

# **NUCLEAR REGULATORY COMMISSION**

**Docket No. 50-220**

**Exelon Generation Company, LLC**

**Nine Mile Point Nuclear Station, Unit 1**

**Exemption**

## **I. Background.**

Exelon Generation Company, LLC (Exelon, the licensee), is the holder of Renewed Facility Operating License No. DPR-63 which authorizes operation of the Nine Mile Point Nuclear Station (Nine Mile Point), Unit 1, a boiling-water reactor located in Scriba, New York (6 miles northeast of Oswego, New York). 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, Commission) now or hereafter in effect. The current operating license for Nine Mile Point, Unit 1, expires on August 22, 2029.

By letter dated September 11, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20255A001), Exelon requested an exemption that would allow submittal of a subsequent license renewal application (SLRA) for Nine Mile Point, Unit 1, at least 3 years prior to the expiration of the existing license and, if the NRC finds the application sufficient for docketing, to still receive timely renewal protection under title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, Section 2.109(b). Pursuant to 10 CFR 2.109(b), the NRC provides timely renewal protection to licensees that submit a sufficient license renewal application at least 5 years before the expiration of the existing license.

## **II. Request/Action.**

Under 10 CFR 54.17(a), the NRC requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b). In

turn, 10 CFR 2.109(b) states "If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined." In its letter dated September 11, 2020, Exelon requested an exemption from 10 CFR 54.17(a) to allow Exelon to submit its SLRA for Nine Mile Point, Unit 1, at least 3 years prior to the expiration of the existing license and still receive timely renewal protection under 10 CFR 2.109(b).

### **III. Discussion.**

Under 10 CFR 54.15, exemptions from the requirements of Part 54 are governed by 10 CFR 50.12. 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 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) special circumstances are present, as defined in 10 CFR 50.12(a)(2). In its application, Exelon stated that three special circumstances apply to its request. The three special circumstances that Exelon included in its request are:

- 1) The special circumstance in 10 CFR 50.12(a)(2)(ii) states, "[a]pplication 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;"
- 2) The special circumstance in 10 CFR 50.12(a)(2)(iii) states, "[c]ompliance would result in undue hardship or other costs that are significantly in excess

of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;"

- 3) The special circumstance in 10 CFR 50.12(a)(2)(vi) states, "[t]here is present other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption."

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

This exemption would allow Exelon to submit a sufficient SLRA for Nine Mile Point, Unit 1, at least 3 years prior to the expiration of its existing license and still receive timely renewal protection under 10 CFR 2.109(b). Section 2.109 implements Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. §558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109 is the result of a discretionary agency rulemaking under Sections 161 and 181 of the Atomic Energy Act of 1954, as amended, and not required by the APA. As stated above, 10 CFR 54.17(a) requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b). In addition, 10 CFR 54.15 allows the NRC to grant exemptions from the requirements of 10 CFR Part 54. The NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the APA, or the NRC's regulations. Therefore, the exemption is authorized by law.

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

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for Exelon to submit a sufficient SLRA and receive timely renewal protection is a scheduling change. The action does not change the manner in

which the plant operates and maintains public health and safety because no additional changes are made as a result of the action. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the SLRA, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern. Based on the above, the NRC finds that the action does not cause undue risk to public health and safety.

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

The requested exemption to allow for a timely renewal protection deadline of at least 3 years instead of 5 years is a scheduling change. The exemption does not change any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

**D. Special Circumstances**

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the "timely renewal" provision of Section 9(b) of the APA, 5 U.S.C. § 558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The underlying purpose of this "timely renewal" provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with

agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR Part 54, with associated changes to 10 CFR Parts 2, 50, and 140, in the *Federal Register* (56 FR 64943). The statement of considerations discussed the basis for establishing the latest date for filing license renewal applications and the timely renewal doctrine (56 FR 64962). The statement of considerations stated that:

Because the review of a renewal application will involve a review of many complex technical issues, the NRC estimates that the technical review would take approximately 2 years. Any necessary hearing could likely add an additional year or more. Therefore, in the proposed rule, the Commission modified § 2.109 to require that nuclear power plant operating license renewal applications be submitted at least 3 years prior to their expiration in order to take advantage of the timely renewal doctrine.

No specific comment was received concerning the proposal to add a 3-year provision for the timely renewal provision for license renewal. The current regulations require licensees to submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their operating licenses. The Commission has concluded that, for consistency, the deadline for submittal of a license renewal application should be 5 years prior to the expiration of the current operating license. The timely renewal provisions of § 2.109 now reflect the decision that a 5-year time limit is more appropriate.

Thus, the NRC originally estimated that 3 years was needed to review a renewal application and to complete any hearing that might be held on the application. The NRC changed its original deadline from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and related financial assurance information and when they must submit their license renewal application to receive timely renewal protection.

Application of the 5-year period in 10 CFR 2.109(b) is not necessary to achieve the underlying purpose of the timely renewal provision in the regulation if Exelon files a

sufficient Nine Mile Point, Unit 1, SLRA at least 3 years prior to expiration of the license. The NRC's current schedule for review of SLRAs is to complete its review and make a decision on issuing the renewed license within 18 months of receipt if there is no hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's review and of the hearing process, and issuance of a decision on the license renewal application within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a complete and sufficient application being submitted and on the review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstance of Nine Mile Point, Unit 1.

In addition, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is present in the circumstances of Nine Mile Point, Unit 1. Compliance with § 2.109(b) would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. In its application, Exelon stated that the decision to continue power operation at Nine Mile Point, Unit 1, depended on economic and legislative factors that evolved in a way that did not permit the preparation and submission of an SLRA 5 years prior to the license expiration date. Exelon further stated that if the exemption is not granted, and it submits its SLRA less than 5 years before license expiration, then Exelon would face the risk of being forced to shut down if

the application is not approved before the current license expires. The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present. Because the NRC staff finds that special circumstances exist under 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii), the NRC staff did not consider whether special circumstances also exist under 10 CFR 50.12(a)(2)(vi), as presented by Exelon in its exemption request.

#### **E. Environmental Considerations**

The NRC has determined that the issuance of the requested exemption meets the provisions of categorical exclusion 10 CFR 51.22(c)(25)(vi)(G). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies as a categorical exclusion if (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 involves scheduling requirements. The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)-(vi).

##### **Requirements in 10 CFR 51.22(c)(25)(i)**

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a

no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the license renewal application at least 3 years before the expiration of the existing license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (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. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption constitutes a change to the schedule by which Exelon must submit its SLRA and still receive timely renewal protection, which is administrative in nature, and does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite and does not contribute to any significant increase in occupational or public radiation exposure. 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. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.



#### Requirements in 10 CFR 51.22(c)(25)(v)

The exemption constitutes a change to the schedule by which Exelon must submit its SLRA and still receive timely renewal protection, which is administrative in nature, and does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

#### Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(G), the exemption must involve scheduling requirements. The exemption involves scheduling requirements because it would allow Exelon to submit a SLRA for Nine Mile Point, Unit 1, at least 3 years prior to the expiration of the existing license, rather than the 5 years specified in 10 CFR 2.109(b), and still receive timely renewal protection under 10 CFR 2.109(b). Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

### **IV. Conclusions.**

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 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, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the licensee a one-time exemption for Nine Mile Point, Unit 1, from 10 CFR 54.17(a) to allow the submittal of the Nine Mile Point, Unit 1, SLRA at least

3 years prior to expiration of the operating license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b).

This exemption is effective upon issuance.

Dated: April 9, 2021

For the Nuclear Regulatory Commission.

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