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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 2021 (86 Fed. Reg. 10459, dated February 22, 2021) (Docket ID NRC-2018-0292)

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 2021, published at 86 Fed. Reg. 10459 on February 22, 2021.

Exelon appreciates the NRC's continued efforts to improve the efficiency and clarity of the fee process as part of the Fees Transformation Initiative and implementation of the Nuclear Energy Innovation Modernization Act (NEIMA). This includes e-Billing, providing an estimate of the operating reactor annual fee as part of the Congressional Budget Justification (CBJ), determination of Consumer Price Index adjusted operating reactor fee cap in the associated work papers, and the other improvements.

Regarding the FY2021 Proposed Fee Rule, although NRC has improved the invoicing process as noted above, Exelon continues to have many of the same concerns regarding the fee-setting process that we have expressed in recent years.[1] We also question whether the NRC is implementing NEIMA in a manner that fulfills the statute's requirements and intent. In the spirit of continued improvement in regulatory efficiency, Exelon provides the following comments on the FY2021 Proposed Fee Rule.

- The FY2021 Proposed Fee Rule continues to shift the burden created by overestimating Part 170 fee collections reflected in the NRC's appropriated budget to the recovery of Part 171 annual

[1] *See* Letter from J. Fewell, Exelon to U.S. NRC, "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)," dated March 19, 2020 (ADAMS ML20084K871); 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).

fees. While Exelon appreciates the challenge of precisely estimating the amount of Part 170 fees that will be recovered two years in advance due to the budget cycle, we note that this is precisely the problem that NEIMA intended to address. The Conference Report for NEIMA describes exactly this challenge in explaining the basis for the law: "Several problems arise from [the OBRA-90] structure. If the NRC overestimates the amount of revenue it expect [*sic*] to collect under Part 170, it must recover the resulting revenue shortfall through Part 171 fees in order to meet the OBRA–90 mandate for 90 percent fee recovery."[2] The Congress noted that this situation "highlight[s] the need for the NRC to budget more accurately and recover fees for work that is actually conducted."[3] It is clear, therefore, that Congress designed NEIMA with the existing challenges of the budget cycle in mind. Notwithstanding Congress's clear intent in this regard, the FY2021 Proposed Fee Rule would continue to shift the impacts of Part 170 overbudgeting to Part 171 annual fees, which does not appear to take advantage of the significantly greater flexibilities in NEIMA with respect to the portions of its appropriated budget that the NRC must collect through fees.

- In the FY2021 Proposed Fee Rule, the NRC did not make a "fee-relief adjustment" that it has made in past years on the basis that "[b]ecause NEIMA eliminated the approximately 90 percent requirement for fee recovery and, in turn, the 10 percent limit on fee-relief activities, the NRC will no longer provide a fee-relief credit or assess a fee-relief surcharge as part of the calculation of annual fees for each licensee fee class."[4] However, nowhere in NEIMA itself nor in the legislative history did Congress direct the NRC to eliminate fee-relief adjustments. NEIMA specifically requires the deduction of "any fee relief activity, as identified by the Commission," which seems on its face to provide significant flexibility to the Commission to make necessary adjustments since "any fee relief activity" is not defined in the statute or the legislative history. The Proposed Fee Rule expressly acknowledges that the exclusion of fee relief activities is required by NEIMA as part of "Excluded Activities" to be excluded from fee recovery. But as explained in the Proposed Fee Rule, "[i]n FY 2021, the fee-relief activities identified by the Commission are consistent with prior final fee rules"[5] with the exception of some international activities. In other words, while NEIMA made it possible for the NRC to define "fee relief activities" in a way that could have accounted for Part 170 over-budgeting, the Proposed Rule essentially maintains the same constraints that existed under OBRA-90. This interpretation was not mandated by Congress, nor does it appear to align with the NRC's overall vision to become a "modern, risk-informed regulator" that values innovative approaches to problem solving.[6]

- One of NEIMA's requirements is the limitation of Corporate Support costs as a percentage of total budget authority, to the maximum extent practicable. Exelon suggests that the fee rule explain whether the Corporate Support costs are under the NEIMA limit. NRC should also demonstrate, either in the fee rule or the work papers, how the Corporate Support cost as a percentage of total budget authority is determined. For fiscal year 2021, NEIMA limits Corporate Support costs (to the maximum extent practicable) to 30 percent of the NRC's total budget authority. During the March 18, 2021 NRC public meeting on the Proposed Fee Rule, the

[2] Sen. Rep. No. 115-86, at 2 (2017).
[3] *Id.*
[4] 86 Fed. Reg. 10459, 10467 (Feb. 22, 2021).
[5] *Id*. at 10461.
[6] See, e.g., SECY-21-0018, Update on Agencywide Transformation Performance Measures (Feb. 22, 2017).

staff explained that Corporate Support costs for FY2021 totaled 31% of the agency's overall budget. However, the work papers for the determination of the professional hourly rate includes approximately $284M for Corporate Support (with IG), which amounts to approximately 34% of the overall budget authority of $844M. The NRC should clearly explain in the fee rule how it arrived at the 31% allocation that it described during the public meeting.

- As noted in the Proposed Fee Rule, NRC has improved the accuracy and clarity of Part 170 service fee invoicing, e.g., via internal auditing and development of Enterprise Project Identifiers (EPID). Exelon acknowledges and salutes the NRC's success in this area. However, as accuracy and clarity in hourly fees collected under Part 170 has increased, the actual amount of fees collected under Part 170 has decreased. Exelon understands that the numerous line item numbers shown in the work papers' Power Reactors Fee Class details are themselves the summations of multiple other supporting calculations apparently too detailed to provide. Numerous as these line items are, their general nature makes understanding difficult for an outside reviewer. Exelon suggests that some "pointer" designation be developed, similar to the EPID/CAC system used for Part 170 fees, and included in the quarterly Part 171 reactor fee invoicing. This way, the details of which line items will be funded via reactor fee invoicing within a given calendar year quarter may be better tracked back to the work papers, allowing constructive dialogue between NRC and reactor licensees regarding the applicability of a particular line item to that licensee.

Exelon supports the comments of the Nuclear Energy Institute on the FY2021 Proposed Fee Rule. Given that there is no formal way for stakeholders to provide input into the formulation of the NRC's annual budget, Exelon encourages the NRC to consider these comments as part of its next budget and fee formulation process. Exelon respects the objective judgment that NRC exercises as an independent safety regulator. However, Exelon encourages the NRC to seek ways to improve its interactions with the regulated industry during budget development, within the limits required to maintain NRC independence.

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 630-740-2282.

Respectfully,

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Exelon Generation Company, LLC