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Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

Subject: Comments Concerning Revision of Fee Schedules; Fee Recovery for Fiscal Year 2020 (85 Fed. Reg. 9328, dated February 18, 2020) (Docket ID NRC-2017-0228)

Exelon Generation Company, LLC ("Exelon") submits these comments on the Nuclear Regulatory Commission's (NRC's) proposed rule to revise the fee schedules in 10 CFR Parts 170 and 171 for Fiscal Year 2020, published at 85 Fed. Reg. 9328 on February 18, 2020.

Exelon appreciates the NRC's continued efforts to improve the efficiency and clarity of the fee and invoicing process, e.g., the recently implemented e-Billing process, the breakout of how prior year carryover was distributed, and the other improvements made as part of the Fees Transformation Initiative.

Regarding the FY2020 proposed fee rule, although NRC has improved the fee process as noted above, Exelon continues to have many of the same concerns regarding this process that we have expressed in recent years.[1] The power reactor industry's continued economic stress highlights the importance of efficient regulatory oversight, given the industry's high levels of safety and reliability. It is in the spirit of continued improvement in regulatory efficiency that Exelon provides the following comments on the FY2020 proposed rule.

- The work papers supporting the FY2020 proposed rule show a detailed breakdown of the products and product lines included in the calculation of the Part 171 Operating Power Reactors annual per-reactor fee, including significant amounts for various research activities. Research

[1] *See* Letter from J. Fewell, Exelon to U.S. NRC, "Comments Concerning Revision of Fee Schedules; Fee Recovery for Fiscal Year 2019 (84 Fed. Reg. 578, dated January 31, 2019)(Docket ID NRC-2017-0032)," dated Feb. 27, 2019 (ADAMS ML19059A253); Letter from J. Fewell, Exelon, to U.S. NRC, "Comments Concerning Revision of Fee Schedules; Fee Recovery for Fiscal Year 2018 (83 *Fed. Reg.* 3407, dated January 25, 2018) (Docket ID NRC-2017-0026)," dated Feb. 21, 2018 (ADAMS ML18054B354); Letter from J. Fewell, Exelon, to U.S. NRC, "Comments Concerning Revision of Fee Schedules; Fee Recovery for Fiscal Year 2017 (82 *Fed. Reg.* 8696, dated January 30, 2017) (Docket ID NRC-2016-0081)," dated Feb. 28, 2017 (ADAMS ML17061A683); Letter from J. Fewell, Exelon, to C. Bladey, NRC, "Comments Concerning Fee Development and Communications (81FR15352, dated March 22, 2016) (Docket ID NRC- 2016-0056)," dated May 6, 2016 (ADAMS ML16133A327); Letter from B. Hanson, Exelon, to U.S. NRC, "Comments Concerning Proposed Rule 10 CFR Parts 170 and 171, 'Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015' (80FR15476, dated March 23, 2015) (Docket ID NRC-2014-0200)," dated April 22, 2015 (ADAMS ML15113B230).

for Operating Reactors is shown as $24M in contract dollars, and 128 FTEs. While some research appears explainable for the existing fleet of reactors, e.g., "Aging & Materials", other descriptors are more cryptic, e.g., "Engineering Research", "Systems Analysis", or "Risk Analysis" ($16M contract dollars budgeted for these three.) And others that might appear applicable, e.g., "Digital I&C" have no resources budgeted. It would be helpful to have in the work papers, perhaps as a separate paragraph or table in the Operating Power Reactors section, a brief description of the major efforts for each research Product, the goal of the research, expected completion date, safety issue to be resolved by the research, whether related to specific licensing actions, etc., so that Licensees and the public have confidence that these research dollars are being used to directly support the NRC mission.

- The work papers also show that approximately 17% of the Nuclear Reactor Safety program budget used in determining the annual Operating Reactor fee comes from the New Reactors product line. Exelon suggests that the new reactor budget be broken out separately, to be paid by those entities pursuing new reactors. Alternately, the work papers should clarify in some detail how new reactor spending benefits the operating reactor fleet.

- The percentage of fees recoverable via Part 170 collections continues to decline, from approximately 38% in FY2016 to less than 32% in FY2020 proposed. This loss in Part 170 fees is understandable, given the shutdowns in commercial reactors, reductions in licensing actions, and completion of NRC reviews and certifications. Because the recovery of NRC fees is a zero-sum effort, reductions in Part 170 collections, without a commensurate reduction in NRC budget authority, drive Part 171 fee collections higher. As Exelon has noted in reviewing proposed fee rules for prior years, this trade-off between Part 170 and Part 171 fees divorces the reactor fee from any actual health and safety benefit to be achieved via the Part 171 fee collection. That is, an increase in per-reactor fee does not necessarily mean greater NRC focus is needed to ensure safety. Exelon notes that under the Nuclear Energy Innovation and Modernization Act (NEIMA), the reactor fee is limited "to the maximum extent practicable." Exelon recommends that the work papers address this aspect of the fees so that safety benefit derived from increased Part 171 fees can be better understood. If the fee reflects only the budgeting process and not any change in the need for NRC oversight, that clarity would also be useful for the industry in prioritizing resource allocations.

- The NRC staff provided a very thorough public briefing about the proposed fee rule on March 5, 2020, including the business line budget utilization of the $40M in carryover funds. Approximately 50% of the carryover funding was utilized in the Operating and New Reactor business lines, consistent with the business line budgeting information provided in the briefing. However, the fee class budget distribution provided in the briefing shows 86% of the fee/receipt recoverable budget is allocated to Power Reactors. The Federal Register publication of the proposed fee rule notes that the $40M in carryover results in reduced fees to licensees. In light of the NRC's distribution of its fee-recoverable appropriation, how did the NRC determine the percentage of carryover that would be applied to reduce operating reactor fees?

- Related to the use of carryover funds, the $40M amount is very large by historical standards, i.e., the FY2019 carryover was $20M. Again, referencing the business line carryover utilization provided in the March 5 briefing, $13M, approximately one third of carryover funding was used to defray corporate support costs. NRC has struggled to contain corporate support costs and is required under NEIMA to reduce these costs to less than 30%, to the maximum extent practicable. Exelon is concerned that without continued use of carryover funds in future years, corporate support will drive licensee fees higher, with uncertain safety benefit. We request that the work papers address the potential for increased industry fees to cover NRC corporate support.

Lastly, Exelon supports the general comments of the Nuclear Energy Institute on the FY2020 proposed fee rule. Exelon encourages the NRC to consider all these comments as the FY2020 budget and fee structure is developed. Exelon also encourages the NRC to seek industry and licensee input as the NRC transitions to implementing NEIMA's fee structure.

Exelon appreciates the opportunity to submit these comments. If you have any questions or require further information, please contact Eric Jebsen, Senior Regulatory Engineer, at 630-657-2829.

Respectfully,

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Exelon Generation Comp