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ADD: Mark Resner

200 Exelon Way
Kennett Square, PA 19348
www.exeloncorp.com

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U.S. Nuclear Regulatory Commission
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Subject: Comments Concerning Draft Regulatory Issue Summary 2020-XX, "*Clarification of Personnel Access Authorization Requirements for Non-immigrant Foreign Nationals Working at Nuclear Power Reactors*" (*Federal Register* 85FR17770, dated March 31, 2020, Docket ID NRC-2020-0073)

This letter is being submitted in response to the U.S. Nuclear Regulatory Commission's (NRC's) request for comments concerning draft Regulatory Issue Summary 2020-XX, "*Clarification of Personnel Access Authorization Requirements for Non-immigrant Foreign Nationals Working at Nuclear Power Reactors*," published in the *Federal Register* (i.e., 85FR17770, dated March 31, 2020).

Exelon Generation Company, LLC (Exelon) appreciates the opportunity to comment on this draft RIS. Exelon supports the June 15, 2020 comments submitted by the Nuclear Energy Institute (NEI) related to the subject RIS. In particular, the draft RIS erroneously attempts to incorporate employment/immigration matters into the NRC's access authorization regulations by setting an expectation that licensees must validate "the correct visa category [for a foreign national applicant for unescorted access] to perform the type of work at a nuclear power plant" through the licensees' access authorization programs.

Imposing an expectation that licensees validate non-immigrant's *employment eligibility* is inconsistent with the clear purpose and scope of the NRC's security regulations. The subject of the draft RIS – 10 CFR 73.56(d)(3) – requires that licensees "in the case of foreign nationals, validate the claimed non-immigration status that the individual has provided is correct." The purpose of this provision is to verify an applicant's true identity "to ensure that the applicant is the person that he or she has claimed to be." But this requirement does not exist in a vacuum – it is one piece of the NRC's access authorization requirements, with the overall objective to "provide high assurance that individuals subject to access authorization programs are trustworthy and reliable, and do not pose an unreasonable risk to public health and safety or the common defense and security." Furthermore, a licensee's access authorization program is part of the licensee physical protection program, which must be designed to "protect against the design basis threat of radiological sabotage" and "prevent significant core damage and spent fuel sabotage." In other words, the objective of validating an applicant's non-immigration status is to establish true identity as part of a trustworthiness and reliability determination, which in turn helps to ensure protection of the facility from radiological sabotage. The draft RIS fails to articulate

any nexus between the prevention of radiological sabotage and verification of employment eligibility.

In addition to being inconsistent with the purpose of NRC's access authorization requirements, the interpretation provided by the draft RIS is impractical and would create a significant burden on Exelon's Access Authorization program. Exelon's Reviewing Officials are not immigration experts and currently do not possess the ability to collect and assess any one of the hundreds of codes associated with immigration status against an applicant's intended employment. Furthermore, Exelon's Reviewing Officials are not typically provided specific information about the type of work an applicant will be doing after access is granted because it is not relevant to a trustworthiness and reliability determination. In fact, not all individuals who apply for unescorted access or unescorted access authorization will ever actually work within the protected area of a nuclear power plant.

In this light, the regulatory position reflected in the draft RIS clearly represents a new interpretation that would impose additional, unjustified burdens on licensees. Even assuming that the NRC has the legal authority to impose on licensees a requirement seemingly unrelated to radiological sabotage, the draft RIS fails to indicate that the NRC analyzed those additional burdens as required by the backfit rule at 10 CFR 50.109.

To be clear, Exelon is committed to complying with all applicable immigration and employment laws and expects its contractors to do the same. It is also Exelon's highest priority to ensure the safety and security of the facilities it operates. But the NRC itself acknowledged multiple times during its April 28, 2020 meeting that it "is confident there are no security threat concerns present regarding these foreign nationals." If there is no "security threat" concern, then regulatory action is unwarranted. As such, Exelon recommends that the NRC discontinue further activity on the draft RIS and that the NRC work with industry to clarify existing guidance consistent with the scope of the NRC's access authorization regulations.

If you have any questions or require additional information, please do not hesitate to contact Jason Zorn at (202) 637-0320.

Respectfully,



J. Bradley Fewell
Senior Vice President Regulatory and General Counsel
Exelon Generation Company, LLC