



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 12, 2019

Mr. Bryan C. Hanson  
Senior Vice President  
Exelon Generation Company, LLC  
President and Chief Nuclear Officer  
Exelon Nuclear  
4300 Winfield Road  
Warrenville, IL 60555

SUBJECT: OYSTER CREEK NUCLEAR GENERATING STATION – EXEMPTION FROM  
THE REQUIREMENTS OF 10 CFR 140.11(a)(4), CONCERNING OFFSITE  
PRIMARY AND SECONDARY LIABILITY INSURANCE (EPID L-2019-LLE-0007)

Dear Mr. Hanson:

The U.S. Nuclear Regulatory Commission (NRC) has reissued the enclosed exemption from specific requirements of Title 10 of the *Code of Federal Regulations* Section 140.11(a)(4) concerning offsite primary and secondary liability insurance for Exelon Generation Company, LLC. This action is in response to your application dated April 4, 2019 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML19094B776) requesting an earlier effective date for the previously issued exemption to reduce the required level of primary offsite liability insurance from \$450 million to \$100 million and to eliminate the requirement to carry secondary financial protection for Oyster Creek Nuclear Generating Station. The reissued exemption is effective 9.38 months (285 days) after the permanent cessation of power operations.

A copy of the exemption and the Indemnity Agreement are enclosed. The exemption has been forwarded to the Office of the Federal Register for publication. An official hard copy of the amended indemnity agreement will be sent to you should the License Transfer be approved by the NRC and upon submittal of documentation that the purchase sale agreement has been finalized.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of ADAMS. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

//RA//

Amy M. Snyder, Senior Project Manager  
Reactor Decommissioning Branch  
Division of Decommissioning, Uranium Recovery  
and Waste Programs  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 50-219

Enclosures:

1. Exemption
2. Amendment No. 18 to Indemnity Agreement No. B-37

cc w/encls: Distribution via Listserv

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**ADAMS Package Accession No.: ML19129A363****Letter: ML19129A365****Exemption: ML19129A366****FRN: ML19129A3654****\*via e-mail**

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**ENCLOSURE 1**

EXEMPTION

EXELON GENERATION COMPANY, LLC

OYSTER CREEK NUCLEAR GENERATING STATION

DOCKET NO. 50-219

**NUCLEAR REGULATORY COMMISSION**

**Docket No. 50-219**

**Exelon Generation Company, LLC**

**Oyster Creek Nuclear Generating Station**

**Exemption**

**I. Background.**

Exelon Generation Company, LLC (Exelon, the licensee), is the holder of Renewed Facility Operating License No. DPR-16 for Oyster Creek Nuclear Generating Station (Oyster Creek). By letter dated February 14, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML18045A084), Exelon submitted to the U.S. Nuclear Regulatory Commission (NRC) a certification in accordance with Sections 50.82(a)(1)(i) of Title 10 of the *Code of Federal Regulations* (10 CFR), indicating that it plans to cease permanent operation no later than October 31, 2018. By letter dated September 25, 2018 (ADAMS Accession No. ML18268A258), Exelon submitted to the NRC a certification in accordance with 10 CFR 50.82(a)(1)(ii), stating that Oyster Creek permanently ceased power operations on September 17, 2018, and that, as of September 25, 2018, all fuel had been permanently removed from the Oyster Creek reactor vessel. The facility consists of a permanently shutdown and defueled boiling-water reactor located in the town of Forked River, Ocean County, New Jersey.

**II. Request/Action.**

On December 19, 2018, the NRC exempted Exelon from 10 CFR 140.11(a)(4) to allow Exelon to reduce the required level of primary off-site liability insurance for Oyster Creek from

\$450,000,000 to \$100,000,000, and eliminate the requirement for Oyster Creek to carry secondary financial protection (ADAMS Accession Nos. ML18229A005 [Cover Letter] and ML18229A006 [Exemption]). The December 19, 2018, exemption originally had an effective date of 12 months (365 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1).

By letter dated April 4, 2019 (ADAMS Accession No. ML19094B776), Exelon requested to change the effective date of the December 19, 2018, exemption from 12 months (365 days) to 9.38 months (285 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1). Exelon certified that Oyster Creek permanently ceased power operations on September 17, 2018. Therefore, the revised effective date of the exemption would be June 29, 2019.

To provide a complete record of the NRC staff's review, the NRC is reissuing the December 19, 2018, exemption from 10 CFR 140.11(a)(4) with a revised effective date of 9.38 months (285 days) from the certification of permanent cessation of power operations under 10 CFR 50.82(a)(1). This reissued exemption supersedes the exemption issued on December 19, 2018.

The regulation at 10 CFR 140.11(a)(4) requires each licensee to have and maintain primary financial protection in an amount of \$450 million. In addition, the licensee is required to participate in an industry retrospective rating plan (secondary financial protection) that commits each licensee to pay into an insurance pool to be used for damages that may exceed primary insurance coverage. Participation in the industry retrospective rating plan will subject Exelon to deferred premium charges up to a maximum total deferred premium of \$131,056,000 with respect to any nuclear incident at any operating nuclear power plant, and up to a maximum annual deferred premium of \$20,496,000 per incident.

The licensee states that the risk of an offsite radiological release is significantly lower at a nuclear power reactor that has permanently shut down and defueled, when compared to an

operating power reactor. Similarly, the associated risk of offsite liability damages that would require insurance or indemnification is commensurately lower for permanently shut down and defueled plants. Therefore, Exelon requested an exemption from 10 CFR 140.11(a)(4), to permit a reduction in primary offsite liability insurance and to withdraw from participation in the industry retrospective rating plan.

### **III. Discussion.**

Pursuant to 10 CFR 140.8, “Specific exemptions,” the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 140, when the exemptions are authorized by law and are otherwise in the public interest. The NRC staff has reviewed Exelon’s request for an exemption from 10 CFR 140.11(a)(4) and has concluded that the requested exemption is authorized by law and is otherwise in the public interest.

The Price Anderson Act of 1957 (PAA) requires that nuclear power reactor licensees have insurance to compensate the public for damages arising from a nuclear incident. Specifically, the PAA requires licensees of facilities with a “rated capacity of 100,000 electrical kilowatts or more” to maintain the maximum amount of primary offsite liability insurance commercially available (currently \$450 million) and a specified amount of secondary insurance coverage (currently up to \$131,056,000 per reactor). In the event of an accident causing offsite damages in excess of \$450 million, each licensee would be assessed a prorated share of the excess damages, up to \$131,056,000 per reactor, for a total of approximately \$13 billion per nuclear incident. The NRC’s regulations at 10 CFR 140.11(a)(4) implement these PAA insurance requirements and set forth the amount of primary and secondary insurance each power reactor licensee must have.

As noted above, the PAA requirements with respect to primary and secondary insurance, and the implementing regulations at 10 CFR 140.11(a)(4), apply to licensees of facilities with a “rated capacity of 100,000 electrical kilowatts or more.” When the NRC issues a license amendment to a decommissioning licensee to reflect the defueled status of the facility, the license amendment includes removal of the rated capacity of the reactor from the license.

Accordingly, a reactor that is undergoing decommissioning has no “rated capacity.” Removal of the rated capacity from the facility of a decommissioning licensee, thus, allows the NRC to take the reactor licensee out of the category of reactor licensees that are required to maintain the maximum available insurance and to participate in the secondary retrospective insurance pool under the PAA, subject to a technical finding that lesser potential hazards exist at the facility after termination of operations.

The financial protection limits of 10 CFR 140.11(a)(4) were established to require a licensee to maintain sufficient insurance, as specified under the PAA, to satisfy liability claims by members of the public for personal injury, property damage, and the legal cost associated with lawsuits, as the result of a nuclear accident at an operating reactor with a rated capacity of 100,000 kilowatts electric (or greater). Thus, the insurance levels established by this regulation, as required by the PAA, were associated with the risks and potential consequences of an accident at an operating reactor with a rated capacity of 100,000 kilowatts electric (or greater).

The legal and associated technical basis for granting exemptions from 10 CFR part 140 is set forth in SECY-93-127, “Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning,” dated May 10, 1993 (ADAMS Accession No. ML12257A628). The legal analysis underlying SECY-93-127 concluded that, upon a technical finding that lesser potential hazards exist after termination of operations (and removal of the rated capacity), the Commission has the discretion under the PAA to reduce the amount of insurance required of a licensee undergoing decommissioning.



As a technical matter, the fact that a reactor has permanently ceased operations is not itself determinative as to whether a licensee may cease providing the offsite liability coverage required by the PAA and 10 CFR 140.11(a)(4). In light of the presence of freshly discharged irradiated fuel in the spent fuel pool (SFP) at a recently shutdown reactor, the primary consideration is the risk of offsite radiological release from a zirconium fire. That risk generally remains for about 10-16 months of decay time for the fuel used in the last cycle of power operation. After that time, the offsite consequences of an offsite radiological release from a zirconium fire are negligible for shutdown reactors, but the SFP is still operational and an inventory of radioactive materials still exists onsite. Therefore, an evaluation of the potential for offsite damage is necessary to determine the appropriate level of offsite insurance post shutdown, in accordance with the Commission's discretionary authority under the PAA to establish an appropriate level of required financial protection for such shutdown facilities.

The NRC staff has conducted an evaluation and concluded that, aside from the handling, storage, and transportation of spent fuel and radioactive materials for a permanently shut down and defueled reactor, no reasonably conceivable potential accident exists that could cause significant offsite damage. During normal power reactor operations, the forced flow of water through the reactor coolant system removes heat generated by the reactor. The reactor coolant system transfers this heat away from the reactor core by converting reactor feedwater to steam, which then flows to the main turbine generator to produce electricity. Most of the accident scenarios postulated for operating power reactors involve failures or malfunctions of systems that could affect the fuel in the reactor core, which in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of reactor operations at Oyster Creek and the permanent removal of the fuel from the reactor core, such accidents are no longer possible. The reactor, reactor coolant system, and supporting systems no longer operate and have no function related to the storage of the

irradiated fuel. Therefore, postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite. On a case-by-case basis, licensees undergoing decommissioning have been granted permission to reduce the required amount of primary offsite liability insurance coverage from \$450 million to \$100 million and to withdraw from the secondary insurance pool. One of the technical criteria for granting the exemption is that the possibility of a design-basis event that could cause significant offsite damage has been eliminated.

The NRC staff performed an evaluation of the design-basis accidents for Oyster Creek being permanently defueled as part of SECY-18-0062, "Request by the Exelon Generation Company, LLC for Exemptions from Certain Emergency Planning Requirements for the Oyster Creek Nuclear Generating Station," dated May 31, 2018 (ADAMS Accession No. ML18030B340).

The licensee has stated, and the NRC staff agrees, that while spent fuel remains in the SFP, the only postulated design-basis accident that would remain applicable to Oyster Creek in the permanently defueled condition that could contribute a significant dose will be a fuel handling accident (FHA) in the Reactor Building, where the SFP is located. For completeness, the NRC staff also evaluated the applicability of other design-basis accidents documented in the Oyster Creek Updated Final Safety Analysis Report (UFSAR) (ADAMS Accession No. ML15307A558), to ensure that these accidents would not have consequences that could potentially exceed the 10 CFR 50.67 dose limits and Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," dose acceptance criteria or approach the U.S. Environmental Protection Agency (EPA) early phase protective action guides (PAGs).

In the Oyster Creek UFSAR, the licensee has determined that within 33 days after shutdown, the FHA doses would decrease to a level that would not warrant protective actions

under the EPA early phase PAG framework, notwithstanding meeting the dose limit requirements under 10 CFR 50.67 and dose acceptance criteria under Regulatory Guide 1.183. The NRC staff notes that the doses from an FHA are dominated by the isotope Iodine-131. The date of cessation of power operations of Oyster Creek occurred on September 17, 2018. With 9.38 months of decay, the thyroid dose from an FHA would be negligible. After 9.38 months of decay, the only isotope remaining in significant amounts, among those postulated to be released in a design-basis accident FHA, would be Krypton-85. Since Krypton-85 primarily decays by beta emission, the calculated skin dose from an FHA analysis would make an insignificant contribution to the total effective dose equivalent (TEDE), which is the parameter of interest in the determination of the EPA early phase PAGs for sheltering or evacuation. The NRC staff concludes that the dose consequence from an FHA for the permanently defueled Oyster Creek would not approach the EPA early phase PAGs. Therefore, any offsite consequence from a design-basis radiological release is unlikely, and a significant amount of offsite liability insurance coverage is not required.

The only beyond design-basis event that has the potential to lead to a significant radiological release at a permanently shut down and defueled (decommissioning) reactor is a zirconium fire. The zirconium fire scenario is a postulated, but highly unlikely, accident scenario that involves the loss of water inventory from the SFP, resulting in a significant heatup of the spent fuel and culminating in substantial zirconium cladding oxidation and fuel damage. The probability of a zirconium fire scenario is related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the risks from a zirconium fire scenario continue to decrease as a function of the time that Oyster Creek has been permanently shut down.

In the analysis provided in the Attachment to its submittal dated November 6, 2018, as supplemented by letter dated February 13, 2019, with Attachment 1, Response to NRC's Request for Additional Information and Attachment 2, Zirconium Fire Analysis for Drained Spent Fuel Pool, C-1302-226-E310-457, Revision 2, (ADAMS Accession Nos. ML18310A306, and

ML19044A643, respectively), the licensee compared the conditions for the hottest fuel assembly stored in the SFP to a criterion proposed in SECY-99-168, "Improving Decommissioning Regulations for Nuclear Power Plants" (ADAMS Accession No. ML12265A598), applicable to offsite emergency response for the unit in the decommissioning process. This criterion considers the time for the hottest assembly to heat up from 30 degrees Celsius ( $^{\circ}\text{C}$ ) to  $900^{\circ}\text{C}$  adiabatically. If the heatup time is greater than 10 hours, then offsite emergency preplanning involving the plant is not necessary. Based on the limiting fuel assembly for decay heat and adiabatic heatup analysis presented in Attachment 2, at 9.38 months (285 days) after permanent cessation of power operations (i.e., 9.38 months decay time), the time for the hottest fuel assembly to reach  $900^{\circ}\text{C}$  is 10 hours after the assemblies have been uncovered. As stated in NUREG-1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," February 2001 (ADAMS Accession No. ML010430066),  $900^{\circ}\text{C}$  is an acceptable temperature to use for assessing onset of fission product release under transient conditions (to establish the critical decay time for determining availability of 10 hours for deployment of mitigation equipment and, if necessary, for offsite agencies to take appropriate action to protect the health and safety of the public, if fuel and cladding oxidation occurs in air).

The NRC staff reviewed the calculation to verify that important physical properties of materials were within acceptable ranges and the results were accurate. The NRC staff determined that physical properties were appropriate. Therefore, the NRC staff found that after 9.38 months (285 days), more than 10 hours would be available before a significant offsite release could begin. The NRC staff concluded that the adiabatic heatup calculation provided an acceptable method for determining the minimum time available for deployment of mitigation equipment and, if necessary, implementing measures under a comprehensive general emergency plan.

In this regard, one technical criterion for relieving decommissioning reactor licensees from the insurance obligations applicable to an operating reactor is a finding that the heat

generated by the SFP has decayed to the point where the possibility of a zirconium fire is highly unlikely.

This was addressed in SECY-93-127, where the NRC staff concluded that there was a low likelihood and reduced short-term public health consequences of a zirconium fire once a decommissioning plant's spent fuel has sufficiently decayed. In its Staff Requirements Memorandum, "Financial Protection Required of Licensees of Large Nuclear Power Plants during Decommissioning," dated July 13, 1993 (ADAMS Accession No. ML003760936), the Commission approved a policy that authorized, through the exemption process, withdrawal from participation in the secondary insurance layer and a reduction in commercial liability insurance coverage to \$100 million, when a licensee is able to demonstrate that the spent fuel could be air-cooled if the SFP was drained of water.

The NRC staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (e.g., Maine Yankee Atomic Power Station, published in the *Federal Register* on January 19, 1999 [64 FR 2920]; Zion Nuclear Power Station, published in the *Federal Register* on December 28, 1999 [64 FR 72700]; Kewaunee Power Station, published in the *Federal Register* on March 24, 2015 [80 FR 15638]; and Crystal River Unit 3 Nuclear Generation Plant, published in the *Federal Register* on May 6, 2015 [80 FR 26100]).

Additional discussions of other decommissioning reactor licensees that have received exemptions to reduce their primary insurance level to \$100 million are provided in SECY-96-256, "Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11," dated December 17, 1996 (ADAMS Accession No. ML15062A483). These prior exemptions were based on the licensee demonstrating that the SFP could be air-cooled, consistent with the technical criterion discussed above.

The NRC staff has evaluated the issue of zirconium fires in SFPs and presented an independent evaluation of a SFP subject to a severe earthquake in NUREG-2161,

“Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor,” September 2014 (ADAMS Accession No. ML14255A365). This evaluation concluded that, for a representative boiling-water reactor, fuel in a dispersed high-density configuration would be adequately cooled by natural circulation air flow within several months after discharge from a reactor if the pool was drained of water.

By letters dated August 22 and December 6, 2017 (ADAMS Accession Nos. ML17234A082 and ML17340A708, respectively), Exelon confirmed that the plant design and fuel storage configuration considered in NUREG-2161 were consistent with the Oyster Creek plant design and fuel storage configurations to be used in the decommissioning of Oyster Creek. The NRC staff independently confirmed that the Oyster Creek fuel assembly decay levels are also consistent with the spent fuel considered in NUREG-2161. Thus, the NRC staff has determined that after 9.38 months (285 days) decay, the fuel stored in the Oyster Creek SFP will be able to adequately be cooled by air in the unlikely event of pool drainage.

In SECY-00-0145, “Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,” dated June 28, 2000, and SECY-01-0100, “Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools,” dated June 4, 2001 (ADAMS Accession Nos. ML003721626 and ML011450420, respectively), the NRC staff discussed additional information concerning SFP zirconium fire risks at decommissioning reactors and associated implications for offsite insurance. Analyzing when the spent fuel stored in the SFP is capable of adequate air-cooling is one measure that demonstrates when the probability of a zirconium fire would be exceedingly low.

The licensee’s analyses demonstrate that under conditions where the SFP water inventory has drained and only air cooling of the stored irradiated fuel is available, there is reasonable assurance that 9.38 months (285 days) after the certification of permanent cessation

of operations that the Oyster Creek spent fuel will remain at temperatures far below those associated with a significant radiological release.

In addition, the licensee performed adiabatic heatup analyses, in which a complete drainage of the SFP is combined with rearrangement of spent fuel rack geometry and/or the addition of rubble to the SFP; this type of analysis postulates that decay heat transfer from the spent fuel via conduction, convection, or radiation would be impeded. The licensee's adiabatic heatup analyses demonstrate that 9.38 months (285 days) after the certification of permanent cessation of operations, there would be at least 10 hours after the loss of all means of cooling (both air and/or water), before the spent fuel cladding would reach a temperature where the potential for a significant offsite radiological release could occur.

In the NRC staff's safety evaluation dated June 11, 2019 associated with the NRC's reissuance of exemptions from certain emergency planning requirements for Oyster Creek, with a modified effective date of 9.38 months (285 days) after the permanent cessation of operations, the NRC staff assessed the Exelon accident analyses associated with the radiological risks from a zirconium fire at a permanently shut down and defueled Oyster Creek site. Based on its evaluation of the licensee's adiabatic heatup analyses, the NRC staff found that, for the very unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, there will be a minimum of 10 hours from the initiation of the accident until the cladding reaches a temperature where offsite radiological release might occur. The NRC staff found that 10 hours is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation.

The NRC staff has determined that the licensee's proposed reduction in primary offsite liability coverage to a level of \$100 million, and the licensee's proposed withdrawal from participation in the secondary insurance pool for offsite financial protection, are consistent with the policy established in SECY-93-127 and subsequent insurance considerations resulting from

zirconium fire risks, as discussed in SECY-00-0145 and SECY-01-0100. The NRC has previously determined in SECY-00-0145 that the minimum offsite financial protection requirement may be reduced to \$100 million and that secondary insurance is not required, once it is determined that the spent fuel in the SFP is no longer thermal-hydraulically capable of sustaining a zirconium fire based on a plant-specific analysis. In addition, the NRC staff notes that similar exemptions from these insurance requirements, have been granted to other permanently shutdown and defueled power reactors, upon satisfactory demonstration that zirconium fire risk from the irradiated fuel stored in the SFP is of negligible concern.

**A. The Exemption is Authorized by Law**

The PAA, and its implementing regulations in 10 CFR 140.11(a)(4), require licensees of nuclear reactors that have a rated capacity of 100,000 kilowatts electric or more to have and maintain \$450 million in primary financial protection and to participate in a secondary retrospective insurance pool. In accordance with 10 CFR 140.8, the Commission may grant exemptions from the regulations in 10 CFR part 140, as the Commission determines are authorized by law. The legal and associated technical basis for granting exemptions from 10 CFR part 140 are set forth in SECY-93-127. The legal analysis underlying SECY-93-127 concluded that, upon a technical finding that lesser potential hazards exist after termination of operations, the Commission has the discretion under the Price-Anderson Act to reduce the amount of insurance required of a licensee undergoing decommissioning.

The NRC staff concludes that the technical criteria for relieving Exelon from its existing primary and secondary insurance obligations have been met. As explained above, the NRC staff has concluded that no reasonably conceivable design-basis accident exists that could cause an offsite release greater than the EPA PAGs, and therefore, that any offsite consequence from a design-basis radiological release is unlikely, and the need for a significant



amount of offsite liability insurance coverage is unwarranted. Additionally, the NRC staff determined that, after 9.38 months (285 days) decay, the fuel stored in the Oyster Creek SFP will be able to adequately be cooled by air in the unlikely event of pool drainage. Moreover, in the very unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, the NRC staff has determined that 10 hours would be available and is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation. Thus, the NRC staff concludes that the fuel stored in the Oyster Creek SFP will have decayed sufficiently by the requested effective exemption date of 9.38 months (285 days) after the certification of permanent cessation of operations, to support a reduction in the required insurance consistent with SECY-00-0145.

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, Section 170, or other laws, as amended, which require licensees to maintain adequate financial protection. Accordingly, consistent with the legal standard presented in SECY-93-127, under which decommissioning reactor licensees may be relieved of the requirements to carry the maximum amount of insurance available and to participate in the secondary retrospective premium pool where there is sufficient technical justification, the NRC staff concludes that the requested exemption is authorized by law.

**B. The Exemption is Otherwise in the Public Interest**

The financial protection limits of 10 CFR 140.11 were established to require licensees to maintain sufficient offsite liability insurance to ensure adequate funding for offsite liability claims, following an accident at an operating reactor. However, the regulation does not consider the

reduced potential for and consequence of nuclear incidents at permanently shutdown and decommissioning reactors.

The basis provided in SECY-93-127, SECY-00-0145, and SECY-01-0100 allows licensees of decommissioning plants to reduce their primary offsite liability insurance and to withdraw from participation in the retrospective rating pool for deferred premium charges. As discussed in these documents, once the zirconium fire concern is determined to be negligible, possible accident scenario risks at permanently shutdown and defueled reactors are greatly reduced, when compared to the risks at operating reactors, and the associated potential for offsite financial liabilities from an accident are commensurately less. The licensee has analyzed and the NRC staff has confirmed that the risks of accidents that could result in an offsite radiological risk are minimal, thereby justifying the proposed reductions in offsite primary liability insurance and withdrawal from participation in the secondary retrospective rating pool for deferred premium charges.

Additionally, participation in the secondary retrospective rating pool could potentially have adverse consequences on the safe and timely completion of decommissioning. If a nuclear incident sufficient to trigger the secondary insurance layer occurred at another nuclear power plant, the licensee could incur financial liability of up to \$131,056,000. However, because Oyster Creek is permanently shut down, it cannot produce revenue from electricity generation sales to cover such a liability. Therefore, such liability if subsequently incurred, could significantly affect the ability of the facility to conduct and complete timely radiological decontamination and decommissioning activities. In addition, as SECY-93-127 concluded, the shared financial risk exposure to Exelon is greatly disproportionate to the radiological risk posed by Oyster Creek, when compared to operating reactors. The reduced overall risk to the public at decommissioning power plants does not warrant that Exelon be required to carry full operating reactor insurance coverage, after the requisite spent fuel cooling period has elapsed following final reactor shutdown. The licensee's proposed financial protection limits will maintain

a level of liability insurance coverage commensurate with the risk to the public. These changes are consistent with previous NRC policy as discussed in SECY-00-0145, and exemptions approved for other decommissioning reactors. Thus, the underlying purpose of the regulations will not be adversely affected by the reductions in insurance coverage. Accordingly, an exemption from participation in the secondary insurance pool and a reduction in the primary insurance to \$100 million, a value more in line with the potential consequences of accidents, would be in the public interest in that this assures there will be adequate funds to address any of those consequences and helps to assure the safe and timely decommissioning of the reactor.

Therefore, the NRC staff has concluded that the reissued exemption from 10 CFR 140.11(a)(4), which would permit Exelon to lower the Oyster Creek primary insurance levels and to withdraw from the secondary retrospective premium pool at the requested effective date of 9.38 months (285 days) after the certification of permanent cessation of operations, is in the public interest.

### **C. Environmental Considerations**

The NRC's approval of an exemption from insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant

increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve surety, insurance, or indemnity requirements.

As the Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, I have determined that reissuing the exemption involves no significant hazards consideration, as defined in 10 CFR 50.92, because reducing a licensee's offsite liability requirements at Oyster Creek does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of Oyster Creek or site activities. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident), nor any activities conducted at the site. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region resulting from issuance of the requested exemption. The requirement for offsite liability insurance involves surety, insurance, or indemnity matters only.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the reissuance of this exemption.

#### **IV. Conclusions.**

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, reissuing the exemption originally granted on December 19, 2018, is authorized by law and is otherwise in the public interest. Therefore, the Commission hereby reissues Exelon an exemption from the requirements of 10 CFR 140.11(a)(4) for Oyster Creek. Exelon certified that it permanently ceased operation at Oyster Creek on September 17, 2018. The exemption from 10 CFR 140.11(a)(4) permits Oyster Creek to reduce the required level of primary financial protection, from \$450 million to \$100 million and to withdraw from participation in the secondary layer of financial protection 9.38 months (285 days) after the certification of permanent cessation of operations.

Therefore, the exemption is effective on June 29, 2019 (9.38 months (285 days) after Oyster Creek permanently ceased power operations on September 17, 2019).

Dated at Rockville, Maryland, this 12 day of June 2019.

For the Nuclear Regulatory Commission.

**//RA//**

John R. Tappert, Director,  
Division of Decommissioning, Uranium Recovery  
and Waste Programs  
Office of Nuclear Material Safety  
and Safeguards

**ENCLOSURE 2**

AMENDMENT NO. 18 TO INDEMNITY AGREEMENT NO. B-37

EXELON GENERATION COMPANY, LLC

OYSTER CREEK NUCLEAR GENERATING STATION

DOCKET NO. 50-219



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, D.C. 20555-0001

Docket Nos. 50-219  
72-015

AMENDMENT TO INDEMNITY AGREEMENT NO. B-37  
AMENDMENT NO. 18

Effective \_\_\_\_\_, 2019, Indemnity Agreement No. B-37 between Exelon Generation Company, LLC, and the United States Nuclear Regulatory Commission, dated October 3, 1967, as amended, is hereby further amended as follows:

Article VIII of the Indemnity Agreement is deleted in its entirety wherever it appears in the Indemnity Agreement, and is substituted therein by the requirements of the exemption permitting a reduction in primary financial protection from \$450,000,000 to \$100,000,000, and withdrawal from participation in the secondary layer of financial protection.

Item 2a of the Attachment to the Indemnity Agreement is deleted in its entirety and the following substituted therefor:

Item 2 – Amount of financial protection

a. \$100,000,000 (From 12:01 a.m., \_\_\_\_\_, 2019)

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
Anthony Bowers, Chief  
Financial Projects Branch  
Division of Licensing Projects  
Office of Nuclear Reactor Regulation

Accepted \_\_\_\_\_, 2019

By \_\_\_\_\_  
Exelon Generation Company