have sufficient financial resources to continue to operate the facilities or properly decommission them. The Commission should resolve this uncertainty by exercising its authority pursuant to Section 50.33(f)(5) of its Rules. That section states that “[t]he 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.” 10 C.F.R. § 50.33(f)(5) (emphasis added). This section applies to both established entities and newly-formed entities, meaning that the Commission can require this additional information regardless of how it or Exelon characterizes the transfers at issue.¹ Critically, the section specifically provides that the Commission may request “information regarding a licensee’s ability to continue the conduct of the activities authorized by the license and to decommission the facility.” *Id.* As explained by the People in their initial petition, Exelon has provided woefully insufficient data for the Commission to determine, with reasonable assurance, that the spun off Exelon Generation / SpinCo and its new parent company will be able to continue to operate and maintain the transferred nuclear plants and adequately fund their decommissioning trusts.

First, serious questions exist as to whether the Exelon Generation / SpinCo and the yet-to-be-formed HoldCo will be able to operate the transferred nuclear plants. While Exelon is correct that Illinois law prevents it from using income from electric delivery service to subsidize generation service, it is naïve to believe that Exelon Generation does not currently benefit from the existing corporate structure where Exelon Corp. owns electric delivery utilities that currently provide substantial revenues to Exelon Corp. These conditions make investment in Exelon Corp. *as a whole* more attractive and will be absent under Exelon Generation’s new corporate arrangement. *See* Req. for Leave to Intervene at 13. Exelon asserts that its financial summaries show that the new Exelon Generation / SpinCo can cover all of its nuclear costs with revenues from nuclear operations alone. Exelon Answer at 30. However, the People of Illinois’s concern is that by excluding the cost and revenues of Illinois plants in its reporting and by failing to

¹ Exelon’s assertion that this proceeding involves indirect transfers also does not change the standard the Commission must apply in this case. Section 50.80 of the Commission’s rules provides that the Commission must consent in writing to all license transfers, including both direct and indirect transfers. 10 C.F.R. § 50.80(a).

attribute revenues and costs to specific plants or categories of plants, it is impossible for the Commission to assess whether Illinois and Exelon's other plants are facing premature retirement due to insufficient revenues or are producing sufficient revenues to continue to operate safely.

Exelon Generation / SpinCo and HoldCo's financial issues also present a threat to public safety. If HoldCo is undercapitalized and itself faces financial pressure, it may require more revenues from Exelon Generation / SpinCo to cover its cost of capital and operations than the generation subsidiary can reasonably provide while still being able to maintain safe nuclear operations. The Commission should not accept Exelon's current submissions to transfer twenty-one active nuclear power plants at twelve sites that, if poorly managed or maintained, could create an accident that would contaminate a 10-50 mile radius around the facility at issue.²

Given this uncertainty, the Commission should require Exelon to submit *plant specific* financial information in order to transfer plant specific licenses to HoldCo. The ongoing discussion of nuclear plant subsidies at the state and the federal level³ should caution the Commission from acting on an application that can easily hide either financial stability or financial peril⁴ by lumping all financial information into highly summarized reports that fail to provide a useful breakdown of costs and revenues.

Second, Exelon's current financial reporting does not sufficiently allow the Commission to determine if HoldCo and Exelon Generation / SpinCo will be able to obtain sufficient capital or surety to fund the decommissioning trusts and safely decommission facilities in the future. Exelon acknowledges in its Application that a decommissioning trust fund "shortfall exists for

² See <https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/emerg-plan-prep-nuc-power.html> (accessed August 12, 2021).

³ https://www.wspynews.com/news/local/kinzinger-backed-nuclear-power-incentive-included-in-senate-infrastructure-bill/article_0a55ca40-fab2-11eb-be75-df7f38f45c28.html (accessed August 13, 2021).

⁴ Exelon's Pennsylvania, New Jersey and Maryland nuclear facilities operate in the same PJM electricity markets as its Illinois nuclear plants (except the Clinton plant) and accordingly face similar market pressures.

Byron Units 1 and 2,” and that the Dresden decommissioning funds are only sufficient with projected growth. Application at 12. Exelon also plans to shutter the Braidwood and LaSalle plants and assumes a shortfall in these future decommissioning trusts. *Id.* In its Answer, Exelon states that it will obtain the necessary surety bonds to cover decommissioning fund shortfalls *before* the license transfer occurs, but this commitment only extends to the facilities currently scheduled for shut-down: Byron Units 1 and 2. Exelon Answer at 35–36.

The issue that remains is whether HoldCo will have the significant financial means necessary to fund the decommissioning of the Dresden, Braidwood, and LaSalle facilities. After the split, HoldCo may be unable to access the same capital at reasonable cost, for the reasons described above, as Exelon. The Braidwood decommissioning trust funds are 18% and 11.6% underfunded, and the LaSalle funds are each 6% underfunded. Together, these shortfalls are more than \$235 million and, when added to the Bryon shortfalls, exceed \$360 million.⁵ Under normal circumstances, these trust fund shortfalls would be addressed when the plants are shutdown. Here, however, the Commission should require Exelon to provide more granular financial data concerning both the SpinCo and HoldCo so that it can be reasonably sure that they will have adequate resources to obtain the necessary surety bonds given that there are open questions about how HoldCo and Exelon Generation / SpinCo will perform and how they will be capitalized. This added review will help to ensure that the public is protected during the decommissioning process notwithstanding Exelon’s reorganization and license transfer.

Thus, the Commission should exercise its authority pursuant to Section 50.33(f)(5) and compel Exelon to submit additional and more detailed information regarding its ability to continue operating the facilities and safely decommission them. The Commission need not

⁵ <https://www.nrc.gov/docs/ML2105/ML21055A776.pdf> (accessed August 13, 2021).

engage with Exelon's arguments that the Application seeks an indirect transfer to an established entity to exercise its authority under this section as the Commission's authority covers both newly-formed and established entities.

b. Exelon Wrongly Argues That the People Are Requesting "Absolute Certainty" when Instead the People Request Adequate Disclosure.

Exelon argues that the Commission should reject the People's request for financial reports that enable it to assess the financial security of Exelon Generation's twenty-one nuclear power plants because the Commission's rules allow summary information and do not require "absolutely certain predictions of future economic conditions." Exelon Answer at 9, 24.

Exelon's Answer misconstrues both the People's contentions and the Commission's rules.

As discussed above, the Commission's rules authorize it to request that an entity "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. §50.30(f)(5). The Commission should not accept Exelon's low and hardly assuring standard of review – that its financial summaries are acceptable so long as they are "plausible." *See, e.g.*, Exelon Answer at 10–11, 18, 20, 31.

Exelon asserted that the financial summaries in fact contain "dozens of separate line items and sub-headings," citing the number of line items. *Id.* at 24. However, the line items that Exelon cites include additions and subtractions and even repeated entries, and do not make the data more granular. The summaries do not show the sources of revenues, the type and size of expenses, a categorization of revenues and costs by location or type of plant or market, or any other data that would enable the Commission to assure itself that the nuclear facilities are and will continue to be financially stable and properly maintained. Unlike the FERC Form 1, that

includes “a comprehensive financial and operating report submitted for Electric Rate regulation and financial audits,”⁶ the financial summaries provided by Exelon provide no insight into the financial stability of the nuclear facilities subject to the LTA. The Commission is well within its authority to seek more detailed and transparent financial reports in its review of the LTA.

The need for the Commission to assure that it has comprehensive financial reporting was highlighted on August 6, 2021, the day Exelon’s Answer was filed, when Exelon filed a report with the Securities and Exchange Commission that explained that Exelon Generation agreed to purchase EDF Inc.’s 49.99% equity interest in Constellation Energy Nuclear Group (“CENG”). Exelon Generation “entered into a \$880,000,000 364-day Term Credit Agreement . . . with Barclay’s Bank pursuant to which [Exelon] Generation used the net proceeds to fund the purchase of EDF’s equity interest in CENG. . . . Borrowed funds are prepayable at any time following the funding at [Exelon] Generation’s option.”⁷ This loan increases Exelon Generation’s total short term loan obligations from \$1.2 billion by \$.88 billion, or by 73%.⁸ This additional loan burden, along with the change in revenues due to the purchase, should be reported to the Commission prior to any action on the LTA to assure that the Commission has a full understanding of the financial condition of the licensee.

II. CONCLUSION

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 pursuant to the People of Illinois’s

⁶ <https://www.ferc.gov/industries-data/electric/general-information/electric-industry-forms/form-1-electric-utility-annual> (accessed on August 12, 2022).

⁷ <https://investors.exeloncorp.com/static-files/b15e7722-a3bf-4ecf-bf0c-ba065b188e36> (accessed August 12, 2021).

⁸ <https://www.chicagobusiness.com/utilities/why-exelon-just-borrowed-almost-900m> (accessed August 12, 2021). In addition, Exelon Generation reportedly holds \$4.6 billion in long-term debt. *Id.*

Contentions 1, 2, and 3 *prior* to approving any license transfer to a to-be-formed and unnamed corporate entity. 10 C.F.R. §2.309(f)(1)(i).

DATED: August 13, 2021

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
(312) 350-2769
Susan.Satter@illinois.gov

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