

NUCLEAR REGULATORY COMMISSION

Docket No. 50-244

Exelon Generation Company, LLC

R.E. Ginna Nuclear Power Plant

Exemption

I. Background.

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of Facility Operating License No. DPR-18, which authorizes operation of the R.E. Ginna Nuclear Power Plant (Ginna). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Wayne County, New York.

II. Request/Action.

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix E, Section IV.F.2.c requires that "Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan." By letter dated October 6, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21279A112), as supplemented by letter dated November 15, 2021 (ADAMS Accession No. ML21320A054), the licensee requested an exemption from this requirement that would allow the licensee to delay conduct of certain offsite portions of a biennial emergency preparedness (EP) exercise required to be completed by

December 31, 2021 to be completed prior to July 20, 2022.¹ The licensee's request states that because of a series of Hurricanes/Tropical Storms (Henri and Ida) that struck the State of New York during the period of August 21-23, 2021 and September 1-3, 2021, causing significant widespread damage throughout the State and leading to Presidential Disaster Declarations, as well as the impact on State and local resources from Henri and Ida and the continued Coronavirus Disease 2019 (COVID-19) public health emergency, the licensee was unable to find a suitable time agreeable with Offsite Response Organizations (OROs) to complete the necessary offsite exercise objective by the end of Calendar Year (CY) 2021, and an exemption is being pursued.

By letter dated August 24, 2021 (ADAMS Accession No. ML21236A114), the NRC was notified by Exelon that the State of New York Office of Emergency Management (OEM), Wayne and Monroe Counties, and other affected OROs would not be available to participate in the scheduled August 24, 2021 biennial EP exercise due to the aftermath of Hurricane/Tropical Storm Henri, which occurred during the period of August 21-23, 2021. Exelon still conducted its biennial EP exercise for the Ginna facility as scheduled; however, only the onsite portions of the exercise were performed. The August 24, 2021 letter to the NRC also stated that Exelon would pursue regulatory relief if arrangements with OROs and Federal stakeholders could not be made prior to the end of CY 2021 so that necessary offsite exercise criteria/objectives could be demonstrated.

Based on recent discussions between Exelon, supporting OROs, and Federal stakeholders, it was determined that rescheduling participation to complete the applicable offsite exercise objectives would not be feasible prior to the end of CY 2021 due to the impacts on the

¹ The licensee's application requests deferral of offsite portions of the EP exercise until a date no later than July 20, 2022. However, also stated in the initial application and supplement, FEMA and the State of New York state the exercise must be completed prior to July 20, 2022. The licensee states in its supplement that it agrees to the timeframe of FEMA and the State of New York. Therefore, the staff interprets the request as supplemented to be completion of the exercise prior to July 20, 2022.

availability of the OROs and Federal stakeholders caused by the significant devastation from Hurricane/Tropical Storm Henri and later Ida and the continued COVID-19 public health emergency. On September 1, 2021, a teleconference was held with representatives from the State of New York OEM, Exelon, Federal Emergency Management Agency (FEMA), and other supporting OROs related to deferring/postponing the completion of ORO exercise criteria/objectives until sometime in 2022. Subsequently, in a telephone conversation between Exelon and FEMA representatives on October 1, 2021, FEMA indicated that they were not opposed to postponing FEMA-evaluated exercise criteria/objectives until CY 2022. FEMA noted that completion of the remaining exercise criteria/objectives must occur prior to July 20, 2022.

III. Discussion.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, Appendix E, when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

A. The Exemption is Authorized by Law.

This exemption would accommodate the impacts on the licensee's offsite response organizations from Hurricanes Henri and Ida and the continued COVID-19 public health emergency by postponing the select functions of the offsite portion of the exercise from the previously scheduled date of August 24, 2021 until a date prior to July 20, 2022.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50, Appendix E. The NRC staff has determined that granting of

the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety.

The underlying purpose of 10 CFR Part 50, Appendix E, Section IV.F.2.c is to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities and the licensee. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. The last Ginna full participation biennial EP exercise was conducted on August 20, 2019. Conducting the remaining offsite portions of the Ginna biennial EP exercise after CY 2021 places the exercise outside of the required biennium. Since the last biennial EP exercise on August 20, 2019, the licensee has conducted nine (9) full-scale, integrated performance indicator drills as well as numerous training sessions with the State and local response organizations. These drills and training sessions exercised all the proposed rescheduled offsite functions and support the licensee's assertion that it has a continuing level of engagement to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities and the licensee. The NRC staff has determined the licensee has met the purposes underlying the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement by having conducted these series of drills and training sessions.

In addition, no new accident precursors are created by allowing the licensee to postpone the selected offsite portions of the exercise from CY 2021 until a date prior to July 20, 2022. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

C. The Exemption is Consistent with the Common Defense and Security.

The proposed exemption would allow rescheduling of the specific offsite portions of the biennial EP exercise from the previously scheduled date of August 24, 2021 until a date prior to July 20, 2022. This change to the biennial EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

D. Special Circumstances.

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. Special circumstances per 10 CFR 50.12 that apply to this exemption request are 10 CFR 50.12(a)(2)(ii) and (v). Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when: “Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.” Section IV.F.2.c of 10 CFR Part 50, Appendix E requires licensees to exercise offsite plans biennially with full or partial participation by each offsite authority having a role under the plan. The underlying purposes of 10 CFR Part 50, Appendix E, Section IV.F.2.c requiring licensees to exercise offsite plans with offsite authority participation is to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee’s EP Program, and to test and maintain interfaces among affected State and local authorities, and the licensee. Although the affected OROs and FEMA were unable to participate in the scheduled exercise for August 24, 2021, no NRC findings (ADAMS Accession No. ML 19263A647) nor FEMA deficiencies (ADAMS Accession No. ML21307A042) were identified at the previous biennial EP exercise conducted on August 20, 2019. As previously discussed, the licensee has conducted nine (9) full-scale, integrated performance indicator drills as well as numerous training sessions with the State and local response organizations in 2019 through 2021. The NRC staff has determined that the licensee’s drill

performances and training sessions have been adequate to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities and the licensee during this period, satisfying the underlying purpose of the rule.

To accommodate the scheduling of exercises, the NRC has allowed licensees the flexibility to schedule their exercises at any time during the biennial calendar year. This provides a 13- to 35-month window to schedule exercises while still meeting the biennial requirement. This one-time change in the exercise schedule increases the interval between biennial exercises, however conducting the postponed exercise on a date prior to July 20, 2022, falls within the 35-month window, thus meeting the intent of the regulation.

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Exelon requests a temporary, one-time exemption for the evaluation of certain offsite elements/objectives from the CY 2021 biennial EP exercise at Ginna. Based on discussions between Exelon, supporting OROs, and Federal stakeholders, it was determined that rescheduling participation to complete the applicable offsite exercise objectives would not be feasible prior to the end of CY 2021 due to the impacts on the availability of the OROs and Federal stakeholders caused by the significant devastation from Hurricane/Tropical Storm Henri and later Ida and the continued COVID-19 public health emergency. On September 1, 2021, a teleconference was held with representatives from the State of New York OEM, Exelon, FEMA, and other supporting OROs related to deferring/postponing the completion of ORO exercise criteria/objectives until sometime in CY 2022. Subsequently, in a telephone conversation between Exelon and FEMA representatives on October 1, 2021, FEMA indicated that they were not opposed to postponing FEMA-evaluated exercise criteria/objectives until CY 2022. FEMA noted that completion of the

remaining exercise criteria/objectives must occur prior to July 20, 2022. Attachment two to the licensee's application documents that the State of New York OEM was unable to find a suitable window of available dates in CY 2021 to accommodate the offsite portions of the Ginna biennial EP exercise. Attachment four to the licensee's application documents the scheduling conflicts identified by the State of New York OEM preventing the exercise from occurring in CY 2021. Therefore, the licensee has made good faith efforts to comply with the regulations. Granting the requested exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement to conduct the specific offsite portions of the biennial EP exercise in CY 2022, instead of CY 2021, would provide only temporary relief from the applicable regulations. Additionally, the licensee has acknowledged returning to the previous biennial EP exercise schedule of every odd year and conducting the next follow-on biennial EP exercise in CY 2023, which will include both onsite and offsite participation.

Granting the exemption would still achieve the underlying purpose of 10 CFR Part 50, Appendix E, Section IV.F.2.c, the licensee has made a good faith effort to comply with the regulation, and the exemption would grant only temporary relief from the applicable regulation. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and (v) exist for the granting of an exemption.

E. Environmental Considerations.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements.

The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the

facility or any of its safety systems, change any of the assumptions or limits used in the licensee's safety analyses, or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the licensee's technical specifications or by the regulations in 10 CFR Part 20, "Standards for Protection Against Radiation." There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public.

There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

IV. Conclusions.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon Generation Company, LLC an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c. to conduct the specific offsite portion of the Ginna biennial EP exercise required for CY 2021, permitting

that part of the exercise to be conducted in coordination with FEMA, NRC Region I and Ginna by a date prior to July 20, 2022. This exemption expires on July 20, 2022, or when the offsite biennial EP exercise is performed in CY 2022, whichever occurs first.

Dated at Rockville, Maryland, this 15th day of December 2021

For the Nuclear Regulatory Commission.

Bo M. Pham, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.