

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of:

Docket Nos.:

EXELON GENERATION COMPANY, LLC; EXELON CORPORATION; EXELON FITZPATRICK, LLC; NINE MILE POINT NUCLEAR STATION, LLC; R. E. GINNA NUCLEAR POWER PLANT, LLC; and CALVERT CLIFFS NUCLEAR POWER PLANT, LLC	)	STN 50-456, STN 50-457, 72-73, STN 50-454, STN 50-455, 72-68, 50-317, 50-318, 72-8, 50-461, 72-1046, 50-10, 50-237, 50-249, 72-37, 50-333, 72-12, 50-373, 50-374, 72-70, 50-352, 50-353, 72-65, 50-220, 50-410, 72-1036, 50-171, 50-277, 50-278, 72-29, 50-254, 50-265, 72-53, 50-244, 72-67, 50-272, 50-311, 72-48, 50-289, 72-77, 50-295, 50-304, and 72-1037 -LT
(Braidwood Station, Units 1 and 2; Byron Station, Unit Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit No. 1; Dresden Nuclear Power Station, Units 1, 2, and 3; James A. FitzPatrick Nuclear Power Plant; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Quad Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Three Mile Island Nuclear Station, Unit 1; Zion Nuclear Power Station, Units 1 and 2; and Associated Independent Spent Fuel Storage Installations)	)	June 30, 2021

**COMBINED MOTION OF EXELON TO FILE ITS ANSWERS TO THE EDF AND EPSTEIN/TMIA HEARING REQUESTS ON ILLINOIS'S NEW HEARING REQUEST DEADLINE AND MOTION OF ELPC TO MOVE EXELON'S DEADLINE TO ANSWER ELPC'S HEARING REQUEST TO JULY 30, 2021**

Pursuant to 10 C.F.R. §§ 2.323, 2.1325, and 2.307, Exelon Generation Company, LLC, on behalf of itself and Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC; R. E. Ginna Nuclear Power Plant, LLC; and Calvert Cliffs Nuclear Power Plant, LLC (collectively, "Exelon") hereby move to align the deadline for Exelon to file answers to the previously-filed hearing requests of EDF, Inc. ("EDF") and Eric J. Epstein and Three Mile Island Alert ("Epstein/TMIA") with the recently-established deadline for the State of Illinois ("State")

to file a hearing request.<sup>1</sup> This will ensure that Illinois does not receive an unfair advantage by seeing Exelon’s Answer to other hearing requests before Illinois files its own hearing request. In addition, the Environmental Law & Policy Center (“ELPC”) moves to extend the deadline for Exelon to file an answer to ELPC’s hearing request.<sup>2</sup> This will accommodate a brief period of unavailability of ELPC’s counsel.

### **BACKGROUND**

The NRC published a notice in the *Federal Register* on May 3, 2021, offering an opportunity to file hearing requests and petitions to intervene in the above-captioned proceeding by May 24, 2021.<sup>3</sup> The NRC Secretary subsequently extended that deadline three times. First, on May 24, 2021, the Secretary issued an order extending that deadline by three weeks for all potential petitioners, until June 14, 2021.<sup>4</sup> The EDF and Epstein/TMIA hearing requests were filed on June 14, 2021.<sup>5</sup> On that same day, the Secretary issued a second extension of the deadline, until June 23, 2021, but only as to the State of Illinois (“State”) and the Environmental Law and Policy Center (“ELPC”).<sup>6</sup> On June 23, 2021, ELPC filed its hearing request.<sup>7</sup>

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<sup>1</sup> Pursuant to 10 C.F.R. § 2.323(b), Exelon’s counsel certifies that Exelon made a sincere effort to contact the other participants and resolve the issues raised in this Motion as to Exelon’s requested relief. Mr. Epstein (on behalf of himself and TMIA) and ELPC do not oppose, and EDF and the State of Illinois take no position.

<sup>2</sup> Pursuant to 10 C.F.R. § 2.323(b), ELPC’s counsel certifies that ELPC made a sincere effort to contact Exelon and resolve the issues raised in this Motion as to ELPC’s requested relief. Exelon does not oppose.

<sup>3</sup> Consideration of Approval of Transfer of Licenses and Conforming Amendments, 86 Fed. Reg. 23,437 (May 3, 2021) (“Hearing Opportunity Notice”).

<sup>4</sup> NRC Secretary Order at 2 (May 24, 2021) (ML21144A125).

<sup>5</sup> Petition of EDF Inc. for Leave to Intervene and Request for a Hearing (June 14, 2021) (ML21165A295); Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing (June 14, 2021) (ML21165A196).

<sup>6</sup> NRC Secretary Order at 2 (June 14, 2021) (ML21165A124).

<sup>7</sup> Environmental Law & Policy Center’s Petition to Intervene and Hearing Request (June 23, 2021) (ML21174A320).

But, on June 22, 2021, the Secretary issued a third order, *sua sponte*, staying the State's deadline to file a hearing request,<sup>8</sup> pending consideration of a motion filed by the State to amend the Protective Order in this proceeding ("State's Motion").<sup>9</sup> On June 29, 2021, the Secretary issued a ruling on the State's Motion, specifying that "[T]he State's new deadline to file a request for hearing shall be within ten [calendar] days of its receipt of the information provided under the Second Amended Protective Order."<sup>10</sup>

### **DISCUSSION**

Pursuant to 10 C.F.R. § 2.309(i)(1), the current deadline for Exelon to file answers to the EDF and Epstein/TMIA hearing requests is July 9, 2021. Meanwhile, the State's new deadline to file a hearing request is July 12, 2021.<sup>11</sup> Exelon respectfully requests that the deadline to answer the EDF and Epstein/TMIA hearing requests be moved one business day, from Friday, July 9, 2021, to Monday, July 12, 2021, to correspond with the State's new hearing request deadline. Additionally, pursuant to 10 C.F.R. § 2.309(i)(1)-(2), Exelon's current deadline to answer the ELPC hearing request is July 19, 2021, and ELPC's reply deadline is July 26, 2021. ELPC respectfully requests that Exelon's deadline to answer the ELPC hearing request be moved to Friday, July 30, 2021.

Good cause exists to adjust Exelon's deadline to answer the EDF and Epstein/TMIA hearing requests because the current deadline, under 10 C.F.R. § 2.309(i)(1), would require

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<sup>8</sup> NRC Secretary Order at 2 (June 22, 2021) (ML21173A299).

<sup>9</sup> The People of the State of Illinois' Motion to Enter Second Amended Protective Order (June 17, 2021) (ML21168A328).

<sup>10</sup> NRC Secretary Order at 3 (June 29, 2021) (including the Second Amended Protective Order).

<sup>11</sup> See Second Amended Protective Order ¶ 24 (June 29, 2021) (providing that Illinois must file non-disclosure declarations ("NDDs") via EIE within "2 business days" of the issuance of the order, *i.e.*, by July 1, 2021; and providing that Exelon has "3 business days" to provide the information to Illinois). Assuming Illinois timely files the NDDs via EIE by July 1, even if Exelon provides the information to Illinois same-day, or by July 2, the ten-day period results in a filing deadline of Monday, July 12, 2021. See 10 C.F.R. § 2.306(a) (weekend deadlines are moved to the following business day).

Exelon to file answers to those hearing requests *before* the State must file its hearing request. In effect, Exelon would be compelled to disclose (via its Answers, to which the State would have access) key arguments and legal strategy that the State could leverage in developing its hearing request, giving the State an unfair advantage not provided to the other participants and prejudicing Exelon. This disordered, answer-before-petition pleading sequence also would be contrary to the spirit of the Commission’s codified procedural rules, which purposefully contemplate logically-ordered adjudicatory proceedings in which petitions are filed before answers are due.<sup>12</sup> Furthermore, this circumstance was unavoidable<sup>13</sup> on the part of Exelon because it arose from the Secretary’s prior Orders and *sua sponte* extension.<sup>14</sup>

Likewise, good cause exists to grant ELPC’s request to move Exelon’s deadline to answer the ELPC hearing request because ELPC’s counsel of record, Ms. Kearney and Ms. Cox, both will be unavailable during the period in which ELPC would need to develop its reply pleading (between July 19 and July 26, 2021) under the current schedule. By moving Exelon’s deadline to answer the ELPC hearing request to Friday, July 30, 2021, ELPC’s reply would be due Friday, August 6, 2021, per 10 C.F.R. § 2.309(i)(2), which ELPC’s counsel is able to accommodate. Furthermore, this adjustment would not extend the overall briefing window for this proceeding because briefing on the State’s hearing request would remain ongoing beyond ELPC’s proposed reply deadline.

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<sup>12</sup> See generally 10 C.F.R. § 2.309.

<sup>13</sup> See *Hydro Res., Inc.* (Albuquerque, NM), CLI-99-1, 49 NRC 1, 3 n.2 (1999) (observing that “unavoidable and extreme circumstances” provide sufficient grounds to extend filing deadlines).

<sup>14</sup> Notably, the State’s Motion was only filed *three* business days before the previous deadline.

## CONCLUSION

For all of these reasons, the Secretary should issue an order establishing Monday, July 12, 2021, as Exelon's deadline to file answers to the EDF and Epstein/TMIA hearing requests and establishing Friday, July 30, 2021 as Exelon's deadline to file an answer to ELPC's hearing request.

Respectfully submitted,

As to ELPC's requested relief,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated at Washington, DC  
this 30th day of June 2021

Respectfully submitted,

As to Exelon's requested relief,

Executed in Accord with 10 C.F.R. § 2.304(d)

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NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that the foregoing “COMBINED MOTION OF EXELON TO FILE ITS ANSWERS TO THE EDF AND EPSTEIN/TMIA HEARING REQUESTS ON ILLINOIS’S NEW HEARING REQUEST DEADLINE AND MOTION OF ELPC TO MOVE EXELON’S DEADLINE TO ANSWER ELPC’S HEARING REQUEST TO JULY 30, 2021,” was served upon the Electronic Information Exchange (the NRC’s E-Filing system) in the above-captioned proceeding.

Signed (electronically) by Ryan K. Lighty

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